




Taiwan and the Trans-Pacific Partnership

Preparing the Way

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This paper provides an analysis of the benefits to Taiwan of membership in the Trans-Pacific Partnership (TPP), discusses why Taiwan's membership is also important for current TPP members, and suggests steps that Taiwan and the United States can and should take to create an atmosphere conducive to Taiwan's inclusion in TPP, should it decide to formally seek membership. In order for Taiwan (or any other country) to join the TPP an accession process will be required that is realistic and reflects the economic and strategic significance of the TPP, including the importance of growing the TPP to become a Free Trade Agreement of the Asia Pacific region. This paper discusses how Vietnam and Japan joined the TPP, what they needed to demonstrate in order to join and the economic and strategic calculations that underpinned U.S. support for these countries' participation. The paper also overviews the outcomes being sought in the TPP negotiations in the areas of market access, rules and so-called cross-cutting issues and what types of reforms the TPP would require Taiwan to adopt should it join the TPP.

The Trans-Pacific Partnership

History

The TPP was built on the so-called Pacific-4 (P4)—a free trade agreement (FTA) between New Zealand, Chile, Singapore and Brunei that came into effect in 2006. In 2008, the Bush Administration notified Congress of its intentions to join what became the TPP negotiations. Australia, Peru and Vietnam joined shortly thereafter, followed by Malaysia in October 2010. Canada and Mexico joined the TPP in June 2012 and Japan joined the TPP negotiations in July 2013.

The TPP parties are aiming to complete negotiations by the end of the year. At the October 2013 APEC meeting, leaders stated that they are on track to completing the TPP this year – though it is likely that the negotiations will be finalized in 2014.

The Significance of the TPP

President Ma Ying-jeou, in his inauguration address in 2012, committed Taiwan to joining the

TABLE 1: TPP PARTIES AND THEIR SIGNIFICANCE TO TAIWAN

2012							
	Population (millions)	GDP (billions \$)	Taiwan Imports (billions \$)	Taiwan Exports (billions \$)	Trade Balance (billions \$)	Taiwan Imports (% of total imports)	Taiwan Exports (% of total exports)
Australia	23	1,542	9.3	3.7	-5.6	3.4	1.2
Brunei	0.4	17	0.0	0.0	0.0	0.0	0.0
Canada	35	1,819	1.6	2.5	0.9	0.6	0.8
Chile	17	268	1.9	0.4	-1.5	0.7	0.1
Japan	128	5,964	47.6	19.0	-28.6	17.6	6.3
Malaysia	29	304	7.8	6.6	-1.3	2.9	2.2
Mexico	115	1,177	0.6	1.8	1.2	0.2	0.6
New Zealand	4	170	0.7	0.5	-0.2	0.3	0.2
Peru	30	199	0.3	0.3	0.0	0.1	0.1
Singapore	5	277	8.1	20.1	12.0	3.0	6.7
United States	314	15,685	23.6	33.0	9.4	8.7	10.9
Vietnam	90	138	2.3	8.4	6.1	0.8	2.8
Taiwan	23	474	103.9	96.3	-7.5	38.4	32.0

Data sources: IMF World Economic Outlook, April 2013; Taiwan National Statistics and Ministry of Finance

TPP within eight years. This is a sensible goal. The TPP is one of the most significant trade negotiations underway globally. The parties to the TPP represent 650 million people, and comprise 40 percent of global GDP and one third of world trade. The TPP parties represent a \$1.7 trillion trading relationship for the United States, and account for 45 percent of U.S. exports.

The significance of the TPP is also as a potential vehicle to achieving the aspirations in the 1994 APEC Bogor Declaration of free trade amongst APEC members by 2020 by becoming an FTA of the Asia Pacific region (FTAAP).¹ Indeed, at the 2013 APEC meeting, leaders endorsed the TPP

as a “promising path” towards an FTAAP. Should this be achieved, the TPP will eventually cover 48 percent of world trade and 56 percent of global GDP. In addition to Taiwan, for instance, Korea, Thailand and the Philippines have already expressed interest in joining the TPP.

Taiwan is a major trading nation and exports of goods and services accounts for a large percentage of Taiwan’s GDP—74 percent of GDP in 2012. And the TPP is an important agreement for Taiwan to join. Five of Taiwan’s top ten export destinations are TPP parties. As the above table shows, trade with TPP parties represents approximately 35 percent of Taiwan’s total trade (over 38

¹ APEC, “1994 Leaders’ Declaration,” November 15, 1994, http://www.apec.org/Meeting-Papers/Leaders-Declarations/1994/1994_aelm.aspx. Taiwan joined APEC in 1991.

percent of imports and 32 percent of exports). It is estimated that Taiwan's exports could contract 1 percent by 2025 if Taiwan does not join the TPP.²

The TPP is also a strategic agreement for the United States, understood as the economic pillar of the United States's so-called rebalancing towards Asia. As Thomas Donilon stated when he was U.S. National Security Adviser, "The centerpiece of our economic rebalancing is the Trans Pacific Partnership."³

The strategic dimension of TPP is a template for trade and investment rules in the Asia Pacific region.⁴ And this assumes particular significance for the United States when much of Asia is participating in a range of other trade initiatives. The largest of these excludes the United States—namely the Regional Comprehensive Economic Partnership (RCEP) negotiations which comprise the ten members of the Association of Southeast Asian Nations (ASEAN) plus China, Japan, Korea, Australia, India and New Zealand.

