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**The Trans-Pacific Partnership Agreement:
Looking Ahead to the Next Steps**

Deborah Kay Elms

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Deborah Kay Elms is Head of the Temasek Foundation Centre for Trade & Negotiations and Senior Fellow at the S. Rajaratnam School of International Studies.

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Please contact the author for information about this paper.

Email: isdelms@ntu.edu.sg

Asian Development Bank Institute
Kasumigaseki Building 8F
3-2-5 Kasumigaseki, Chiyoda-ku
Tokyo 100-6008, Japan

Tel: +81-3-3593-5500

Fax: +81-3-3593-5571

URL: www.adbi.org

E-mail: info@adbi.org

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Abstract

Pressure has been building for the conclusion of the 12-country Trans-Pacific Partnership (TPP) negotiations. Getting the deal done is important, but the TPP is not just another free trade agreement (FTA). It represents the chance to set a trade agenda for the future across a wide range of topics for countries throughout the Asia-Pacific region. This means that the agreement should not be settled in haste. More importantly, it also means that key decisions need to be reached about broader issues related to the institutional structure of the TPP. These decisions must be made now, before the deal is closed, on issues such as how to create the TPP as a living agreement, the formation of a TPP Secretariat, and the clarification of entry conditions for future members such as the People's Republic of China (PRC). These choices must be made deliberately and carefully even while officials are struggling with reaching closure on the most highly sensitive issues still remaining in the agreement. It will not be easy, but wise decisions are necessary now to ensure the long-term success of the TPP.

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1. INTRODUCTION

1.1 Unfinished Business in the Endgame

After nearly four years of negotiations, officials have been scrambling to conclude the negotiations of the Trans-Pacific Partnership (TPP) among the current 12 participating members: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Viet Nam. Although multiple deadlines have passed for conclusion (the most serious was one announced for the November 2011 Asia-Pacific Economic Cooperation [APEC] Leader's Meeting), many anticipate the "real" conclusion in early 2014.

This means that we have entered the "endgame" of these negotiations. After more than 19 rounds of very complex, difficult bargaining across an expanding set of members, negotiators are down to the final, political decisions on how deep, wide, and ambitious the TPP agreement will ultimately become. Most of the final sticking points were predicted at the outset of the negotiations. Rather than rehash the specific problem areas like sugar, dairy, rice, intellectual property rights, or the environmental chapter again here (Elms 2013; Schott 2013), I will focus on some of the broader issues that remain in the negotiations.¹

This paper explores some key elements of the TPP negotiations that have not yet been addressed in detail in any scholarly work. I discuss the context of the negotiations, the concept of a "living agreement," the idea of a TPP Secretariat, the connections between the TPP and APEC, and engage in a discussion of future admission procedures for new members.

These broader issues are likely to be critical to the future success of the TPP. Many of these ideas were discussed at length at the very outset of negotiations, starting in March 2010 in Melbourne. However, once officials began getting serious about the technical issues, most of the deeper concerns fell by the wayside. As officials struggle toward the finish line, the urgency in finding creative solutions to these far-reaching aspects of the agreement has only increased.

2. THE CLUSTER APPROACH

One of the biggest challenges in getting the TPP to reach the highest aspirational goals of a "21st century, high quality" agreement has been prodding trade officials to think as broadly as possible about the implications of their actions. Since the 12 TPP members have all been so active in negotiating free trade agreements (FTAs) in the past, many of the officials involved view the TPP as just another trade agreement, albeit one that is bigger and harder to negotiate than many of the others.

In the initial round of negotiations in Melbourne, officials wanted to think creatively. Rather than split negotiations into traditional "chapters" for discussions (goods, services, investment, intellectual property, etc.), they tried to divide them into clusters. These clusters were supposed to consider overarching themes that ran across multiple issue areas and might better conform to the real world of business than past FTA practices. However, the cluster idea quickly broke down once the discussions started

¹ To show how deep and enduring the sticking points have been in these talks, the book by Lim, Elms and Low (2012) is likely to have highlighted nearly every problem area still being contested in October 2013, although the book was completed by the team of authors early in 2012.

moving into more substantive areas. Officials reached for the familiar settings of traditional chapters and the cluster approach was rapidly abandoned.

