Looking to the Future of the TPP: A Perspective from Singapore

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The Unfinished Business in the End Game

At the time of this conference, officials have been scrambling to conclude the negotiations of the Trans-Pacific Partnership (TPP) among the current 12 participating members: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam. Although multiple deadlines have passed for conclusion (the most serious was one announced for the November 2011 APEC Leader’s Meeting), many anticipate the “real” conclusion around the end of 2013.

This means that we have entered the “end game” of these negotiations. After more than three years of very complex, difficult bargaining across an expanding set of members, negotiators are down to the final, political decisions on how deep, wide and ambitious the TPP agreement will ultimately become. Most of the final sticking points could have been (and were) predicted at the outset of the negotiations.

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1 This paper is written in the author’s own capacity from Singapore and does not (necessarily) represent the views of officials in Singapore.
2 Although my own money is on March 2014, depending on what happens with South Korea.
Rather than rehash the specific problem areas like sugar, dairy, rice, intellectual property rights, or the environmental chapter again here, I will focus on some of the broader issues that remain in the negotiations.

Many of these broader issues were discussed at length at the very outset of negotiations, starting in March 2010 in Melbourne. However, once the talks began getting serious about the technical issues, most of the deeper concerns fell by the wayside. As officials limp towards the finish line, hopefully they are not too exhausted by their travels and years of labor to return to these issues for resolution before concluding the talks.

The Cluster Approach

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

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4 To show how deep and enduring the sticking points have been in these talks, the book by Lim, Elms and Low is likely to have highlighted nearly every problem area still contested in October 2013, although the book was completed by the team of authors in early 2012. See Trans-Pacific Partnership: The Quest for a 21st Century Trade Agreement, C.L. Lim, D.K. Elms, P. Low, (eds), Cambridge University Press, September 2012.
As an example, in the initial round of negotiations in Melbourne, officials wanted to think creatively. Rather than split themselves into traditional “chapters” for discussions (goods, services, investment, IP, etc.), they tried dividing themselves into clusters. These clusters were supposed to consider overarching themes that ran across multiple issue areas and might better conform to the “real world” of business than past FTA practices. However, the cluster idea quickly broke down once the discussions started moved into substantive areas. Officials reached for the familiar settings of traditional chapters and the whole “cluster” approach was rapidly abandoned.

The only exception was the “horizontal” chapter where nearly everything new and innovative about the TPP was tossed. This included ideas like fostering small and medium enterprises, encouraging supply chains, bringing about regulatory coherence, and all things related to development and cooperation.

A moment’s reflection, however, will suggest that this approach was also going to be problematic. Placing all these diverse issue areas into one basket left a handful of officials grappling with a wide range of topics and concerns. To compound the difficulties, these were all issues that had never before been addressed in a trade agreement—mostly because they were extremely tough to tackle. Now they were all bundled together and handed to one team.\(^5\) It is therefore not particularly surprising that the results from the horizontal chapter will be deeply disappointing to many.

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\(^5\) Of course, officials will quickly argue that they had other individuals they could engage as resources whenever and wherever needed. But I believe that history will show that most of the teams on the horizontal chapter managed the bulk of the details on their own.
The efforts to assist small and medium enterprises quickly devolved into a website. Much of the “meat” of the supply chain/business connectivity issues got pulled out and placed elsewhere in the agreement. This is fine, except that many in the supply chain industry, particularly those in logistics, have argued for years that the primary problem for supply chain operators is precisely that their issues fall in between ministries and are therefore never appropriately managed by anyone. The TPP was supposed to represent a rare opportunity to pull together a host of issues into one place and keep governments focused on this critical web of interlocking elements for business in the 21st century. By pulling these items out of their own special “chapter” and placing them back into various substantive chapters, like goods or services, some of the synergies that were supposed to be unlocked by bundling them together will have been lost.

The regulatory coherence materials may be the most disappointing of all. Whenever officials in the TPP are asked about the 21st century components of the agreement, they cite regulatory coherence. The idea was that countries would try to harmonize standards in food, agriculture and elsewhere if such a thing were possible. If not, they would at least try to accept as small a set as possible of compatible, multiple standards. As an example, if Country A permitted a certain type of food safety inspection for apples, Country B would be willing to accept this certification, even if their own apple inspection might be different. They would not be harmonizing standards to the same degree (which was seen as too ambitious),

6 And, I would argue, this is even worse than it sounds—unless the TPP creates a meaningful Secretariat as discussed further below, such a website will rapidly collapse since no one will be responsible for maintaining it.
but going beyond what is typically found in an FTA especially one with multiple parties.