The dynamic of having China participate in RCEP and not in TPP, and the United States in TPP but not in RCEP, reinforces a view that U.S.-China strategic competition has spilled over into the trade arena. Moreover, some Chinese officials view the TPP as a U.S.-led containment strategy.⁵ However, repeated statements by U.S. officials that China is welcome to join the TPP when it is

prepared to accept the TPP standards seems to be leading the Chinese to take an increasingly benign view of the TPP.⁶

The RCEP is another opportunity to liberalize trade and investment in the Asia-Pacific region. Whether the TPP and RCEP lead to comprehensive trade and investment liberalization in the Asia-Pacific region or competing trading blocs, remains to be seen. However, the overlap between RCEP and TPP membership suggests that a successful conclusion to both trade agreements will create a strong economic incentive for the two remaining countries that by then will likely not be a party to both agreements—the United States and China—to either merge TPP and RCEP or negotiate their own FTA.⁷

Accession to the Trans-Pacific Partnership

The TPP parties have made clear that the TPP is open to all APEC economies, with the aim of becoming a free trade agreement of the Asia Pacific region (FTAAP). For this to occur will require an accession process that is realistic. To date, the WTO has been the only trade agreement to which countries have successfully acceded.⁸ Countries don't tend to accede to FTAs. Some FTAs don't allow accession. And even where FTAs do allow countries to accede, these agreements often reflect the particular economic and political dynamics

² Peter A. Petri, Michael G. Plummer and Fan Zhai "The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment," Peterson Institute for International Economics, Policy Analyses in International Economics, No. 98 (November 2012), p. 45.

³ Thomas Donilon, "The United States and the Asia-Pacific in 2013," speech at The Asia Society, New York, New York, March 11, 2013.

⁴ Peter A. Petri, Michael G. Plummer and Fan Zhai "The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment," 98 Policy Analyses in International Economics (Peterson Institute for International Economics, November 2012), p. 11.

⁵ Yao Yang, "America's Pivot to Asia Will Provoke China," *Financial Times*, February 12, 2013.

⁶ Ding Qingfen and Joseph Boris, "China Send Positive Signs for TPP," China Daily July 3, 2013 at http://www.chinadaily.com.cn/business/2013-07/03/content_16714153.htm.

⁷ Peter A. Petri, Michael G. Plummer and Fan Zhai "The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment," 98 Policy Analyses in International Economics (Peterson Institute for International Economics, November 2012).

⁸ Countries have acceded to the European Union, which has included being part of the customs union.

amongst the parties, making FTAs difficult to replicate for other countries. Moreover, should one country wish to obtain the economic benefits of an existing FTA, starting an FTA negotiation from scratch with the parties to the FTA provides the flexibility to develop a new agreement that accommodates the parties' trade relationship and avoids limits set by the parameters of an existing FTA.

The TPP is now a regional trade agreement of growing economic pull. As noted, South Korea has recently indicated its interest in joining and other countries such as the Philippines and Thailand have as well. This suggests that TPP membership could be expanded after its completion, making important the design of an effective accession clause.

The original P4 agreement between New Zealand, Brunei, Chile and Singapore envisaged countries acceding. Article 20.6.1 of the P4 states as follows:

This Agreement is open to accession on terms to be agreed among the Parties, by any APEC Economy or other State. The terms of such accession shall take into account the circumstances of that APEC Economy or other State, in particular with respect to timetables for liberalisation.

There are no formal accession terms for the P4. As outlined above, the United States joined the P4 in 2008, followed shortly thereafter by Australia and Peru. Negotiations of the then so-called TPP7 commenced in March 2010 with Vietnam as an observer. Malaysia joined the TPP in October 2010. By the 2011 APEC Leaders meeting in

Hawaii, Japanese Prime Minister Noda announced that it would consult with other TPP parties about joining the TPP and Mexico and Canada similarly expressed interest in beginning consultations to join. Mexico and Canada joined the TPP in December 2012 and Japan joined in July 2013.

As the TPP7 expanded to become the TPP12, state practice provides guidance on what other countries will likely need to do in order to join the TPP. In this regard there are two steps that prospective TPP members have taken before being accepted into the TPP. The first step has been to undertake bilateral meetings with existing TPP members. The aim here has been to determine the trade liberalization that each TPP member would require of the prospective member – a process not dissimilar to a WTO accession process. These bilateral discussions have also provided the opportunity for prospective members to demonstrate their willingness and capacity to accept the high standards being negotiated in the TPP. As Demetrios Marantis (then acting United States Trade Representative) explained recently, “whether it’s China, whether it’s the Philippines, whether it’s Thailand...it’s incumbent upon those economies to be able to convince the other TPP partners that they are capable of meeting the high standards that we’re negotiating.”⁹ This is not only about the willingness of a country to accept the TPP standards but it also requires demonstrating to TPP members that there are no domestic political constraints that will prevent the economic reform that TPP membership will demand. Having completed these bilateral discussions, the second step has required all TPP parties to agree to the addition of any new member.¹⁰

⁹ “Door to TPP is open for China, says U.S.,” *China Daily*, March 22, 2013, http://usa.chinadaily.com.cn/business/2013-03/22/content_16332233.htm.

