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Meredith Kolsky Lewis

University at Buffalo School of Law, mlewis5@buffalo.edu

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Achieving a Free Trade Area of the Asia-Pacific: does the TPP present the most attractive path?

MEREDITH KOLSKY LEWIS

This chapter examines the prospects for the Trans-Pacific Partnership (TPP) to expand into a Free Trade Area of the Asia-Pacific (FTAAP). It does so by comparing the TPP to other potential models for Asian economic integration, and by identifying what factors might enhance or diminish the possibility of the TPP serving as the FTAAP model.

First, the chapter briefly traces the history of the TPP and its linkage to a potential FTAAP. Second, it examines other potential models for regional economic integration and discusses the pros and cons of each option for the major economies in the region. Third, it discusses reasons why the TPP might or might not be the preferred model, identifying important factors playing into this calculus.

1 The origins of the TPP-FTAAP linkage

The concept of an FTAAP has been bandied about for the past several years. C. Fred Bergsten has been a particularly strong advocate of this idea, espousing the pursuit of the Bogor goals of free trade and investment regimes throughout the Asia-Pacific Economic Cooperation (APEC).¹ APEC initiated a study of the FTAAP concept in 2006, and in 2009 pledged to explore pathways to create an FTAAP.² Bergsten's early writings³ on the subject assumed the only way an FTAAP could be accomplished would be to take the existing regional FTAs and

¹ See Bergsten (2005). ² See APEC (2010).

³ *Ibid.* ("The question before this panel is: 'Squaring FTAs with the Bogor Goals: How Can it be Done?' The honest answer is that it can only be done, over time, by rolling the individual FTAs and Economic Partnership Agreements (EPAs) and otherwise-named sub-regional trade agreements into a single Free Trade Area of the Asia Pacific.")

agreements and combine them into an FTAAP. More recently, however, Bergsten has seized upon the TPP as the basis for an ultimate FTAAP.⁴

APEC has similarly evolved in its approach towards achieving an FTAAP. As recently as its November 2010 meeting, APEC identified possible pathways as follows: “We believe that an FTAAP should be pursued as a comprehensive free trade agreement by developing and building on ongoing regional undertakings, such as ASEAN+3, ASEAN+6 and the Trans-Pacific Partnership, among others.”⁵ However, following the 2011 APEC meeting, the focus now appears to be more squarely on the TPP. In an op-ed published in December, APEC Secretariat Executive Director Ambassador Muhamad Noor noted that “APEC Leaders have agreed that the TPP could become a building block for a much-wider Free Trade Area of the Asia-Pacific, a long-term APEC goal,”⁶ and that the TPP’s objectives (including increasing trade flows and being open for inclusion of new participants) “suit[] APEC’s agenda, particularly given our vision for a Free Trade Area of the Asia-Pacific.”⁷

We therefore have a number of interesting dynamics occurring. One is that APEC has taken a consistent approach over the past few years that an FTAAP is desirable. A second is that the discussion of potential models for such an FTAAP have shifted from a view that existing bilateral agreements would need to be somehow combined, to a belief that an FTAAP will grow out of a single arrangement, be it the TPP, ASEAN+3, ASEAN+6 or an APEC-based FTA. And more recently, there has been increased emphasis on that single arrangement being the TPP.

Notwithstanding the current interest in the TPP, some APEC countries may prefer that an alternative agreement serve as the foundation for an FTAAP. Thus, this chapter examines the alternatives to the TPP. Before doing so, this section briefly traces the connection between the TPP and an FTAAP.

As discussed in [Chapter 2](#) of this volume, the TPP has grown out of a precursor agreement, the Trans-Pacific Strategic Economic Partnership Agreement, more colloquially known as the P4, which is a linkage between New Zealand, Singapore, Chile and Brunei Darussalam. The P4 members did not join together for purposes of expanding their economic markets amongst themselves, but rather sought to form a high-standards

⁴ See, e.g., APEC’s trade agenda presents possibility, problems (interview with Bergsten originally published in the *Asahi Shimbun*), November 10, 2010. Available at http://news.xinhuanet.com/english2010/indepth/2010-11/10/c_13600034.htm (accessed January 30, 2012).

⁵ *Ibid.* ⁶ See APEC (2011). ⁷ *Ibid.*

agreement that could serve as a model for an ultimate FTAAP. The P4 therefore included features that were intended to attract other countries to join. In particular, it has an open accession clause, which encourages other economies to negotiate to accede to the agreement;⁸ and it is in substance a highly comprehensive agreement. The idea was to liberalize broadly and comprehensively; this is particularly notable in the context of trade in goods, where the P4 members agreed to liberalize trade on all goods, with the exception of minor exclusions claimed by Brunei Darussalam for non-economic reasons.⁹

Initially, this Agreement did not appear to attract much attention. However, the P4 text provided that negotiations pertaining to financial services and investment would commence two years after the Agreement came into force. The Agreement came into effect in 2006, and the members accordingly planned to hold the investment and financial services negotiations in the first quarter of 2008.¹⁰ When the time neared for those negotiations to commence, the office of the United States Trade Representative (USTR) issued a press release indicating it intended to participate in these negotiations.¹¹ It suggested that if these negotiations went favourably, it would be interested in these negotiating to join the Agreement in full. This resulted in a wave of other countries – Australia, Peru and Viet Nam in the first instance – expressing their interest in participating as well.

