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## Between Power Politics and International Economic Law: Asian Regionalism, the Trans-Pacific Partnership and U.S.-China Trade Relations

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# **BETWEEN POWER POLITICS AND INTERNATIONAL ECONOMIC LAW: ASIAN REGIONALISM, THE TRANS- PACIFIC PARTNERSHIP AND U.S.-CHINA TRADE RELATIONS**

**Jiangyu Wang\***

## **ABSTRACT**

This Article examines the interactions of power politics and international economic law in the development of regionalism in Asia, particularly in the context of United States-China trade relations. It argues that the process of regional economic integration in Asia has been slow-moving because of the politicization of regionalism by power rivalries. China's initial regional integration initiatives apparently ignored the United States, a superpower which has always been a major player in Asia and an indispensable part of the region's economic process. The United States-led Trans-Pacific Partnership was allegedly designed to exclude China, Asia's largest economy. On the other hand, the Trans-Pacific Partnership also spurred the effects of competitive liberalization, pushing China to deepen its economic reform domestically and engage its trading partners on friendlier terms at regional and international levels. The demise of the Trans-Pacific Partnership does not amount to the death of its cutting-edge rules. Those rules have laid a solid foundation for developing high-

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standard template agreements for Free Trade Agreements of the next generation, and many of them are likely to be incorporated into an upgraded multilateral trading system. United States' withdrawal from the Trans-Pacific Partnership offers a golden opportunity for Asian countries to establish a real Pan-Asia free trade area through the negotiations for the Regional Comprehensive Economic Partnership, but in the long run, regional integration in Asia should look beyond Asia and include the economies of the American side of the Pacific for both economic and strategic reasons. The Article concludes with a few suggestions.

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## INTRODUCTION

Regional/Free Trade Agreements (“RTAs” or “FTAs”) are the talk of the town in the Asia-Pacific.<sup>1</sup> On October 5, 2015, twelve Pacific Rim countries, led by the United States (“U.S.”), announced the successful conclusion of the negotiations on the Trans-Pacific Partnership Agreement (“TPP”),<sup>2</sup> which was signed on February 4, 2016.<sup>3</sup> U.S.’ involvement in the TPP, however, was terminated by Donald J. Trump, America’s newly-elected president, while it was waiting for ratification (mainly by the U.S.) to enter into force.<sup>4</sup> Meanwhile, the Regional Comprehensive Economic Partnership (“RCEP”), another mega-trade agreement, has been negotiated by the ten members of the Association of Southeast Asian Nations (“ASEAN”) and its six FTA partners since 2012.<sup>5</sup> Additionally, in 2012, the Chinese Communist Party, the ruling party of the People’s Republic of China (“PRC” or “China”), announced at its 18th Party Congress that China would

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<sup>1</sup> Preferential trade agreements are usually called FTAs by countries negotiating and signing them, but the World Trade Organization officially uses RTAs. See *Regional Trade Agreements*, WTO (Sep. 1, 2016), [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.html](https://www.wto.org/english/tratop_e/region_e/region_e.html).

<sup>2</sup> Jessica Glenza, *The TPP deal: US and 11 other countries reach landmark Pacific trade pact*, THE GUARDIAN (Oct. 5, 2015), <https://www.theguardian.com/business/2015/oct/05/trans-pacific-partnership-deal-reached-pacific-countries-international-trade>.

<sup>3</sup> *Trans Pacific Partnership trade deal signed in Auckland*, BBC NEWS (Feb. 4, 2016), <http://www.bbc.com/news/business-35480600>.

<sup>4</sup> In November of 2017, the other eleven members of the TPP agreed to continue the TPP without the U.S. The new pact is called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. See Lee U-Wen In Danang, *Trans-Pacific Partnership deal moves ahead without US*, STRAITS TIMES (Nov. 12, 2017), <http://www.straitstimes.com/world/tpp-deal-moves-ahead-without-us>.

<sup>5</sup> REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP), ASEAN, [http://asean.org/?static\\_post=rcep-regional-comprehensive-economic-partnership](http://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership) (last visited Mar. 4, 2018).