¹⁰ Deborah Elms and C.L. Lim, “The Trans-Pacific Partnership Agreement (TPP) Negotiations: Overview and Prospects,” RSIS Working Paper No. 232, 21 February 2012, p. 10.

When it comes to a decision by the United States on new TPP members, it is also necessary to take into account the strategic dimensions of the TPP. As noted, the TPP is the economic pillar of the United States so-called rebalancing towards Asia. It affirms U.S. economic engagement in the region by establishing a template for trade and investment in the Asia Pacific region that is market-oriented and establishes new rules and creates market access in areas of growing importance for the U.S. economy. This means that any decision by the United States regarding prospective TPP members will include both economic and strategic calculations.

The following provides an overview of the economic and strategic calculations that underpinned entry by Vietnam and Japan into the TPP and what this experience might mean for Taiwan.

Vietnam

As outlined above, bilateral negotiations with existing members and consent by all TPP parties have been required in order for a country to join the current TPP negotiation. An important part of the process has been the ability of prospective members to demonstrate their willingness and ability to accept the rules being negotiated in the TPP, including in new and often economically sensitive areas, such as state-owned enterprises (SOEs) and data flows, and to commit to undertake negotiations with the aim of reducing to zero tariffs on all goods.

Vietnam undertook significant economic liberalization prior to its WTO accession in 2007, including reform of its state sector. However, its

ability to conform to the high TPP standards, particularly on issues such as SOEs, will require further reforms as SOEs retain a significant role in its economy in areas such as telecommunications, extractive industries and manufacturing. Moreover, there is evidence that the importance of SOEs for the Vietnamese government in terms of tax revenues explains the relatively high domestic tariffs that still exist in those sectors in which SOEs operate.¹¹ This suggests that Vietnamese Government will resist the type of competitive neutrality rules being developed in the TPP as well as further reductions in tariffs in those sectors where they operate.

The fact that Vietnam has joined the TPP despite the challenging economic reforms it will need to undertake speaks to the seriousness of the government about reform and may also demonstrate that economic reform is easier to do in authoritarian states than in democracies like Taiwan.

As noted, understanding Vietnam's acceptance into the TPP also requires understanding the strategic dimensions. As former U.S. Ambassador to Vietnam Raymond Burghardt has observed, "Vietnam's entrance into the TPP negotiations was a "strategic decision" by both Hanoi and Washington."¹² Growth in this dimension of the U.S.-Vietnam relationship has been built on joint concerns over issues such as China's maritime claims in the South China Sea and the desire of both countries for Vietnam to take a stronger leadership role in ASEAN. Moreover, on July 25, 2013 President Obama and Vietnam's President Truong Tan Sang announced the creation of a U.S.-Vietnam Comprehensive Partnership. The Partnership will provide a framework for enhanced cooperation on

¹¹ Leonardo Baccini, Giammario Impullitti and Edmund J. Majesky, "Trade Liberalization and State-Owned Enterprises: Evidence from Vietnam's Accession to the WTO," at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2314897 (visited 23 September 2013).

¹² Raymond Burghardt, "US-Vietnam: New Strategic Partners Begin Tough Trade Talks," Asia Pacific Bulletin No. 153, February 29, 2012.

issues ranging from trade and the economy to the environment to defense and security.¹³ When making the announcement, the leaders recognized “the importance of economic cooperation as a foundation and engine for the new U.S.-Vietnam Comprehensive Partnership.”¹⁴ Vietnamese participation in the TPP provides the economic cooperation that will strengthen the broader U.S.-Vietnam strategic relationship.

Japan’s participation in the TPP

In November 2011 at the APEC Leaders meeting in Hawaii, then-Prime Minister Yoshihiko Noda announced that Japan would begin consultations with TPP members about joining the TPP negotiations. Consultations with all TPP members followed, and on July 23, 2013 Japan formally joined the TPP negotiations. Japan’s decision to seek TPP membership and the decision of the TPP parties to accept Japan also reflected a mix of economic and strategic calculations.

On the economic side, Japan is the world’s third largest economy and is now the second largest TPP member. Japan’s participation significantly raised the potential economic benefits of the TPP. In particular for the United States, which already had FTAs with six of the eleven TPP parties, Japan’s participation in the TPP expanded what would otherwise have been small economic gains for the United States from the TPP.

For the United States, including Japan in the TPP also achieves strategic goals. It underpins an already close security alliance and cements Japan’s

economic orientation in a U.S.-led Asia Pacific agreement at a time when Japan is also participating in a range of other Asian FTAs, some of which, such as the RCEP, exclude the United States. Japan’s participation in the TPP also gives the agreement additional momentum towards becoming an FTAAP as it becomes an economically more significant agreement. Moreover, as an advanced developed economy, Japan’s participation in the TPP provides a like-minded voice in support of the type of trade and investment rules of importance for the U.S. economy in areas such as intellectual property (IP) protection, investment, services, cross-border data flows and a reduced role for SOEs in the economy.