The US already had FTAs with Singapore and Chile, and had long rebuffed New Zealand's overtures to negotiate a bilateral arrangement.¹²

⁸ For a discussion of open accession clauses in FTAs, see Lewis (2011a).

⁹ The P4 does not require Brunei Darussalam to liberalize with respect to alcohol, tobacco, opium or firearms. These products are excluded pursuant to exceptions provisions in the P4 that allow measures to protect, *inter alia*, public morals and human health. See Trans-Pacific Strategic Economic Partnership Agreement, Art. 11.22 (the P4 general exceptions provisions).

¹⁰ See MFAT (2008).

¹¹ See "United States to Join Sectoral Negotiations with Four Asia-Pacific Countries Will Explore Participation in Broader Strategic Partnership Agreement," *USTR News* (February 4, 2008). Available at www.sice.oas.org/TPD/TPP/Negotiations/USjoins_inv_serv_e.pdf (accessed on January 23, 2012).

¹² This was due to a number of factors. Historically, the US had told New Zealand there would never be a free trade agreement so long as New Zealand refused to allow US ships carrying nuclear material in New Zealand waters. In addition, it is likely that even without New Zealand's no nukes policy, the US would not have been enthusiastic. On the market access potential front, New Zealand has a small economy of only 4 million people and already has relatively low tariffs, meaning increases in exports would only be modest at best. On the flip side, New Zealand exports significant quantities of dairy products, which the United States generally treats as sensitive, as well as other agricultural products that compete with US production.

Clearly access to Brunei Darussalam's small market was not the driver. Instead, the United States' interest in the Agreement was clearly tied to its potential to expand. This remains the case today, as the other countries that have joined the negotiation also provide little in the way of new market access opportunities for the US. In addition to the FTAs mentioned above, the US also has FTAs with Peru and Australia. Thus, the current group of nine only provides new linkages for the US to four participants – Brunei Darussalam, New Zealand, Malaysia and Viet Nam.¹³

Although at times USTR officials and the USTR website have positioned the TPP as attractive because it provides a good market access opportunity, the United States 2010 Trade Policy Report perhaps tells a more accurate story: "U.S. participation in the TPP agreement is predicated on the shared objective of expanding this initial group to include additional countries throughout the Asia-Pacific region. Several additional countries already have expressed initial interest in participating in the agreement."¹⁴ While the USTR has primarily discussed the Agreement in terms of its longer-term market access potential, others have been more forthright in identifying its broader strategic implications. For example, Kevin Brady, the chair of the House Ways and Means Trade Subcommittee, gave a speech in 2011 in which he said that the TPP "at least begins the process of positioning the US as a counterweight to China in the Asia-Pacific region."¹⁵ Presumably Brady's statement reflects one of the Administration's true objectives in pursuing the TPP. Several different models have been proposed for East Asian economic integration, potentially resulting in the formation of an FTAAP. Until the TPP, none of those models included the United States. The US therefore has been facing the prospect of a world with three major economic trading blocs: the Americas, the EU and an Asian bloc. The Americas would be the weakest of these three; however, the TPP provides at least a prospect for an Asia-Pacific bloc that would combine large portions of the Americas with the major Asian economies. Such a development would have a number of positives for the US. First, it would place the US squarely in the thick of the Asia-Pacific bloc, rather than sitting on the wrong side of a divided Pacific. Second, should the Agreement expand

¹³ On the eve of the November 2011 APEC summit, Japan announced its intention to join the TPP negotiations. This decision was closely followed by statements by Canada and Mexico that they too intend to join. However, it is unclear whether these countries will be willing to make the substantive commitments required.

¹⁴ USTR (2009).

¹⁵ See discussion of Brady's speech in *Inside US Trade* (2011b).

into an FTAAP, this would have the US in the more powerful of two major blocs, rather than in the weakest of three. And third, the TPP will give the US some regional preferences that will help it respond to a degree to increasing competition from China.

Now that the TPP has emerged as an alternative path towards an FTAAP, it is an opportune time to examine the major alternative FTAAP models and identify their strengths and weaknesses.

2 Possible avenues for Asian economic integration – pros and cons

2.1 ASEAN+3/EAFTA

The ASEAN+3 model would see the ten ASEAN countries combined with China, Japan and the Republic of Korea (henceforth Korea) in a single FTA, sometimes called the East Asian FTA or EAFTA. This approach has been promoted by China over the past few years.¹⁶ The EAFTA model has been viewed with some caution by Japan, which is concerned that such an agreement would be imbalanced, with China being by far the largest economy. China's motivation seems in part to be to have a central role, but also to propose a model that excludes the United States.