“accelerate implementation of the *strategy* of building free trade areas.”<sup>6</sup>

The TPP (and its possible successor Comprehensive and Progressive Trans-Pacific Partnership (“CPTPP”)), RCEP, and China’s enhanced FTA programme are landmark developments in the ongoing economic regionalism in Asia. Regionalism, known as regional economic integration, is a process that brings the markets of countries—usually, but not always, in the same region—together to achieve free movement of goods, services, capital, labor, and possibly other economic factors of production through intergovernmental initiatives, mainly including FTAs.<sup>7</sup> Richard Pomfret notes that there have been three waves of regionalism since the inception of the General Agreement on Tariffs and Trade (“GATT”) in 1947.<sup>8</sup> The first wave started in Europe in the 1950s when six Western European countries began to work on regional economic integration, which led to the establishment of a customs union in the 1960s.<sup>9</sup> The second wave of regionalism was initiated by the bilateral and regional trade negotiations in North America, which resulted in the establishment of the North American Free Trade Agreement (“NAFTA”) in 1993.<sup>10</sup> We are now, however, witnessing the third wave of regionalism that emerged in the early 2000s, which, for the first

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<sup>6</sup> Hú Jintāo (胡锦涛) [Hu Jintao], *Hújintāo Zài Zhōngguó Gòngchǎndǎng Dì Shíbā Cì Quánguó Dàibiǎo Dàhuì Shàng de Bàogào* (胡锦涛在中国共产党第十八次全国代表大会上的报告) [Hu Jintao at the Eighteenth National Congress of the Communist Party of China Report], PEOPLE’S DAILY (May 1, 2017), <http://cpc.people.com.cn/n/2012/1118/c64094-19612151.html> (emphasis added).

<sup>7</sup> See Jiangyu Wang, *China, India, and Regional Economic Integration in Asia: The Policy and Legal Dimensions*, 10 SING. Y.B. INT’L L. 269, 269-70 (2006).

<sup>8</sup> Richard Pomfret, *Is Regionalism an Increasing Feature of the World Economy?*, 30 WORLD ECON. 923, 924 (2007); see generally Theresa Carpenter, *A Historical Perspective on Regionalism*, in MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM 13 (Richard Baldwin & Patrick Low eds., 2009).

<sup>9</sup> Pomfret, *supra* note 8, at 924-25.

<sup>10</sup> *Id.* at 925.

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time, now focuses on East Asia, “partly stimulated by a perception that the global economic institutions let the region down in the 1997 Asian Crisis and partly by the increase of China’s economic power.”<sup>11</sup>

Regionalism in East Asia has its early initiatives dating back to two decades ago, marked by the formation of the ASEAN Free Trade Area (“AFTA”) in 1992.<sup>12</sup> The AFTA, however, could not be taken as the serious beginning of this region’s regionalization as its performance was rather “dismal”<sup>13</sup> and “had minimal economic impact.”<sup>14</sup> As such, “[b]efore 2000, regionalism in the Asia-Pacific region was distinguished by its absence.”<sup>15</sup>

Regional economic integration in Asia was accelerated when China, followed by Japan, Korea, and other countries, jumped on the bandwagon. China kicked off the current wave of economic regionalism in Asia by proposing the ASEAN-China Free Trade Agreement (“ACFTA”) in 2000, which was quickly followed by the conclusion of a Framework Agreement with an Early Harvest Programme in 2002, and the formation of a full ASEAN-China Free Trade Area in 2010.<sup>16</sup> In the decade after the ACFTA Framework Agreement, Asian negotiators had witnessed the competition between the ASEAN+3 model endorsed by China

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<sup>11</sup> *Id.*

<sup>12</sup> See Rahul Sen, “New Regionalism” in *Asia: A Comparative Analysis of Emerging Regional and Bilateral Trading Agreements involving ASEAN, China and India*, 40 J. WORLD TRADE 553, 554 (2006); see generally Tan, Lay Hong & Samtani, Anil *The Shifting Paradigm in Regional Economic Integration: The ASEAN Perspective*, TLH02/02 (Aug. 22, 2002), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=325484](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=325484).

<sup>13</sup> Tan & Samtani, *supra* note 12, at 1.

<sup>14</sup> RICHARD POMFRET, *REGIONALISM IN EAST ASIA: WHY HAS IT FLOURISHED SINCE 2000 AND HOW FAR WILL IT GO?* 25 (World Sci. 2011).

<sup>15</sup> *Id.*

<sup>16</sup> See generally Jiangyu Wang, *China’s Regional Trade Agreements (RTAs) Approach: the Law, the Geopolitics and the Impact on the Multilateral Trading System*, 8 SING. Y.B. INT’L LAW 119 (2004).

and the ASEAN+6 model favored by Japan.<sup>17</sup> While it was still believed by many in Asia that economic integration would eventually be achieved through the adoption of either of the two models, the emergence of the TPP put both aside, at least for a few years until Donald J. Trump signed an executive order to pull his country out of the TPP in his first week as the 45th President of the United States.<sup>18</sup>

For the Asians, regional integration makes sense both economically and geo-strategically. A report of the Asian Development Bank (“ADB”) suggested that “[r]egional cooperation, effectively structured and implemented, is a powerful new tool in Asia’s policy arsenal. It can help Asia address regional challenges as well as provide stronger foundations for its global role.”<sup>19</sup> But, major Asian economies, including China, Japan, Korea, and the ASEAN countries, were already busy with negotiating and concluding FTAs of their own before regional-level integration achieved some meaningful progress. When national ambitions and regional ideas are intertwined, the regionalization process is inevitably complicated by national interests, nationalist sentiments in historic and contemporary bilateral relations, and power politics.

