

The United States and East Asian Regionalism: Competing Paths to Integration

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Abstract

Though it has neglected the region for brief periods over the past two decades, U.S. trade policy, linked to U.S. diplomatic and security policy, has made East Asia a central focus. Secretary of State James Baker's vow not to allow a line to be drawn the middle of the Pacific with the US on one side and the nations of Asian on the other has held steady. This article traces and analyzes U.S. trade policy toward East Asia since 1990. It describes the development of competing paths to Asian trade integration: a trans-Pacific vision, embodied now in the Trans-Pacific Partnership Agreement (TPP); and an intra-Asian vision, embodied most clearly in the ASEAN Plus Three process. The article concludes with a detailed description of the major negotiating issues and challenges that have emerged in the ongoing TPP bargaining sessions.

Key Words: Asian regionalism, U.S. trade policy, APEC, Trans-Pacific Partnership Agreement, ASEAN Plus Three

Introduction

Looking Back: A Selective Historical Overview of U.S. Regionalism

Beginning in the 1940's, when the postwar multilateral trading system was founded around the truncated provisions of the General Agreements on Tariffs and Trade (GATT), and continuing to the mid-1980s, the United States steadfastly opposed derogations from most favored national status (MFN) obligations, and, therefore, most regional trading arrangements. (Cold War exigencies account for the exception regarding the formation and growth of the European Community.) Essentially, the U.S. adhered to a two-track trade policy: (1) multilateralism, embodied in its membership in the GATT and in its leadership in eight rounds of trade-liberalizing GATT negotiations; and,

(2) unilateralism-bilateralism, dictated by the substantive reality that GATT did not cover key trading sectors, and thus powerful domestic interests demanded that U.S. political leaders pursue independent bilateral negotiations—particularly with Japan and the EC—to achieve trade policy goals beyond multilateral disciplines. Unilateralism was linked directly to bilateral negotiations as the U.S. also reserved the right to act on its own by enforcing its will, should bilateral negotiations fail.¹

By the late 1980s, however, forces were coming into play that would induce the United States to introduce bilateral and regional agreements into its portfolio of trade instruments. In response, beginning with the Bush (I) administration, but continuing in more urgent and vocal fashion in the Clinton administration, voices for a greater priority for regional trade policies obtained greater influence within the U.S. executive department. Secretary of State James Baker had stated that while the United States hoped that liberalization would occur in the Uruguay Round, “If not, we might be willing to explore a market-liberalizing club approach through mini-lateral arrangements or a series of bilateral arrangements”²

And in a move that still resonates within the current debate over the correct balance in U.S.-Asian trade and diplomatic policy, it was Baker who challenged (behind the scenes) the first proposal for an intra-East Asian regional institution in form of an East Asian Economic Caucus, advanced by Malaysia in 1991. Baker made clear to U.S. allies in the region that the United States would oppose any plan that “drew a line down the middle of the Pacific” and placed the United States on the other side of that line.³ Baker’s attempt to meld trade policy with broader diplomatic and security goals has echoed throughout all succeeding US administrations.

The Clinton Years

In 1993, when the Clinton administration came into office, it was keenly aware that it had won the presidency with the slogan, “It’s the Economy, Stupid!” Since 1990, the United States had experienced a brief recession, and (unfortunately for then-President Bush) a slow recovery and stubbornly high unemployment.

It is not surprising, then, that the trade policy of the first Clinton administration took on a strongly mercantilist flavor—and that Asia emerged for the first time in postwar history an important priority for new trade initiatives. The administration was quite candid in describing

the underlying mercantilist thrust its trade policy. The 1994 Economic Report of the President promised an “activist commitment to promote American exports.”⁴ And the 1995 Economic Report directly tied export activism to Clinton regional initiatives: “Export and investment opportunities to emerging markets in Latin America and Asia will be a key engine of growth for the U.S. economy over the next decade.”⁵

APEC (Asia Pacific Economic Cooperation)

Given the mercantilist cast to early Clinton administration trade policy, it is not surprising that Asian emerged as a central focus and priority. With great fanfare in 1993, the administration announced a new National Export Strategy, and a year later launched its “Big Emerging Markets” initiative to target nations where U.S. corporations had the greatest potential to boost exports. Of the top ten nations so identified, more than half were located in Asia.⁶

While there were antecedents for the new priority given to the region, Clinton took pains to emphasize a departure for U.S. trade policy: “In years past, frankly, some Americans viewed Asia’s vibrancy... as a threat. I see it very differently. I believe the Pacific region can and will be a vast source of jobs, of income, of partnerships, of ideas, of growth for our own people in the United States.”⁷ Thus, in 1993 the president raised the stakes and the status of APEC by inviting APEC national leaders (heads of state and governments) to meet in Seattle. Though not foreordained, the leaders’ meeting immediately became an annual affair, as other heads of state lined up to host annual summits. At the second leaders’ meeting in Bogor, Indonesia, with U.S. leadership (and a crucial intervention by the host, President Suharto of Indonesia), APEC adopted the Bogor Declaration that committed the member states to free trade and investment for the developed APEC members by 2010, and for the developing countries 2020.