At present, ASEAN already has a series of ASEAN+1 agreements that include agreements with China, Japan and Korea. Thus on the surface, the idea of ASEAN+3 seems simple. However, in order to have an ASEAN+3 that is a single, integrated FTA rather than a hub and spokes system, China, Japan and Korea will need to negotiate with each other – something that has been the subject of discussion, but which has not yet risen to the level of negotiations. China has proposed an FTA between the three major East Asian economies, and Japan and Korea agreed to study this idea. Prior to the 2011 APEC summit, there did not seem to be significant momentum for this concept. However, in January 2012 the three countries indicated their intentions to begin negotiating a tri-party FTA later in the year.¹⁷ Press reports reflected the advances of the TPP that had led China to increase its pressure on Korea and Japan to begin trilateral negotiations as soon as possible: “Through the TPP, the US expects to take a dominant position in the integration of economies of the Asia-Pacific

¹⁶ See, e.g., People's Daily (2009). ¹⁷ See China Daily (2012).

region and expand its exports to the region ... But China cannot just wait and see. And it should actively promote the progress of the FTA talks.”¹⁸

2.2 ASEAN+6/CEPEA

Japan has propounded a different model as a preferred alternative to the ASEAN+3. Japan’s proposed model, sometimes called a Comprehensive Economic Partnership in East Asia, or CEPEA, would comprise the ASEAN+3 countries, with the addition of Australia, New Zealand and India. This approach is also called ASEAN+6.¹⁹ This is seen as a model that would provide more of a counterbalance to China, and would adopt a more expansive approach to the region than just East Asia. Unsurprisingly, Australia, New Zealand and India also prefer this model to ASEAN+3.

At present ASEAN has hub and spoke agreements with all of the potential +3 and +6 partners, as it has negotiated separate FTAs with India, China, Japan and the Republic of Korea, and a single FTA with Australia and New Zealand. However, the spokes do not at present all have FTAs amongst themselves. There are a number of FTAs across the spokes, however, so an integrated ASEAN+3 or +6 is not beyond the realm of possibility. ASEAN has been able to negotiate so many ASEAN+1 agreements in part because its agreements generally are less than fully comprehensive, making them easier to negotiate.

2.3 APEC

Initially, the discussion of an FTAAP arose from APEC. Indeed, historically APEC has a long-term goal of free trade across APEC members. It has supported this concept by, *inter alia*, encouraging open accession provisions in FTAs and promoting fully comprehensive, high-standard agreements. Yet, APEC has not emerged as the driver for an FTAAP. This is in part due to APEC’s diminished role following the Asian financial crisis in the late 1990s. APEC did not prove itself able to promote major reforms or to take the lead in responding to the crisis, and this suggested that APEC

¹⁸ See Mainichi Daily News (2012).

¹⁹ The ASEAN countries themselves have taken a somewhat pragmatic approach, suggesting that the ASEAN+3 and ASEAN+6 proposals be studied simultaneously. *Ibid.*

was not strong enough to serve as the motor for economic integration. Instead, ASEAN has largely filled that void.²⁰

Nonetheless, recently there has been significant discussion within APEC regarding an FTAAP and the need to study various models for such an agreement. It has identified ASEAN+3, ASEAN+6 and the TPP as potential models, but has not as yet stated a preference for any one of these.²¹ However, at the 2011 APEC meeting, increased attention was directed towards the TPP as President Obama formally outlined details for the Agreement.²²

3 The TPP as FTAAP model?

The TPP provides an alternative to the ASEAN+3 and ASEAN+6 models discussed above. It differs in a number of important respects – in some ways that may enhance its potential for serving as an FTAAP model, and in others that detract. A selection of these factors is discussed below.

3.1 *Ease of accession*

In order for the TPP to expand into an FTAAP, it will need to absorb many additional countries into its membership. The ease or difficulty of this process may affect some countries' interest in, and willingness to, participate.

A major issue in the TPP negotiations thus far has been that of “modalities” – whether the Agreement will comprise a series of bilateral market access agreements with an overlay of common new understandings, or whether instead the entire Agreement will be unified, with a single market access schedule for each country. The resolution of this issue may significantly impact the TPP's prospects for further expansion.²³

Beginning in the initial rounds of TPP negotiations, the United States took the position that it intended to negotiate new bilateral market access arrangements with the countries with which it did not already have free trade agreements – namely New Zealand, Brunei Darussalam and Viet Nam. This approach was extended to include Malaysia when it joined the negotiations as a full member in October 2010. The US intent was that its market

²⁰ Of course, APEC's large diverse membership would make it exceedingly difficult to negotiate an APEC-wide agreement all at once. If the size alone were not enough, the Russian Federation is finishing accession to the WTO and Chinese Taipei presents its own challenging issues.

²¹ See APEC (2010). ²² BBC News Asia (2011).

²³ For more detailed discussion on this issue, see Lewis (2011b).

access commitments with respect to existing FTA partners Australia, Chile, Peru and Singapore would not be reopened or renegotiated.²⁴

This approach was opposed by New Zealand, Singapore and Australia.²⁵ These members argued that it would be preferable to have a single market access schedule. Ultimately the issue has been tabled for future negotiation, but its resolution may be pivotal for the future prospects of the TPP.