The only exception was the “horizontal” chapter into which nearly everything new and innovative about the TPP was placed. This includes ideas such as fostering small and medium enterprises, encouraging supply chains, bringing about regulatory coherence, and all things related to development and cooperation. A moment’s consideration, however, would have suggested that this approach would be problematic. Placing all these diverse issues into one basket left a handful of officials grappling with a wide range of topics and concerns. To compound the difficulties, these were all issues that had never before been addressed in a trade agreement—mostly because they were extremely tough to tackle. Here they were all bundled together and handed to one team.² It is therefore not particularly surprising that the results from the horizontal chapter will be deeply disappointing to many.

The efforts to assist small and medium enterprises quickly devolved into a website.³ Much of the “meat” of the supply chain/business connectivity issues got pulled out and placed elsewhere in the agreement. This is fine, except that many in the supply chain industry, particularly those in logistics, have argued for years that the primary problem for supply chain operators is precisely that their issues fall in between ministries and are therefore never appropriately managed by anyone. The TPP was supposed to represent a rare opportunity to pull together a host of issues into one place and keep governments focused on this critical web of interlocking elements for business in the 21st century. By pulling these items out of their own dedicated “chapter” and placing them back into various substantive chapters, like goods or services, some of the synergies that were supposed to be unlocked by bundling them together will have been lost.

The issue of regulatory coherence may be the most disappointing of all. Whenever officials in the TPP have been asked about the 21st century components of the agreement, they cite regulatory coherence. The idea was that countries would try to harmonize standards in food, agriculture, and other areas if such a thing were possible. If not, they would at least try to accept a small set of compatible, multiple standards. As an example, if Country A permitted a certain type of food safety inspection for apples, Country B would be willing to accept this certification, even if their own apple inspection might be different. They would not be harmonizing standards to the same degree (which was seen as too ambitious), but would still be going beyond what is typically found in an FTA—especially one with multiple parties.

The 12 November 2011 Leader’s Statement highlighted regulatory coherence in particular, noting that members pledged to “work to improve regulatory practices, eliminate unnecessary barriers, reduce regional divergence in standards, promote transparency, conduct [their] regulatory processes in a more trade-facilitative manner, eliminate redundancies in testing and certification, and promote cooperation on specific regulatory issues.”⁴

² Of course, officials will quickly argue that they had other individuals they could engage as resources whenever and wherever needed. I believe that history will show that most of the teams on the horizontal chapter managed the bulk of the details on their own.

³ I would argue that this is even worse than it sounds—unless the TPP creates a meaningful secretariat as discussed later, such a website will rapidly collapse since no one will be responsible for maintaining it.

⁴ See <http://www.ustr.gov/about-us/press-office/press-releases/2011/november/trans-pacific-partnership-leaders-statement>

Such high ambition proved problematic to implement. It was especially difficult to get regulators from different ministries and agencies to cooperate with trade officials in the TPP on the broad agenda of increasing market access for members. In the end, the TPP chapter on regulatory coherence will be about the institutional framework for coherence. It will contain information on enquiry points and procedures for obtaining information and promoting transparency. It will not really discuss standards at all. Some of this material was put into the specific chapters on sanitary and phytosanitary standards (SPS) or technical barriers to trade (TBT), but in general it has proved too difficult to get regulators to cooperate in the TPP.⁵ The final result will be much less ambitious and less 21st century than the early rhetoric would have suggested.

3. A LIVING AGREEMENT

All is not yet lost. One of the best ideas of the TPP from the beginning was to create the TPP as a “living agreement.” The idea gained momentum after officials observed problems in the World Trade Organization’s (WTO) Information Technology Agreement (ITA), which was being renegotiated at the time the TPP was getting underway. In the ITA, the electronics sector was liberalized, which unleashed tremendous growth, especially in Asia. However, it had what officials soon came to recognize was a serious flaw—the method of negotiation used was a “positive” list, and technology was only liberalized if it was included on the list (see Beltz 1997; Lee-Makiyama 2011; Lin 2011). This meant that as new technology was developed, it was not automatically included for market opening. Over time and in a rapidly evolving industry, the ITA became less and less relevant as fewer and fewer traded products were covered. Record players might be eligible, but not smart phones, for example. Getting countries to sit down and reopen negotiations also proved extremely difficult and tedious.