This proved problematic. It was especially difficult to get regulators from different ministries and agencies to cooperate with trade officials in the TPP around a broad agenda of increasing market access for members. In the end, the TPP chapter on regulatory coherence will be about the institutional framework for coherence. It will contain information on enquiry points and procedures for obtaining information and promoting transparency. It will not really discuss standards at all. Some of this material got put into the specific chapters on sanitary and phytosanitary standards (SPS) or technical barriers to trade (TBT). But in general, it proved too difficult to get regulators to cooperate in the TPP. The final result is much less ambitious and 21st century than many were lead to believe from the outset.

A Living Agreement

All is not yet lost. One of the best ideas of the TPP from the beginning was to create the TPP as a “living agreement.” The idea came from problems in the World Trade Organization’s (WTO) Information Technology Agreement (ITA) which was being renegotiated at the same time that the TPP was getting underway. In the ITA, the electronics sector was liberalized and it unleashed tremendous growth, especially in Asia. However, it had what officials soon came to recognize was a

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7 If the living agreement idea discussed below takes off, this may not be a fatal blow, as regulators would, in fact, meet regularly to discuss changes and, perhaps, move towards harmonization.
serious flaw—given the method of negotiation (a positive list), technology was only liberalized if it were included on the list. This meant that, as new technology was developed, it was not automatically included for market opening. Over time, in a rapidly evolving industry, the ITA became less and less relevant as fewer and fewer traded products were covered. Record players might be eligible, but not smart phones, for example. Getting countries to sit down and reopen negotiations also proved extremely difficult and tedious.

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

The TPP officials suggested a slightly different approach early on in the talks. This FTA would become a “living agreement.” This meant that it would not just be opened for annual reviews. Instead, it would be up for regular and ongoing discussions and revisions going forward. In this way, it would never be out of date.

A living agreement could, for example, take the rather limited framework for regulatory coherence in the original TPP document and, over time, turn it into something much more substantial. Regulators from across the TPP countries could engage in ongoing meetings and become accustomed to coordinating their
regulations with one another before proceeding with changes that might impact the membership.

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

**A TPP Secretariat**

If it is to survive and be meaningful, a living agreement cannot be managed without a robust Secretariat dedicated to managing the TPP agreement. The intention of the TPP is to continue to expand in the future—at least in terms of membership. If the living agreement idea gains traction, the issue areas and coverage of the agreement will also increase over time.

Even if it does not expand any further, the TPP includes nearly 30 chapters and 12 member countries. Many of the rules go well beyond anything promised in the WTO or other FTAs. Commitments will be phased in over the implementation period(s), with different start dates likely for many members. This will add to the complexity of administering the agreement.

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8 I should note here that the Secretariat notion is my own—and does not represent Singapore’s ambition in the TPP negotiations (although I submit they would be well-placed to host such a Secretariat, should they try to push for such a post).
The TPP will require a dedicated staff at the very least for some short-to-medium term to monitor implementation and reach out to the business community in each of the member countries. Otherwise, the provisions negotiated at great cost and difficulty across so many years are likely to be underutilized.

For example, many of the commitments in the agreement go well beyond obligations made in the WTO. This will make it impossible to use WTO dispute settlement for many issues in the TPP. Like most FTAs, the TPP has its own dispute settlement structure. However, unlike most FTAs, the TPP DSU has been designed to be actively used. Again, managing dispute cases will require an institutional structure.

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

Some have suggested that the APEC Secretariat could be used as the TPP Secretariat. After all, the TPP is officially one of the four possible pathways to the Free Trade Area of the Asia-Pacific (FTAAP) for APEC. So far, all TPP members are also APEC members. The accession clause for the TPP privileges APEC members as
well. I will return to the idea of the TPP as a possible pathway to the FTAAP later.

For now, the issue is whether or not the APEC Secretariat could do double duty as the TPP Secretariat as well. I suggest it could not.

There are at least three reasons why using APEC is problematic. First, APEC’s own statement of purpose is to “serve as an incubator of ideas.” This function would be lost if the Secretariat were to become somehow divided between staff responsible for monitoring the TPP and staff incubating ideas in a non-binding manner.

Second, not all of the APEC members are also members of the TPP. This issue of membership is discussed in more detail below. It is highly likely that the non-TPP members of APEC would find the suggestion to convert APEC into the TPP Secretariat quite objectionable.

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

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9 “The Agreement is open to any APEC economy or any other State (Article 20.6), subject to terms to be agreed among the Parties.”
In short, using the APEC Secretariat as the TPP Secretariat is a poor idea. The two ought to coordinate, but they must remain separate to provide the best service to both institutions.