On the other hand, regional integration is also necessarily a legalization progress. Through FTAs, countries establish rules and standards to govern their external economic relations, and agree to bind themselves to legal obligations under international economic law. As observed by Joel Trachtman, “[r]egionalism presents many faces to the international economic law system. Regional

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<sup>17</sup> Masahiro Kawai & Ganeshan Wignaraja, *Multilateralizing Regional Trade Arrangements in Asia*, in *MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM* 495, 500-504 (Richard Baldwin & Patrick Low eds., 2009).

<sup>18</sup> David Smith, *Trump withdraws from Trans-Pacific Partnership amid flurry of orders*, *THE GUARDIAN*, (Jan. 23, 2017, 12:46 EST), <https://www.theguardian.com/us-news/2017/jan/23/donald-trump-first-orders-trans-pacific-partnership-tpp>.

<sup>19</sup> ASIAN DEVELOPMENT BANK, *EMERGING ASIAN REGIONALISM: A PARTNERSHIP FOR SHARED PROSPERITY* 13 (2008).

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integration creates international economic law subsystems.”<sup>20</sup> A particular model of bilateral or regional economic arrangements, once it is codified into RTAs/FTAs as such part of international economic law, will impose constraints on state behavior. That is probably why, knowing the consequences of legalization, none of the major economies in Asia would easily subscribe to the regional integration model proposed by others given their complicated bilateral relations as well as each country’s peculiar relations with the U.S. The “battle of models” leaves ample space for power politics, as there is little doubt “the prevailing great powers at this historical moment are keen to use legal rules and institutions to advance their interests and institutionalize their power,”<sup>21</sup> both regionally and globally. Thus, Asian regionalism is one of the best examples through which one can investigate “the role of law in shaping international politics,” “the role of politics in shaping international law,”<sup>22</sup> and the possibility of using international economic law to limit injurious power politics.

This Article looks at the interactions of power politics and international economic law in the development of trade regionalism in Asia in the context of U.S.-China trade relations. It argues that the process of regional economic integration in Asia has been rather slow because of the politicization of Asia regionalism by power rivalries. China’s initial regional integration initiatives apparently ignored the U.S., which has always been an indispensable part of the economic processes in Asia. The U.S.-led TPP was allegedly designed to exclude China, the largest economy in Asia. On the other hand, the TPP also spurred the effects of competitive liberalization, pushing China to deepen its economic reform domestically and engage its trading partners on

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<sup>20</sup> Joel Trachtman, *International Trade: Regionalism*, in RESEARCH HANDBOOK IN INTERNATIONAL ECONOMIC LAW 151, 151-52 (Andrew T. Guzman & Alan O. Sykes eds., 2007).

<sup>21</sup> A.M. Slaughter, *International Law and International Relations*, in L’ACADÉMIE DE DROIT INTERNATIONAL DE LA HAYE [THE HAGUE ACADEMY OF INTERNATIONAL LAW] RECUEIL DES COURS 285 (2000) [COLLECTED COURSES 285 (2000)] 199 (2001).

<sup>22</sup> *Id.* at 198.



friendlier terms at regional and international levels. Further, the demise of the TPP does not also mean the death of its cutting-edge rules. Many of those rules are likely to be incorporated into other new generations of FTAs or even the multilateral trading system if the World Trade Organization (“WTO”) is upgraded to a second version. Consequently, China must prepare itself for meeting the high-standards of TPP-style agreements at some point in the future. It is further argued that U.S.’ withdrawal from the TPP offers a golden opportunity for Asian countries to establish a real Pan-Asia free trade area through the negotiations of the RCEP, but in the long run, regional integration in Asia should look beyond Asia to include the economies of the American side of the Pacific for both economic and strategic reasons.

The Article is organized as follows. Part I analyzes the early stage of regionalism in East Asia, which started at the turn of the 21st century, focusing on the China-Japan-U.S. rivalries in the competition for regional integration models. Part II examines the rise and demise of the TPP. Part III discusses the impacts of the TPP on U.S.-China trade relations and Asian regionalism. Part IV discusses the ongoing fundamental changes in U.S.-China trade relations in the Post-TPP Trump Era. Lastly, Part V concludes with some policy recommendations.

