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The Trans-Pacific Strategic Economic Partnership *Will it divide the Asia-Pacific?*

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Negotiations on the Trans-Pacific Strategic Economic Partnership (TPP) were to be wrapped up last year before the Asia Pacific Economic Cooperation (APEC) leaders' meeting in November 2011. However, lack of consensus between members on provisions of the Agreement has extended negotiations. Since the APEC meeting, there have been four rounds of negotiations within the last seven months. The next, and the fourteenth round, is scheduled to be held in Virginia, US, during 6-15, September, 2012.

While progress appears to have been made on several issues, it is not sure whether negotiations will conclude before the forthcoming US presidential elections. The Obama administration has high stakes in the TPP as it believes the Agreement will increase American exports to robust economies in the Asia-Pacific and help in creating jobs at home.

Once implemented, the Agreement, criticised for non-transparent negotiations, rigid provisions on intellectual property and a divisive approach to integration in the Asia-Pacific, will be an architecture with far-reaching strategic economic ramifications.

This Briefing Paper provides a background on the TPP initiative and states that the Agreement will continue to dominate the strategic economic discourse on the regional architecture of the Asia-Pacific irrespective of its outcome.

Background

The WTO notes the TPP to have come into force from 28 May 2006 as a RTA in goods and services between Brunei, Chile, New Zealand and Singapore¹. The current TPP negotiations, however, are taking place between the original four members and Australia, Malaysia, Peru, Vietnam and the US, on an expanded set of issues. Japan and South Korea have shown interest in joining the negotiations and are potential future members of the TPP. Mexico and Canada have been invited to the negotiations and are expected to join soon. The negotiations cover a wide range of issues including not only ambitious tariff liberalization, but also competition policy, intellectual property, technical barriers to trade (TBT), sanitary & phyto-sanitary (SPS) measures and government procurement. Discussions also include labour and environment standards and services and investment.

The geographical sweep of the TPP is vast covering Northeast Asia (Japan, South Korea), Southeast Asia (Brunei, Malaysia, Singapore, Vietnam), Oceania (Australia, New Zealand), North America (Canada, Mexico, US) and South America (Chile, Peru). It has the largest number of geographical regions and continents after the WTO and APEC frameworks. The major regions missing from the TPP are Europe, Central Asia, Middle East, South Asia and Africa.

Size and Heterogeneity

The cumulative membership of the TPP (including the countries likely to join) represents a sizeable economic block with 39.39 per cent of the world GDP (33.7 per cent of world GDP in PPP terms; Table 1). The US is the most dominant economic entity followed by Japan, Canada, Australia, Mexico and South Korea. Exclusion of Japan, Canada, Mexico and South Korea – which are interested but non-negotiating partners at present – reduces the economic size of the group to 25.28 per cent of world GDP (22.36 per cent of GDP (PPP)). The inclusion of these four countries would not only increase the economic size and significance of the TPP but would also ensure a more even balance of economic power within the group as opposed to the current skewed slant towards the US.

The economic heterogeneity within the TPP in terms of difference in living standards of members is evident from the wide dispersion in national per capita incomes (Figure 1). The range of incomes is from US\$60,642 (Australia) to US\$1,411 (Vietnam) measured in nominal terms. Similar dispersion is noticeable in PPP income terms also. While the heterogeneity helps the TPP in defending itself against notions of being a club of rich economies, it also complicates negotiations given the significant differences in levels of economic progress and development between the members. Indeed, this also explains why the

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Table 1: TPP Members' Shares (%) in World GDP

Country	World GDP (nominal)	World GDP (PPP)
Australia	1.96	1.13
Brunei	0.02	0.03
Canada	2.48	1.74
Chile	0.36	0.35
Japan	8.38	5.61
South Korea	1.59	1.85
Malaysia	0.40	0.55
Mexico	1.65	2.15
New Zealand	0.20	0.17
Peru	0.25	0.36
Singapore	0.34	0.38
United States	21.57	19.03
Vietnam	0.18	0.36
Total	39.39	33.70

Source: World Bank; Computed on the basis of latest year GDP estimate available

negotiations are getting prolonged. The difficulties in agreeing to various provisions are particularly high for a country like Vietnam, which is a late entrant to the WTO, and would require committing to extensive domestic liberalization at the TPP. The same holds true for Malaysia, which is required to take proactive steps in 'closed' sectors like government procurement.