It is understandable at one level why the United States initially proposed a series of bilateral agreements as the modality for market access. It would of course prefer not to have to make new commitments to its current FTA partners. And this would be an issue: under the terms of existing FTAs, the United States has excluded a variety of products from coverage. For example, under the Australia–United States Free Trade Agreement (AUSFTA), the United States excluded sugar from its commitments. Accordingly, Australia’s sugar producers obtained no new market access to the US market as a result of the AUSFTA. If under the TPP the terms of existing FTAs were to remain in place, the US could continue to maintain its exclusion of sugar from Australia.

Although the initial US position makes sense from the standpoint of not wishing to give new concessions to its existing FTA partners, in a broader sense, this position may undermine the potential of the TPP to expand into an FTAAP. A series of bilateral arrangements would be far less attractive for potential new entrants than would a single agreement with unified market access schedules. For a non-member looking in, it would presumably prefer negotiating one schedule rather than ten or more. The bilateral approach reflects the previous wisdom that an FTAAP would have to be created by patching together the region’s many various FTAs. However, that approach is arguably more difficult than starting anew with one fresh agreement. Linking together existing agreements is made enormously complicated by differing rules of origin across agreements. This problem can be resolved by starting from scratch with a new agreement in which a single approach to rules of origin (ROO) is defined, and then requiring new entrants to accept that ROOs system.

For the moment, the issue of modalities has been largely put on hold. The US has tabled its goods market access offers only to New Zealand, Brunei Darussalam, Viet Nam and Malaysia.²⁶ At the same time, other participating countries such as Australia have made their offers on a

²⁴ See Inside US Trade (2010b). ²⁵ *Ibid.*

²⁶ See Inside US Trade (2011c).

plurilateral basis. Thus for now, there are both bilateral and plurilateral offers on the table.²⁷ Some reports suggest that the US remains open to negotiating a unified schedule at the end of the day. It has, at a minimum, indicated that there will be some aspects of commonality, but that it is deferring for now decision of how far that commonality will extend. In striking a balance between the desire to attract more members on the one hand, and not wishing to make significant new commitments to existing FTA partners on the other, the US may elect to agree to a unified market access schedule, but then to insist upon product-specific rules of origin that will minimize the potential for non-TPP partner content to be entitled to the TPP rate.²⁸ This approach would lead to fewer products qualifying as having origin from a TPP partner country than would a more liberal approach to rules of origin.

3.2 Participants

The most likely alternatives to the TPP, as discussed above, are either ASEAN+6 or ASEAN+3, or perhaps a new model with a China–Japan–Korea FTA at its core. All of these models have three things in common: (i) the participation of the three major Asian economies, China, Japan and Korea; (ii) the exclusion of the United States; and (iii) the exclusion of any other economies from the Americas side of the Pacific. In contrast, the TPP at present features South American participants, the United States, and lacks full participation by any of the major three Asian economies.²⁹ However, the latter point of difference may soon narrow. Japan has recently indicated its intent to participate in the TPP negotiations. In addition, the ratification in late 2011 of the KORUS FTA by both the United States and Korea makes it more politically feasible for Korea to enter into a new FTA negotiation with the United States, should it wish to do so. Thus, while the TPP at present contains none of the three largest Asian economies, most pointedly it excludes China.

²⁷ See Inside US Trade (2011a).

²⁸ See Inside US Trade (2011c) (discussing, *inter alia*, a yarn-forward ROO for textiles and apparel, which would mean that if a garment were produced in Viet Nam from yarn sourced from a non-TPP country, that garment would not be deemed a product of Viet Nam for ROO purposes; and other product-specific rules of origin relating to dairy and sugar).

²⁹ In November 2011, Japan announced its intention to join the negotiations. At this time it is unclear, however, whether Japan's participation in negotiations will culminate in TPP membership.

For some Asian economies (particularly China), the absence of the United States is presumably positive, and any of the alternate models would be preferable to the TPP. On the other hand, other non-members that do not currently have an FTA with the United States may find the market access possibilities of the TPP the most attractive of all the models. Given the ASEAN+1 agreements already in existence, the biggest market access gains for most Asian countries would arise out of the new linkages to the US and, to a lesser extent, the Latin American participants.³⁰ Further, given concerns about China's economic and military might, some Asian countries may welcome the US playing a greater role in the region, and the opportunity to forge linkages with the US.

Definitions of "Asia-Pacific" are variable, and there is no single agreed-to formulation. That said, it is easier to envision an agreement wearing the mantle of "FTAAP" that excludes the United States, than one that does not include China, Japan or Korea. Amongst the current TPP members, the United States has by far the largest economy, with an estimated GDP of US\$14.6 trillion. The US is followed by Australia (US \$1.22 trillion); Malaysia, Singapore and Chile come in next all around US \$200 billion, with the other economies far smaller.³¹ It is essential to add other, larger economies for the Agreement to have any prospect of becoming an FTAAP.³² But how likely is this?

