

EXPLAINING CHINA’S TRIPARTITE STRATEGY TOWARD THE TRANS-PACIFIC PARTNERSHIP AGREEMENT

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Abstract

The emergence of mega-regional trade agreements like the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) threatens to fragment global trade governance in fundamental ways. An important question, yet so far under-explored, is how the rising powers currently being excluded from the mega-regionals, such as China, view this new development in global economic governance. This article intends to fill this gap in the literature from a Chinese perspective. Specifically, this article addresses the following questions: why has China changed its initial suspicious attitude to a more neutral stance toward the TPP recently? What are the short-term and long-term effects of the TPP on China’s economic growth and geo-political influence? How will China deal with a myriad of challenges posed by the TPP going forward, be it in or outside the TPP? After the analysis of a range of relevant political, economic and legal factors, I submit that the Chinese government has adopted what I call a ‘tripartite strategy’ toward the TPP. What remains to be seen is whether this tripartite strategy provides the best roadmap for China’s further integration into the global economy.

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I. INTRODUCTION

Starting from a modest free trade agreement (FTA), originally known as the Trans-Pacific Strategic Economic Partnership Agreement (P-4 Agreement) among Brunei, Chile, New Zealand and Singapore in early 2002, the Trans-Pacific Partnership (TPP) agreement quickly rose to prominence since the US joined the negotiations in 2008.¹ On 14 November 2009, President Obama committed the US to engage with other TPP participating members ‘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’.² If successfully concluded, the TPP would be a significant economic force in the global economy. The 12 member countries (the US, Canada, Japan, Mexico, Chile, Peru, Australia, New Zealand, Vietnam, Singapore, Malaysia and Brunei) represent nearly 40 percent of the global GDP and about one-third of all world trade, nearly twice as much as the European Union.³ It is estimated that the TPP will lead to \$295 billion in annual global benefits by 2025.⁴

¹ Inkyo Cheong, ‘Negotiations for the Trans-Pacific Partnership Agreement: Evaluation and Implications for East Asian Regionalism’, Asian Development Bank Institute Working Paper Series No. 428 (July 2013) 4.

² Office of the Press Secretary, the White House, ‘Remarks by President Barack Obama at Suntory Hall’ <<http://www.whitehouse.gov/the-press-office/remarks-president-barack-obama-suntory-hall>>.

³ Brock R. Williams, ‘Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis’, CRS Report for Congress R42344 (June 10, 2013), at 4.

⁴ Peter A. Petri and Michael G. Plummer, ‘The Trans-Pacific Partnership and Asia-Pacific Integration: Policy Implications’, Peterson Institute for International Economics Policy Brief NUMBER PB12-16 (June 2012), at 5.

With 29 chapters currently under intense negotiations, the TPP member countries envision the final agreement to be a comprehensive and high-standard FTA.⁵ Indeed, the TPP enjoys some defining features that make it stand out among conventional FTAs. First, the TPP offers comprehensive market access, including duty-free access to each other's goods markets and simultaneously removes barriers on services, investment, financial services, temporary entry, and government procurement. Second, the TPP is a fully regional agreement. It will construct a single tariff schedule and have common rules of origin in order to facilitate the development of production and supply chains among the TPP members. Third, the TPP aims to establish disciplines on new and emerging trade issues as well as cross-cutting issues that have not traditionally been addressed in FTAs, such as state-owned enterprises (SOEs), supply chain facilitation, e-commerce, regulatory coherence, environmental and labour protections, etc. Finally, the TPP is a living agreement. It will evolve in response to developments in trade, technology or other emerging issues and expand to include other economies from across the Asia-Pacific region.⁶ As the cornerstone of the Obama Administration's economic policy in Asia Pacific, the emerging TPP Agreement has profound implications for Asian economic integration process, the multilateral trading system, and power dynamics between world major trading blocs.⁷

A riveting question about the TPP is the relationship between the TPP and China. Given China's scale and strategic role in the Asia Pacific region, it is rather extraordinary that China has not participated in the TPP negotiations. With the US announcement in November 2013 not to accept entry of any new country until the negotiations among the current members are

⁵ Office of the United States Trade Representative (USTR), 'Enhancing Trade and Investment, Supporting Jobs, Economic Growth and Development: Outlines of the TPP Agreement', <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/outlines-trans-pacific-partnership-agreement>.

⁶ Ian F. Fergusson et al, 'The Trans-Pacific Partnership Negotiations and Issues for Congress', CRS Report for Congress R42694 (January 30, 2015), at 47.

⁷ Meredith Kolsky Lewis, 'The Trans-Pacific Partnership: New Paradigm or Wolf in Sheep's Clothing?' 34 *Boston College International & Comparative Law Review* 27 (2011), at 28.

concluded, the TPP is poised to be formally established without China's participation.⁸ At least partially motivated by the substantial progress in the TPP negotiations, China has taken the lead in pushing for an intra-Asia economic and trade architecture. This is particularly demonstrated by China's strong support of the launch of negotiations for the Regional Comprehensive Economic Partnership (RCEP), announced at the East Asia Summit in Cambodia on November 20, 2012.⁹ As the dominant competitor with the TPP, the RCEP differs widely from the TPP in its design, principles, volume and membership.¹⁰

This state of affairs raises some intriguing questions. How does China view the emergence of a US-led TPP in Asia? As a 21st century free trade agreement, how are the new TPP rules different from current international trade and investment rules and how will the new TPP rules pose challenges to China's domestic political and economic system? What are the short-term and long-term effects of the TPP on China's economic growth and geo-political influence? How does China respond to a myriad of challenges going forward, given that it will be outside the TPP in the foreseeable future? This article explores these questions, with a focus on explaining China's emerging tripartite strategy toward the TPP. Part II puts the TPP in a grand political-economic context. This includes the troubled Asian economic integration process over the past twenty years; the Obama Administration's 'rebalancing' policy toward Asia, and the rapidly changing diplomatic and security concerns in East Asia. Part III explains China's emerging tripartite strategy toward the TPP, including a wait-and-see attitude, the promotion of an alternative model of FTAs and the acceleration of domestic market-oriented reforms. Part IV concludes the article.

⁸ Statement by U.S. Trade Representative Michael Froman on Korea's Announcement Regarding the Trans-Pacific Partnership (29 November 2013), <http://www.ustr.gov/about-us/press-office/press-releases/2013/November/Froman-statement-TPP-Korea>.

⁹ Regional Comprehensive Economic Partnership (RCEP): Joint Statement, The First Meeting of Trade Negotiating Committee (9-13 May 2013, Brunei Darussalam).

¹⁰ Jagannath P. Panda, 'Factoring the RCEP and the TPP: China, India and the Politics of Regional Integration', 38 (1) Strategic Analysis 49 (2014), at 51.

II. CONTEXTUALIZING THE TPP

A. The Troubled Economic Integration in the Asia-Pacific Region

Amid the negotiation deadlock in the Uruguay Round and the rapid development of the European Union (EU) and the North American Free Trade Agreement (NAFTA), Ministers from Asia-Pacific governments convened to discuss possible trade liberalization and cooperation in 1989. It marked the origin of the Asia-Pacific Economic Cooperation (APEC).¹¹ At the initiative of the US, APEC has developed the current process of annual Leaders' meetings hosted in turn by member economies since 1993. APEC now comprises twenty-one economies at markedly different stages of development and is the world's largest trans-regional economic architecture in the Pacific Rim.¹²

At the second annual APEC Leaders' meeting in Bogor, Indonesia in 1994, the APEC Heads of State set out a broad vision for the future of the Asia-Pacific economic integration:

With respect to our objective of enhancing trade and investment in the Asia-Pacific, we agree to adopt the long-term goal of *free and open trade and investment in the Asia-Pacific*. This goal will be pursued promptly by further reducing barriers to trade and investment and by promoting the free flow of goods, services and capital among our economies. ...We further agree to announce our commitment to complete the achievement of our goal no later than 2020.¹³

Since the Bogor Declaration in 1994, the APEC economies have engaged a broad range of initiatives to achieve the Bogor goal. However, it quickly turned out that APEC's importance to regional economic integration is seriously limited by its institutional weaknesses.¹⁴

¹¹ Pasha L. Hsieh, 'Reassessing APEC's Role as a Trans-regional Economic Architecture: Legal and Political Dimensions', 16 *Journal of International Economic Law* 120 (2013), at 122.

¹² APEC Secretariat, 'APEC at a Glance' (2012), at 2, http://publications.apec.org/publication-detail.php?pub_id=1246

¹³ 1994 Leaders' Declaration, Bogor Declaration - APEC Economic Leaders' Declaration of Common Resolve (Bogor, Indonesia, 15 November 1994).

¹⁴ John Ravenhill, 'APEC Adrift: Implications for Economic Regionalism in Asia and the Pacific', 13 (2) *The Pacific Review* 319 (2000).

First, from its inception, APEC was unique among multilateral trade agreements. It never proceeded from a traditional reciprocity-based negotiating framework. Rather, a distinctive feature of APEC has been the consensus-based, non-binding nature of its activities.¹⁵ Member economies participate and worked on the basis of ‘concerted unilateralism’, whereby each member is expected to move toward free trade at its own pace and along its own path.¹⁶ Admittedly, the non-binding, soft law approach is one of the most attractive features of APEC to its members. The diverse economic scales of APEC’s member economies make some developing country members worried about the transformation of APEC into a west-dominated institution, thus compelling them to commit to a degree of liberalization that will harm their vulnerable domestic industries.¹⁷ By keeping APEC as a voluntary and informal forum, each member economy is able to determine the pace and specifics of its market-opening policies. This distinct modality of operation, one that strongly reflected the characteristics of the Asian approach to economic negotiations, arguably protected the interests and sovereignty of smaller Asian developing countries because this voluntary liberalization process would not expose them to enforcement measures and pressure from other economies.¹⁸

Ironically, APEC’s biggest advantage is also its fatal weakness. Whist the non-binding nature of commitments allowed APEC members flexibility to choose their own liberalization timeframes and exclude sensitive sectors from liberalization, it also led to inertia or inaction due to a lack of strong leadership and political will. In 1996, developed APEC countries initiated the Early Voluntary Sectoral Liberalization (EVSL) program that would lower tariffs and non-tariff barriers for 15 sectors, but failed in a year primarily owing to Japan’s

¹⁵ Patrick B. Fazzone, ‘The Trans-Pacific Partnership- Towards a Free Trade Agreement of Asia-Pacific?’, 43 *Georgetown Journal of International Law* 695 (2012), at 698.