It is true that FTAs usually have a clause that requires regular reviews. However, in practice, such reviews are frequently not held or are largely superficial. Even when countries take the review process seriously, the revisions generally consist of changes to the legal language of the document to bring conformity to different sections, or to try to bring different FTA provisions into compliance with one another. Periodic reviews have, so far, not been used for major renegotiations of an FTA.

Officials are not oblivious to these problems in other agreements. There are generally two different approaches taken to avoid creating obsolete commitments in “modern” FTAs. First, officials try to negotiate on the basis of a “negative” list. This approach means that new sectors are automatically opened for partner preferences unless the members specifically meet and declare reservations to opening the sector. The TPP uses a negative list for both services and investment partly as a mechanism to remain relevant in the future without the need for complex revisions to the agreement. It ensures that new industries and sectors are automatically opened for investment or foreign competition.

Second, most next generation FTAs have a complex committee structure built into the agreement from the beginning. The two sides in a bilateral deal may agree to create a general trade committee that meets every year or every two years. This is supplemented with specific committees on goods, services, investment, government procurement, and so forth. These subcommittees or working groups are also scheduled to meet regularly—often every two years.

⁵ If the living agreement idea discussed below takes off, this may not be a fatal blow, as regulators would, in fact, meet regularly to discuss changes and, perhaps, move towards harmonization.

However, these committees do not always meet regularly. In many of the latest generation of FTAs, it is too soon to tell how well these committee structures will work because many have only just been completed and reviews have not yet been held. If there is an obvious flaw in the agreement, the committees should allow the parties to correct the problem, but modifications or improvements to the overall agreement are unlikely to happen. These committee meetings are probably going to be short affairs attended by junior staff, in most cases.

Recall the promiscuity of the TPP member countries in signing FTAs. Chile has agreements with 60 countries. By the time it joined the TPP, Mexico had 12 FTAs linking 44 countries. By 2013, Singapore had 20 FTAs, with another 5 under negotiation. Many of these deals come with complex committee structures for management. In most of the TPP member countries, some portion of trade ministry officials could likely spend their careers moving from preparing for one committee review to another.

Consequently, TPP officials suggested a slightly different approach early on in the talks. This FTA would become a “living agreement.”⁶ This meant that it would not just be opened for annual reviews. Instead, it would allow regular and ongoing discussions and revisions. In this way, it would never be out of date. From an institutional perspective, a benefit of a living agreement is that TPP member countries would appoint a dedicated set of individuals to manage and monitor TPP commitments. It would not just be examined in a biennial committee period.

A living agreement could, for example, take the rather limited framework for regulatory coherence in the original TPP document and, over time, turn it into something much more substantial. Regulators from across the TPP countries could engage in ongoing meetings and become accustomed to coordinating their regulations with one another before proceeding with changes that might impact the membership. New elements like sub-federal level entities or states could be added to the government procurement commitments relatively easily under a living agreement provision. Reservations in specific service sectors or subsectors could be removed over time without requiring a wholesale renegotiation of the agreement.

Other than the European Union, perhaps the closest trade agreement to a living agreement idea is the Australia–New Zealand Closer Economic Partnership (Leslie and Elijah 2012). Another potential candidate model might be APEC itself where commitments made by member states evolve over time. The difference, of course, with APEC is that APEC is not binding.

The idea of the living agreement was discussed at length early on in the TPP negotiations. It was then largely dropped from conversations for most of the next three years while officials moved on to more substantive conversations about specific chapters. At the time of the endgame negotiations in late 2013, it is not clear whether the idea will survive at all, or whether it will simply be an augmented version of the regular FTA review mechanisms.

⁶ The term has been used most often in labor bargaining to refer to continuous bargaining or negotiations that do not have defined beginning and ending periods (see Walton, Cutcher-Gerchenfeld, and McKersie 1994: 51; Clarke and Haiven 1999: 169; Moody 2009: 111).