In pursuing this agenda, APEC adopted a distinct modality of operation—one that strongly reflected the characteristics of the Asian (particularly the ASEAN nations) approach to economic and diplomatic negotiations: decisionmaking by consensus, which protected the interests and sovereignty of the smaller ASEAN economies; and a voluntary liberalization process, with each nation proceeding at its own pace toward the free trade and investment goals. This system of voluntary individual actions—formally titled Individual Action Plans—to achieve the 2010/2020 goals was defined by the term, “concerted unilateralism.”⁸

The second defining characteristic of APEC was the pledge to accomplish its free trade goals through “open regionalism.” The Bogor Declaration that set the regional 2010/2020 free trade goals in 1994, anchored the commitment in the multilateral system, stating that APEC “will achieve this goal in a GATT-consistent manner” and that “we wish to emphasize our strong opposition to the creation of an inward-looking trading bloc that could divert from the pursuit of global free trade.”⁹

Conflicting Interpretations

From the promulgation of the Bogor Declaration, however, significant differences emerged regarding the precise definition of ‘open regionalism,’ and the adequacy of ‘concerted unilateralism’ as a method of reaching regional free trade goals. Two different visions emerged. The first, advanced by the United States, with backing from Australia, New Zealand and Canada (the ‘Anglo-Saxons’), envisioned detailed negotiations to achieve strict comparability: a defined timetable; and then a binding preferential trade agreement among APEC nations. The second path, or the Asian way as it was labeled, envisioned continued reliance on unilateral liberalization, with each nation determining the pace and specifics of its market-opening policies. The multilateral principle of unconditional MFN would also be retained and greater emphasis would be placed on trade facilitation measures and technical assistance. APEC ASEAN members were clearly most comfortable with this vision of future negotiations.¹⁰

In the months leading up to the Osaka summit in 1995, it became clear that EPG vision of APEC was losing out to a less bold vision of the future, more in keeping with the so-called Asian way Declaration. Asian APEC nations resisted pressure for more legalistic rules and tighter reciprocity, arguing the APEC should advance with a looser consensus process embodied in the “concerted unilateralism” described above.¹¹

At the Osaka summit, the Asian way prevailed. No strict timetable or deadlines were adopted, and each nation was left to construct the mix and timing of future market-opening measures.

The Trade Policy of the Bush (II) Administration

Defining Hallmarks: Trade as Foreign Policy and “Competitive Liberalization”

In addition to a priority commitment to the multilateral trading system and the WTO, two other themes dominated the trade policy of the

Bush administration. The first was an explicit linkage between trade policy and overall U.S. foreign and security policy—particularly after 9/11. The second was the doctrine of “competitive liberalization,” a slogan that signified that the administration was committed to negotiations with individual nations, groups of nations, and whole regions (as a complement to its multilateral negotiations), on the theory that, through the discrete use of the huge U.S. market, such negotiations would set off a competitive process toward global free trade.

Neither of these themes was wholly new in U.S. trade diplomacy. Earlier administrations had at times invoked political or foreign policy considerations when defending trade policy initiatives (for instance, with NAFTA, both presidents Bush(I) and Clinton had openly talked of the need to bolster democratic pluralism in Mexico); and the term “competitive liberalization” was first coined—and has been widely publicized since—by S. Fred Bergsten, a well-known and widely quoted U.S. international trade economist and policy entrepreneur.¹² What is novel is the explicit articulation of an integrated strategy—whether successfully executed or not—that from the outset underpinned the trade policy initiatives of the Bush (II) administration.¹³

The Bush Record: Balancing Security and Economics

Between 2001 and 2009, the Bush administration initiated or completed negotiations with fifteen countries for formal bilateral or regional agreements (See Table 1). In addition, three negotiations—with Thailand, Malaysia, and the United Arab Emirates—began but were suspended or put on hold. Finally, as President Bush left office, three FTAs (Panama, Colombia and South Korea) had been concluded but awaited congressional approval.

As US Trade Representative (USTR) Zoellick (and his successors in that job) had laid out, the choice of FTA partners was dictated by a combination of economic and foreign policy considerations. Most clearly, the foreign policy tilt was evident in Middle Eastern endeavors. The Bush administration signed bilateral FTAs with Jordan, Morocco, and Bahrain and Oman (an FTA with Israel dated back to 1985). These individual FTAs were part of a long-term plan, announced in May 2003, to create a U.S.-Middle East Free Trade Agreement (MEFTA) by 2013.¹⁴

Foreign policy considerations dictated other bilateral FTA choices in Asia, both positively and negatively. Australia was moved to the head of

the line as a result of support for the Iraq war, including the provision of troops. Conversely, despite substantial support in Congress, the Bush administration refused to enter into negotiations with New Zealand, largely because of that country's long-standing refusal to allow U.S. nuclear warships into its ports and because of opposition to the 2003 Iraqi invasion.¹⁵

Table 1

Bush Administration FTAs US Bilateral and Regional Trade Agreements	
Bilateral FTAs	Regional FTAs
<i>Bilateral FTAs Negotiated</i>	<i>Regional FTAs Negotiated</i>
1. Israel	1. CAFTA-DR ¹⁶
2. Jordan	
3. Chile	
4. Singapore	
5. Australia	
6. Morocco	
7. Bahrain	
8. Oman	
9. Peru	
<i>Bilateral FTAs Pending Congressional Approval</i>	<i>Proposed Regional FTAs</i>
1. Colombia	1. MEFTA ¹⁷
2. Panama	2. FTAAP ¹⁸
3. Republic of Korea	3. FTAA ¹⁹
<i>Other Bilateral FTAs in Negotiation (suspended)</i>	
1. Malaysia	
2. Thailand	
3. UAE	

Source: Office of the United States Representative

Successful negotiations during the second Bush term with South Korea, Colombia and Peru were the result of combined diplomatic and economic motivations. Korea had been a key ally of the United States on the Pacific Rim and had emerged as a major trading partner. Colombia, torn by civil war and surrounded by hostile, Chavez-leaning governments, obviously benefited from a closer connection with the United States; but it was also chosen as a future, important Latin American economy. Significantly, for both agreements the Bush administration augmented its

trade team with strong diplomatic and security rationales advanced by the Secretaries of Defense and State.