¹⁶ Claude Barfield & Philip I. Levy, ‘Tales of the South Pacific: President Obama and the Trans-Pacific Partnership’ (2009), <http://www.aei.org/files/2009/12/18/09-IEO-Dec-g.pdf>.

¹⁷ See Hsieh, above n 11, at 122.

¹⁸ See Fazzone, above n 15, at 699.

opposition, supported by other Asian countries. The EVSL failure made the APEC suffer an unprecedented credibility crisis and shifted APEC's agenda from trade liberalization to economic and technical cooperation that developing members preferred.¹⁹ As a result, while APEC has made some contributions to trade liberalization and facilitation in the Asia-Pacific region, it is frequently criticized as a 'talk shop' or 'a perfect excuse to chat'.²⁰

Second, even though the Bogor Declaration agreed on the long-term goal of free and open trade and investment in Asia Pacific, for a long time it was not clear whether APEC member economies were committed to establish a Free Trade Area of the Asia-Pacific (FTAAP). Due to fast-growing Asian regionalism, APEC leaders have only recently begun to embrace the idea of a region-wide FTA as a long-term objective. The Leaders first announced in 2006 in Hanoi that they agreed to 'seriously consider' negotiating an FTAAP and instructed their officials to undertake further studies on ways and means to promote the initiative.²¹ Thereafter the idea of an FTAAP has been repeatedly confirmed at all annual APEC Leaders' meetings. Despite an explicit common resolve to create a binding set of liberalizing commitments embodied in an FTAAP across the APEC membership, many critical questions remain unresolved. For example, the 2010 Yokohama statement declares:

An FTAAP should be pursued as a comprehensive free trade agreement by developing and building on ongoing regional undertakings, such as ASEAN+3, ASEAN+6, and the TPP, among others. To this end, APEC will make an important and meaningful contribution as an incubator of an FTAAP by providing leadership and intellectual input into the process of its development.²²

¹⁹ See Hsieh, above n 11, at 131.

²⁰ Elizabeth Keenan, 'Talking Shop', *Time* (31 August 2007); Monique Chu, 'Critics Pan APEC as Merely 'A Perfect Excuse to Chat'', *Taipei Times* (11 November 2000).

²¹ 2006 Leaders' Declaration, Hanoi Declaration- Towards a Dynamic Community for Sustainable Development and Prosperity (Hanoi, Vietnam, 18-19 November 2006).

²² 2010 Leaders' Statement, Yokohama Declaration- The Yokohama Vision- Bogor and Beyond (Yokohama, Japan, 13-14 November 2010).

By referring to different paths to an FTAAP, the declaration did not clarify the basic standards for what an FTAAP would contain, nor how it was to come about and when.²³ It is now widely accepted that APEC has drifted, increasingly bereft of momentum and influence.²⁴

B. The TPP and the US ‘Rebalancing’ toward Asia Policy

Beginning in the fall of 2011, the Obama Administration has issued a series of announcements and taken a series of steps to expand and intensify the already significant role of the US in the Asia-Pacific region, known as the ‘pivot’ or ‘rebalancing’ strategy. Underlying the ‘rebalancing’ is the Obama Administration’s belief that the centre of gravity for US foreign policy, national security, and economic interests is shifting toward Asia, and that US strategy and priorities need to be adjusted accordingly.²⁵

The TPP is part of the broad US ‘rebalancing’ to Asia policy and a central element of its economic dimension. Indeed, the TPP is important to several strategic US goals. First, as the economic recession dragged on, the Obama Administration has turned to trade and exports to boost the flagging US economy. The TPP will serve to strengthen US trade and investment ties to the Asia Pacific region, which is a priority given the economic significance of the region to the US now and in the future. As a group, the TPP countries are the largest goods and services export market of the US. US goods exports to the broader Asia Pacific totaled \$942 billion in 2012, representing 61 percent of total US goods exports.²⁶ The region also plays a crucial role in President Obama’s National Export Initiative: four of the ten emerging

²³ Fazzone, above n 15, at 708.

²⁴ Claude Barfield, ‘The United States and East Asian Regionalism: Competing Paths to Integration’, XVI (2) *International Journal of Korea Studies* 157 (2012), at 167.

²⁵ Robert G. Sutter et al, ‘Balancing Acts: The US Rebalance and Asia-Pacific Stability’ (August 2013), at 7-10, http://www2.gwu.edu/~sigur/assets/docs/BalancingActs_Compiled1.pdf.

²⁶ Alan M. Field, ‘Will Canada’s Gain from the Upcoming Trans-Pacific Partnership Winding up Giving away to the US?’ (2013), at 6, http://greatwhitepublications.ca/Issues/weekly/oct_13/oct_7_2013.pdf.

export markets targeted in the 2011 National Export Strategy- China, India, Indonesia and Vietnam- are part of the Asia Pacific region.²⁷

Second, the TPP will start the process of ‘competitive liberalization’ in Asia Pacific and the ripple effects may also extend to the World Trade Organization (WTO). The negotiation of the TPP exerts pressure to other regional economies to consider joining in order to be competitive in the TPP countries’ markets. It will then trigger a domino effect which draws in even more members who are worried about the disadvantages in staying on the side-lines.²⁸ Similarly, the TPP could potentially spark multilateral trade negotiations at the WTO, which has been at an impasse since 2008. The TPP sends a clear signal to non-cooperating WTO members that the US and its partners are ready to fragment the global trade governance system and that trade liberalization can proceed without them.

Third, the TPP may help to rationalize the ‘spaghetti bowl’ of Asia-Pacific FTAs. Since early 2000, an increasing web of bilateral and regional FTAs has been concluded among countries in the Asia Pacific region.²⁹ The variances among the agreements create differing and potentially conflicting obligations. This ‘spaghetti bowl’ effect of overlapping FTAs causes serious administrative difficulties and could tend to negate the benefits intended in each trade deal.³⁰ The former Secretary of State Hillary Clinton criticized the proliferation of FTAs among Asia-Pacific economies:

Asian nations have signed over 100 bilateral trade deals in less than a decade, but many of those agreements fall short on key protections for business, workers and consumers. There are a lot of bells and whistles, but many of the hard questions are glossed over or avoided... Beyond that there is now a danger of creating a hodgepodge of inconsistent

²⁷ See Sutter et al, above n 25, at 14.

²⁸ Richard Baldwin, ‘21st Century Regionalism: Filling the Gap between 21st Century Trade and 20th Century Trade Rules’, World Trade Organization Economic Research and Statistics Division Staff Working Paper ERSD-2011-08 (23 May 2011), at 5.

²⁹ According to the Asian Development Bank, as of July 2014, 119 FTAs that include one or more Asian countries have been signed and implemented and 25 signed but not yet in effect. In addition, another 121 are in process, proposed or under negotiation.

³⁰ APEC, *Identifying Convergences and Divergences in APEC RTAs/FTAs* (Peru, 2008), at 3.

and partial bilateral agreements which may lower tariffs, but which also create new inefficiencies and dizzying complexities.³¹

There is a potential for the TPP to begin to tame the tangle of overlapping and inconsistent FTAs in Asia Pacific. It offers the possibility of multilateralising regionalism by TPP parties agreeing to a harmonized set of commitments to which other countries could accede.³²

Fourth, the TPP may serve as a vehicle for achieving the long-term objective of generating an FTAAP with the US as the leader and agenda-setter.³³ In the recent decade, there are numerous initiatives for deeper economic integration in the Asia Pacific region, such as ASEAN plus three FTA, ASEAN plus six FTA and China – Japan – Korea FTA. Notably, every FTA model thus far deliberately omitted the US from the equation.³⁴ This has caused great alarm to the US. As early as 1991, the then US Secretary of State James Baker told US allies in the region that the US would oppose any plan that ‘drew a line down the middle of the Pacific and placed the US on the other side of the line’.³⁵ The former Secretary of State Hillary Clinton declared in 2009 that the US was both ‘a transatlantic and transpacific power’.³⁶ Thus, the US is wary of the rise of intra-Asia RTAs that conspicuously leaves out the US. As a rivalry model to other intra-Asian FTAs, the TPP could lead to a different path toward Asian economic integration, which would have neither ASEAN nor the three major East Asian economies as its driver, and which would instead have the US as the leading force. The TPP is therefore a core component of the Obama Administration’s efforts to ‘rebalance’

³¹ ‘Clinton Offers TPP as Solution to ‘Hodgepodge’ of Bilateral FTAs in Asia’, Inside U.S. Trade (July 29, 2011).

³² John Ravenhill, ‘Can the TPP Resolve the ‘Noodle Bowl’ Problem?’ (2009), East Asia Forum, <http://www.eastasiaforum.org/2009/11/26/can-the-tpp-resolve-the-noodle-bowl-problem/>

³³ Barfield & Levy, above n 16.

³⁴ Meredith Kolsky Lewis, ‘Expanding the P-4 Trade Agreement into a Broader Trans-Pacific Partnership: Implications, Risks and Opportunities’, 4 Asian Journal of WTO and International Health Law and Policy 401 (2009), at 408-413.