4. A TRANS-PACIFIC PARTNERSHIP SECRETARIAT

If it is to survive and be meaningful, a living agreement cannot be managed without a robust secretariat dedicated to supervising the TPP agreement. The intention of the TPP is to continue to expand in the future—at least in terms of membership. If the living agreement idea gains traction, the issue areas and coverage of the agreement will also increase over time. Even if it does not expand any further, the TPP includes 12 member countries and nearly 30 chapters. Many of the rules go well beyond anything promised in the WTO or other FTAs. Commitments will be phased in over the implementation period, with different start dates likely for many members. This will add to the complexity of administering the agreement.

The TPP will require dedicated staff to monitor implementation and reach out to the business community in each of the member countries. Otherwise, the provisions negotiated at great difficulty, cost, and time are likely to be underutilized. As an example, many of the commitments in the agreement go well beyond obligations made in the WTO. This will make it impossible to use WTO dispute settlement for many issues in the TPP. Like most FTAs, the TPP has its own dispute settlement management (DSM) structure. However, unlike most FTAs, the TPP DSM has been designed to be actively used. If the DSM picks up momentum over time, the case load could increase, so managing dispute cases will require an institutional structure. It might even be possible to imagine a scenario under which the TPP develops a standing dispute system, more similar to that of the WTO.

Even leaving dispute settlement aside, such a complicated agreement cannot be managed by trade officials in the Asia desk like many other bilateral FTAs. Existing regional FTAs, like the ASEAN+1 agreements do not extend nearly so far nor include such deep behind-the-border commitments. The fact that these FTAs have worked without a secretariat is not a convincing argument for managing the TPP going forward. As it stands, already many TPP officials have complained about the difficulties of coordination during the negotiation stage.

Some have suggested that the APEC Secretariat could be used as the TPP Secretariat. After all, the TPP is officially one of the four possible pathways to the Free Trade Area of the Asia-Pacific (FTAAP) for APEC, and so far all TPP members are also APEC members. The accession clause for the TPP privileges APEC members as well.⁷ I will return to the idea of the TPP as a possible pathway to the FTAAP later. For now, the issue is whether or not the APEC Secretariat could also act as the TPP Secretariat. I suggest it could not.

There are at least three reasons why using APEC is problematic. First, APEC's own statement of purpose is to "serve as an incubator of ideas."⁸ This function would be lost if the secretariat were to become somehow divided between staff responsible for monitoring the TPP, and staff incubating ideas in a non-binding manner. APEC already has a very complex organizational structure of its own and an extremely small secretariat staff to manage hundreds of meetings and thousands of participants in a rotating set of host countries.

⁷ The relevant clause is drawn from the original P4 agreement and reads, "The Agreement is open to any APEC economy or any other State (Article 20.6), subject to terms to be agreed among the Parties." See Article 20, <http://www.mfat.govt.nz/Trade-and-Economic-Relations/2-Trade-Relationships-and-Agreements/Trans-Pacific/0-P4-Text-of-Agreement.php>

⁸ See, for example, the statements of the Economic Committee, "APEC Business Leaders Call for Action to Support SMEs, Boost FDI," <http://apec.org/Press/News-Releases/2011>

Second, not all APEC members are also members of the TPP. This issue of membership is discussed in more detail later. It is highly likely that the non-TPP members of APEC would find the suggestion to convert the APEC Secretariat into the TPP Secretariat quite objectionable. Even if only a portion of the APEC Secretariat were kept busy with TPP tasks, it would run the risk of diluting the non-TPP portion of the agenda.

Third, two of the possible pathways to the FTAAP are currently in play—the TPP and the Regional Comprehensive Economic Partnership (RCEP). The RCEP involves 16 parties in Asia. Not all RCEP members are APEC members, as noted below. However, a more relevant point is that the RCEP may also need a secretariat at some point in the future if the agreement also progresses to become a deep integration effort similar to the TPP. This would mean that the APEC Secretariat would effectively be split into three different elements—a non-binding ideas hub in APEC, the deeply ambitious TPP, and the perhaps less ambitious RCEP.

It is possible to argue that in the long run, these functions might merge again in the FTAAP, and that in the meantime, the costs involved in setting up the institutional structure of a TPP Secretariat could be significant. However, even if the TPP eventually evolves into the FTAAP, such a outcome is likely to be well over a decade (and more likely two decades) away. In the interim period, businesses could substantially benefit from a strong institutional structure to effectively implement the complicated TPP agreement.