For Japan, the TPP is a key means for working with the United States to take a leadership role in developing rules for trade and investment in the Asia Pacific region. As Prime Minister Shinzo Abe stated recently, “Japan must remain a leading promoter of rules...for trade, investment, intellectual property, labor, environment and the like.”¹⁵ Japan’s membership in the TPP is also an integral part of the “third arrow” of Prime Minister Abe’s so-called “Abenomics” strategy for reforming and growing the Japanese economy.

Japan joining the TPP negotiations, did however, present a range of challenges for the Obama Administration. These stemmed from long-standing concerns about Japan’s use of non-tariff barriers to protect economic sectors such as automobiles, limited access to the services sector, the role of Japan Post in the economy and its highly protected agricultural sector. Additionally, the difficulty

¹³ Joint Statement By President Barack Obama of the United States of America and President Truong Tan Sang of the Socialist Republic of Vietnam, July 25, 2013, The White House, Office of the Press Secretary.

¹⁴ Joint Statement By President Barack Obama of the United States of America and President Truong Tan Sang of the Socialist Republic of Vietnam, July 25, 2013, The White House, Office of the Press Secretary.

¹⁵ Shinzo Abe, “Japan is Back,” speech at the Center for Strategic and International Studies, February 22, 2013, <http://csis.org/event/statesmens-forum-he-shinzo-abe-prime-minister-japan>.

successive Japanese Prime Ministers have had reforming the Japanese economy meant that despite Japan's willingness to join the TPP, there was significant doubt in Congress and amongst some in the Administration as to whether Japan could implement the type of reforms and market opening the TPP would require.

The process Japan and the United States agreed to follow to address these concerns and which paved the way for U.S. support of Japan's entry into the TPP can provide guidance for Taiwan.

As a first step and before formally joining the TPP, Japan agreed to a number of confidence building measures designed to demonstrate its willingness and ability to deliver economic reform. For instance, the U.S.-Japan Economic Harmonization Initiative launched in November 2010 promotes "cooperation to harmonize approaches that facilitate trade, address business climate and individual issues, and advance coordination on regional issues of common interest."¹⁶ Under this initiative the United States sought to address issues ranging from competition in the allocation of communications spectrum, intellectual property issues such as extending copyright protection and reform of Japan Post to ensure equivalent conditions of competition with private financial companies.¹⁷ Japan also took steps to demonstrate its ability to liberalize access for U.S. beef—as it had banned

beef imports over 20 months old due to concerns over bovine spongiform encephalopathy (BSE, or "mad cow disease"). In December 2011 Japan's Food Safety Commission commenced a new risk assessment process of imports of U.S. beef and in January 2013 Japan agreed to permit imports of U.S. beef up to 30 months old.¹⁸

On April 12, 2013, the United States announced that it had completed its bilateral negotiations with Japan regarding it joining the TPP negotiations.¹⁹ On that day Prime Minister Abe also announced that Japan would seek to participate in the TPP negotiations. The United States and Japan also agreed that should Japan join the TPP negotiations that the two countries would commence parallel negotiations on a range of non-tariff barriers in areas that included insurance, investment, IPR, and government procurement and would also address U.S. concerns regarding motor vehicle exports to Japan.²⁰

Following Japan's completion of its bilateral negotiations with the rest of the TPP membership, on April 24, 2013 the Obama Administration notified Congress of its intent to include Japan in the TPP negotiations, which triggered a 90 day consultation period with Congress.²¹ Japan formally joined the TPP negotiations and participated in the 18th round of TPP negotiations held in Malaysia on July 25, 2013.

¹⁶ "U.S.-Japan Economic Harmonization Initiative," Office of the United States Trade Representative, www.ustr.gov/countries-regions/japan-korea-apec/japan (visited 24 September 2013).

¹⁷ "United States-Japan Economic Harmonization Initiative," Office of the United States Trade Representative February 2011, http://www.ustr.gov/webfm_send/2578 (visited 16 October 2013).

¹⁸ "U.S. Trade Representative Ron Kirk and Agriculture Secretary Tom Vilsack Announce Agreement to Further Open Japan's Market to U.S. Beef," Office of the United States Trade Representative, January 28, 2013, <http://www.ustr.gov/about-us/press-office/press-releases/2013/january/ustr-kirk-ag-sec-vilsack-japan-beef-announcement> (visited 24 September 2013).

¹⁹ "Statement by Acting U.S. Trade Representative Demetrios Marantis Regarding Japan and the Trans-Pacific Partnership," Office of the United States Trade Representative, April 12, 2013, <http://www.ustr.gov/about-us/press-office/press-releases/2013/april/amb-marantis-japan-tp>, (visited 24 September 2013).

²⁰ Letter from Japanese Ambassador to the United States Kenichiro Sasae to Acting USTR Demetrios Marantis, dated 12 April 2013.

²¹ "Obama Administration Notifies Congress of Intent to Include Japan in Trans-Pacific Partnership Negotiations," Office of the United States Trade Representative, April 24, 2013, <http://www.ustr.gov/about-us/press-office/press-releases/2013/april/congressional-notification-japan-tp>, (visited 24 September 2013).