3.2.1 Republic of Korea

Korea is the smallest of the big three East Asian economies, but would have the easiest path to TPP accession. Since Korea has already negotiated an FTA with the United States, it has made the most significant market access concessions required already. KORUS required Korea to open up its market to US beef exports, causing significant domestic unrest. However, Korea was able to overcome its domestic concerns, and acceding to the TPP would be relatively straightforward in

³⁰ ASEAN has FTAs with China, Japan, Korea, India, and a single agreement with Australia and New Zealand. More information regarding ASEAN FTAs can be found on ASEAN's website. Available at www.aseansec.org/4920.htm (accessed January 30, 2012).

³¹ Statistics available at www.cia.gov/library/publications/the-world-factbook/fields/2195.html (accessed January 30, 2012). The three major East Asian economies have significant GDPs: China's is reported at US \$5.7 trillion, considered an understatement, as it has been calculated using official exchange rates which are widely viewed as undervaluing the Chinese currency; Japan's is US \$5.39 trillion; and Korea's is US \$986.3 billion.

³² See *Inside US Trade* (2010e).

comparison. Korea already has FTAs with most of the major participants, so would not see significant negative domestic impacts to joining. In addition, Korea has taken a very active approach to negotiating FTAs with large economies. Besides KORUS, it has also recently concluded an agreement with the EU, and is negotiating agreements with Canada, Australia and several other countries.³³

Will Korea join the TPP? It was prudent in the first instance for Korea to forgo participating, pending the ratification of KORUS in the US and Korea. However, the FTA has recently been ratified by both countries³⁴ and it will be interesting to see if Korea will now seek (or agree) to join. The current TPP partners have already made an overture to Korea, asking it to join the talks before the first round of negotiations in 2010.³⁵ During the last APEC forum held in Yokohama, Japan in November 2010, Korea's President Lee Myung-bak indicated that his country was considering joining, but noted that he was uncertain whether its effect would be anything more than symbolic in the quest to achieve an FTAA.³⁶ Certainly for Korea itself, the TPP may not lead to very much in the way of new market access. And on the flip side, Korea would need to agree to liberalize its agricultural sector more than it has been willing to thus far. Samsung Economic Research Institute economist Park Bun-soon has expressed pessimism that Korea will take this step: "The TPP requires tearing down tariffs in all areas including the agricultural sector and can Korea do that now? I don't think so ... Korea doesn't seem ready for the TPP."³⁷ However, Korea has taken a pragmatic approach to its FTA policy, and if Japan's decision to participate proves to bear fruit, Korea may decide it needs to do so as well.

3.2.2 Japan

In a fascinating development, Japan's Prime Minister Yoshihiko Noda announced just prior to the November 2011 APEC Summit that Japan

³³ For a complete list of Korea's FTAs in effect, concluded under negotiation and under consideration, see www.mofat.go.kr/english/econtrade/fta/issues/index2.jsp (accessed January 30, 2012).

³⁴ The United States ratified KORUS on October 12, 2011 and Korea ratified the agreement on November 22, 2011.

³⁵ See *Inside US Trade* (2010a).

³⁶ See www.reuters.com/article/2010/11/14/us-apec-korea-idUSTRE6AD05L20101114 (accessed January 30, 2012).

³⁷ See Gwang-lip and Daily (2010).

would try to join the TPP negotiations.³⁸ In addition to Noda, Banri Kaieda, the head of METI, has spoken in favour of Japan's participating, indicating that joining the TPP would signal Japan's openness to free trade, and would lead to more economic growth for Japan.³⁹ Unsurprisingly, this news has been greeted warmly by the Obama Administration. Farming interests object to Japan's acceding to the TPP; however, some have argued that Japan needs to join to ensure Asia is available to replace Japan's domestic market as a destination for Japanese products.⁴⁰

If Japan participates meaningfully with a willingness to liberalize its agricultural sector, this would represent a sea change in Japanese policy. However, Japan has been in a prolonged and persistent recession, and is no longer the largest economy in Asia. Japan clearly has concerns about the rise of China, and is also increasingly on the back foot in its competitive relationship with Korea, as Korea has formed many more FTAs than Japan has. Joining the TPP may therefore present Japan with an opportunity to improve its economic standing.

Notwithstanding Noda's statement that Japan will participate in the negotiations, there are reasons to be doubtful about Japan's prospects of joining. There is a big difference between agreeing to sit at the table, and making the difficult concessions the TPP partners may require. Domestic agricultural interests are unlikely to watch quietly. When Japan first announced it would enter into consultations (before deciding to fully participate in negotiations) with current TPP partners, the organization of agricultural cooperatives (*Zenchu*) immediately lodged vociferous objections, issuing a position paper stating: "our country's agriculture will be dramatically reduced and destroyed completely. Regional economies and communities will also collapse including related industries ... The TPP will completely destroy not only agriculture but also forestry and fisheries. The most important things for us as human beings – our lives and environment – will be made hollow and will be entrusted to foreign countries."⁴¹ This is broadly representative of the line Japan's agricultural interests have taken for decades. All of the combined pressures of Japan's trading partners in the WTO have only succeeded in getting Japan to lower its tariffs on imported rice from their high of over 1000 percent to a current level of 788 percent.⁴²

³⁸ See Harlan (2011).