**The Broader Relationship to APEC**

As noted above, officially the TPP is one of the four possible pathways to the FTAAP. APEC itself has no negotiating function, so any movement towards a broader FTA must be accomplished by traveling some other route. At the 2010 APEC Leader’s Meeting, the 21 member economies had agreed to move towards the FTAAP. APEC officials charted four possible routes to getting there: ASEAN+3, ASEAN+6 (now called the Regional Comprehensive Economic Partnership or RCEP), the TPP, and others.

All of the substantive announcements of the TPP have taken place on the sidelines of APEC. The current 12 members are all APEC members. However, going forward, this apparently tight linkage between the TPP and APEC need not remain in place.

The strength of the bond between the TPP and APEC is likely to be overblown in any case. Very little of the substantive negotiating agenda in the TPP has been drawn from APEC work. Although a few of the officials involved in the TPP

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10 The 21 members of APEC are: Australia, Brunei, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, South Korea, Chinese Taipei, Thailand, United States, and Vietnam.

11 ASEAN+3 is the 10 members of the Association of Southeast Asian Nations (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand, Singapore, and Vietnam) with the three countries of Northeast Asia (China, Japan and South Korea). ASEAN+6 adds Australia, India and New Zealand to the 13.
negotiations have prior experience in APEC, there appears to have been little effort to involve APEC working groups, use APEC pathfinder approaches or model measures. The TPP has implemented an innovated outreach to the business community in the stakeholder meetings held alongside every negotiating round, but these outreach efforts have not specifically targeted or built on the APEC Business Advisory Council (ABAC) inputs. Thus, although the TPP countries always meet on the sidelines of APEC meetings and important announcements about the TPP have frequently been made at APEC events, the substantive connection between the two is more limited.

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

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

13 Costa Rica had been an observer, but their request to upgrade this status to full membership was approved in May 2013.
The official rhetoric of having the TPP eventually become the FTAAP is also deeply problematic in practice. Not all of the current 21 member economies of APEC appear to want to join such an ambitious agreement. Even if they wished to do so, the current procedures for the remaining nine will require them to accede to the existing agreement. It is not at all clear whether the new entrants will have any flexibility in opening up previously agreed provisions.

This problem applies to countries both large and small. For big potential members like China, joining the TPP without the prospect of alteration of terms is going to be sticky. But for smaller members like Papua New Guinea, joining the TPP is also a substantial challenge.

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

Of course, RCEP has only met twice (in May and September 2013), so it is conceivable that the level of ambition in this agreement will ratchet upwards over
time. The overlapping membership between the two agreements will help to push RCEP in a more aspiring direction.

However, early signs of ambition and convergence are not promising. From the very beginning, RCEP has included language allowing special and differential treatment for developing country members. Initial signals from some RCEP countries have suggested a desire to protect special and sensitive products, as well as allow long timelines for implementation. Coupled with the evidence from past agreements, the signs for high ambition in RCEP are not optimistic. This does not mean that RCEP will not be a worthwhile agreement or one that delivers meaningful benefits for members. But it does suggest that an eventual merger between the TPP and RCEP will not be possible.

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

**Implementation**

Getting the agreement done is one thing. Getting it ratified and entering into force is another. But the agreement will only have meaning when it is implemented in the member countries and begins to be used by businesses. Since

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14 The third round is not scheduled until January 2014 in Malaysia.
15 Ratification in the United States, especially, is likely to prove extremely challenging.
the 12 current members are well connected by existing FTAs, for many businesses in many countries the immediate impact of the TPP will be modest.

For example, since Singapore already has zero tariffs (on all but 6 tariff lines), no FTA delivers much in terms of goods access. Singapore already had FTAs in place with every TPP party except Canada and Mexico. For some partners, Singapore has multiple agreements in place, including regional deals through ASEAN, that deliver some of the larger benefits of supply chains and cumulation possible in the TPP.

This means that implementation of the full package will be especially critical to Singapore. Until the whole agreement is in place, the economic benefits may be modest indeed. It also means that keeping the highest levels of ambition all the way to the final goal post will be critical. Any shaving of quality at the last minute to allow the deal to get done could mean fewer benefits in the end from the agreement, particularly for a country like Singapore.

It is to be hoped that, in the final push to conclude the TPP by the end of 2013, that officials and leaders do not dilute the ambition of the agreement and do not choose to skip over some of the critical broader, long-term decisions that may ultimately be most important in building a last agreement for the future.

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