The negotiations that the United States and Japan have agreed to in parallel to the TPP negotiations are to address the range of issues outlined above and by conclusion of the TPP negotiations they are to produce results that are “tangible and meaningful.”²² So far, some progress has been made including agreement with Japan in the following areas:

- to not approve any new cancer insurance and stand-alone medical products of Japan Post Insurance until equivalent conditions of competition with private sector insurance companies have been established
- to double the number of cars eligible for import under Japan’s Preferential Handling Procedure
- to a tariff snap back as remedy in dispute settlement over automobiles
- to improved transparency and opportunities for stakeholder input into regulation
- to provide meaningful opportunities for merger and acquisition into Japan
- to strengthen IPR protection and enforcement
- greater transparency in the development of standards and adoption of international standards

Accession to a completed TPP Agreement

The process for acceding to a completed TPP agreement is yet to be determined. As discussed, in order for countries to join the current set of negotiations has required the consent of all existing

TPP parties. It is likely that a similar rule will apply to future accessions to a completed TPP agreement.

There are, of course, strategic choices that the United States and other TPP parties will need to make in designing a future accession process. Requiring unanimous consent seems the most likely outcome because it will ensure that any expansion of the parties to the TPP agreement expands trade amongst all TPP parties. Additionally, requiring unanimous consent can drive greater economic reform within potential TPP parties if they know they have to satisfy the demands of all TPP parties.²³

However, a unanimous consent rule can have its costs. It creates an incentive for TPP parties to demand concessions from other TPP parties in exchange for its consent to accession of new candidates. For instance, in the WTO context there are examples of countries holding out against accession of new members, such as Georgia delaying Russia’s WTO accession in 2006.

An alternative arrangement would be for the TPP parties to allow accession with a qualified majority, such as TPP parties representing some majority of trade or GDP. TPP parties who do not consent to the new member joining could be allowed to not extend TPP market access concessions to the new TPP member, thereby preserving its TPP commitments amongst the current set of parties. The advantage of such an approach for the United States would be that it could prevent smaller TPP parties having a veto over future members; lack of veto power for any one member could speed up the broader U.S. goal of expanding the TPP into an FTAAP. Moreover, any voting rules could be

²² Letter from Japanese Ambassador to the United States Kenichiro Sasae to Acting USTR Demetrios Marantis, dated 12 April 2013.

²³ Christina J. Schneider and Johannes Urpelainen, “Accession Rules for International Institutions: A Legitimacy-Efficacy Trade-off?” 56(2) *Journal of Conflict Resolution* 2012.

designed to prevent agreement on access without U.S. participation. However, the cost of such an approach would be a series of regional market access concessions that would undermine the overall economic benefits of a comprehensive FTAAP.

What TPP Seeks

The following section outlines the key aims of the TPP and what TPP membership would mean for Taiwan's economy.

TPP seeks to secure liberalization in three arenas: market access for goods and service; rules, and the so-called cross-cutting issues. The market access chapters represent, by and large, the carryover of 20th century issues; those on rules and cross-cutting issues are more designed to address twenty-first century problems. This section summarizes what will be required, or is likely to be required in each.²⁴

Market Access

Concerning goods, the TPP aims to formulate schedules to phase out tariffs on more than 11,000 product categories. Although the schedules may be prolonged for some sensitive products, the preference is for immediate termination of tariffs. Here, the most controversial sectors are textiles, apparel, footwear, and agriculture. On the latter, the argument is not always between developed and developing countries. The American dairy and sugar industries seek protection for at least some of their products, for example, and Japan has high tariffs and quotas on the import of rice.

On services, the sectors concerned include financial services (insurance, banking, etc.), professional

services (legal, education, etc.), telecommunications, express delivery, and e-commerce. The United States seeks commitments that go beyond the WTO's General Agreement on Trade in Services (GATS). The GATS employs a positive list approach whereby countries identify those sectors where market access is permitted. Under the TPP a negative list approach is being followed under which countries designate those areas where market access can be denied. Other service-related provisions likely to be included in TPP are non-discriminatory treatment; liberal market access; prohibition on requirements that the service provider have a commercial presence within the borders of the buyer; mutual recognition of professional qualification; transparency in regulations; and an open approach to capital flows.

Government procurement is a final subject of market access. Here, the standard appears to be the WTO Government Procurement Agreement, to which Taiwan, under the name of Chinese Taipei, has already acceded.

Rules

It is in the area of trade rules, broadly defined, that TPP represents a new, leading edge of policy innovation. Obviously, rules often cut cross the treatment of market access. Regarding agriculture, for example, the United States seeks in TPP to liberalize and standardize the parties' approach to sanitary and phytosanitary standards—an issue on which Taipei and Washington have already crossed swords. Yet most discussion of rules concerns manufactured products and services. On the protection of intellectual property rights, for example, Washington is seeking a standard that is higher than the WTO's Agreement on Trade-Related Aspects of

²⁴ This section is based on Ian F. Fergusson, William H. Cooper, Remy Jurenas, and Brock R. Williams, "The Trans-Pacific Partnership Negotiations and Issues for Congress," Congressional Research Service, Report R42694, August 21, 2013, pp. 21-53.