³⁹ See Nagata (2011).

⁴⁰ E.g., comments of Professor of Japanese politics at University of New South Wales, Aurelia George Mulgan, as reported in Wheatley (2011).

⁴¹ Quoted in Mulgan (2010). ⁴² See Brasor (2011).

Thus on the one hand, it makes all the sense in the world for Japan to join the TPP, to get back on at least somewhat of an even playing field with Korea (which has negotiated far more FTAs than has Japan), and try to jump-start its long-flagging economy by dropping its protectionist policies and liberalizing its economy. On the other hand, Japan's current policies are deeply rooted in decades of policies aimed at protecting farming interests and promoting food self-security. Thus, pursuing the TPP would be a seismic policy shift for Japan. For these reasons, Japan's decision to join the talks should be viewed cautiously. Nonetheless, it is a very important development and could lead to the Agreement growing significantly in members and importance.

3.2.3 China

An analyst with the Asian Development Bank has predicted that ASEAN+6 and the TPP will ultimately merge together.⁴³ This is a definite possibility. It is hard to envision economies such as India or China agreeing in the near-term to the comprehensive liberalization on trade in goods that acceding to the TPP would entail. At the same time, it also does not seem realistic that in the long-term there will be an FTAAP that does not include China.⁴⁴ Furthermore, should Korea and Japan agree to join the TPP, it would not be in China's interests to remain on the outside. In the short-term, while China has acknowledged the TPP, along with ASEAN+3 and ASEAN+6, as a potential model for Pacific trade liberalization,⁴⁵ it is not seeking to participate in the talks. China has also never agreed to an FTA with the level of comprehensiveness of the P4 (and likely comprehensiveness of the TPP), and would likely want more time before committing to such terms. In addition, China is unlikely to seek to join an agreement shaped in large part by the United States.

⁴³ See discussion of Ganeshan Wignaraja's views in New York Times online. Available at www.nytimes.com/2011/02/15/business/global/15inside.html?_r=1&src=busln (accessed January 30, 2012).

⁴⁴ India is less certain, because India is at present not even a member of APEC. Although India has expressed significant interest in joining APEC, APEC's current members, particularly China, have not been enthusiastic. India's domestic constraints make it unlikely to be able to commit to completely comprehensive market opening to the world's largest economies anytime in the near future. India's FTAs thus far have included numerous exclusions. For example, the just-announced FTA with Japan will not see India cutting duties on Japanese auto parts. See www.moneycontrol.com/news/business/indo-japan-fta-likely-to-be-implementedapril_524640.html (accessed January 30, 2012).

⁴⁵ *The Wall Street Journal*, "China Studying TPP; APEC Green Goods Pledge Is 'Aspirational'" (November 14, 2011). Available at: <http://online.wsj.com/article/BT-CO-20111114-701145.html> (accessed January 30, 2012).

Thus, while China may feel disadvantaged by not joining the TPP, at the same time it seems unlikely for both political and substantive reasons that China would in fact seek to do so. It is possible that these competing considerations will coalesce via an ultimate melding together of the TPP with ASEAN+6, such that non-TPP members of ASEAN+6 phase in their commitments over a longer and later time period.

3.2.4 Other possible participants

In addition to Japan, Canada and Mexico have recently announced their intent to join the negotiations. As noted above, Canada previously engaged in preliminary consultations with existing TPP participants; however, the current participants decided Canada was not sufficiently able to commit to the market access required. It remains to be seen whether the TPP members are now willing to accept less or Canada to give more. Indonesia, the Philippines and perhaps others have not made efforts to participate in these formative negotiations, but have expressed their interest in possibly joining at a later time.⁴⁶ The Philippines would have some of the same labour issues Colombia faced with respect to the US–Colombia FTA, and Indonesia has generally taken a protective approach to its agricultural sector, so it is unclear whether these countries will be able to accede, should they ultimately seek to.

3.2.5 Striking a balance

Leading up to the 2011 APEC Leaders' Meeting, the current TPP parties were anxious to advance their negotiations as quickly as possible, in light of the original ambitious goal of completing the Agreement by the November meeting. Thus, the parties were cautious about expanding the negotiations, particularly because several rounds of negotiations have now been held, so adding new countries mid-process would be challenging.⁴⁷ The US has, from the onset of the negotiations, indicated that new countries would need to express interest and commit to the requisite degree of commitments early in the process. At the same time, it has made clear it anticipates other countries joining at a later time, after the initial Agreement is concluded.⁴⁸ With nine negotiating rounds now concluded, the opportunity to join the Agreement from the beginning may no longer be an option for those not already participating. In light of the work that has already been done, and the desire to conclude the Agreement quickly,

⁴⁶ See Inside US Trade (2010d).

⁴⁷ See Inside US Trade (2010c). ⁴⁸ *Ibid.*

this position seems reasonable. However, this approach may lead to some difficulties with Japan, which would rather be able to negotiate the initial terms, rather than be faced with a take-it-or-leave-it completed deal.⁴⁹ The TPP was not completed by the 2011 APEC Leaders' Meeting, and indeed the new target completion date of July 2012 seems overly optimistic. Japan will therefore be joining the talks in progress; however, it is unclear to what extent Japan will be able to alter the negotiating framework or reopen resolved issues.