In short, using the APEC Secretariat as the TPP Secretariat is a poor idea. The two ought to coordinate, but they must remain separate to provide the best service to both institutions.

5. THE BROADER RELATIONSHIP WITH THE ASIA-PACIFIC ECONOMIC COOPERATION

As noted earlier, officially the TPP is one of the four possible pathways to the FTAAP. APEC itself has no negotiating function, so any movement towards a broader FTA must be accomplished through another route. At the 2010 APEC Leader's Meeting, the 21 member economies agreed to move towards the FTAAP.⁹ APEC officials charted four possible routes to getting there: ASEAN+3, ASEAN+6 (now called the RCEP), the TPP, and others.¹⁰

All of the substantive announcements of the TPP have taken place on the sidelines of APEC. The current 12 members are all APEC members. However, going forward, this apparently tight linkage between the TPP and APEC need not remain in place. In any case, the strength of the bond between the TPP and APEC is likely to be overblown. Very little of the substantive negotiating agenda in the TPP has been drawn from APEC work. Although a few of the officials involved in the TPP negotiations have prior experience in APEC, there appears to have been little effort to involve APEC working groups, or use APEC pathfinder approaches or model measures. The TPP has

⁹ The 21 members of APEC are: Australia; Brunei Darussalam; Canada; Chile; the PRC; Hong Kong, China; Indonesia; Japan; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; the Philippines; Russia; Singapore; the Republic of Korea; Taipei, China; Thailand; United States; and Viet Nam.

¹⁰ ASEAN+3 is the 10 members of the Association of Southeast Asian Nations (Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Thailand, Singapore, and Viet Nam) with the three countries of Northeast Asia (the PRC, Japan, and the Republic of Korea). ASEAN+6 adds Australia, India and New Zealand to the 13.

implemented innovative outreach to the business community in the stakeholder meetings held alongside every negotiating round, but these outreach efforts have not specifically targeted or built on the APEC Business Advisory Council inputs.¹¹ Thus, although the TPP countries always meet on the sidelines of APEC meetings and important announcements about the TPP have frequently been made at APEC events, the substantive connection between the two is limited.

Another challenge to the TPP connection with APEC will come when this first set of negotiations concludes and the next tranche of negotiations begins. Of the countries lining up for membership, several are not APEC economies. For example, both Costa Rica and Colombia have aspirations of joining the TPP. Both are members of the Pacific Alliance, which is a high quality, ambitious trade agreement in Latin America.¹² The three other members of the Pacific Alliance are already in the TPP (Chile, Mexico, and Peru). Some of the countries negotiating in the RCEP are also not APEC members (Cambodia, the Lao People's Democratic Republic, and Myanmar in ASEAN, as well as India). Of course, APEC is not averse to having non-APEC members on the path to the FTAAP. Still, the possible addition of non-APEC members into the TPP will further weaken the connection with APEC.

The intention of having the TPP eventually become the FTAAP is also deeply problematic in practice. Not all of the current 21 member economies of APEC appear to want to join such an ambitious agreement.

There is also a great deal of talk about an eventual merger between the RCEP and the TPP. However, the likelihood of such a merger is extremely remote. The gap in quality between the existing ASEAN+1 agreements and the TPP is impressively large. As a simple example, many of the ASEAN+1 agreements have never managed to sign or implement commitments beyond basic agreements on tariff reductions for goods—nothing at all on services or investment. There are no rules in areas like intellectual property rights, labor, environment, competition, or market liberalization in government procurement, agriculture, and so forth. Even the strongest ASEAN+1 agreement, the ASEAN–Australia–New Zealand Free Trade Agreement (AANZFTA), falls considerably short of meeting the ambitions of the TPP.