³⁵ See Barfield, above n 24, at 158.

³⁶ Hillary Clinton, ‘U.S. and Asia, Two Transatlantic and Transpacific Powers’, Remarks at the Asia Society (New York, February 13, 2009).

US foreign policy priorities toward the Asia Pacific region by playing an active role in shaping the region's rules and norms.

Fifth, the TPP offers the US an opportunity to play a major role in developing new international economic rules on emerging trade issues such as SOEs and regulatory coherence across the rapidly developing region.³⁷ As the WTO does not cover some key trading sectors and major developing countries refuse to negotiate new trade issues that reflect the US interests, powerful domestic interests demanded that US political leaders pursue independent bilateral or regional negotiations to achieve trade policy goals beyond multilateral disciplines.³⁸ The successful negotiation and implementation of proposed new trade rules in the TPP on such emerging issues could not only outline the structure of acceptable behaviour in international economic relations but also serve as a template for future WTO negotiations. In other words, the TPP has the potential to set the social, political and economic tone of the conversation about the methods and values of transnational economic activity in the 21st century.³⁹

Finally, one basic feature of US trade policies is that they are frequently shaped to a large extent by diplomatic and security goals.⁴⁰ After 30 years of sustained fast economic growth, China has re-emerged as a major global economic and trade power. Coinciding with China's rapid economic growth and military modernization is a transformation of China's foreign policy strategy from 'keeping a low profile' to 'striving for achievement'.⁴¹ This means that China will take initiatives to shape its external environment in a favourable direction, instead of adapting itself to the changes in external conditions. China's assertive posture on maritime

³⁷ See Fergusson et al, above n 6, at 44.

³⁸ See Barfield, above n 24, at 158.

³⁹ Remarks by the President in Meeting with Trans-Pacific Partnership (12 November, 2011), <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2010/november/remarks-president-barack-obama-meeting-tran>

⁴⁰ See Barfield, above n 24, at 161-2.

⁴¹ Yan Xuetong, 'From Keeping a Low Profile to Striving for Achievement', 7(2) the Chinese Journal of International Politics 153 (2014), at 154.

territorial disputes with its neighbouring countries is a case in point. Many prominent commentators noted that one strategic objective of the TPP is to contain China's meteoric rise as an economic and political power by excluding China from a new powerful FTA.⁴² Going forward, the TPP will shape the discourse of international trade regulation that would make it even harder for China to participate effectively in moving the regulatory environment to better align it with China's development objectives.

III. EXPLAINING CHINA'S TRIPARTITE STRATEGY

The emergence of the TPP puts China in a catch-22 situation. If China chooses to join the TPP, China will have to join under the terms dictated by the US and its allies. If China keeps itself outside the TPP, China's booming foreign trade and investment, the lifeblood of China's robust economy, will be negatively affected. Both prospects are not appealing to the Chinese government. A shared observation among policy advisors in China is that the TPP has posed a serious challenge to China as a new rising power.⁴³ Though the Chinese government has never stated its official policy toward the TPP other than a vague 'open-minded attitude', I submit that China has formulated what I call a 'tripartite strategy' toward the TPP. This tripartite strategy includes a wait-and-see attitude, pushing for alternative models of FTAs in the Asia Pacific region and accelerating domestic market-oriented economic reforms.

A. A wait-and-see attitude

China's attitude toward the TPP has shifted over the past few years. Initially, China denounced the TPP as a strategic tool of the US to contain China's rise and dominate the

⁴² For example, Jagdish Bhagwati, 'America's Threat to Trans-Pacific Trade', Project Syndicate (December 30, 2011), <http://www.project-syndicate.org/commentary/america-s-threat-to-trans-pacific-trade>.

⁴³ Li Xiangyang: 'Trans-Pacific Partnership: A Major Challenge to China's Rise', 2 International Economic Review (2012), at 17-27; An Bang Consulting, 'China should be strategically alert to the U.S.-led TPP', <http://finance.jrj.com.cn/opinion/2011/11/14155611552482.shtml>.

Asia-Pacific region.⁴⁴ More recently, however, China's attitude has been less suspicious. An increasing number of policy advisers are now openly calling for the Chinese government to apply to join the TPP negotiations as early as possible.⁴⁵ According to the Ministry of Commerce (MOFCOM), China 'will analyze the pros and cons as well as the possibility of joining the TPP, based on careful research and according to principles of equality and mutual benefit'.⁴⁶ Similarly, a spokesman from the Ministry of Foreign Affairs said: 'the Chinese side has an open-minded attitude with regard to the TPP and other initiatives conducive to promoting Asia-Pacific economic integration and common prosperity'.⁴⁷ What explains the change of the official Chinese position toward the TPP from one of hostility and suspicion to a more neutral stance and even an expression of interest in participation?

To begin with, as a preferential trade agreement, the TPP discriminates against non-TPP countries. If China is not a member of the TPP, China's foreign trade and investment flows would be negatively affected. For instance, since export products from some TPP member countries like Vietnam and Malaysia are highly similar to those of China, some Chinese experts are concerned that this similarity will trigger export competition between China and these TPP members. As products from TPP member countries enjoy preferential market access, the TPP will pose a serious threat to China's exports.⁴⁸ Japan's decision to join the TPP negotiations in March 2013 and Korea's announcement to take part in preliminary bilateral talks with the current negotiating members in November 2013 further strengthened

⁴⁴ Cary Huang, 'Beijing Suspicious over U.S. Regional Trade Bloc', South China Morning Post (November 14, 2011); Ding Gang & Ji Peijuan, 'The US Attaches Great Importance to the Trans-Pacific Partnership', People's Daily (July 27, 2011).

⁴⁵ Barnard K. Gordon, 'China Belong to the Pacific Trade Pact', Wall Street Journal (April 23, 2014); Beijing University Institute of National Development Research Report, 'China should Join TPP Negotiations as Soon as Possible', The First Financial and Economic Daily (October 30, 2013).

⁴⁶ MOFCOM, 'Interview with the Spokesman of the MOFCOM' (2013), <http://www.mofcom.gov.cn/article/ae/ag/201305/20130500146218.shtml>.

⁴⁷ Brian Spegele and Thomas Catan, 'China Suggests Shift to US-led Pact', Wall Street Journal (May 31, 2013).

⁴⁸ Song Gouyou, 'The US Views TPP as a New Leverage to Deal with China', International Herald Tribunal (November 11, 2011).

the argument that it would not be in China's interest to remain on the outside.⁴⁹ It was estimated that due to trade diversion caused by the TPP, China's loss would rise from \$1 billion in 2014 to \$28 billion in 2020 and to \$47 billion in 2025.⁵⁰ By contrast, China stands to gain considerably by joining the TPP: China's total production would increase by about 3.8%, welfare will increase about 1.1% and trade increase more than 10% under complete trade costs removal.⁵¹ Compared to other alternative economic configurations in Asia such as ASEAN plus three and ASEAN plus six, the TPP will offer better market access for China's final goods.⁵² The chief economist of the People's Bank of China predicts that joining the TPP would add two percentage points to China's annual GDP.⁵³

Moreover, TPP rules will not only set the rules for trade and investment in the Asia-Pacific region, but will also shape the future course of multilateral trade liberalization. Some even argued that the TPP rings the death toll for the WTO to be the vessel for developing new rules of global engagement.⁵⁴ If this is true, then China should try to play an active role in shaping the future architecture of transnational economic transactions by joining the TPP negotiations as early as possible. If China seeks membership in the TPP *after* TPP negotiations are completed, China will have to go through a strenuous, China-unfriendly

⁴⁹ Bloomberg, 'After Japan Joins Talks, China Considering TPP', The Japan Times (June 1, 2013); Meredith Kolsky Lewis, 'Achieving a Free Trade Area of the Asia-Pacific: Does the TPP Present the Most Attractive Path?' in CL. Lim et al (eds), *The Trans-Pacific Partnership: A Quest for a Twenty-First Century Trade Agreement* 223 (Cambridge University Press, 2012), at 235.

⁵⁰ Peter A Petri, Michael G. Plummer and Fan Zhai, *The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment*, Peterson Institute of International Economics (November, 2012), at 78.

⁵¹ Li Chungding and John Whalley, 'China and the TPP: A Numerical Simulation Assessment of the effects Involved', NBER Working Paper No. 18090 (2012), at 44;

⁵² Evelyn S. Devadason, 'The Trans-Pacific Partnership (TPP): the Chinese Perspective', 23 *Journal of Contemporary China* 462 (2014), at 478.

⁵³ Asia Briefing, 'China Considers Economic Benefits to Joining Trans-Pacific Partnership' (2014), <http://www.asiabriefing.com/news/2014/06/china-considers-economic-benefit-joining-trans-pacific-partnership/>

⁵⁴ Zaki Laidi, 'Trade Deal Show Power Politics is Back', Financial Times (31 March 2013).

accession process and comply with all the disciplines that it did not participate in the making.⁵⁵

Next, China's attitude toward the TPP is inevitably influenced by China's ten years' experience in the WTO, the first comprehensive trade pact that China has ever entered into and a milestone of China's integration with the global economy. China's WTO accession has led to deep structural changes that are the core of China's transformation toward a modern market-based economy.⁵⁶ As a result, the performance of the Chinese economy since its entry into the WTO in 2001 has been spectacular. In other words, China has successfully used the WTO accession negotiations as a strategic lever to consolidate, accelerate and, finally, lock in the reforms that had started already in the late 1970s and accelerated markedly after 1994.⁵⁷ In short, China's integration into the global economy served it extremely well over the past three decades. China's entry into the WTO was a springboard for it to emerge as a new global economic power.