Intellectual Property, and specifically better IP protection for each country's pharmaceuticals and for the trade secrets of companies in each economy. Concerning issues like investment and competition policy, the U.S. approach favors non-discrimination, transparency, and a level playing field. Finally, there are provisions on labor and the environment, which have become a fixture of the U.S. approach to free-trade agreements.²⁵

On two categories of rules, American proposals may bear on the business plans of Taiwan's companies. On rules of origin, the United States would give preference to the products of TPP countries whose inputs come from other TPP countries. On technical barriers to non-agricultural trade, it emphasizes international standards rather than those of one country or group of countries.

Cross-Cutting Issues

These are regulator coherence, state-owned enterprises, e-commerce, competitiveness and supply chains, and small- and medium-sized enterprises. As suggested by the descriptor "cross-cutting," the focus here is on issues that surface in various sectors but have broader import for trading countries more generally. They may emerge in a "bottom-up" fashion in specific sectors and so covered in the relevant chapters of the TPP agreement: thus sanitary and phytosanitary matters are covered under agriculture. But regulation can be treated in more of a top-down fashion, for example, by creating institutional mechanisms within each country to ensure that current and new regulations are consistent with both domestic legislation and

international norms. Again, the emphasis is on creating a level playing field for all players and provides as much transparency as possible.

Taiwan and the TPP

American voices have already spoken out on Taiwan's participation in TPP. Rupert Hammond-Chambers, president of the U.S.-Taiwan Business Council, has written that securing membership should be a near-term goal.²⁶ A study by the Heritage Foundation concluded that the U.S. government should "take up the cause" of Taiwan's TPP membership.²⁷ The American Chamber of Commerce in Taipei has identified participation in TPP as a "major challenge" for Taiwan.²⁸ Not always understood is why being part of TPP would be good for Taiwan.

Taiwan's membership in the TPP will provide a number of important benefits for current members. As the world's 19th largest trader and 28th largest economy, it will include a medium-sized developed economy that is an important driver of trade and investment in the Asia Pacific region. It will also give the TPP further momentum towards becoming an FTAAP. Taiwan's participation in TPP will provide current members with improved market access into Taiwan and also allow TPP members to take advantage of the Taiwan-China Economic Cooperation Framework Agreement (ECFA) and use Taiwan as a platform for trading and investing with China. Additionally, Taiwan is deeply integrated in the value chains in Asia (see Joshua Meltzer working paper "Taiwan's Economic Opportunities and Challenges and the Importance

²⁵ Joshua Meltzer, "The Trans-Pacific Partnership Agreement, the Environment and Climate Change", in *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement*, Edward Elgar, 2014 (forthcoming).

²⁶ Rupert Hammond-Chambers, "Special Commentary: Taiwan, TIFA & TPP – Taiwan Needs the Trans Pacific Partnership Now, U.S.-Taiwan Business Council, March 11, 2013.

²⁷ "US Should Support TTPP Membership for Taiwan," *Taipei Times*, July 17, 2013.

²⁸ American Chamber of Commerce in Taipei, "2013 Taiwan White Paper," *Taiwan Business Topics*, Vol. 43, Issue 6 (June 2013).

of the Trans-Pacific Partnership” for more detail) and including Taiwan in the TPP will ensure that the agreement strengthens and further enables these production networks. This should also enhance the economic gains from the agreement for other TPP members.

For Taiwan, the TPP will create new market access opportunities for its goods and services in TPP markets. The preferential market access that Taiwan will get in the United States, but also large developed country markets such as Canada and Australia, could give Taiwanese business an opening to move further up the value chain and develop more of its own branded goods and services sold directly to consumers. Moreover, as the TPP will impact regional supply chains of which Taiwan is deeply embedded, participation in the TPP will further reinforce Taiwan’s role here.

In our view, however, the reasons for Taiwan to join TPP go beyond the potential market openings with major trading partners and are more strategic in nature. TPP’s liberalization agenda will require Taiwan to undertake a range of economic reforms that will entail costs for some sectors but will have a significant and positive impact on the prospects for Taiwan’s productivity, competitiveness and economic growth going forward. Joining TPP can become a driver of domestic economic reform in Taiwan and in this respect could have a similar impact as the WTO.

Yet, as the above inventory of TPP issues indicates, meeting the goals of an agreement will not be an easy policy task. As the American Chamber argues, it will require Taipei to “convince other countries of Taiwan’s commitment to trade liberalization and to build widespread domestic public support for more open markets.”²⁹ Given the polit-

ical challenges of economic reform in Taiwan, the commitment by the government to reform under the TPP could be crucial in helping overcome domestic barriers.

What specifically will Taiwan need to do to conform to the market access and rules provisions of TPP?

Market Access

Agriculture is probably the most sensitive area for Taiwan when it comes to opening its domestic market under TPP. This is very much a “twentieth century issue,” and was a key sticking point for Taiwan’s accession to WTO. In TPP, the United States’s concerns with Taiwan’s agriculture sector include tariff and tariff rate quotas on commodities such as rice. The United States also has a perception that Taiwan at times does not adopt science-based regulations for food safety. Some American officials and business representatives feel that, in some cases, regulators instead respond to public sentiment whipped up by a sensationalist media by adopting regulations that do little for food safety and a lot to protect local agricultural producers. Here, Taiwan’s ban on imports of pork treated with ractopamine is a case in point.