Of course, the RCEP has only met twice, in May and September 2013, so it is conceivable that the level of ambition in this agreement will ratchet upwards over time.¹³ The overlapping membership between the two agreements will possibly help to push the RCEP in a more aspiring direction. However, early signs of ambition and convergence are not promising. From the beginning, the RCEP has included language allowing special and differential treatment for developing country members. Initial signals from some of the RCEP countries have suggested a desire to protect special and sensitive products, as well as allow long timelines for implementation. Coupled with the evidence from past agreements, the signs for high ambition in the RCEP are not optimistic. This does not mean that the RCEP will not be worthwhile, or that it will fail to deliver meaningful benefits for its members, but it does suggest that a merger between the TPP and the RCEP will not be possible.

¹¹ At least from Round 6 in Singapore, when the process was formalized, until Round 19 in Brunei Darussalam in mid-2013. Stakeholders from business or NGOs have been invited to give presentations and/or stand beside tables to provide information about their specific issue area or business interest.

¹² Costa Rica had been an observer, but their request to upgrade to full membership was approved in May 2013.

¹³ The third round is not scheduled until January 2014 in Malaysia.

Finally, even if it were possible to create a form of FTAAP agreement by merging the TPP and the RCEP, this would be an extremely poor method of creating an FTA that best meets the needs of the set of 21 members.

6. IMPLEMENTATION AND ACCESSION OF NEW MEMBERS

6.1 Implementation

Getting the agreement done is one thing. Getting it ratified and entered into force is another.¹⁴ The agreement will only have meaning when it is implemented in the member countries and begins to be used by businesses. Since the 12 current members are well connected by existing FTAs, for many businesses in many countries the immediate impact of the TPP will be modest, and utilization rates of many existing FTAs have been modest to date (Kawai and Wignaraja 2011).

For example, since Singapore already has zero tariffs (on all but six tariff lines), FTAs do not have significant impacts in terms of goods access. Singapore already had FTAs in place with every TPP party except Canada and Mexico.¹⁵ With some partners, Singapore already has multiple agreements in place, including regional deals through ASEAN that deliver some of the larger benefits to supply chains and cumulation possible through the TPP. This means that implementation of the full package will be especially critical to Singapore. Until the whole agreement is in place, the economic benefits may be modest. It also means that maintaining the highest levels of ambition will be critical. Any shaving of quality at the last minute to facilitate the conclusion of the agreement could mean fewer benefits in the end, particularly for a country like Singapore.

It is hoped that in the final push to conclude the TPP, officials and leaders do not dilute the ambition of the agreement and do not choose to skip over some of the critical broader, long-term decisions that may ultimately be most important in building a lasting agreement for the future.

6.2 Accession of New Members

Another broad, long-term issue that must be sorted out prior to the closure of the agreement is the procedure for accession of new members. Under the current rules, new members have been admitted by formally applying to the current members. Each prospective member must then engage in a series of bilateral meetings to discuss possible bilateral obstacles in the relationship that may prove problematic for the group as a whole. These issues may require resolution, or progress towards resolution, prior to entry to avoid having them hinder negotiations with the members. Finally, the whole TPP membership has to collectively approve the new member for admission. New members then have to wait for final domestic procedures to be completed before they

¹⁴ Ratification in the United States, especially, is likely to prove extremely challenging. See Fergusson et al. 2013.

¹⁵ Chile faces a similar situation, with FTAs in place with every country except Japan.

are allowed to see the negotiating texts and formally sit down with the other members at the table.¹⁶

A further informal provision introduced when Canada and Mexico joined in late 2012 prevented new members from “reopening” any closed chapters or provisions that had already been agreed upon by the existing members. Outstanding issues could be discussed and new issues tabled, but anything resolved could not be taken up again.

Taken as a package, these accession procedures suggest that, going forward, the next tranche of TPP members will not have any room for negotiation on the TPP rules at all. New members will engage in bargaining over their own market access commitments in goods, services, investment, government procurement, and so forth, but they will have no input into the rest of the document.

From the perspective of those who have spent roughly four years negotiating over every comma, clause, and paragraph in the existing agreement, such provisions make a great deal of sense. They do not see any need to allow new members the ability to reopen parts of the document that were finally agreed upon. After all, I could imagine many saying that the whole agreement was open to new members (particularly from APEC economies) at any point starting from 2008. If any new country had wanted to join in the negotiating stage, they could simply have put their hand up, joined, and negotiated for whatever priorities they may have had.