The Central American Free Trade Agreement or CAFTA (El Salvador, Nicaragua, Honduras, Guatemala, Costa Rica, and the Dominican Republic) was defended as a means to bolster and reinforce democratic institutions; but also, when counted as a single group, CAFTA added up to a not unsubstantial economic agreement.²⁰

Trade Policy Under the Obama: General Observations

This article is not the place for a detailed review of the trade policy of the Obama administration. Rather this section will describe the evolution of that policy as it pertains to the subject at hand: to wit, U.S. trade/diplomatic priorities and goals, and Asian regionalism.²¹ As he campaigned for the presidency in 2008, it looked as if there was a good chance that Barak Obama would represent a major turning point for U.S. trade policy. Famously, Obama boasted that he had “voted against CAFTA, never supported Nafta, and will not support Nafta-style trade agreements.”²² As president, however, Obama gradually changed his view of trade and moved toward a more traditional U.S. chief executive’s internationalist view.

A combination of economic and imperatives and pressing foreign policy and security considerations drove this shift. First, practical economic facts reinforced economic theory: as the recession dragged on, the Obama administration turned to trade and exports to boost the flagging U.S. economy. This resulted in a major National Export Initiative and belated but strong support for completing action on the three pending FTAs with South Korea, Colombia and Panama.²³

Though in many ways the foreign policy of the Obama administration differed dramatically from that of the Bush administration, in both cases diplomatic and security imperatives played a large role in shaping trade policy. Below, we shall consider in details shaping trends and events in East Asia, but two preliminary points should be emphasized. The second Bush term, 2005-2009, and the beginning of the Obama administration in 2009 witnessed the full impact, both in economic and foreign policy, of the arrival of a stronger, unified Chinese state in the international arena. This explains in part the turnabout in the Bush administration after 2005 toward Asia; and it forms the central element in the high priority—from day one—that the Obama administration gave to that region.

Secretary of State Hillary Clinton announced with some bravado that the United States was “back” in Asia. Her first trip abroad was not—as had been traditional—to Europe, but to Asia. In February 2009, just after she became Secretary of State, Clinton, in a speech to the Asia Society, set forth an Asian agenda for the Obama administration, stating that the area was “indispensable for our security and prosperity” and vowing that the United States would henceforth pursue a more “rigorous and consistent commitment and engagement.” The U.S., she concluded, was both a “transatlantic and a transpacific power.”²⁴

Within months, Secretary Clinton had signed the Treaty of Amity and Commerce with ASEAN, paving the way for the United States to join the East Asian Summit (see below). Allied with Secretary of Defense Robert Gates, she pressed the White House to move on the Korea FTA—not least because of the increasingly dangerous belligerence of North Korea. And she boldly stepped into the fractious South China Sea negotiations, declaring that the United States, while neutral as to individual claims, had a “national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law.”²⁴⁸

To conclude this brief political tour, it should be noted that it was some months before the White House was ready to move forward with concrete trade proposals. But in his first trip to Asia in November 2009 the president announced that the U.S. would join the Trans-Pacific Partnerships (TPP) negotiations and that he had directed USTR to move forward with the Korea FTA.²⁵

Recent Trends in East Asia Regionalism

As it took office, the Obama administration faced a complex situation with regard to the future U.S. role in the region. On the one hand, whatever the judgments on Bush administration foreign and international economic policy in other areas of the world, in general it can be said that U.S. relations with key actors—China, Japan, South Korea, Singapore—were quite good. On the other hand, until its last years in office, the Bush administration had failed to construct a coherent vision for the U.S. role in this vital area. Most specifically, for a long time Bush and his economic and trade advisers took no stand on central questions surrounding the rapid development of an intra-Asian regional framework that competed with, if it did not directly challenge, the U.S. vision—dating back to the Bush I administration—of a trans-Pacific architecture.²⁶

Since the late 1990s, East Asian regionalism has witnessed the emergence of three different phenomena in tandem: the decline of the importance and influence of APEC and trans-Pacific regionalism; the rise of alternative intra-East Asian regional organizations and processes—ASEAN Plus Three (APT) and East Asian Summit (EAS)—that are duplicating, and may well replace, the activities associated with APEC; and an explosion of bilateral FTAs (both among East Asian nations and with nations outside the region).²⁷

Intra-Asian Regionalism: Asean Plus Three (APT) and East Asian Summit (EAS)

The APT process began quite modestly when the ASEAN nations asked ministers from Japan, China and South Korea to participate in talks to reach common ground on issues at a summit with the European Union in 1995. Subsequently, the first APT leaders summit was convened in Kuala Lumpur in December 1997, in conjunction with the 30th anniversary of ASEAN's foundation. Though not explicitly stated, the desire for a common response to the Asian financial crisis was the most compelling subject at the initial gathering and for some years thereafter.²⁸

For these modest beginnings, after 2000 the APT increasingly moved to center stage as the chief vehicle for East Asian integration. In 2002, leaders of the APT established an East Asian Study Group (EASG), composed entirely of government officials, which recommended a “step-by-step” approach to trade and financial liberalization in East Asia and suggested that formal negotiations for an intra-East Asian FTA be put off well into the future.²⁹ Despite this cautious approach, the APT has steadily moved to duplicate and overtake many of the functions of APEC. There are now annual meetings of trade ministers, and, in recent years, the APT has taken on additional activities, with accompanying ministerial meetings, such as the environment, energy, tourism, health and safety, financial services—and recently, regional security.