## I. CHINA’S EARLY PARTICIPATION AND THE CHINA-JAPAN RIVALRY IN EAST ASIAN REGIONALISM

### A. *East Asian Regionalism and China’s Early Participation*

As noted previously, regionalism in East Asia arguably dates back to the 1992-established AFTA, although this was not a serious beginning of regional integration as the AFTA has not even realized meaningful free trade within ASEAN, let alone generating impact at the Pan-Asian level.<sup>23</sup> At the end of the 1990s, highly trade-dependent countries in ASEAN, most notably Singapore, began to look at FTAs in response to regional and global economic

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<sup>23</sup> See *supra* notes 12-15 & the accompanying text.

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events that included the 1997-1998 Asian Financial Crisis, the collapse of the WTO's meeting in Seattle, and China's anticipated accession to the WTO. Singapore and Japan established a Joint Study Group to examine the feasibility of a bilateral FTA in December 1999, which led to the signing of the Japan-Singapore Economic Partnership Agreement ("JSEPA") in January of 2002.<sup>24</sup>

The landmark regional integration initiative that kicked off this wave of regionalism in Asia was the ASEAN-China FTA ("ACFTA"), which was surprisingly proposed to ASEAN countries by the then Chinese Premier Zhu Rongji at the ASEAN-China Summit in November of 2000.<sup>25</sup> An expert group was quickly formed to examine the feasibility of such a FTA, and negotiations commenced in 2001.<sup>26</sup> In November of 2002, China and ASEAN countries were able to sign a Framework Agreement for the ACFTA.<sup>27</sup> The ASEAN-China Free Trade Area, which is based on a range of agreements between China and ASEAN on trade in goods, services, investments, and other matters, came into being on January 1, 2010, as the world's biggest regional trade deal measured by population and third largest by nominal GDP.<sup>28</sup>

Arguably, it was the ACFTA that triggered the new wave of Pan-East Asian regionalism. China was the first country that entered FTA relations with ASEAN. The ACFTA set the framework and precedent for the FTAs that ASEAN signed with

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<sup>24</sup> See Press Release, Singapore Ministry of Foreign Affairs, Entry into Force of the Agreement Between Japan and Singapore for a New Age Economic Partnership (Oct. 31, 2002) (on file with the Singapore Ministry of Foreign Affairs).

<sup>25</sup> See Wang, *supra* note 16, at 124.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Andrew Walker, *China and Asean free trade deal begins*, BBC (Jan. 1, 2010, 12:33 AM), <http://news.bbc.co.uk/2/hi/business/8436772.stm>; see generally Mohamed Aslam, *The Impact of ASEAN-China Free Trade Area Agreement on ASEAN's Manufacturing Industry*, INT'L J. CHINA STUD., Apr. 2012, at 43; see generally SARAH Y. TONG & CATHERINE CHONG SIEW KENG, CHINA-ASEAN FREE TRADE AREA IN 2010: A REGIONAL PERSPECTIVE (E. Asian Inst. of Nat'l Univ. of Sing. ed., 2010).

Korea in 2007, Japan in 2008, and Australia, New Zealand, and India in 2009.<sup>29</sup> In Asia, China, Japan, and Korea were newcomers to regionalism, but the ASEAN+1 FTAs signed by them show that “the three major East Asian countries have undergone a strategic policy change from favoring the multilateral approach for global free trade to actively participating in regional grouping in order to regain their growth momentum after the [Asian Financial Crisis]”.<sup>30</sup> In tandem with pursuing the ACFTA, by 2010, the number of FTAs China concluded totaled ten, with economies like Pakistan, Chile, New Zealand, Singapore, Peru, Hong Kong, Macau, Taiwan, and Costa Rica.<sup>31</sup>

*B. Politicized East Asian Regionalism: China-Japan Rivalry for Regional Leadership*

From the very beginning of this regional economic integration wave, Asian countries were struggling with identifying the geographic coverage of the economic regionalism, out of, however, mainly geopolitical concerns. Several regional grouping ideas were proposed but favored by different major powers in the region. China initially indicated its willingness to negotiate a trilateral FTA among China, Japan, and South Korea.<sup>32</sup> The concern for strong domestic opposition within the three Northeast countries led them to agree that ASEAN was the ideal center to hold East Asia together, which led to the idea of an ASEAN+3 model of regionalism.<sup>33</sup> The ASEAN+3 FTA was officially

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<sup>29</sup> In the case of the ASEAN-Japan FTA, it was noted that “[p]rompted by the China + ASEAN framework agreement, Tokyo followed suit.” See Khairy Tourk, *The Political Economy of East Asian Economic Integration*, 15 J. ASIAN ECON. 843, 857 (2004).

<sup>30</sup> Jong-Wha Lee & Innwon Park, *Free Trade Areas in East Asia: Discriminatory or Non-discriminatory?*, 28 WORLD ECON. 21, 23 (2005).