3.3 *Qualitative considerations*

As discussed throughout this volume, the TPP aspires to be a more comprehensive agreement than the vast majority of existing FTAs. For countries weighing whether to join the TPP or to pursue an ASEAN-driven or other model of integration, the comparative degrees of comprehensiveness and quality may be a significant factor.

As noted in the introductory chapter, a high-quality agreement would include: (i) comprehensive scope of diverse topics; (ii) substantial geographical scope; (iii) considerable depth that includes cooperation and integration components among members; and (iv) contain a set of shared values or norms among participants. While it remains to be seen how comprehensively the TPP achieves these benchmarks, it is certain the aim of the participating members is to create such an agreement.

The ASEAN+3 and ASEAN+6 models are likely to differ significantly from the TPP with respect to their trade liberalization aspirations. ASEAN+3 and ASEAN+6 have been discussed as strategic linkages, with free trade agreements a potential component – rather than the stated purpose – of those bonds.⁵⁰ ASEAN's FTAs thus far have not been particularly comprehensive, and analysts expect that neither ASEAN+3 nor ASEAN+6 would form a trade agreement that would be compliant with GATT Article XXIV, the WTO provision that allows members to form FTAs as an exception to the general MFN requirement. Article XXIV requires that agreements cover “substantially all the trade” between the FTA partners.⁵¹ While the term has not been defined in detail, “substantially all the trade” is widely viewed as precluding the exclusion of entire sectors. In contrast, the TPP participants promote their agreement as a comprehensive, high-standards agreement that would presumably fit within the “substantially all the trade” definition found in GATT Article XXIV. Thus, for countries

⁴⁹ *Ibid.* ⁵⁰ See Inside US Trade (2010f). ⁵¹ *Ibid.*

that have not yet negotiated an agreement that has required them to make substantial commitments in agriculture, the TPP may not be viewed as a realistic or desirable option. The more gentle approach of ASEAN+ may instead be more appealing. However, because the ASEAN+ models have security and other non-trade components to them, an ASEAN+ model and the TPP could both be pursued, side-by-side.⁵²

In addition to the comprehensiveness of sectoral coverage under the TPP, for less developed countries, the non-trade aspects of the TPP – heightened IP protections, a strong labour chapter, and stringent environmental provisions, among others – may entail more comprehensive domestic reforms than are feasible in the short- or even medium-term. For example, the TPP discussions suggest the parties are taking an active approach to trade in services. Under the WTO General Agreement on Trade in Services (GATS), members only made commitments under a “positive list” approach, meaning no commitments were made unless specifically listed. In contrast, the TPP approach is a “negative list” approach, meaning that unless specifically *excluded*, all relevant services are included.

It will be instructive to see how Viet Nam’s commitments are phased in under the TPP. This may give courage to countries such as the Philippines and Indonesia or may lead them to retreat.

4 Conclusion

Various models have been proposed for Asian economic integration, and these are all potential candidates to expand into an ultimate FTAAP. Most of these models have a number of commonalities, including the participation of the three major East Asian economies of China, Japan and Korea; the lack of inclusion of the United States; and goals of security and other non-economic issues that may exceed the desire for deep economic liberalization. The TPP provides a striking alternative. At present it does not definitively feature China, Japan⁵³ or Korea. It does include the United States, and it has as a major goal creating a high-standard, comprehensive trade agreement. Under these circumstances, countries in the region may prefer one model to the other.

⁵² *Ibid.*

⁵³ As noted above, Japan’s participation is at a preliminary stage and may or may not result in ultimate accession.

This chapter has attempted to identify some of the factors that may lead to preferences in one direction or the other, and to note that countries may elect to participate simultaneously in multiple of these models. Indeed, it is likely that plurilateral FTAs will be pursued in parallel: one will be the TPP and will not yet include China, but will include the United States and other countries from the Americas; and the other will feature the ASEAN+3 or ASEAN+6 countries – thus including China, but no participants from the Americas. It remains to be seen whether these two visions can be merged into a single FTAAP that would include the United States and China in the same agreement.