Originally behind the scenes but in recent years more openly, the PRC has pushed to increase the stature and activities of the APT. For China, there are three virtues associated with the organization and the process: neither the United States nor Taiwan are members, and the overriding vision foresees intra-Asian regionalism as the wave of the future. Chinese scholars, if not Chinese officials, have become quite candid in their view of the future of Asian regionalism and the role of the United States. Chu Shulong, a scholar close to the Beijing government

(and a 2006-2007 visiting scholar at the Brookings Institution) wrote bluntly in 2006: “Americans ... have to realize, soon(er) or later, that a regional economic and security arrangement in Asia without direct U.S. involvement is inevitable in the long run ... simply because ... Asia needs its own economic and security mechanism to (take) care (of) itself.”³⁰

It was against this background that in 2000, China surprised everyone by announcing that it was prepared to offer a free trade arrangement with ASEAN; and it subsequently sweetened the offer with proposals to pre-liberalize a number of key sectors. This offer triggered competitive proposals by Japan and South Korea, resulting with a few years in three ASEAN Plus one FTAs among the nations composing ASEAN and China, Japan and Korea.³¹

In 2008, Japan, China and South Korea created their own forum, the Northeast Asian Trilateral Summit and established a Trilateral Summit Cooperation Secretariat (TCS) in 2011. In response to substantial forward movement in the trans-Pacific TPP negotiations, (see below) China has begun a strong push for next steps toward an intra-East Asian economic and trade architecture. Pursuant to this goal, in the spring of 2012 and at a trilateral summit, the three nations agreed to begin negotiations for the trilateral FTA by the end of 2012. If successful, such an agreement would create one of the world largest FTAs, accounting for about 20 percent of world GDP, and 19 percent of world exports.³² Modeling undertaken some years ago (2005) by the Korea International Economic Policy Institute predicted that under the most conservative assumptions (a so-called static model), a China-Japan-Korea FTA would increase the GDP of China, Japan and South Korea by .89 percent, 1.05 percent, and 3.27 percent, respectively. Exports would also increase some 11 percent, 5 percent and 8 percent respectively for the three countries.³³

While Japan agreed to start negotiations, most observers believe that, politically it will be impossible for Tokyo to complete such an agreement in the near-to-medium term. Separately, however, the PRC and South Korea have agreed to go forward with a bilateral FTA and have set a goal of completing negotiations within the next year. No matter how these FTA negotiations play out in the near term, China will continue to push them, as a way station to an East Asian FTA that combines the economies of ASEAN with those of China, Japan and South Korea—but conspicuously leaves out the United States.³⁴

Trans-Pacific Regionalism: APEC Adrift

With little exaggeration, it can be said that after 1998, APEC has drifted, increasingly bereft of momentum, and, as time has passed, influence.⁷ After the failure of the Early Voluntary Sector Liberation (EVSL) effort in 1998, the Clinton administration lost interest in APEC as a vehicle for trade liberalization. Then after 9/11, pushed strongly by the Bush(II) administration, global security issues and the war on terrorism took center stage at APEC leaders' meetings. In 2003, the official APEC leaders' declaration raised security issues to equal priority with trade and other economic concerns, a change that administration officials candidly admitted caused some friction among other APEC members.

Meanwhile, from 2001 to 2005, the U.S. position toward further APEC regional liberalization was either negative or non-committal. In 2003, USTR Robert Zoellick rebuffed a proposal by Thailand to move up the Bogor Goals from 2020 to 2015, arguing that the "best way to move forward" was to use bilateral FTAs "to create models" for future liberalization.³⁵

Still, there were those who wanted to revive the trans-Pacific vision of regional integration. In 2004, the influential international trade economist and policy entrepreneur C. Fred Bergsten persuaded the APEC Business Advisory Council (ABAC) to put forward a proposal for a Free Trade Area of the Asia-Pacific (FTAAP). At the Santiago leaders' meeting, although Australia, Singapore and New Zealand supported the idea, the U.S. was noncommittal. Zoellick labeled the proposal a "valuable discussion topic," but he also stated that most ministers were mainly interested in more "practical steps"³⁶ It was not until 2006, two years later, that President Bush endorsed a study group to assess the possibilities of FTAAP, and even at that point, he only stated that the idea deserved "serious consideration."³⁷ It was not until the 2007 APEC leaders' summit in Sydney, Australia, that Bush administration officials attempted to exert leadership in advancing the FTAAP proposal—to muted and even lukewarm response from other APEC leaders.³⁸

The Trans-Pacific Partnership Agreement

When the full history of the TPP is written, a prominent place will be reserved for former USTR Susan Schwab (2006-2009). Though she could not control events beyond the 2008 presidential election, Schwab,

in throwing forward a trade policy dart to the incoming Obama administration, forced the TPP onto the trade agenda.³⁹

The original TPP (then known as the Pacific-4), negotiated by Chile, New Zealand, Brunei and Singapore, came into effect in 2006. In September 2008, after prodding by USTR Schwab, the Bush administration formally notified Congress of its intention to begin negotiations with the original TPP nations, plus Australia, Peru, and Vietnam, which had signaled their desire to join the agreement. (The United States already had concluded FTAs with four of the proposed TPP members: Australia, Chile, Peru, and Singapore.) Subsequently, Malaysia was allowed to join the agreement in October 2010, bringing the current total negotiating partners to nine. (Table 3)

After more than ten months' delay, the action-forcing event for President Obama was the November 2009 APEC Leaders Summit, where the lack of any announcement regarding regional trade negotiations would have badly undercut the administration's evolving theme that the United States was "back" in Asia and ready to assume a forward-looking leadership role. Thus, on November 14, Obama committed the US to "engage" the TPP nations "with the goal of shaping a regional agreement that will have broad-based membership and the high standards worthy of a 21st century trade agreement."⁴⁰

Once launched into the negotiating process, the Obama administration and the other TPP partners established a very ambitious agenda and schedule: they nominally committed themselves to the goal of completing negotiations on the TPP by the time the United States hosted the APEC summit in Hawaii in November 2011. Pursuant to that goal, TPP members held four negotiating sessions in 2010 (Melbourne, San Francisco, Brunei, and Auckland).