<sup>31</sup> See Jiangyu Wang, *China and East Asian Regionalism*, 17 EUR. L. J. 611, 613 (2011).

<sup>32</sup> Kawai & Wignaraja, *supra* note 17, at 501.

<sup>33</sup> *Id.* n.9 (indicating that Japan was “cautious about [a China-Japan-Korea FTA] at this stage” officially because Japan wanted China to demonstrate its compliance with its WTO obligations).

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proposed by China,<sup>34</sup> and favored by South Korea and ASEAN, at least initially.<sup>35</sup>

The ASEAN+3 model of regional cooperation commenced when China, Japan, and South Korea were invited to the informal ASEAN Leaders' Meeting in December of 1997 amid the Asian Financial Crisis.<sup>36</sup> Since then, numerous inter-governmental initiatives were developed under the umbrella of ASEAN+3, including the rather successful regional financial cooperation in Asia that produced the Chiang Mai Initiative, which is Asia's only regional liquidity support arrangement, the regional economic surveillance process, and the Asian bond market.<sup>37</sup> It was also the model envisaged by the East Asian Vision Group in its 2001 report, which recommended the establishment of an East Asian Free Trade Area ("EAFTA") embracing the ASEAN+3 grouping.<sup>38</sup>

China has been a firm supporter of the EAFTA and East Asia's regional integration, on the condition, however, that it is

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<sup>34</sup> *Id.*

<sup>35</sup> Tourk, *supra* note 29, at 858. In January 2018, China has concluded 16 FTAs and is engaging in negotiations for 11 other FTAs. *See* CHINA FTA NETWORK, <http://fta.mofcom.gov.cn/english/index.shtml> (last visited Jan. 23, 2018).

<sup>36</sup> Masahiro Kawai & Ganeshan Wignaraja, *ASEAN+3 Or ASEAN+6: Which Way Forward?* 6 (Asian Dev. Bank Inst., Discussion Paper No. 77, 2007), <https://www.adb.org/sites/default/files/publication/156716/adbi-dp77.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> EAST ASIAN VISION GROUP, TOWARDS AN EAST ASIAN COMMUNITY: REGION OF PEACE, PROSPERITY AND PROGRESS 3 (2001), <http://www.mofa.go.jp/region/asia-paci/report2001.pdf>.

based on the ASEAN+3 model.<sup>39</sup> With its rapidly growing economic might, China seemed to be confident that a “10+3” FTA would eventually run in China’s favor and strengthen China’s dominance in the region, even though Japan and Korea were economically much more developed than China.<sup>40</sup> China’s enthusiasm for this model was, however, well received by ASEAN, and was written into a Joint Declaration signed by the Chinese Premier Wen Jiabao and the heads of the ten ASEAN governments in October of 2003, based on which, China and ASEAN agreed to “[m]ake the ASEAN Plus Three mechanism as the main channel to move forward cooperation and regional economic integration in East Asia as a whole so as to promote

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<sup>39</sup> See ZHANG YUNLING, CHINA AND ASIAN REGIONALISM 8 (2010) (indicating “China takes ‘10+3’ . . . as the core course for EAC [East Asian Community]”); see also 10+3 Hézuo 20 Zhōunián: Mài Xiàng Dōngyà Jīngjì Gòngtóngtǐ, Wàijiāo Bù Huíyīng (10+3 合作20周年：迈向东亚经济共同体，外交部回应) [The 20th Anniversary of the 10+3 (ASEAN+3) Cooperation: Comment of the PRC Ministry of Foreign Affairs on the Path to East Asian Community], CANKAOXIAOXI.COM (June 25, 2017), <http://www.cankaoxiaoxi.com/china/20170625/2145968.shtml> (indicating that “the ‘10+3’ model is the main avenue for East Asian cooperation, and the main platform for establishing an East Asian regional economic community” and that “China has always attached high degree of importance to and always enthusiastically supported and participated in the ‘10+3’ model of cooperation”).

<sup>40</sup> See Wáng Jiāngyǔ (王江雨) [Wang Jiangyu], Yàzhōu Jīng Jǐ Yǐtǐ Huà de Géjú, Luàn Jú Héjiě Jú (亚洲经济一体化的格局、乱局和解局) [Asian Economic Integration: State of Affairs, Messy Situation, and Solutions], CAIJING MAGAZINE (Nov. 28, 2015), <http://comments.caijing.com.cn/20151128/4020687.shtml> (indicating that China believed this model was in its best interest because (1) this model is relatively smaller in size than other models and as such is more manageable and less risky; (2) it can exclude suspicious countries such as India and Australia; and (3) China is confident that it is only a matter of time before it will inevitably play a dominate role in this region as its economic and comprehensive powers continue to grow).