References

- APEC. 2010. *Leaders' Declaration: Pathways to FTAAP*. Yokohama, Japan. Available at www.apec.org/Meeting-Papers/Leaders-Declarations/2010/2010_aelm/pathways-to-ftaap.aspx (accessed January 23, 2012).
2011. "Op-ed, APEC and TPP Work to Integrate Region". News Release (December 17). Available at: www.apec.org/Press/News-Releases/2011/1217_opedTPP.aspx (accessed January 23, 2012).
- BBC News Asia. 2011. "Obama Outlines Pan-Pacific Trade Plan at APEC Summit." (13 November). Available at www.bbc.co.uk/news/world-asia-15704358 (accessed January 23, 2012).
- Bergsten, F.C. 2005. "A Strategy for APEC." Presentation at the 16th General Meeting of the Pacific Economic Cooperation Council, Seoul, South Korea. Available at www.pecc.org/ftaap/papers/PECCXVI-GM-Bergsten.pdf (accessed January 23, 2012).
- Brasor, P. 2011. "The Sticky Subject of Japan's Rice Protection." *The Japan Times* (February 20). Available at <http://search.japantimes.co.jp/cgi-bin/fd20110220pb.html> (accessed January 23, 2012).
- China Daily. 2012. "Wen urges start to FTA Talks." (January 11). Available at www.chinadaily.com.cn/cndy/2012-01/11/content_14419187.htm (accessed January 23, 2012).
- China Studying TPP. 2011. "APEC Green Goods Pledge is 'Aspirational'," *The Wall Street Journal*. (November 14). Available at <http://online.wsj.com/article/BT-CO-20111114-701145.html> (accessed January 23, 2012).
- Gwang-lip, M. and JoongAng Daily. 2010. "TPP, An Opportunity and Challenge for Korea." Available at <http://joongangdaily.joins.com/article/view.asp?aid=2928443> (accessed January 23, 2012).
- Harlan, C. 2011. "Japan Will Take Part in Trade Talks, PM Noda Says." *Washington Post* (November 11). Available at www.washingtonpost.com/world/japan-will-take-part-in-trade-talks-pm-noda-says/2011/11/11/gIQANw63BN_story.html (accessed January 23, 2012).

- Honge, M. (ed.). 2010. "APEC's Trade Agenda Presents Possibility, Problems." Available at http://news.xinhuanet.com/english2010/indepth/2010-11/10/c_13600034.html (accessed January 23, 2012).
- Inside US Trade. 2010a. "Kirk: U.S. Seeks to Retain as Many FTA Benefits as Possible in TPP" (May 21) (subscription only).
- 2010b. "TPP Countries Examining New Compromise Idea for Market Access Talks" (August 6) (subscription only).
- 2010c. "Japan Conducts High-Level Consultations on Whether to Join TPP Talks" (October 7) (subscription only).
- 2010d. "TPP Officials to Meet Reps from Countries Interested in Joining at APEC" (November 4) (subscription only).
- 2010e. "Key to TPP Success is Whether Major Economics Will Get on Board" (November 18) (subscription only).
- 2010f. "U.S. Faces Challenges in Bid to Shape Economic Integration in Asia" (November 18) (subscription only).
- 2011a. "Official: U.S. TPP Goods Market Access Offer Will Not Exclude Any Sectors" (January 13) (subscription only).
- 2011b. "Brady: Republicans Pressing for TPP conclusion by November" (January 21) (subscription only).
- 2011c. "U.S. TPP Goods Market Access Offer Leaves Some Questions Unanswered" (February 3) (subscription only).
- Lewis, M.K. 2011a. "Open Accession Provisions in FTAs: A Bridge Between Regionalism and Multilateralism?" in Junji Nakagawa (ed.) *Multilateralism and Regionalism in Global Economic Governance: Trade, Investment and Finance*. Routledge.
- 2011b. "The Trans-Pacific Partnership: New Paradigm or Wolf in Sheep's Clothing?," *British Columbia International and Competition Law Review* 27: 34.
- Mainichi Daily News. 2012. "Japan, China, S. Korea to kick off FTA talks" (January 9). Available at <http://mdn.mainichi.jp/mdnnews/business/news/20120109p2g00m0bu075000c.html> (accessed January 23, 2012).
- MFAT. 2008. *Investment and Financial Services – Negotiations between P4 and the United States*. Information Bulletin. Available at www.nzuscouncil.com/index.php/news/coverage/p4_united_states/ (accessed January 23, 2012).
- Mulgam, A.G. 2010. "TPP, Trade Liberalization and Japan's Farm Lobby." Available at www.eastasiaforum.org/2010/11/22/tpp-trade-liberalisation-and-japans-farm-lobby/ (accessed January 23, 2012).
- Nagata, K. 2011. "Biz-Friendly Kaieda Bullish on TPP," *Japan Times* (January 21). Available at <http://search.japantimes.co.jp/cgi-bin/nn20110121f3.html> (accessed January 23, 2012).
- Office of the United States Trade Representative. 2009. *Annual Report*. Available at www.ustr.gov/2010-trade-policy-agenda (accessed January 23, 2012).

2010. *United States 2010 Trade Policy Agenda*. Available at www.ustr.gov/2010-trade-policy-agenda (accessed January 23, 2012).
- People's Daily. 2009. "East Asia FTA, a Good Thing That Doesn't Come Easy." Available at <http://english.peopledaily.com.cn/90001/90780/91421/6799315.html> (accessed January 23, 2012).
- Wheatley, A. 2011. "Japan Premier's Balancing Act on Joining Pacific Free Trade Group," *The New York Times* (February 14). Available at: www.nytimes.com/2011/02/15/business/global/15inside.html?_r=1&src=busln (subscription only).
- Wignaraja, G. 2011. Available at: www.nytimes.com/2011/02/15/business/global/15inside.html?_r=1&src=busln. (subscription only).