China's domestic reforms have now entered what Chinese President Xi Jinping called 'deep water zone'. Chinese economy has shown signs of slowing in recent years. Real GDP grew by 7.4% in 2014, the slowest since 1990. Though many economists project that China will enjoy fairly healthy growth in the near future, they caution that China's ability to maintain a rapidly growing economy in the long run will depend largely on the ability of the Chinese government to implement comprehensive economic reforms that more quickly hasten China's transition to a free market economy.⁵⁸ Going forward, by continuing to intensify its trade,

⁵⁵ Ding Gang, 'China should Join TPP Negotiations' (2011), <http://opinion.huanqiu.com/pk/2011-11/2174214.html>; Donald Gross, 'Welcoming China to the Trans-Pacific Partnership' (2013), http://www.huffingtonpost.com/donald-gross/trans-pacific-partnership-china_b_3562801.html.

⁵⁶ OECD, *China in Focus: Lessons and Challenges* (Paris: OECD Publishing, 2012), 51.

⁵⁷ Razeen Sally, 'Globalization and the Political Economy of Trade Liberalization in the BRIICS', in OECD, *Globalization and Emerging Economies: Brazil, Russia, India, Indonesia, China and South Africa* 117 (2009), at 148.

⁵⁸ OECD, above n 56, at 1-15. See generally The World Bank, *China 2030: Building a Modern, Harmonious and Creative Society* (Washington DC, 2013).

investment and financial links with the global economy, China will be able to benefit from further specialization, increased investment opportunities and higher returns to capital, and a mutually beneficial of ideas and knowledge.⁵⁹ In this connection, similar to the WTO, the TPP might be used as a driver to spur China's long-needed domestic reforms, such as reducing government involvement in the private sector, pushing for reform of SOEs and protection of intellectual property.⁶⁰ The TPP's focus on services, investment and government procurement, among other trade issues, would dovetail nicely into China's current efforts to reform its economy. Rather than a threat to China's economic development or an effort to decrease China's competitiveness, the TPP may be viewed as an opportunity for China to accelerate far-reaching and long overdue domestic reforms.

Granted, China's decision on whether or not to join the TPP should be based on a careful cost-benefit analysis on how will the TPP serve or harm Beijing's national interest. China's ambiguous attitude toward the TPP is precisely because some practical considerations counsel against China's joining the TPP in the near future. First, there is still widespread suspicion in China that the TPP is part of a broader containment strategy initiated by the US and other like-minded countries to isolate and contain a rapidly-emerging China.⁶¹ If the TPP were perceived as settings in which others could gang up on China or fronts for American efforts to check China's rise, China would choose to keep a distance from the TPP.

Second, the US will not admit China, or indeed any other country, in current negotiations even if China proposes to join the TPP. To be fair, the US has never excluded the possibility of China joining the TPP. The US National Security Adviser, Susan Rice, publicly welcomed China's participation, but only under the condition that China is able to meet the high

⁵⁹ The World Bank, *Ibid*, at 365-366.

⁶⁰ Wang Zhile, 'TPP can Benefit China', *China Daily* (June 24, 2013); Zheng Yangpeng, 'Debate on China's TPP Role Regains Momentum', *China Daily* (July 11, 2013).

⁶¹ See for example, Wang Xiaorong, 'China's Responding Strategies toward the TPP: Research Frontiers and Issues for Debate', 28 (6) *Journal of Guangdong University of Finance and Economics* (2013), 11-17;

standards required by the TPP.⁶² Since China is unlikely to agree to various concessions - on SOEs, services, intellectual property, environment and labour - that the US would demand, the US does not have much incentive to involve China *before* all negotiations are finished.⁶³ The US presently leads the TPP negotiations and acts as its gatekeeper. The power dynamics in the current TPP framework ensure that the US enjoys considerable leverage in influencing the outcome of the final TPP text.⁶⁴ From the US perspective, the only effect to include China in the current negotiations is that the discussions will slow down and the envisaged 'high standard' diluted to reflect less of US interests.⁶⁵ It may well be that the US wants China to join the TPP *after* all the rules are written by the US and its like-minded partners. There is no good reason for the US to admit China in the current TPP negotiations.

Whenever China intends to join the TPP, China should be braced for the fact that its accession to the TPP will not be easier than its WTO accession a decade ago, if not more difficult and time-consuming. Without being prepared to make huge concessions and commit to extensive regulatory reforms, it is not possible for China to be a member of the TPP. The US strategy is clear-cut: if China applies to join the TPP, it means that China agrees to comply with the trade rules set by the US in the 21st century.⁶⁶ At the same time, the US is prepared to have the TPP without China's participation. This may explain why a few developing countries like Vietnam and Malaysia are included in the current TPP negotiations. As it is always a difficult process for China to join the TPP, early negotiation will certainly not make a challenging accession process any easier. The opportunity for China to shape the future trade rules by early participation in the TPP negotiations is merely wishful thinking.

⁶² See Gordon, above n 45.

⁶³ Petri and Plummer, above n 4, at 3.

⁶⁴ Raj Bhala, 'Trans-Pacific Partnership or Trampling Poor Partners? A Tentative Critical Review', 11(1) *Manchester Journal of International Law* 2 (2014), at 26.

⁶⁵ Meredith Kolsky Lewis, 'The TPP and the RCEP (ASEAN+6) as Potential Paths toward Deeper Asian Economic Integration', 8 *Asian Journal of WTO & International Health Law and Policy* 359 (2013), at 374.

Peter K. Yu, 'TPP and Trans-Pacific Perplexities', 37 *Fordham International Law Journal* 1129 (2014), at 1140.

⁶⁶ Edward Luce, 'Obama's Trade Agenda Hangs on a Thin Reid', *Financial Times* (3 February 2014).

Third, assuming that China will not join the TPP, the stimulation results show that the resulting trade diversion under the TPP will indeed hurt China, especially after Japan decided to join the TPP negotiations. But the negative trade effects are relatively modest, and so will not have a drastic impact on China.⁶⁷ It seems that China is so deeply embedded in global supply chain trade that it is difficult to marginalize China or throw China out of the international production networks. At the same time, numerous researches have shown that it is economically unwise to exclude China from the TPP. If China joins the TPP, all TPP member countries will reap substantial economic benefits and the TPP as a regional economic institution will become more important and influential.⁶⁸

Fourth, some proposed new rules in the TPP are clearly targeted at China. It is true that joining the TPP may spur some long overdue domestic reforms in China. But in view of the width and depth of the TPP disciplines, it is unclear whether it is politically realistic for China to negotiate such a complex trade agreement at present. Before any decision is made, a politically savvy choice for China is clearly to do 'due diligence', knowing the implications of committing to a large body of new rules, consulting the stakeholders and building up consensus. As an official from the Ministry of Commerce has recently said:

'China keeps an open attitude to the TPP. To join the TPP is a big business. Doing big business requires an evaluation of all potential risks. Though China has not participated in the TPP negotiations, China has kept information sharing and communication with all negotiating parties.'⁶⁹

This statement has shown that China has taken a cautiously open approach to the TPP and it is unlikely that any hasty decision will be made in the near future. In the meantime, the

⁶⁷ Li and Whalley, above n 51, at 44; Cheong, above n 1, at 9-11.

⁶⁸ Buhara Aslan, Merve Mavus and Arif Oduncu, 'The Possible Effects of Transatlantic Trade and Investment Partnership and Trans-Pacific Partnership on Chinese Economy', MPRA Paper No. 53541 (February 2014), at 8, <http://mpra.ub.uni-muenchen.de/53431>.

⁶⁹ Dong Guanyang, 'China MOFCOM Says that Whether to Join the TPP is under Discussion' (2013), <http://finance.chinanews.com/cj/2013/12-04/5581266.shtml>.

Obama Administration has placed top priority on concluding the TPP quickly.⁷⁰ All these make it unlikely for China to join the TPP any time soon.

Fifth, as much as trade officials have tried to talk up the TPP as almost finished and repeatedly described the TPP as in the ‘end game’, recent reports and leaks show that there are some challenging issues to be settled in the negotiations leading up to the TPP Agreement.⁷¹ A successful completion of TPP negotiations should not be taken for granted. For instance, although Japan’s entry into the TPP negotiations was a game changer, there have been long-standing issues on access to Japanese markets for US goods, services and agricultural products dating back to 1980s.⁷² Take the tariff negotiations for agricultural products in Japan as an example. The political power of rural farmers had traditionally prevented Japanese government from making significant changes to subsidies or to vote against the wishes of the well-organized agricultural lobbies. Consequently, there has been an enduring and strong antipathy to liberalizing Japan’s agricultural sector because of political risk. Precisely for this reason, Japan had largely excluded sensitive agricultural products under its traditional FTAs.⁷³ But the exclusion of sensitive agricultural products from coverage would not work in the TPP negotiations which aim for an ambitious and comprehensive outcome. More important, estimates of the benefits from the TPP tend to assume that Japan will be willing to negotiate and relax restrictions on its so-called ‘sacred cows’ (rice, wheat, beef and poultry, dairy products and sugar). If Japan negotiates

⁷⁰ USTR, ‘Japan, the United States, and the Asia-Pacific in the 21st Century’, Remarks by U.S. Trade Representative Michael Froman at Japan National Press Club on August 19, 2013, <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/august/%E2%80%9Cjapan-united-states-and-asia-pacific-21st-ce>.

⁷¹ Inu Barbee and Simon Lester, ‘TPP and the Future of Trade Agreements’, 2 (1) *Latin American Journal of International Trade Law* 207 (2014), at 215; Deborah Kay Elms, ‘The Trans-Pacific Partnership Trade Negotiations: Some outstanding Issues for Final Stretch’, 8 *Asian Journal of WTO and International Health Law & Policy* 379 (2014), 384-390.

⁷² Len Bracken, ‘US to Continue Consultations with Japan as TPP States Consider Candidacy’, 30 *International Trade Reporter (BNA)* 421 (21 March 2013).