Central Negotiating Issues and Flashpoints

Several significant issues have emerged as negotiations have proceeded. Even as negotiations head into the fall of 2011, is too early to ascertain how the greatest challenge to the successful completion of the negotiations by November 2011 will be overcome—but several clearly will be difficult to work through. The emphasis here will be on U.S. negotiating objectives, both offensive and defensive.

1. Membership

The original P-4 agreement provided for future expansion to include

other nations, through a consensus process. Indeed, from the outset the ultimate objective of the negotiations was to provide the building blocks for an area-wide Asia-Pacific FTA. In 2006, the idea had become linked to APEC, with the Summit Leaders' endorsement (long-range) of a Free Trade Agreement of the Asia-Pacific (FTAAP). And at present, all nine TPP members have endorsed the idea that, at a minimum, all APEC nations are eligible for TPP membership.⁴¹ (See Chart 3 for percentage of world trade if and when TPP expands)

Carrying over from P-4 decisions, it was envisaged that new members would enter in successive tranches, either individually or as a group; and, through this process of consensus, the United States, Australia, Peru, Vietnam and Malaysia were added to the original four founding members. Inevitably, however, U.S. membership, and subsequently the desire to complete TPP negotiations by November 2011 (when the U.S. hosted APEC in Honolulu), complicated further membership additions.

2. Architecture: Bilateral, Regional, Hybrid?

A second major issue running through all of the negotiations, but still unresolved in final form, concerns the market access architecture of the TPP: oversimplifying, whether the negotiators should aim for common market access rules among all members or whether existing bilateral market schedules should remain in place, with some additional common schedules to be added later in the negotiations. The United States has strongly urged that existing FTA market access schedules be maintained. It has both defensive and offensive reasons for this position.

Australia, Brunei, and New Zealand favor negotiating a common market access schedule that would apply to all TPP members. They argue that this approach would reduce or even eliminate the so-called "spaghetti bowl" effect with differing and potentially conflicting obligations.

In October 2009, at Brunei, a compromise, "hybrid" approach was adopted (a near-term win for the United States.) Under this agreement, countries will be allowed to make offers, on a bilateral basis or to the TPP membership as a whole. This compromise will also allow for bilateral market access offers to be multi-lateralized later in the negotiations. This is a messy solution that will have to be resolved before a final agreement is reached.

As of the Chicago meeting in September 2011, architectural issues remained unresolved, and thus by default, a two-track process has

become more entrenched. The U.S. has made bilateral offers to Malaysia, Vietnam, Brunei, and New Zealand, while Australia and Singapore have taken a plurilateral approach and tabled single offers to all TPP countries simultaneously. No solution has been achieved on how to consolidate various bilateral and plurilateral agreements at the end of the process.⁴²

3. Agriculture

The bilateral vs. regional divisions carry over into the agriculture sector negotiations. Major U.S. agricultural groups, particularly in sensitive areas such as sugar and dairy products, are pushing the Obama administration to keep in place existing FTA market access provisions. They see little export gain from liberalizing tariff rates and quotas among TPP nations; and they have urged USTR to concentrate SPS, technical barriers to trade, and non-tariff barriers (NTPs) as agriculture trade priorities. There is some division within the U.S. agriculture ranks, as major agricultural processing companies (who have less political clout) have pressed the administration to reopen these schedules in existing FTAs. At a minimum, they argue that USTR should use U.S. agriculture restrictions as bargaining points to advance U.S. interests in other areas.⁴³

4. Rules of Origin

Closely entwined with market access issues relating to both industrial and agricultural products are the complex rules of origin (ROOs) negotiations. (In FTAs, these rules of origin are used to determine eligibility for tariff preferences, in most cases dependent on the percentage of a good produced by a FTA partner as opposed to non-member nation.)⁴⁴ The United States, beginning with the NAFTA negotiations, has always pressed for strict (i.e., more protectionist) ROOs for its “sensitive” products: textiles and apparel and dairy products. In the current TPP negotiations, U.S. negotiators are pushing for narrow, product-specific ROOs, with high threshold levels (percentages) for determining eligibility.

Other TPP nations by and large support more liberal ROOs. They oppose product-specific or nation-specific ROOs, pushing instead for regional-wide rules that will allow the cumulation of origin percentages among TPP member states. Regional rules (‘cumulation’ in the trade jargon) allows products that have obtained originating status in one partner country to be further processed in another partner country as if they had originated there.

5. Intellectual Property

Here, as in some other areas, the key questions revolve around the degree to which the TPP will aim for a WTO-Plus IP chapter, or largely rephrase and reframe existing WTO rules in the TRIPS agreement. In addition, there is division among U.S. interests groups that has delayed the Obama administration's final position on IP and the TPP.