Studies forecasting potential economic benefits from the TPP indicate greater gains for relatively smaller economies in the group, particularly those that are less liberalized and having fewer FTAs with the US. Chile, Malaysia, Peru and Vietnam are projected to experience the maximum income gains among members in the medium term extending up to 2025². These outcomes, however, are contingent upon rigorous implementation of the provisions of the TPP. And implementation, till now, has been difficult to agree upon.

The US Interests

The TPP was formalised at a time when multilateral trade talks at the WTO had begun experiencing serious difficulties over the implementation of the Doha Development Agenda (DDA). Signed a few weeks before the Hong Kong Ministerial of the WTO in November 2005, the agreement hardly elicited interest in the world trade community till the US decided to join the negotiations in February 2008 and agreed to accede to the agreement in September 2008 and also invited Australia, Peru and Vietnam to join. This was one of the last major decisions on international trade taken by the Bush administration. The timing of the decision was significant as it came soon after global trade talks ended in a stalemate at the WTO Ministers' meeting

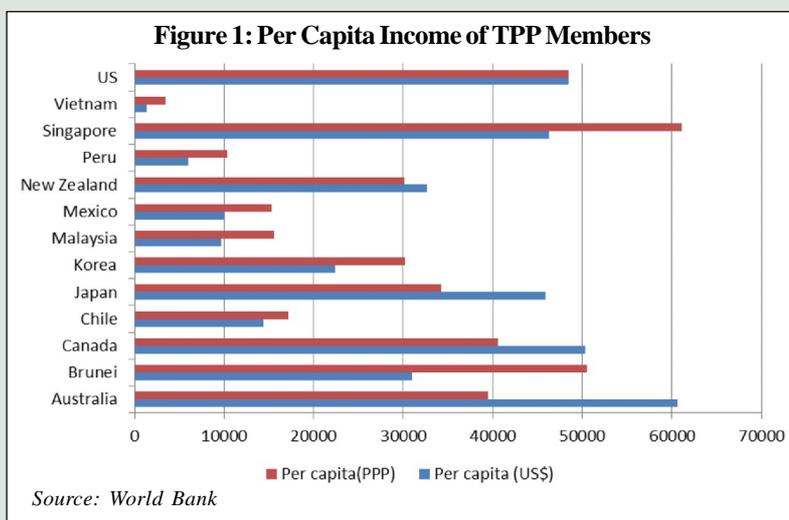
in Geneva in July 2008 and also on the heels of the onset of the global economic crisis in September 2008.

The agreement has considerable strategic economic significance for the US at a time when it is searching new markets for creating fresh growth opportunities through international trade. The Obama administration carried forward its predecessor's decision to commit the US firmly into the trade architecture of the Asia-Pacific by formally notifying the Congress of its decision to negotiate with the TPP partners in December 2009. The US has not featured prominently in the dense web of regional and bilateral PTAs and FTAs within the Asia-Pacific and is keen to avoid further marginalization in the trade and market access spaces in the region. By committing to the TPP, the US also aspires to set the ball rolling for a pan-regional free trade block in the Asia-Pacific³. This, arguably, is a 'second-best' alternative to a global free trade club, which, given the impasse at the WTO, appears unlikely.

Free Entry?

The accession clause of the original TPP Agreement has been a controversial feature. Article 20.6 of the Agreement specifies that any APEC member or another state can accede to the Agreement on terms agreed to by Parties to the Agreement⁴. Analysts have argued that such a clause is rather unusual to PTAs⁵. There would be certain implications if the final TPP Agreement continues to have an accession clause.

An accession clause enabling third parties to negotiate with the original signatories for joining a PTA has two implications. On one hand, it can reduce anxieties and tensions between members of other existing PTAs given the knowledge that they can aspire to join particular PTAs of their choice. For an agreement like the TPP, however, the presence of an accession clause can be interpreted as a window for expanding the membership of the alliance by including like-minded members through covert channels. It is noteworthy that the scope of including partners in the present instance goes beyond the APEC. Indeed, the US's views at the time of committing to the Agreement of expanding the scope of

Figure 1: Per Capita Income of TPP Members

the latter to gradually include countries sharing similar visions of 'free and fair trade' were apprehensions highlighted by the critics of the accession clause, which were further vindicated by its inviting Australia, Peru and Vietnam to the negotiating table.

Rigid Intellectual Property

The TPP aims to introduce rules on intellectual property rights (IPR) that would provide much stronger levels of IP protection than are usually provided for in most PTAs. The ongoing negotiations on IPR go beyond the provisions of the TRIPS agreement of the WTO to the higher standards of protection settled by the WIPO.