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sustainable development and common prosperity there.”<sup>41</sup> Ever since, Chinese delegates have tried hard to sell the ASEAN+3 model to other East Asian countries.<sup>42</sup>

Japan initially supported the idea of ASEAN+3, but quickly backed down from it.<sup>43</sup> Instead, Japan proposed a bigger regional deal, or the ASEAN+6 grouping, which converts ASEAN+3 to a larger trade block to include Australia, New Zealand, and India.<sup>44</sup> The China-Japan rivalry appeared to be more visible in 2004 and 2005. ASEAN leaders, through a suggestion of the East Asian Vision Group, agreed in November of 2004 to convene an East Asian Summit (“EAS”). The first EAS was held in Kuala Lumpur on December 14, 2005.<sup>45</sup> Arguments about who to invite between China and Japan preceded the Summit. “China favored a guest list limited to ASEAN+3. Japan, seeking counterweights to China’s influence, argued successfully for Australia, India, and New Zealand to be included.”<sup>46</sup> The EAS has since become a pan-Asia forum for the sixteen countries, known as the ASEAN+6 forum.<sup>47</sup>

<sup>41</sup> Ass’n of Southeast Asian Nations [ASEAN], *Joint Declaration of The Heads of State/Government of the Association of Southeast Asian Nations and the People’s Republic of China on Strategic Partnership for Peace and Prosperity* (May 11, 2012), [http://asean.org/?static\\_post=external-relations-china-joint-declaration-of-the-heads-of-stategovernment-of-the-association-of-southeast-asian-nations-and-the-people-s-republic-of-china-on-strategic-partnership-for-peace-and-prosp](http://asean.org/?static_post=external-relations-china-joint-declaration-of-the-heads-of-stategovernment-of-the-association-of-southeast-asian-nations-and-the-people-s-republic-of-china-on-strategic-partnership-for-peace-and-prosp).

<sup>42</sup> See, e.g., *Zhōngguó Zhīchí Dōngméng Zhǔdǎo “10+3” Jīngjì Hézuò* (中国支持东盟主导‘10+3’经济合作) [China Supports ASEAN Playing the Leading Role in the “10+3” Model of Economic Cooperation], SINA (Aug. 25, 2006), <http://news.sina.com.cn/w/2006-08-25/09199847099s.shtml> [hereinafter China Supports 10+3].

<sup>43</sup> Masahiro Kawai and Ganeshan Wignaraja noted Japan’s cautious attitude towards the ASEAN+3 FTA proposed by China: “[Japan’s] official view is that, before negotiating an FTA/EPA, China must clearly demonstrate that compliance with all the commitments made in WTO accession negotiations.” See Kawai & Wignaraja, *supra* note 17, at 501.

<sup>44</sup> *Id.*

<sup>45</sup> POMFRET, *supra* note 14, at 95.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 96-97; see also Masahiro Kawai, *Evolving Economic Architecture in East Asia* 22 (Asian Dev. Bank Inst., Discussion Paper No. 84, 2007), <https://www.adb.org/sites/default/files/publication/156723/adb-dp84.pdf>.

No agreement, however, was reached to accommodate Russia's membership in the EAS, albeit Russia's request was supported by China and India.<sup>48</sup>

Obviously, Australia, New Zealand, and India were brought into the EAS to check the growing influence of China, despite China's Premier Wen Jiabao's call that East Asian regionalism should be "led by the East Asian countries."<sup>49</sup> In that sense, the first EAS "can be seen as a significant setback for Chinese diplomacy."<sup>50</sup> On the other hand, China's lack of interest in participating in negotiations for an ASEAN+6 based Comprehensive Economic Partnership in East Asia ("CEPEA"), proposed by Japan in 2006 as a counter-proposal to China's idea of an ASEAN+3 FTA, was one of the main reasons that the ASEAN+6 regionalism made little progress between 2007 and 2009.<sup>51</sup> At that time, the politicization of regionalism turned economic integration in Asia into word games. "It is now understood that the core of East Asian cooperation lies in ASEAN as the 'driving force,' with ASEAN+3 as the 'main vehicle' for the realization of an eventual East Asian economic community, with the EAS as 'an integral part of the overall evolving regional architecture.'"<sup>52</sup> In other words, regional economic integration conducted by Asians themselves stalled at that time, thanks to the lack of East Asia's indigenous leadership because of the China-Japan rivalry.

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<sup>48</sup> POMFRET, *supra* note 14, at 95.

<sup>49</sup> Philip Bowering, Opinion, *Towards an "Asian Union,"* N.Y. TIMES (Jun. 18, 2005), <http://www.nytimes.com/2005/06/18/opinion/philip-bowering-toward-an-asian-union.html>.