At the September 2011 negotiating session in Chicago, the U.S. tabled its IP patent proposal in the form of a White Paper. Generally, the administration sided with the U.S. pharmaceutical companies by agreeing to support mandatory data exclusivity and patent extension provisions. In return, pharmaceutical companies would have to seek foreign country marketing approval immediately after U.S. approval in other TPP countries or lose the new protections. The administration's White Paper has produced a backlash among NGOs, which have charged that USTR has caved into the pharmaceutical industry; but at this point, the Obama administration seems fixed in its evolved stance.⁴⁵

Beyond U.S. internal deliberations, IP is also a divisive issue for other national negotiators. In January 2011, New Zealand tabled a paper that directly challenged key fundamental assumptions behind U.S. arguments for a strong IP patent system. The paper emphatically recommended that TPP negotiations not go beyond the TRIPS provisions in the WTO. It is not clear how forcefully New Zealand negotiators will defend this position, or how much support they will receive from other TPP nations.

6. Investment

Across-the-board, recent FTAs around the world have included ever more detailed rules regarding foreign direct investment. Thus, it should be noted that a number of the FTAs already negotiated by TPP members contain many of the provisions that the U.S. is advocating, including, among others: national treatment and MFN for investment; rules governing expropriation; free transfer of capital; no performance requirements; and, (more recent FTAs) special provisions for financial services.

The key sticking point, both within the United States and among TPP partners, are the details of a section relating to investor-state dispute resolution.⁴⁶

Australia and New Zealand have expressed reservations about some

of the U.S. investment demands. Australia had resisted adding an investor-state dispute resolution chapter to the U.S.-Australia FTA (though it has agreed to a modified version of such a chapter in other FTAs). Labor unions and other advocacy groups in Australia and New Zealand have petitioned these governments to continue to resist U.S. proposals in this area. They also would roll back a number of consultation and right to comment provisions in existing FTAs.

7. *Labor and the Environment*

For the United States, labor and environmental issues may emerge as the thorniest and the most difficult to resolve. This is particularly true with Republican control of the U.S. House of Representatives. As noted above, in 2007, the House Democratic majority forced the Bush administration to accept new language on labor rights and the environment for pending FTAs (Colombia, Peru, and Panama). The new provisions made demands upon U.S. bilateral trading partners that went far beyond existing FTA labor and environment chapters.⁴⁷

A number of FTAs already negotiated by TPP partners contain chapters on labor and the environment. But none match the highly legalistic and restrictive language of recent U.S. FTAs. It is almost certain that developing TPP nations—Vietnam, Brunei, Peru, and Chile—will oppose the “draconian” mandates of recent U.S. FTAs. Even Australia and New Zealand are likely to resist the U.S. legal framework for labor and environmental dispute settlement. Both countries are also wary of seeming to bully developing economies.

8. *Twenty-First Century FTA Issues*

At the core for a “21st century” FTA are several issues that have become a central priority for the US business community—as well as the corporate heads in developed TPP countries such as Australia, New Zealand, and Singapore.

The most concrete trade policy proposals arise in the area of regulatory coherence.⁴⁸ The overarching goal encompassed under the term ‘regulatory coherence’ is the rationalization and harmonization (or at least mutual recognition) of regulatory measures that exert a major impact on international trade. Among the tentative proposals discussed in the negotiating sessions are procedural rules for transparency (public notice and consultation for new regulations); elimination of duplicate and overlapping regulations; rules against anti-competitive practices,

particularly for government monopolies and enterprises; greater use of mutual recognition agreements for services and health and safety regulation; and clear lines of administrative and judicial appeal.

Finally, since early 2011, pushed by some corporate groups and labor unions, the U.S. has raised the issue of more regulatory discipline for SOEs (state-owned-enterprises).⁴⁹ The issue has important implications for TPP members Vietnam and Malaysia, where SOEs occupy an important economic position, and, of greater significance, it sets down markers for China, if and when it applies to TPP membership.

Conclusions, Observations and Lessons

At the June 2012 G-20 summit in Mexico, TPP members invited Canada and Mexico to join negotiations in the fall of 2012. This decision marks a significant forward step for the Pacific pact. Should these negotiations be successful, adding Mexico and Canada to the current nine-member TPP would produce a free trade area covering some 658 million people and about \$20 trillion in economic activity. Many observers predict that including Mexico and Canada will also result in a domino effect, beginning with the addition of Japan and South Korea within the next year. Such moves would produce a free trade area encompassing more than 700 million people, with a combined GDP of some \$26 trillion.⁵⁰

As noted earlier, forward progress in the trans-Pacific TPP has already spurred the PRC to push for a stepped up schedule for an intra-Asian trade architecture. Much, then, will depend on the pace and depth of the competing sets of negotiations. For the foreseeable future, the spotlight will turn on Japan and South Korea. For Japan, the deciding factors will hinge on internal, strife-ridden domestic politics. For South Korea, there will be a balancing between the pressures to accommodate China, Korea's top trading partner, and the equal geopolitical factors related to a US-led trans-Pacific regional pact. On purely economic terms, South Korea will have little adjustment to make from membership in the TPP. The KORUA agreement forms a template for a future TPP and, although some aspects of the TPP will differ slightly with the KORUS, the differences are likely to be minor.

At this writing it is impossible to predict how the balance of economic and strategic forces will play out. What is certain is that over the next several years, the future institutional and policy issues related to Asian and trans-Pacific regionalism will move steadily toward settlement.

Notes:

¹ Claude E. Barfield, “Introduction” and “Trade, Investment, and Emerging US Policies for Asia,” in *Expanding US-Asian Trade and Investment: New Challenges and Policy Options*, ed. (Washington, DC: AEI Press, 1997), 1-55. Jeffrey J. Schott, *More Free Trade Areas? Policy Analyses in International Economics Series* (Washington, DC: Institute for International Economics, 1989). Anne O. Krueger, *American Trade Policy: A Tragedy in the Making* (Washington, DC: AEI Press, 1995).