There are apprehensions that the stringent IPR rules of the TPP will raise prices of several traded items in healthcare and technology originating in the TPP members and bound for developing countries⁶. IPR rules have been an issue in the TPP ever since Brunei joined the agreement and have subsequently been the source of disagreement even between the US and other developed country negotiating members like Australia and Canada. Reaching consensus on IPR rules is difficult with Brunei, Chile, Malaysia, Peru and Vietnam being on the 'watch list' of the US on IPRs. The US has been insisting on the provisions of the US-South Korea FTA, which has TRIPS+ protection levels for healthcare products, as being the benchmark for IPR negotiations in the TPP. While the US position is that the US-Korea FTA standards on data exclusivity and mandatory patent linkage would encourage speedy introduction of generic medicines, alternative views contend that entry of generics might actually be delayed⁷.

Setting the US-South Korea FTA as the standard for IPR rules in TPP implies that domestic IP systems of negotiating countries (as well as future interested parties) need to be reformed for matching the level of IP protection and enforcement standards in the FTA. This is not easy given the TRIPS+ nature of the FTA. If IPR rules allow patent holders of innovations (e.g. in computer programmes) to file claims directly against infringers, then there could be implications for several end-users of software in developing countries that have relatively weak enforcement systems. These issues would manifest within some of the negotiating TPP members themselves. The concerns over the IPR rules are not limited to developing countries only. There are worries over greater market access in goods being traded off against stricter domestic IP laws favouring US industries, such as access for New Zealand's dairy and meat producers in the US market being traded off against the former's IP laws changing to accommodate American film and music industries⁸.

Structural Overlaps

TPP negotiations are facing the obvious difficulties of navigating through the complex trade architecture of the Asia-Pacific. The region has a dense web of agreements and groupings. These existing networks create structural

overlaps of rules and processes between various agreements.

The overlaps are of two kinds. The first arises from the different collectives of countries, which include members negotiating in the TPP. Apart from the overarching framework of the APEC, there are other regional groupings such as the East Asia Summit (EAS), the ASEAN+3 and the ASEAN. The EAS includes all ten members of the ASEAN along with China, Japan, South Korea, India, Australia and New Zealand. The group has expanded by including the US and Russia in the 6th EAS Summit at Indonesia in November 2011. In this respect, it is a larger edition of the ASEAN+3 and the ASEAN. The APEC's vision of a composite and integrated Asia-Pacific is reflected in the vision of the Free Trade Area for the Asia-Pacific (FTAAP), which would include all APEC members. On the other hand, the EAS is exploring the possibility of a Comprehensive Economic Partnership for East Asia (CEPEA), which envisages a FTA for EAS members.

The second structural overlap arises from the existing formal trade linkages within TPP members themselves. These include Australia's bilateral agreements with Chile, New Zealand, Singapore and the US; Chile's FTAs with Malaysia, Peru and the US; the Malaysia-New Zealand FTA; Peru's FTAs with Singapore and the US; and Singapore's agreements with Australia & New Zealand and the US. In addition, the TPP parties are linked through other agreements such as the FTA between Australia, New Zealand and ASEAN; the ASEAN FTA; and the original TPP Agreement between the P4. Brunei, despite having less bilateral FTAs, is connected to other TPP members through the P4 agreement and agreements involving ASEAN. The latter applies for Vietnam as well. The complexities created by the provisions of all these overlapping agreements have made negotiations at the TPP cumbersome and lengthy.

Divisive Approach to Integration?

Views on the TPP being a trade+ grand strategic alliance for reshaping the regional architecture of the Asia-Pacific have gathered strength from the composition of its members. All members (negotiating and potential) are members of the APEC. The APEC members not belonging to the TPP are China, Hong Kong, Indonesia, Papua New Guinea, Philippines, Russia, Taiwan and Thailand. The possibility of these non-TPP APEC members acceding to the Agreement in future cannot be overlooked, at least theoretically. But there are impressions that the TPP is intrinsically divisive and aiming to keep some countries away. By emphasizing on binding provisions on IPRs and labour standards, the TPP, experts argue, is making itself deliberately distant from a country like China, which is unlikely to sign the agreement in the foreseeable future given its different perspectives on these issues⁹. In this respect, the agreement can be obliquely interpreted as an instrument for facilitating a process of economic and strategic integration in the Asia-Pacific which is less China-centric and more US-dominated.