<sup>50</sup> *Id.*

<sup>51</sup> As noted previously, China always believed that ASEAN+3 (10+3) was the major channel to the realization of regional economic integration in Asia, and was suspicious of accepting Non-East Asian members, such as Australia and India into the regional integration circle in East Asia. *See supra* notes 34-37 & the accompanying texts. On the other hand, it was also pointed out that other members' lack of interest in ASEAN+6 was because of "Japanese reluctance to open its market to sensitive imports." *See* POMFRET, *supra* note 14, at 97.

<sup>52</sup> Kawai & Wignaraja, *supra* note 17, at 509.

2018 *Between Power Politics & International Economic Law* 397C. *The Role of the United States in Asian Regionalism: Indifference, Exclusion and Responses*

There were generally two concerns about Asian regionalism when it started in the 2000s. The first was the conventional unease with regionalism's negative impact on global trade liberalization, much discussed in the literature on regionalism.<sup>53</sup> The second is related to U.S.' involvement in Asia. Asia's new regionalist proposals, be it an ASEAN+3 or ASEAN+6 FTA, share a common feature: the exclusion of the U.S., which is historically and practically an Asian power. In the China-Japan rivalry, Asian countries once debated about whether to invite Australia, New Zealand, India, and even Russia to the club, but the U.S. was not considered to be part of the economic integration process in Asia. As Fravel and Samuels observed in 2005, "most of the partnerships exclude the United States altogether—and more are being formed every year."<sup>54</sup>

The lack of participation by the U.S. was nevertheless largely self-chosen exclusion. In part because it was preoccupied with the War on Terror, and in part because it was not interested in the shallow integration projects in Asia, the U.S. "showed less concern about East Asian regionalism in the early 2000s than it had in the 1990s."<sup>55</sup> As observed by Takashi Terada:

The United States had never been interested in participating in any East Asia (as opposed to Asia-Pacific) regional institution until Barack Obama assumed office in January 2009 and subsequently declared himself "America's first Pacific

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<sup>53</sup> See NAKO MUNAKATA, *TRANSFORMING EAST ASIA: THE EVOLUTION OF REGIONAL ECONOMIC INTEGRATION* 15 (2006).

<sup>54</sup> Taylor Fravel & Richard J. Samuels, *The United States as an Asian Power: Realism or Conceit?*, MIT CTR. INT'L STUD.: AUDIT OF CONVENTIONAL WISDOM 2 (2005).

<sup>55</sup> POMFRET, *supra* note 14, at 95.



President.” One of the first steps the Obama administration took in regard to regional engagement was to sign ASEAN’s Treaty of Amity and Cooperation in Southeast Asia (TAC) in July 2009, fulfilling the only precondition for official EAS participation that had not previously been met by the United States.<sup>56</sup>

However, with China’s rapid rise in the region, America’s original indifference gradually turned into anxiety and even “fear of exclusion,” particularly with respect to the escalation of the ASEAN+3 framework to the level of a summit like the EAS. As Naoko Munakata noted:

Another of Washington’s concerns, expressed in mid-2004, was that the idea of a separate East Asia summit circulating at the ASEAN+3 meetings was designed to enhance the influence of China. Because the decision to hold the summit was made somewhat abruptly and difference of its purpose and that of the existing ASEAN+3 leaders meeting was not made clear, some suspected that the true aim might be to exclude US influence in the region and China might use it as a forum to dominate the region.<sup>57</sup>

Responses from the U.S. are threefold. First, senior officials signified warnings to Asian countries, especially

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<sup>56</sup> Takashi Terada, *ASEAN Plus Three: becoming more like a normal regionalism?*, in ROUTLEDGE HANDBOOK OF ASIAN REGIONALISM 364, 371 (Mark Beeson & Richard Stubbs eds., Routledge 2012).

<sup>57</sup> MUNAKATA, *supra* note 53, at 16.

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American allies in the region, that regional integration in Asia was marching toward an unwelcome direction without U.S.' involvement. Beginning in 2004, U.S. senior officials expressed concerns about Asia's regional progress without American involvement.<sup>58</sup> Secretary of State Colin L. Powell, in August of 2004 in Tokyo, urged Asian countries not to participate in Asia-only forums "in a way that undercuts the very, very fine and strong relations that the United States has with each and every one of our friends in Asia."<sup>59</sup> It was suspected in the U.S. that China's goal for promoting regionalism was to exclude America from Asia. Richard Armitage, former U.S. Deputy Secretary of State, warned before the first EAS that such a forum "would exclude the United States, which China was particularly enthusiastic about."<sup>60</sup>