⁷³ The US-Japan Business Council, ‘Japan’s Successful Participation in the Trans-Pacific Participation in the TPP Agreement- Preparing for a 21st Century, WTO-plus Free Trade Agreement’ (June 2011).

exceptions to these sensitive sectors, the benefits of the TPP will be diminished.⁷⁴ Presently there are serious doubts about whether Japan will be prepared to make more than marginal concessions on the most agricultural items as a recent survey shows that some 52 per cent of Japanese do not support making concessions on rice, dairy, beef, pork and grains to secure the TPP.⁷⁵ The two sides have not reached a major breakthrough after several rounds of bilateral parallel negotiations and suddenly collapsed on September 24th 2014 in Washington, DC.⁷⁶

Finally, even if current TPP members have agreed on the basic terms of a trade deal, it may be extremely difficult to sell the deal back home. Sectoral interests are likely to press for special carve-outs, transitions or aggressive undertakings that other economies are not prepared to accept. The TPP will need to be approved by domestic legislation procedures and the final approval may be elusive if sensitive interests are not protected. This is especially a problem for the US. With the expiry of Trade Promotion Authority (TPA) on 30 June 2007, the Obama Administration offered its TPP negotiating partners the modest comfort that it was adhering to procedures under that TPA. Still, without a definitive TPA, those partners could not rest assured that Congress would agree to an up-or-down, no-amendment vote on a final TPP deal.⁷⁷ On the other hand, if negotiators cave to domestic special interest groups, the final TPP text may be diluted and revised, rendering any agreement no more significant than any other normal FTAs. Also consider that the current TPP negotiating countries are at

⁷⁴ Petri, Plummer and Zhai, above n 50, at 50; Alan V. Deardorff, 'Trade Implications of the Trans-Pacific Partnership for ASEAN and Other Asian Countries', The University of Michigan International Economics Discussion Paper No. 638 (July 24, 2013), at 10.

⁷⁵ 'Majority of Japanese Public Oppose Compromising on TPP: Mainichi Poll' (19 May 2014), <http://mainichi.jp/english/english/newsselect/news/20140519p2a00m0na007000c.html>.

⁷⁶ 'Japan, America and the Trans-Pacific Partnership: Stalemate', The Economist (October 4th 2014).

⁷⁷ Bhala, above n 64, at 23.

different economic development stages, it remains to see how to ensure a high standard agreement envisioned by the US.⁷⁸

Despite various impediments as identified above and mounting international criticism against the TPP for its secrecy and lack of transparency, accountability and democratic participation⁷⁹, there is a high probability that the TPP will be successfully concluded in the near future. As one of the most important litmus tests for US ‘rebalancing’ strategy in Asia, the political cost of not being able to bringing the TPP negotiations to a successful conclusion seems too high for the US.⁸⁰ My point is only that a successful conclusion of TPP negotiations should not be assumed as inevitable and that it remains to be seen whether the TPP could be a truly high standard 21st century trade agreement as originally envisioned.

In summary, there are good arguments both for and against China’s joining the TPP in the near future. China’s wait – and - see attitude is certainly a prudent and practical response. Nevertheless, at a deeper level China’s ambiguous attitude reflects a profound uncertainty of the implications of TPP rules for China. Although there is a strong case that China’s joining the TPP will bring economic benefits to China, the Chinese government is not fully convinced yet that the economic benefits from the TPP to the Chinese economy far outweigh potential political and economic costs incurred.

B. The Contest of RTA Templates in the Asia-Pacific Region

From the very beginning, the TPP has been touted as a ‘gold standard’ FTA. The long term view of the US is to create an agreement that will serve as the basis for an eventual FTAAP

⁷⁸ Wen Jin Yuan, ‘The Trans-Pacific Partnership and China’s Corresponding Strategies’, A Freeman Briefing Report (June 2012), at 4.

⁷⁹ See, e.g., Letter from Prof. David S. Levine at al. to Ron Kirk, USTR (May 9, 2012).

⁸⁰ Derek Scissors, ‘What a Good Trans-Pacific Partnership Looks Like’, Heritage Foundation Background No. 2772 (March 8, 2013).

with a new level of comprehensiveness and sophistication in the Asia-Pacific region.⁸¹ However, it is doubtful to what extent can the TPP achieve the self-styled ‘gold standard’ and whether the TPP is the most economically sound and politically feasible template for economic integration in the Asia-Pacific region.

To begin with, according to the USTR, a cornerstone of Obama Administration’s policy is to use FTAs as a component of an integrated approach to development policy.⁸² However, the TPP involves both opportunities and risks for developing countries. The effects of a comprehensive and high-standard TPP on development are difficult to predict.⁸³ Some draft TPP provisions have already caused legitimate concerns even among the TPP negotiating countries.⁸⁴ One salient example is ‘TRIPS- plus’ standards demanded by the US. Although the TPP negotiations have been highly secretive, negotiating texts leaked as recently as 16 October 2014 have suggested that the US is proposing various ‘TRIPS-plus’ standards that establish higher standards for protection of intellectual property than TRIPS, extend protection to a broader array of intangible property, and eradicate flexibilities established in TRIPS.⁸⁵ For example, the TRIPS Agreement includes important flexibilities for governments to decide what type of pharmaceutical products deserve to be protected by patents in a given country. Essential requirements such as ‘novelty’, ‘inventive step’ and ‘industrial applicability’ can be defined by lawmakers in different countries so that they are appropriate within the context of national circumstances. This flexibility allows governments to prohibit ‘evergreening’, which enables pharmaceutical companies to extend the patent life

⁸¹ See Fazzone, above n 15, at 736-737.

⁸² Office of the USTR, ‘New U.S. Initiatives to Boost Trade and Investment Opportunities for Least Developed Countries’ (Dec, 2011).

⁸³ Joel P. Trachtman, ‘Development Aspects of a Trans-Pacific Partnership’ (November 3, 2011), at 1, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1953943.

⁸⁴ See Bhala, above n 64, at 40-49.

⁸⁵ The leaked draft IPR provisions of the TPP could be found at <http://wikileaks.org/tpp-ip2/tpp-ip2-chapter.pdf>. Krista L. Cox, ‘The United States’ Demands for Intellectual Property Enforcement in the Trans-Pacific Partnership Agreement and Impacts for Developing Countries’, available at http://keionline.org/sites/default/files/TPP_IP_Enforcement_4OCT2012_KLCworkingpaper.pdf.

and monopoly protection of old drugs simply by making minor modifications to existing formulations or dosages, without necessarily increasing the therapeutic efficacy for patients, or by identifying a new therapeutic use of an existing medicine.⁸⁶ However, the US is seeking to erode this flexibility by requesting that TPP countries accept new rules that would severely limit the ability of each country to define what is patentable. The relevant part in the leaked IPR provisions reads:

For greater certainty, a Party may not deny a patent solely on the basis that the product did not result in an enhanced efficacy of the known product when the applicant has set forth distinguishing features establishing that the invention is new, involves an inventive step, and is capable of industrial application.

Similarly, Article 40 of the TRIPS Agreement permits governments to address anti-competitive behaviour and abuses of intellectual property rights. However, both the US and Japan have opposed a provision supported by other TPP countries that would permit parties to address the abuse of IP rights by right holders in anti-competitive ways and insisted that a patent should only be cancelled on grounds that would have been justified for refusing to grant the patent in the first place.⁸⁷

One of the common arguments used in pushing for TRIPS-plus standards is that such standards will result in economic growth and development, either through greater local innovation or through increased foreign direct investment.⁸⁸ If this argument could be borne from fact, it would make a good case for developing countries to adopt stronger IP laws. However, empirical studies so far have produced mixed results.⁸⁹ In short, higher levels of IP protection may not only be unnecessary in promoting investment, but can also result in

⁸⁶ Medecins Sans Frontieres (MSF) Access Campaign, *Trading away Health* (August 2012), at 9.

⁸⁷ Krista L. Cox, 'The Intellectual Property Chapter of the Trans-Pacific Partnership Agreement and Investment in Developing Nations', 35 U. Pa. J. Int'l L 1045 (2014), at 1055.

⁸⁸ Carlos A. Primo Braga & Carsten Fink, 'The Relationship between Intellectual Property Rights and Foreign Direct Investment', 9 Duke J. Comp. & Int'l L 163, 165-166 (1998).

⁸⁹ Amy Jocelyn Glass & Kamal Saggi, 'Intellectual Property Rights and Foreign Direct Investment', 56 J. Int'l Econ 387 (2002); Peter K. Yu, 'Intellectual Property, Foreign Direct Investment and the China Exception', in Robert C. Bird & Subhash C. Jain (eds), *The Global Challenge of Intellectual Property Rights* (2008) 153, at 158.

negative impacts on development. As a whole, the increased protection of IP rights required of developing countries by the TRIPS component of the Uruguay Round bargain resulted in welfare losses to developing countries.⁹⁰ As the draft IPR provisions in the TPP generally provide new rights to right holders, without adequate balancing provisions for the public interest, these proposals would result in higher costs for copyrighted and patented goods.⁹¹ It might be reasonably anticipated that developing members of the TPP would experience similar reduced welfare from TRIPS plus provisions.

Another example is the inclusion of environment protection and labour rights provisions in the TPP. According to the US proposal, the parties to the TPP would be obligated to adopt, implement and effectively enforce laws and regulations to fulfil their obligations under seven multilateral environmental agreements as well as five labour rights that are contained in the ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-Up. These provisions are enforceable under the TPP's dispute settlement mechanism and violations are subject to potential trade sanctions.⁹² However, the issue is the relationship between trade policy and labour rights and environment are among the most contentious issues that the global trading system has ever faced.⁹³ There are divergent views on these issues and developing countries are concerned about the effects of these standards on their economic development. Prominent commentators have argued forcefully that attaching non-trade issues to trade agreements will not only not be able achieve the goal, but also could make things

⁹⁰ See Trachtman, above n 83, at 14. Alan V. Deardorff, 'Welfare Effects of Global Patent Protection', 59 *Economica* 35 (1992), at 35-51.