All other current integration efforts in the Asia-Pacific, whether it is the FTAAP, the CEPEA, or the East Asia Free Trade Area (EAFTA) - which is an initiative between ASEAN and China, Japan and Korea - are driven from within Asia and are 'Asia-centric' in their approach to integration. The 'Asia-centric' approach differs from the US-led TPP negotiations in its non-binding and voluntary nature as opposed to the strict and binding track of the TPP¹⁰. The TPP has introduced a pronounced 'non-Asian' flavour to economic integration efforts in Asia. For several economies negotiating the TPP, which are common to other 'Asia-centric' negotiation frameworks as well, the challenges of complying with the two different approaches and their demands can be daunting.

Issues and Prospects

It is difficult to say when the negotiations on the TPP will end and the kind of structure it will eventually assume. What is amply clear, however, is that the Agreement will continue to dominate the strategic economic discourse on the regional architecture of the Asia-Pacific irrespective of its outcome.

The TPP has given birth to different strategic imperatives within the region. China, for example, has responded by hastening talks with Japan and South Korea over a FTA, which is expected to pave the way for the EAFTA comprising the ASEAN+3. Interestingly, Japan and South Korea have continued to engage in FTA talks with China notwithstanding their interest in the TPP. Clearly, neither country wishes to fall between the cracks should the future Asia-Pacific show signs of getting split between an 'Asia-centric' integration framework involving China and the TPP. Similar imperatives are likely to

confront Australia also given its robust economic linkages with China. Within the ASEAN as well, the TPP can produce conflicting responses given the exclusion of major ASEAN economies like Indonesia, Philippines and Thailand from the negotiations.

For India, another major economy in Asia, TPP presents an additional layer in the regional architecture with new issues, which it must accommodate in future negotiations with the countries in the region. If the TPP eventually gets going with the kind of IPR rules and environment and labour standards which the US would like it to have, it will be nearly impossible for India to conceive linkages with the Agreement. On the other hand, India's difficulties in negotiating with the Asia-Pacific countries would increase if the TPP succeeds in disentangling the 'spaghetti bowl' by subsuming other PTAs and FTAs in the region to become the overarching framework for rules of trade. Indeed, this might be a common dilemma for the entire BRICS (Brazil, Russia, India, China, South Africa), which does not figure in the TPP. Will the finalisation of the TPP then encourage the BRICS to work purposefully on closer integration and a possible FTA?

Global economic prospects point to the Asia-Pacific as the location for the most robust global economic activities of the future. This has heavily enhanced the strategic weight of the region. The TPP reflects aspirations and stakes of major global powers in the region. It would be unfortunate if power struggles manifesting through contrasting integration frameworks split the region into economically counterproductive blocks. The TPP, unfortunately, cannot escape the responsibility for generating such apprehensions.

Endnotes

- 1 <http://rtais.wto.org/UI/PublicShowRTAIDCard.aspx?rtaid=9>. The Agreement first took off between New Zealand and Singapore on 28 May 2006. It came into effect for Brunei and Chile from 12 July 2006 and 8 November 2006 respectively. Accessed on 29 July 2012.
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- 3 Fergusson, I, F. and Vaughn, B (2011), 'The Trans-Pacific Partnership Agreement', *Congressional Research Service*, 7-5700, 12 December; <http://www.crs.gov>
- 4 *Trans-Pacific Strategic Partnership Agreement*, Chapter 20, Article 20.6, page 20-2; http://www.fta.gov.sg/tpfta/p3+authentic+trans-pacific+sep+text+english_v1.pdf Accessed on 30 July 2012.
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- 6 Das, S.B and Hman, H.W.N (2012), 'The Trans-Pacific Partnership (TPP): Economic and Strategic Implications for the Asia-Pacific', Institute of South East Asian Studies (ISEAS) *Perspective*, 23 July. http://web1.iseas.edu.sg/Iseas_Perspective/ISEAS%20Perspective_23jul12.pdf Accessed on 27 July, 2012.
- 7 See iii) earlier, pages 12-13, for a detailed analysis of the IPR issues.
- 8 'Don't Trade Away Our Digital Future', <http://internetnz.net.nz/news/blog/2012/Don%E2%80%99t-trade-away-our-digital-future> Accessed on 30 July 2012
- 9 'Pacific trade deal risks new China rift', *Financial Review*, 16 July 2012; http://afr.com/p/national/pacific_trade_deal_risks_new_china_rift Accessed on 31 July 2012
- 10 As in ii) earlier.