TPP’s requirement for liberalization of the agriculture sector will come as no surprise to stakeholders, but it does create a dilemma. Agriculture represents less than 2 percent of Taiwan’s GDP, and for a developed nation is not the future for growth and prosperity. That said, many livelihoods do still depend on agriculture, making agriculture reform a difficult issue. The government should nevertheless start developing policies aimed at liberalizing its agricultural sector and in parallel providing policies to support retraining and providing support for

²⁹ Ibid.

those economically harmed by these actions. This will be necessary if other TPP parties are going to take seriously its efforts to join the TPP. Taiwan can follow the pattern established by Japan here, where reform efforts are being accompanied by policies to help move agriculture producers into higher value-added sectors, promoting agri-tourism, and taking advantage of new export opportunities.³⁰

Another issue in the TPP negotiations which seems more suited to the 20th century than the 21st is market access for textiles and the demand by countries such as Vietnam for the United States to reform the so-called “yarn forward” rule of origin. Applied to the TPP, this rule would require textiles and apparel made from the yarn stage forward to be produced in a TPP party in order to be eligible for the market access preferences under the TPP. With the rule still in place, if Vietnam, which has a significant clothing manufacturing sector, gets into TPP there would be serious economic consequences for Taiwan, which has been a source of yarn for Vietnamese weaving factories. So while this is a 20th century issue it also raises 21st century challenges such as how to design the TPP to increase the efficiency of supply chains and avoid creating alternate supply chains from trade policy rather than economic fundamentals. Absent a liberalization of the yarn forward rule, Vietnam could begin to source yarn from countries within the TPP circle of economies.

More broadly, the rules of origin (ROOs) under TPP will have a significant impact on the supply chains in which Taiwan participates—whether Taiwan joins TPP or not. As noted, Taiwan has a relatively small economy that is already deeply in-

tegrated and dependent on Asian supply chains, the ROOs developed in the TPP could have important implications for the competitiveness of a range of Taiwan businesses. This issue that will start affecting Taiwan upon completion of the TPP and therefore Taiwan needs to take steps now to try and ameliorate these impacts. For instance, Taiwan should consult with all TPP parties to seek to have its interests taken into account in the development of ROOs.

Taiwan would also be required to liberalize its services sector under the TPP, but greater competition in this sector will drive innovation in Taiwan’s services economy and reduce costs. For example, the TPP will address market access for financial services. Applied to Taiwan, this will support Taiwan’s goal of becoming an international financial center. Greater access to international services would also give Taiwan businesses access to world class legal, consulting, financial and engineering services that will improve the productivity and competitiveness of its economy more broadly. In addition, Taiwan should liberalize regulations that are impeding the development of its higher-end services and manufacturing capacity. Addressing those regulations that are also a trade issue for the United States would be good for the Taiwan economy and good for Taiwan’s TPP prospects. For instance, Taiwan should reconsider its proposed data localization laws that will require banks to obtain official approval for outsourcing a range of data processing activities and where the data includes personal information, to also obtain the consent of their customers.³¹ This will be an unnecessary intrusion into bank’s operations, preventing banks from utilizing the lowest cost and most efficient data centers globally and thereby raising the costs

³⁰ Aurelia George Mulgan, “Abe’s ‘growth’ strategy for agriculture in Japan,” East Asia Forum, June 5, 2013.

³¹ “Regulations Governing Internal Operating Systems and Procedures for the Outsourcing of Financial Institution Operation,” Banking Bureau, Financial Supervisory Commission of the ROC, February 8, 2012, <http://law.banking.gov.tw/Eng/EngContent.asp?msgid=426>.

of financial services and reducing the overall attractiveness of Taiwan for foreign investors.

Developing the services sector is also important for Taiwan to fully utilize its well-educated workforce, which according to the World Bank Knowledge Economy Index 2012 ranks 13th globally—higher than the United Kingdom and number one in Asia. Taking advantage of these skills requires developing industry that emphasises innovation as a source of growth and skilled jobs. This will require Taiwan businesses to focus on the R&D and design stage of the manufacturing sector. Logitech is a good example of what a manufacturing company in Taiwan will increasingly look like. Logitech produces mouse pointing devices, keypads, gaming joysticks and the like. Logitech used to manufacture these products in Taiwan but moved production to China due to labor cost pressures. In Taiwan, Logitech still employs 300 employees, though only 25 people work on pilot production lines while 130 are R&D engineers, and the rest provide services such as finance, human resources, and administration.

More generally, future standards should be based on international standards where they exist and regulations should look closely to regional competitors for best practice. This would be good for Taiwan's economy and would help set the right tone for further discussions of TPP membership.

Rules

Taiwan already has strong IP protection.³² However, there are concerns in the United States about lack of enforcement in areas such as trade secrets

and failure to adequately protect copyrights holders from Internet piracy.³³ Provisions in U.S. FTAs such as the Korea-U.S. FTA (KORUS) that focus on having in place mechanisms for enforcing IP standards would help Taiwan address these concerns. This would further strengthen Taiwan's overall IP regime and encourage greater investment in high-end innovation and R&D.