⁹¹ Cox, above n 87, at 1049-1051.

⁹² The US proposal has been controversial among TPP countries and different proposals were tabled by other TPP members. It remains uncertain how hard the US will push for strict labor and environment provisions where it may conflict with its other interests regarding drafting of the TPP. David P. Vincent, 'The Trans-Pacific Partnership: Environmental Savior or Regulatory Carte Blanche?', 23 *Minn J. Int'l L* 1(2014), at 25.

⁹³ Robert Howse, 'The World Trade Organization and the Protection of Workers Rights', 3 *The Journal of Small and Emerging Business Law* 131 (1999), at 132-3.

worse in developing countries.⁹⁴ Many FTAs do not include environment and labour rights chapters. To the extent they are included, the language is in the nature of hortatory ‘best endeavour’ commitments. When Malaysia and the US previously attempted to negotiate a bilateral FTA, one of the main reasons the negotiations broke down was that Malaysia did not want to commit to a stringent labour chapter.⁹⁵ Questions thus arise as to whether member countries can maintain sufficient policy flexibility to structure their regulation to maximize development in the TPP framework.

In this regard, it is noteworthy that the US failed to push forward a FTA in Americas in 2005 because the US insisted on a comprehensive trade agreement. Brazil and other Latin American countries rejected the US approach. As the former Ambassador of Brazil to the U.S. explained:

The fact is that the legacy of the Uruguay Round was a harsh lesson for Brazil, providing that the negotiation of additional multilateral disciplines in areas that are central for Brazil’s technological, scientific and social development should be preceded impact studies, so as to avoid any possible constraints on Brazil’s freedom of action... The Proposals currently being considered as possible hemisphere disciplines in areas such as services, investment, intellectual property, and government procurement may constitute constraints on Brazil’s future development options, which is why Brazil is not currently interested in making any commitments regarding them.⁹⁶

Due to the same development concerns, India sat on the sidelines of TPP negotiations, watching and analysing them, but expressing no interest in joining them.⁹⁷ In August 2013, Rajeev Kher, Additional Secretary in the Indian Ministry of Commerce, confirmed that India is not thinking about joining the TPP. He explained:

⁹⁴ Robert M. Stern and Katherine Terrell, ‘Labour Standards and the World Trade Organization’, A Position Paper (August 2003), <http://www.fordschool.umich.edu/rsie/workingpapers/Papers476-500/r499.pdf>.

⁹⁵ Meredith Kolsky Lewis, ‘The Trans-Pacific Partnership Agreement and Development’, in Tania Voon (ed), *Trade Liberalization and International Cooperation: A Legal Analysis of the Trans-Pacific Partnership Agreement* 28 (Edward Elgar Publishing, 2014), at 44.

⁹⁶ Rubens Antonio Barbosa, ‘The Free Trade Area of the Americas and Brazil’, 27 (4) *Fordham International Law Journal* 1017 (2003), at 1021-1022.

⁹⁷ See Bhala, above n 64, at 16.

[O]n one level, the TPP is a simple trade agreement, but there are a host of non-trade issues such as intellectual property and labour issues, and everyone *knows India's position on these*, so it would be premature for India, as a developing country, to join the TPP. It's too soon in the day for us to get on board.⁹⁸

Furthermore, the emergence of the TPP causes concerns not only in China, but also in other quarters of the Asia Pacific region. For example, over the years, the Association of South East Asian Nations (ASEAN) has taken an 'ASEAN plus one' approach and signed FTAs with China, Korea, Japan, India, Australia and New Zealand. Because there are few FTAs among other countries in the region, ASEAN has obtained the so-called 'ASEAN centrality' in Asian economic integration.⁹⁹ After the US introduced the TPP and several ASEAN members joined the TPP negotiations, ASEAN has been concerned that the US might take away its leadership of Asian economic integration and marginalize the Association. ASEAN's proposal for forming the Regional Comprehensive Economic Partnership (RCEP) in 2012 was at least partially motivated by this concern.¹⁰⁰

As China is presently excluded from the TPP and that the TPP does not necessarily represent the best approach to economic integration in Asia, China has been active in promoting its own FTA strategy in the Asia-Pacific region. China has already negotiated 12 FTAs and is in active negotiations with a few others.¹⁰¹ In particular, in response to substantial progress in TPP negotiations, China has started a strong push for next steps toward an intra-Asia economic and trade architecture. This is particularly demonstrated by China's active support of the launch of negotiations for the RCEP. The RCEP would join ASEAN and its six FTA partners (formerly ASEAN plus six) in one collective FTA. It covers 45% of the global

⁹⁸ Amrit Dhillon, 'Indian Official Denies Reports that U.S. has Pushed Country to Join TPP Talks', 30 International Trade Reporter (BNA)1375 (5 September 2013).

⁹⁹ Peter A. Petri and Michael G. Plummer, 'ASEAN Centrality and the ASEAN-US Economic Relationship', Policy Studies 69, Honolulu: East-West Centre (2014), at 8.

¹⁰⁰ Yoshifumi Fukunaga, 'ASEAN's Leadership in the Regional Comprehensive Economic Partnership', 2 (1) Asia & the Pacific Policy Studies 103 (2014), at 103; Jianmin Jin, 'RCEP vs. TPP' (2013), <http://jp.fujitsu.com/group/fri/en/column/message/2013/2013-02-22.html>.

¹⁰¹ Ministry of Commerce of PRC, 'China FTA Network', http://fta.mofcom.gov.cn/english/fta_qianshu.shtml.

population, a third of the global GDP and accounts for 29% of the world trade.¹⁰² The first round of negotiations was launched in May 2013 and the RCEP participants aim to complete negotiations by the end of 2015.¹⁰³

China's strong support for the ASEAN-led RCEP is easy to understand. Both ASEAN and China share concerns about the TPP that it may be a centrifugal force arising to rip asunder the economic integration of East Asia.¹⁰⁴ Though China is undeniably the most powerful member of the group, both economically and politically, China is not in the driver's seat in the RCEP. This is mainly due to the special power structure in East Asia. The relationship between China and Japan remains fiercely competitive. Some other countries in the region may also perceive the rise of China as a threat.¹⁰⁵ For a long time, ASEAN has executed the diplomatic strategy of 'balancing powers' and built a self-centred cooperation framework in East Asia.¹⁰⁶ To promote intra-region economic integration and build mutual trust, China chooses to support ASEAN's centrality in leading regional economic integration rather than taking the helm itself.¹⁰⁷

Being a staunch supporter of the RCEP, the Chinese government has not been shy in claiming that China should play an important role in RCEP negotiations.¹⁰⁸ However, while striving to push forward the RCEP, China has not articulated clearly what the RCEP will look like. On the one hand, the FTAs negotiated by China and ASEAN are typically less ambitious than the TPP, narrower in their coverage of trade in goods and services, and having few WTO-plus

¹⁰² Gilberto M. Llanto and Ma. Kristina P. Ortiz, 'RCEP: Reform Challenges and Key Tasks for the Philippines', Philippine Institute for Development Studies Discussion Paper Series No. 2013-51 (November 2013), at 3.

¹⁰³ Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership (2012).

¹⁰⁴ See Jin, above n 100.

¹⁰⁵ Joseph S. Nye, 'China's Soft Power Deficit- To Catch up, its Politics must Unleash the Many Talents of its Civil Society', Wall Street Journal (May 8, 2012).

¹⁰⁶ Kim Min-hyung, 'Why does a Small Power Lead? ASEAN Leadership in the Asia-Pacific Regionalism', 27(1) Pacific Focus 111 (2012), at 111-134.

¹⁰⁷ Joint Statement of the 16th ASEAN-China Summit on Commemoration of the 10th Anniversary of the ASEAN-China Strategic Partnership (9 October, 2013).

¹⁰⁸ Xinhua, 'Chinese Premier Calls for Peace, Economic Integration in East Asia' (13 November 2014), http://www.chinadaily.com.cn/world/2014liattendealm/2014-11/13/content_18910051.htm.

provisions.¹⁰⁹ However, negotiations that are limited in scope might fail to attract the support of developed economies and developing members who have already concluded bilateral FTAs with other RCEP members. Therefore, whenever possible, the newly proposed RCEP should try to go beyond WTO commitments, by exploring commitments related to trade and investment in areas not covered, or only partly covered, by the WTO.¹¹⁰ On the other hand, there is a need for the RCEP to take into account sensitivities and asymmetries that exist among the countries participating in the negotiations, rather than imposing a template that does not reflect adequately the realities of the positions expressed by the countries.

A joint statement released by the RCEP participants following their first round of negotiations in May 2013 suggests a shared desire for a more ambitious agreement than the previous ‘ASEAN plus one’ Agreements. The parties expressed the objective of forming ‘a modern, comprehensive, high quality and mutually beneficial economic partnership agreement establishing an open trade and investment environment in the region’. The RCEP will encompass trade in goods and services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues. It aims to progressively eliminate tariff and non-tariff barriers on all trade in good. With regard to trade in services, it will substantially eliminate restrictions and/or discriminatory measures between RCEP participating countries. All sectors and modes of supply will be subject to negotiations.¹¹¹ Even representing a significant improvement over the existing ‘ASEAN plus one’ FTAs, at its core, the RCEP’s primary goal is to multilateralise the regional trade system by combining the five overlapping and inconsistent ASEAN-plus FTAs into a single

¹⁰⁹ Ann Capling and John Ravenhill, ‘Multilateralising Regionalism: What Role for the Trans-Pacific Partnership Agreement?’ 24 *The Pacific Review* 553, at 555; Ka Zeng, ‘Multilateral versus Bilateral and Regional Trade Liberalization: Explaining China’s Pursuit of Free Trade Agreements (FTAs)’, 19 (66) *Journal of Contemporary China* 635 (2010), at 642.