However, a lack of flexibility collides with one important political reality going forward. The TPP would be substantially strengthened if the PRC—currently with the world’s second largest economy—enters. One of the most important factors driving this mega-regional trade agreement is the opportunity to knit together global value chains in a seamless trade agreement that contains not just tariff reductions but also substantial behind-the-border provisions. Since many of the presumptive second tranche members like the PRC; the Republic of Korea; Hong Kong, China; and Taipei, China are deeply enmeshed in value chains in the Asia-Pacific region, getting them into the TPP would provide significant economic benefits (Wignaraja 2013; Baldwin and Kawai 2013; Petri, Plummer, and Zhai 2012).

For the PRC in particular, joining the existing TPP without the opportunity to discuss any of the existing provisions may present political difficulties at the domestic level. This suggests that current TPP members would be wise to think carefully about a mechanism that would apply specifically to new entrants in the next tranche of negotiations. To write into the agreement that accession terms are to be negotiated later with each new entrant will be unacceptable to many. Some sort of clarity is therefore needed as to what sort of accession provisions will be required of new aspirants.

I suggest that officials think creatively about a clause that would allow certain flexibility to the first set of countries entering the TPP. Such a clause would not allow a wholesale rewriting of the agreement, but might allow for some modest changes. Done carefully, it would satisfy the demands for new members to put their collective stamp on the agreement without prolonging new negotiations. Such a mechanism would also encourage any country considering membership to declare their interest. This would

¹⁶ In practice, this basically means that, if a new member does not have clearance from the US Congress in the form of existing coverage under Trade Promotion Authority (TPA), the new member has to wait for USTR to inform Congress of the intention to begin negotiations and wait 90 days for comments inside the United States before US domestic procedures are considered concluded. For the existing members, Malaysia already “had” approval under a stalled bilateral negotiation and could join the talks almost immediately, but Japan, Mexico, and Canada did not and had to wait 90 days before entry. For details on what is now called TPA, see Destler 2005.

have the added benefit of getting all potential new members into the deal at the same time. The alternative to getting everyone in at once might instead be to add new members on a regular basis, which would be deeply problematic.

A clause in the current agreement that privileges entrants in the first wave of new applicants could be extremely helpful in promoting TPP expansion in the near term. It need not allow extensive changes to the existing text, but some show of flexibility may be necessary to encourage new entrants.¹⁷ Otherwise, entry becomes a “take it or leave it” proposition and increases the risk that prospective members may opt to “leave it.”

6.3 Circling Back to the Living Agreement

Managing revisions is tricky, of course. It also comes with one final caveat for officials. Although there are some strong incentives to create a living agreement that allows for general flexibility and improvements to the document going forward, there is at least one challenge to be addressed. For countries that require a ratification procedure for approval of the TPP, there is, presumably, some threshold level of change that cannot be exceeded in the document before it triggers a new need for ratification. It also cannot be the case that every change requires renewed ratification. In other words, it remains to be worked out how much change can take place within the TPP in terms of revisions to the text, rules, schedules, commitments, new members, and so forth without going back to member state domestic procedures for ratification. These conditions should be specified as clearly as possible in advance of closing the agreement so that members know what to expect from one another in the future.

7. CONCLUSIONS

Pressure has been building for closure of the TPP, and concluding the deal is important. The economic benefits from this 12-party agreement are likely to be substantial, but the TPP is not just another FTA. It represents the chance to set a trade agenda for the future across a wide range of topics for countries throughout the Asia-Pacific region. This means that the agreement should not be settled hastily, and more importantly, it also means that key decisions need to be reached about broader issues related to the institutional structure of the TPP. These decisions must be made now before the deal is closed, on issues such as the creation of the TPP as a living agreement, the formation of a TPP Secretariat, and the clarification of entry conditions for future members. These choices must be made deliberately and carefully even while officials are struggling to reach closure on the most highly sensitive issues still remaining in the agreement. It will not be easy, but wise decisions are necessary now to ensure the long-term success of the TPP.

¹⁷ It is true that agreements like the European Union or the WTO, do not allow revisions to the existing framework when new members join. However, I would argue that adding in the PRC to the TPP12 is not analogous to adding the 20th new member to the EU or even adding in the PRC to the existing hundreds of members in the WTO.

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