² Vinod K. Aggarwal and Kun-Chin Lin, “Strategy Without Vision: The US and Asia Pacific Economic Cooperation” in *Asia-Pacific Cooperation (APEC): The First Decade*, ed. by Jürgen Rüländ et al. (London: Curzon Press, 2002), 91-122.

³ James A. Baker III with Thomas W. DeFrank, *The Politics of Diplomacy: Revolution, War, and Peace, 1989-1992* (New York: G.P. Putnam’s and Sons, 1995).

⁴ Council of Economic Advisers, *Economic Report of the President* (Washington, DC: United States Government Printing Office, 1994), 214, http://fraser.stlouisfed.org/publications/erp/issue/1600/download/6050/ERP_1994.pdf.

⁵ Council of Economic Advisers, *Economic Report of the President* (Washington, DC: United States Government Printing Office, 1995), 215.

⁶ US Department of Commerce, *The Big Emerging Markets* (Washington, DC, 1994). Jeffrey J. Schott, ed., *Free Trade Agreements: US Strategies and Priorities* (Washington, DC: Institute for International Economics, 2004).

⁷ William Jefferson Clinton, speech at Waseda University, July 7, 1993.

⁸ Inbom Choi and Jeffrey J. Schott, “Korea-US Free Trade Revisited,” in *Free Trade Agreements: US Strategies and Priorities*, ed. Jeffrey J. Schott (Washington, DC: Institute for International Economics, 2004), 173–196. In 2001, APEC strengthened the peer review process. Because IAPs were quite lengthy and detailed (though, alas, the details did not portend greater liberalization in most cases), it was decided that assessing just a select few each year, rather than those of the entire APEC membership, would allow more careful and meaningful scrutiny. This did occur, but the strengthened process did not challenge—or shame—APEC members in later years to undertake greater liberalization: Simon J. Evenett, Anthony J. Venables, and L. Alan Winters, “The Sequencing of Regional Trade Initiatives in Europe and East Asia,” (prepared for the Economic and Financial Affairs Directorate General, European Commission, February 10, 2004). Edward Lincoln, *East Asian*

Economic Regionalism (Washington, DC: Brookings Institution and Council on Foreign Relations, 2004).

⁹ Y. Kwon, *Regional Community-Building in East Asia* (Seoul, Republic of Korea: Yonsei University Press, 2002).

¹⁰ Michael G. Plummer, "ASEAN and Institutional Nesting in the Asia-Pacific," in *Asia-Pacific at the Crossroads*, ed. Vinod K. Aggarwal et al. (New York: St. Martins Press, 1998).

¹¹ Ellis S. Krauss, "The US, Japan, and Trade Liberalization: From Bilateralism to Regional Multilateralism to Regionalism," *Pacific Review* 16:3 (2003): 307-29.

¹² C. Fred Bergsten, "Competitive Liberalization and Global Free Trade: A Vision for the Early 21st Century," Working Paper No. 96-15 (Institute for International Economics, 1996). C. Fred Bergsten, "A Renaissance for US Trade Policy," *Foreign Affairs* 81 (November-December 2002): 86-98.

¹³ This point is also made by Evenett and Meier who write: "Competitive Liberalization represented an explicit break from the United States' almost exclusive pursuit of multilateralism." Simon J. Evenett and Michael Meier, "An Interim Assessment of the US Trade Policy of 'Competitive Liberalization,'" mimeo (Switzerland: University of St. Gallen, 2006), 23.

¹⁴ Kevin P. Gallagher and Timothy A. Wise, "The false promise of Obama's trade deals," *Guardian*, September 8, 2011.

¹⁵ For commentary on the NEI, see Philip Levy, "Will Exports Save the US Economy?" *The American*, July 25, 2011, <http://www.american.com>. See also, Barfield and Levy, "Tales of the South Pacific."

¹⁶ *International Trade Reporter*, May 15, 2003. Robert Z. Lawrence, "International Trade Policy in the 1990s," in *American Economic Policy in the 1990s*, ed. Jeffrey A. Frankel and Peter R. Orszag (Cambridge, MA: The MIT Press, 2006), 277-327.

¹⁷ Claude E. Barfield, "US Trade Policy: The Emergence of Regional and bilateral Alternatives to Multilateralism," *Intereconomics* (September/October 2007): 2-11. Evenett and Meier, "Interim Assessment."

¹⁸ Barfield, "US Trade Policy."

¹⁹ For more detailed analyses of the politics of trade policy under President Obama, see: Claude Barfield and Philip Levy, "In Search of Obama Trade Policy," *International Economic Outlook* (Washington, DC: American Enterprise Institute, August 5, 2009). Claude Barfield and Philip Levy, "Tales of

the South Pacific: President Obama and the Trans-Pacific Partnership,” *International Economic Outlook 2* (Washington, DC: American Enterprise Institute, December 18, 2009).

²⁰ Sec. Hillary Clinton, “US-Asia Relations: Indispensable to Our Future,” (speech to the Asia Society, US Department of State, February 13, 2009). “Clinton declares US is back in Asia,” *China Daily*, July 23, 2009, http://www.cdeclips.com/en/world/Clinton_declares_US_is_back_in_Asia/fullstory_26273.html. Kevin McCarthy, “Hillary Clinton outlines East Asia Policy at the Asia Society,” *The Morningside Post*, February 16, 2009, <http://www.themorningsidepost.com/2009/02/16/hillary-clinton-outlines-east-asia-policy-at-the-asia-society/>.

²¹ Barfield and Levy, “Tales of the South Pacific.”