¹¹⁰ APEC, ‘Best Practices for RTAs/FTAs in APEC’, 2004/AMM/003 (November 17, 2004), at 2.

¹¹¹ RCEP Joint Statement, above n 9.

agreement. This is in sharp contrast to the TPP which seeks to solve the quality problems in existing regional agreements.¹¹²

Due to its focus on ‘multilateralising the noodle bowl’, the RCEP’s ambitions are much lower than those of the TPP. To begin with, the RCEP is less comprehensive in the coverage of issues compared to the TPP. According to a principles statement issued in 2013, the key focus is on trade in goods – to first integrate the five ASEAN-plus FTAs into a single agreement, and then to negotiate further tariff reductions. Far less attention is paid to other non-tariff issues. For example, environment, labour and government procurement issues are not likely to be covered in the RCEP.¹¹³ Even on the issues that both the RCEP and the TPP covered, the RCEP may not aim for the same level of ambition as the TPP. For example, the IP chapter in the RCEP will be very different from the leaked IP chapter in the TPP or anything likely to emerge from negotiations involving the US.¹¹⁴

Moreover, the RCEP has a more flexible approach since it allows for special and differential treatment to its prospective member countries depending upon their state of development, needs and requirements.¹¹⁵ The Guiding Principle of RCEP negotiations states:

Taking into consideration the different levels of development of the participating countries, the RCEP will include appropriate forms of flexibility including provision for special and differential treatment, plus additional flexibility to the least-developed ASEAN Member States, consistent with the existing ASEAN+1 FTAs, as applicable.¹¹⁶

By contrast, even though there are plans for capacity-building and cooperation to help developing members implement the TPP commitments, developing countries will have to

¹¹² Jeffery D. Wilson, ‘Mega-Regional Trade Deals in the Asia-Pacific: Choosing between the TPP and the RCEP?’ 45 (2) *Journal of Contemporary Asia* 345 (2015), at 349.

¹¹³ Fukunaga, above n 100, at 113.

¹¹⁴ Kimberlee Weatherall, ‘The TPP as a Case Study of Changing Dynamics for International Intellectual Property Negotiations’, in Tania Voon (ed), above n 95, at 63.

¹¹⁵ Sanchita Basu Das, ‘RCEP and TPP: Comparisons and Concerns’, *ISEAS Perspective* (7 January 2013), at 3.

¹¹⁶ *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership* (2012).

commit to the same so-called ‘high standards’ terms as all the other participants.¹¹⁷ The leaked draft TPP texts appear that the TPP negotiating countries have been open to providing the developing country participants with additional time to phase in their commitment under the agreement. In addition, there is speculation that the US will ultimately propose a form of special and differential treatment for the developing country members in the context of at least some IP commitments.¹¹⁸ Still, the flexibility in the TPP would not be akin to the special and differential treatment embedded in the WTO and other FTAs including the RCEP, in which developing members are explicitly provided longer phase-out periods and required less comprehensive commitments compared to developed members. By providing flexibility and adjusting mechanisms in reaching the common end-goals, for instance allowing sensitive items to be left out of the negotiations, the RCEP could be more appealing to countries less inclined to the declared high-standard ambitions of the TPP.¹¹⁹

Finally, the RCEP’s negotiating principles have demonstrated some ‘Asian characteristics’, such as the emphasis of economic and technical cooperation and trade and investment facilitation (in addition to liberalisation). This could include issues like physical, institutional and people-to-people connectivity and infrastructure development, which are crucial to the RCEP countries’ national development since improving connectivity and infrastructure have the potential to result in significantly better economic returns compared to removal of tariff barriers alone.¹²⁰ In November 2014, Chinese President Xi Jinping announced that China will contribute \$40 billion (25.20 billion pounds) to set up a Silk Road infrastructure fund to boost connectivity across Asia. The goal of the fund is to "break the connectivity bottleneck" in

¹¹⁷ See Lewis, above n 95, at 42.

¹¹⁸ Ibid.

¹¹⁹ See Fergusson, above n 6, at 7.

¹²⁰ Asit K. Biswas & Cecilia Tortajada, ‘Why India must Embrace China-led Asian Trade Pact RCEP’, The BRICS Post (24 December 2014).

Asia and the fund will be for investing in infrastructure, resources and industrial and financial cooperation, among other projects.¹²¹

Even though not as comprehensive as the TPP, the RCEP could focus on areas that could result in significant gains for participating members. For example, an APEC analytic study found:

Taking into account the difficulties in forming an FTAAP, this study designed a desirable FTAAP with four policy options: (1) comprehensive application of tariff elimination in goods trade; (2) enhancing trade facilitation; (3) liberalization of services traded; and (4) simplifying rules of origin by adopting a full cumulation scheme.¹²²

In short, the study suggested that FTAs with *limited but focused* negotiating objectives would have some substantial beneficial results.¹²³ More recent researches confirmed that although the RCEP is far less ambitious a trade architecture than the TPP, if successfully concluded, it would generate global annual benefits of \$500 billion by 2025, even larger than \$295 billion that the TPP will yield. This is because the RCEP addresses larger pre-existing trade barriers.¹²⁴ The point is that there is certainly an alternative model of economic integration in the Asia Pacific region that China may find suit its interests without losing economic benefits.

It must be acknowledged that establishing a high-level FTA through the RCEP will not be an easy task. ASEAN' historical efforts, reaching back almost five decades, have not yet led to a high level of integration. Indeed, ASEAN has yet to fully implement its own internal free trade agreement. The Mid-term Review of the Implementation of ASEAN Economic Community (AEC) Blueprint showed that tariff elimination within the AEC was not on

¹²¹ Reuters, 'China to Establish £40 Billion Silk Road Infrastructure Fund' (8 November 2014), <http://uk.reuters.com/article/2014/11/08/uk-china-diplomacy-idUKKBN0IS0BU20141108>.

¹²² APEC, 'Further Analytical Study on the Likely Economic Impact of an FTAAP', APEC Doc. 2009/CSOM/R/010 (October 2009), at 31.

¹²³ See Fazzone, above n 15, at 731.

¹²⁴ Petri and Plummer, above n 4, at 4-5; Ken Itakura and Hiro Lee, 'Welfare Changes and Sectoral Adjustments of Asia-Pacific Countries under Alternative Sequencings of Free Trade Agreements', OSIPP Discussion Paper: DP-2012-E-005 (30 March 2012), at 15.

schedule.¹²⁵ This casts doubt on ASEAN's leadership capacity to manage different relational dynamics among participating countries. Other challenges include historical conflicts and unsettled territorial disputes between China, Japan and Korea; significant development gaps among RCEP members that may prevent countries from pursuing aggressive trade liberalisation policies; lack of commonality across ASEAN plus one FTAs and varying domestic policies; the lack of domestic support; and concurrent regional integration agendas which could put pressure on a country's scarce resources of personnel and budget.¹²⁶ Precisely because of these difficulties, the future of the RCEP was viewed with some suspicion.¹²⁷

The successful conclusion of the RCEP is conceptually and practically important for both ASEAN and China. Just as China and some leading ASEAN countries such as Indonesia have not joined the TPP negotiations, the US has not participated in the RCEP negotiations. Even though both sides have toned down the potential competition between the two initiatives, the RCEP and the TPP represent two different models and approaches to regional economic integration in the Asia Pacific region. The power dynamics within the RCEP and the TPP are also quite different: whilst the TPP is labelled as a group of 'like-minded' countries and the US has played a key role in leading the negotiations, the RCEP is marked by a more diverse group of states and some RCEP negotiating members, such as Japan, may be more interested in a high-standard and comprehensive TPP rather than the RCEP. Going forward, it remains to be seen how RCEP negotiating members will overcome the difficulties identified above, and in particular the role of China in accelerating the RCEP negotiations.

¹²⁵ ERIA, "Mid-Term Review of the Implementation of AEC Blueprint: Executive Summary", Jakarta: Economic Research Institute for ASEAN and East Asia (October 2012).

¹²⁶ Sanchita Basu Das, 'Challenges in Negotiating the Regional Comprehensive Economic Partnership Agreement', ISEAS Perspectives No.47 (August 2013), at 4-7.

¹²⁷ See Lewis, above n 65, at 364.

More recently, China seems to be interested in taking a leading role in reinvigorating the APEC as the leading force to push forward regional economic integration in the Asia Pacific region. At the APEC Annual Leaders' meeting in Beijing in November 2014, the Chinese President Xi Jinping announced that the APEC had decided to 'launch and comprehensively and systemically push forward the FTAAP process'. A comprehensive and strategic study on FTAAP, an idea first proposed in 2004, will also be launched to create favorable conditions and lay solid foundations for establishing the FTAAP.¹²⁸ The formal launch of the FTAAP is undoubtedly a milestone in the economic integration process in Asia Pacific. However, given the current competing models of the RCEP and the TPP, it is not clear which model the future FTAAP will adopt. In addition, as discussed above, APEC has not been known as being particularly effective in trade liberalization initiatives. Unless APEC has undergone some substantial reforms or a new consensus on the role of APEC has emerged, it is not immediately clear whether and how APEC could be a major forum for FATTP negotiations. As China's proposal of pushing forward the FTAAP through APEC has just begun to be considered seriously by other APEC members, it remains to be watched to what extent APEC could bridge the current divergences among APEC members.