The TPP will also require commitments to the free flow of data across borders and greater competition in telecommunications markets. This should strengthen the business environment for Internet services companies and help grow Taiwan's core strengths in areas such as design and R&D.

On the investment front, Taiwan currently maintains investment restrictions in a range of sectors including agriculture, chemical manufacturing and public utilities.³⁴ The TPP is developing rules on market access for investment, investment protection rules and access for investors to international arbitration that will complement President Ma's goal of increasing FDI into Taiwan. Additionally, opening up these sectors to foreign investment could help provide the capital, skills and access to technology that would help otherwise uncompetitive sectors such as agriculture move up the value-added chain to compete more effectively domestically and to take advantage of the market access opportunities that TPP membership would provide.

Some in Taiwan will be inclined to view TPP negotiations in transactional terms. That is, for every concession that Taipei negotiators make to a TPP member country, they should get a compensating

³² "United States National Trade Estimates 2013, Taiwan," Office of the United States Trade Representative, <http://www.ustr.gov/sites/default/files/2013%20NTE%20Taiwan%20Final.pdf>.

³³ Ibid.

³⁴ Ibid.

concession in return. But Taiwan's perspective should be strategic rather than transactional. Membership in TPP is to help Taiwan to position itself to remain competitive in the fast-changing global economy. Adherence to its twenty-first century standards will entail some sacrifice and require economic reform, but the result will be a more efficient use of Taiwan's skills and other economic advantages. For instance, stronger IP rights combined with greater investment and services access will encourage greater investment in R&D, design, and other high end services that will benefit Taiwan's economy broadly. Thus TPP is a platform that will not be easy to build, but the long-term benefits of having that platform can ensure the island's prosperity. Choosing not to build the TPP platform because it is difficult will confine Taiwan to a more difficult future.

In order for Taiwan to adopt such a strategic view of the TPP as a driver of necessary domestic reform will require the Taiwan government to navigate an already difficult political environment when it comes to trade. In his working paper titled "Taiwan's Economic Opportunities and Challenges and the Importance of the Trans-Pacific Partnership," Joshua Meltzer outlined the difficulties Taiwan has had providing some additional market access for U.S. beef and the ongoing ban on imports of pork treated with ractopamine. The domestic resistance that President Ma has faced on these issues, which are all relatively small economic ones for Taiwan, has led many in the U.S. Congress and the Administration to conclude that Taiwan's domestic politics will prevent Taiwan from undertaking the type of deep liberalization that TPP membership would require.

While President Ma understands the need to liberalize and reform Taiwan's economy, the U.S. approach so far—which has required Taiwan to

address specific trade issues of concern for the United States before moving on to other areas—has reinforced those within Taiwan that are opposed to trade liberalization without giving other more economically liberal stakeholders any market access gains to point to, which could strengthen their hand domestically. This is an example of the political economy of market liberalization and explains why trade negotiations are required so that those who benefit from new market access gains overseas can provide a counterweight to opposition to opening domestic markets. To address this, the United States should expand the range of issues it is prepared to discuss with Taiwan in talks on the bilateral Trade and Investment Framework Agreement (TIFA). The expansion of the TIFA discussions to include technical barriers to trade and investment issues appears a step in this direction. And Taiwan should take advantage of the expansion of the TIFA process to demonstrate its capacity to further liberalizing its economy.

Following this approach, once TPP is finished President Ma should assess which of Taiwan's current rules and regulations need to be reformed in order for Taiwan to accept the TPP standard. Indeed, this is something that President Ma is already preparing to do. A finalized TPP will also give Taiwan a good idea of the level of market access that would be required should it join the TPP.

Another approach is for Taiwan to use a final TPP agreement to push for unilateral reform. We have argued that this is the best way for Taiwan to view the TPP. And in a speech in Washington on 3 October, Deputy Assistant Secretary of State for East Asian and Pacific Affairs Kin Moy also expressed the hope that "the high visibility and sheer size of the TPP market may be a spur for Taiwan to liberalize its trading regime." He also suggested that by "fully utilizing the TIFA process, Taiwan will

build confidence in its trade relationship with the United States.”³⁵

President Ma has already asked for an assessment of the gap between Taiwan’s law and regulations and what might be agreed in the TPP. Using the TPP as a template for economic reform would move Taiwan along a path of reform prior to TPP membership, which, Richard Bush suggested in working paper “Taiwan and the Trans-Pacific Partnership: The Political Dimension,” would need to be sequenced with China’s entry into TPP

and could therefore be some way off. However, unilateral reform may be too politically difficult without any offsetting market access benefits that would normally be gained under a trade negotiation. The United States could assist here by indicating its support for Taiwan’s membership in TPP once it has demonstrated that it could meet the rules that will be agreed in the TPP, and once it has made some progress towards opening its markets. And the prospect of United States support for Taiwan’s membership might be enough to address domestic opposition to these reforms.

³⁵ Kin Moy, “Trends in the U.S.-Taiwan Relationship,” Speech at the Carnegie Endowment for International Peace, October 3, 2013, <http://www.state.gov/p/eap/rls/rm/2013/10/213756.htm>.

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