²² For analyses of recent trends in Asian regionalism, see: Wendy Dobson, “Asia’s Evolving Economic Institutions: roles and prospects,” (presented at a Roundtable on Asia, the G20 and global and regional architecture, Canberra, Australia, August 2011). Mireya Solis, “Last Train for Asia-Pacific Integration?: US Objectives in the TPP Negotiations,” mimeo (American University, 2011). Christopher M. Dent, “Organizing the Wider East Asia Region,” ADB Working Paper Series on Regional Economic Integration 62 (Manila: Asia Development Bank, 2010).

²³ For a detailed, recent analysis of the evolution and prospects for East Asian regional institutions, see: Dent, “Organizing.” Dent does not include the TPP in his analysis. This paper will not analyze the bilateral FTA phenomenon: there are now over 200 bilateral FTAs among Asian nations and between Asian nations and nations from other regions.

²⁴ Dent, “Organizing” is the most authoritative recent analysis of the APT. He predicts that it will emerge as the dominant regional institution among the variety of candidates for that honor.

²⁵ Kwon, “Community Building.” D. Capie, “Rival Regions? East Asian regionalism and its challenge to the Asia-pacific,” in *Asia-Pacific: A Region in Transition*. Honolulu: Asia-Pacific Center for Security Studies, ed. Rolfe J. (2004), 149-165.

²⁶ S. Chu, “Regionalism and China’s Peaceful Rise: Local Neighbors and Global Strategy,” (presentation at the Brookings Institution, Washington, DC, 2006).

²⁷ Claude Barfield, “Politics of Trade in the USA and in the Obama Administration: Implications for Asian Regionalism,” *Asian Economic Policy Review* 4:2 (December, 2009): 227-243. Yang Razali Kassim, “East Asian Regionalism: End of ASEAN Centrality?” RSIS Commentaries 116 (Singapore: S. Rajaratnam School of International Studies, July, 4 2012).

²⁸ Kassim, “End of ASEAN Centrality?”

²⁹ Lee Chang Jae, ed., *Rationale for Korea-China-Japan FTA and Its Effects on Korean Economy* (Korea Institute for International Economic Policy, 2005).

³⁰ Jianmin Jin, “China’s Concerns Regarding TPP: Not More Than Empty Worries?” (Tokyo, Japan: Fujitsu Research Institute, January 11, 2012), www.jp.fujitsu.com.

³¹ *International Trade Reporter*, October 23, 2003.

³² *International Trade Reporter*, November 24, 2004.

³³ *International Trade Reporter*, November 23, 2006.

³⁴ US Department of State, “Strengthening regional economic integration: A report on economic integration, including a possible free trade area of the Asia-Pacific as a long-term project” (Washington, DC: 2007).

³⁵ This early history is adapted from: Barfield and Levy, “Tales of the South Pacific.” For additional treatments, see: Solis, “Last Train.”

³⁶ Ian F. Ferguson and Bruce Vaughan, “The Trans-Pacific Agreement,” CRS Report for Congress R40502 (Washington, DC: Congressional Research Service, November 1, 2010). Barfield and Levy, “In Search of Obama Trade Policy.” Interviews: stakeholders, interested academics, trade staff.

³⁷ Barfield and Levy, “Tales of the South Pacific.” Solis, “Last Train.”

³⁸ Interviews with staff aides, negotiators. To follow the progression of these architectural issues, see the following: *Inside US Trade*, February 26, 2010, April 2, 2010, May 13, 2010, June 18, 2010, June 25, 2010, and September 24, 2010. See also Solis, “Last Train,” and Meredith Kolsky-Lewis, “The Trans-Partnership: New Paradigm, or Wolf in Sheep’s Clothing,” *334 B.C. Intl. & Comp. L. Review* 27 (2011).

³⁹ *Inside US Trade*, May 14, 2010 and June 4, 2010.

⁴⁰ Sources for this section on ROOs included the following: *Inside US Trade*, February 5, 2010 and October 29, 2010.

⁴¹ There is a large literature on these issues and on TPP pharmaceutical negotiations. For the evolved US position, see: *Inside US Trade*, September 12, 2011 and September 16, 2011. For strong opposition from US NOOs and congressional allies, see: Knowledge Ecology International, “Inconsistencies between the US Proposal for the IP Chapter of the TPA and US Law,” (submission to the Office of the US Trade Representative, August, 30 2011). *Inside US Trade*, May 11, 2011.

⁴² For details on the interest group reactions and on evolution of the TPP negotiations in this area, see: *Insider US Trade*, December 9, 2010. US Business Coalition for TPP, letter to President Obama, the White House, September 7, 2011.

⁴³ Barfield, "US Trade Policy."

⁴⁴ Ferguson and Vaughan, "Trans-Pacific Agreement." Solis, "Last Train." *Insider US Trade*, September 26, 2010, October 8, 2010, and March 11, 2011.

⁴⁵ *World Trade Online*, March 24, 2011 and April 18, 2011.

⁴⁶ Claude Barfield, "A Big Deal: Canada and Mexico Join the Pacific Trade Pact," *The American*, June 26, 2012.

⁴⁷ El Salvador, Nicaragua, Honduras, Guatemala, the Dominican Republic.

⁴⁸ Jordan, Lebanon, Israel, Palestine, Syria, Iraq.

⁴⁹ Australia, Brunei, Canada, Indonesia, Japan, Malaysia, Philippines, New Zealand, Singapore, Republic of Korea, Thailand, United States, Taiwan, Hong Kong (China), China (mainland), Mexico, Papua New Guinea, Chile, Peru, Russia Vietnam.

⁵⁰ Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, USA, Uruguay, Venezuela.