C. Accelerating Domestic Market-oriented Reforms

China's third strategy is to accelerate long-needed domestic economic and political reforms. At present, the US and other like-minded countries are actively pushing for the TPP, the Transatlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TiSA) negotiations. The successful conclusion of these regional and plurilateral agreements will have the potential to re-write the global trade and investment rules. The new rules will be game-changers after a decade of stagnation of the Doha Round. Even though it is unlikely for

¹²⁸ Xinhua, 'APEC Ministers Adopt FTAAP Beijing Roadmap', <http://www.ecns.cn/business/2014/11-08/141961.shtml>.

China to join the TPP any time soon, China appears to be fully appreciative of the emerging new international economic rules embodied in the new generation of trade agreements. The challenges that the TPP has posed to China are widely discussed and fiercely debated in China. In particular, the Chinese government must decide to what extent the complex rules contained in the TPP Agreement benefit or impede China's economic development.¹²⁹ In other words, the TPP has provided an opportunity for China to take a hard look at its economic development strategy.

In no small measure, the recent extensive market-oriented reform measures announced at the Third Plenary Session of the 18th Central Committee of the Chinese Communist Party (CCP) are proactive responses to an emerging TPP.¹³⁰ Take the reform of state-owned enterprises (SOEs) in China as an example. The regulation of SOEs for the purpose of achieving a level playing field between SOEs and private enterprises in both domestic and international markets has stood out as a significant issue in the TPP negotiations.¹³¹ Some people in the US see the TPP as a means of managing the ability of states, principally China, to blend state and private power through SOEs.¹³² Current proposals that seek commitments from TPP members would require that SOEs investing or operating in the markets of other signatories act on commercial considerations; ensure that SOEs do not receive subsidies or financing or other benefits from their governments that unfairly advantage them with respect to investment abroad; include a reporting/monitoring and information request mechanism; and

¹²⁹ Zhang Yuanan and Chen Lixiong, 'Closer Look: How Agreements Like the TPP Press China to Reform' (2013), <http://english.caixin.com/2013-10-30/100597450.html>.

¹³⁰ Nargiza Salidjanova and Jacob Koch-Weser, *Third Plenum Economic Reform Proposals: A Scorecard*, U.S.-China Economic and Security Review Commission Staff Research Backgrounder (November 19, 2013); Bob Davis and Richard Silk, 'China to Test Looser Grip on Economy', Wall Street Journal (27 September 2013); Kenneth Rapoza, 'Shanghai Prepares for New World Order', <http://www.forbes.com/sites/kenrapoza/2013/09/18/shanghai-prepares-for-new-world-order/>.

¹³¹ Bradley Gardner, 'Trans-Pacific Partnership Meets to Focus on Rules for SOEs' (2012), <http://www.newsbase.com/newsbasearchive/cotw.jsp?pub=chinaoil&issue=409>.

¹³² Ming Du, 'When China's National Champions Go Global: Nothing to Fear but Fear itself', 48 (6) Journal of World Trade 1127 (2014), at 1164.

provide for a dispute settlement mechanism.¹³³ Correspondingly, as one of the fifteen key reform areas, the CCP has launched a new round of drastic SOE reforms in China.¹³⁴ The CCP vowed to develop a ‘mixed ownership economy’ in which both the public sector and non-public sector economy are important components. This objective requires further consolidation of the state-owned sector and the perfection of the modern corporate system for SOEs.¹³⁵ The detailed SOE reform measures include organization of state-owned capital investment and operation companies, more public disclosure of SOE finances, perfection of the enterprise bankruptcy system; increase of dividend pay-out ratio for SOEs from the current 5-15% to 30% by 2020, and promotion of ‘interlocking shareholding’ by encouraging non-public sector stakes in SOEs.¹³⁶ It is clear that these reform measures are designed to reduce governmental interference into SOEs’ decision-making processes; eliminate financial and regulatory benefits conferred on SOEs, upgrade corporate governance standards in SOEs and entrench SOEs’ commercial orientation.

Another significant move by the Chinese government is the building of the Shanghai Pilot Free Trade Zone (FTZ). As set forth in the State Council’s Circular on the Framework Plan for the China (Shanghai) Pilot Free Trade Zone, the Shanghai FTZ has loosened restrictions for foreign investment in 23 service sectors, including banking, financial services, healthcare and technology. The Shanghai FTZ has also replaced the current investment approval process required of all foreign direct investment with a ‘negative list’ approach that eliminates all but ministerial filing obligations for investment in industries not included on the list. Except for sectors specified in the negative list, foreign investors are treated no less favourably than

¹³³ Nova J. Daly, ‘Statement before the US-China Economic and Security Review Commission Hearing on ‘The Evolving U.S – China Trade and Investment Relationship’ (14 June 2012), at 6.

¹³⁴ Gabriel Wildau, ‘China announces plan for reform of state-owned enterprises’, *Financial Times* (15 July 2014).

¹³⁵ Communiqué of the Third Plenum of the 18th Chinese Communist Party Congress (November, 2013).

¹³⁶ Decision on Certain Major Issues Concerning the Comprehensive Deepening of Reform (November 15, 2013).

Chinese investors when seeking to enter China.¹³⁷ These reforms have significantly decreased the time and uncertainty associated with setting-up and opening a business in the Shanghai FTZ. After these economic reform initiatives are tested and refined at the Shanghai pilot FTZ, they will be rolled out nationwide and finally become national policies.¹³⁸ For example, the State Council has approved three additional FTZs in Guangdong, Tianjin and Fujian on 12 December 2014, after the initial zone opened in Shanghai in late September of 2013.¹³⁹ A related progress is that China has started to negotiate bilateral investment treaties (BITs) with the US and the EU. Significantly, China agreed to BIT talks on the basis of pre-establishment national treatment with a ‘negative list’ approach.¹⁴⁰ This means that foreign investors and their investments will be accorded national treatment in the pre-establishment phase of their business, unless the sector or activity is explicitly restricted or prohibited by its inclusion in the negative list. All these new developments demonstrated China’s commitment to embrace the new tide of economic globalization proactively.

Even if China is not ready for the TPP-level of commitments for the time being, the high standard approach of the TPP may serve as a model for some of China’s own initiatives. This is particularly the case when Chinese economy matures and China’s willingness to take on comprehensive liberalizing commitments increases accordingly. Looking at the relationship between China and the TPP from this perspective, the TPP may be a blessing in disguise in the sense that it helps accelerate China’s long-needed economic reforms. As China keeps an open-minded attitude to the TPP, it is quite possible that China may ultimately decide to join the TPP when China feels comfortable and assured that joining the TPP is in line with China’s national interest.

¹³⁷ Circular of the State Council on the Framework Plan for the China (Shanghai) Pilot Free Trade Zone, Guo Fa [2013] No.38 (19 September 2012).

¹³⁸ Timothy P. Stratford and Scott Livingsto, ‘The Third Wave?’ Insight (November 2013), at 25.

¹³⁹ Jamil Anderlini, ‘New China Free Trade Zones to Lift Growth’, Financial Times (December 14, 2014).

¹⁴⁰ Xinhua, ‘China and U.S. to Start Negative List BIT Negotiations’ (July 10, 2014), http://news.xinhuanet.com/english/china/2014-07/10/c_133472362.htm.

To readers not familiar with China's approach to international norms, China's corresponding strategy toward the TPP may present an internal dilemma: on the one hand, China recognizes that structural reforms are necessary to achieve China's long-term economic prosperity; on the other hand, extensive structural reforms that the TPP entails is put forth in the debate as a major reason why China should not join the TPP. Behind this apparent contradiction lies China's deeply-rooted 'adaptive selection' approach to international norms. Selective adaptation is a coping strategy for balancing local regulatory imperatives with requirements of compliance with foreign norms largely derived from the regimes of liberal democratic capitalism.¹⁴¹ The TPP is not only a matter of economics and commerce. At root it is a fundamental challenge of politics and governance. Without a full grasp of the political and economic implications of joining the TPP, China would not apply for admission to its membership. At the same time, China has taken bold steps to initiate new reforms, some reform measures even emulating the emerging TPP rules. This gradual, experimental and 'learning by doing' approach protects the national regulatory autonomy while embracing the emerging rules for global trade and investment in the 21st century.

IV. CONCLUSION

FTAs are not only instruments for international economic integration but also a tool of international relations within the emerging global economic order. The TPP is a case in point. The emergence of the TPP and all the related controversies represent a control of the language of what supranational economic regulation should look like in the 21st century. The implications of a successful TPP for the rise of China as a new superpower and the future of international economic regulation cannot be overestimated. Sooner or later, China will have to decide whether or not it should join the TPP. The fear of being left behind on the one hand,

¹⁴¹ Pitman B. Potter, 'Globalization and Economic Regulation in China: Selective Adaptation of Globalized Norms and Practices', 2 Washington University Global Studies Law Review 119 (2003), at 120.

combined with the fear of uncertain political and economic implications on the other hand, presents a policy dilemma to Chinese decision-makers.

This article explains China's emerging tripartite strategy toward the TPP. First, China is not keen to participate in TPP negotiations, but leaves open the possibility of joining the TPP in the future. Second, at least partly driven by the advance of TPP negotiations, China has been active in concluding bilateral FTAs, pushing for alternative models of regional economic integration such as the RCEP as well as taking the lead to revive the APEC as a leading forum for the FTAAP. Finally, China has initiated a new round of ambitious domestic market-oriented economic reforms, some of which actually emulate the TPP rules. In China's view, these initiatives provide some counterbalance to the US-dominated TPP and reduce the pressure for China to join the TPP in the future.

China's tripartite strategy seems to be grounded on a profound recognition of the challenges posed to the rising powers by the new generation of FTAs such as the TPP and a realistic evaluation of the international political and economic context. This tripartite strategy reflects the Chinese government's systemic efforts to take the initiative to prepare for the future challenges that will go hand in hand with a successful conclusion of the TPP. What remains to be seen is whether this tripartite strategy provides the best roadmap for China's further integration into the global economy.