Second, in light of the view that a China-dominated regionalization project might have excluded the U.S. as the objective, the U.S. lobbied Japan, its most important ally in Asia, not to endorse China's proposal for an EAS, which was part of the reason Japan withdrew its initial backing of the ASEAN+3 model.<sup>61</sup> Still in favor of Asian regionalism, Japan counter-proposed the ASEAN+6 framework to introduce Australia, India, and New Zealand into the circle of Asian countries to dilute Chinese influence.<sup>62</sup> More significantly, "a greater weight of democratic countries with market-based economies might make the grouping more acceptable to the USA."<sup>63</sup>

Third, the U.S. endorsed, albeit a bit unofficially, the idea of Free Trade Area of the Asia-Pacific ("FTAAP") under the umbrella of the Asia-Pacific Economic Cooperation ("APEC"), an

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<sup>58</sup> Mitchell B. Reiss, Director of Policy Planning Staff at the State Department, remarked in November of 2004 in Tokyo that "while we encourage greater integration, greater economic development, greater dialogue among all the countries of this region, we don't want to be excluded from that conversation." Fravel & Samuels, *supra* note 54, at 2.

<sup>59</sup> MUNAKATA, *supra* note 53, at 191.

<sup>60</sup> *Id.*

<sup>61</sup> POMFRET, *supra* note 14, at 95.

<sup>62</sup> *Id.* at 96.

<sup>63</sup> *Id.*

ideal so inclusive that most of the countries along the Pacific Rim would be embraced. The APEC, spear-headed by Japan and Australia, had its first meeting in November of 1989, and it was attended by the finance ministers from twelve Asian-Pacific states with the clear absence of China (China later became an APEC member in 1991).<sup>64</sup> The idea of the FTAAP has its origin in a recommendation of the APEC Business Advisory Council ("ABAC") in a study report of an Asia-Pacific-wide FTA, commissioned by APEC leaders in 2004 and 2005.<sup>65</sup> APEC leaders were initially unenthusiastic about the FTAAP, but the U.S. changed its attitude in 2006 and began to promote the FTAAP as a base agreement for the vast Asia Pacific region.<sup>66</sup>

According to Fred Bergsten, the former Director of the Peterson Institute for International Economics, the former Assistant Secretary for International Affairs of the U.S. Treasury, and Chairman of APEC's Eminent Persons Group for trade policy strategy, an FTAAP would be a "Plan B" to get world trade policy back on track in view of the ailing Doha Round negotiations of the WTO.<sup>67</sup> Further, given the disturbance caused by the explosion of FTAs in Asia and elsewhere, "one of the key advantages of the FTAAP is that it would sweep together the smaller deals already in place and head off those that will otherwise ensue."<sup>68</sup>

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<sup>64</sup> See Nick Bisley, *APEC: Asia-Pacific Economic Cooperation*, in MARK BEESON & RICHARD STUBBS, *ROUTLEDGE HANDBOOK OF ASIAN REGIONALISM* 350, 351-53 (2012).

<sup>65</sup> Robert Scollay, Professor of Economics, Presentation at ISEAS Seminar: A Free Trade Area of the Asia Pacific (FTAAP)? Rational and Feasibility (Mar. 19, 2007), <https://www.pecc.org/resources/publications/trade-and-investment/2028-a-free-trade-area-of-the-asia-pacific-ftaap-rationale-and-feasibility/file>; see also Fred Bergsten, *Toward a Free Trade Area of the Asia Pacific*, PB07-2 PETER G. PETERSON INST. INT'L ECON. 1 (2007), <https://piie.com/sites/default/files/publications/pb/pb07-2.pdf>.

<sup>66</sup> *Id.*

<sup>67</sup> Fred Bergsten, *Plan B for world trade*, FIN. TIMES (Aug. 15, 2006), <https://www.ft.com/content/390d8cec-2c82-11db-9845-0000779e2340>.

<sup>68</sup> *Id.*

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More significantly, the FTAAP would successfully address the exclusion of the U.S. from Asian regionalism and alleviate the play of geopolitics by the major powers in the region through trans-Pacific economic cooperation. For this, Bergsten lucidly wrote:

[An] FTAAP would embed these Asia-only arrangements in a broader Asia-Pacific framework. It would prevent the creation of a new division across the Pacific, with its adverse security as well as economic consequences for relations between east Asia and the US. The US and China would be the natural leaders of an FTAAP process and could simultaneously improve the prospects for resolving their bilateral trade tensions through such a regional framework.<sup>69</sup>

Arguably, the FTAAP proposal by the U.S. in 2006-2007 offered an opportunity for China, Japan, and other Asia economies to welcome the U.S. to the newly-developed Asian regionalism. After all, even from a realist perspective, the U.S. has been the de-facto leading power in Asia Pacific, as well as one of the largest markets and sources of investment and technology for many Asian countries. It has also been the only guarantor of peace and stability in Asia. However, Asian regionalism's existing players, including both China and Japan, did not show much enthusiasm in it.<sup>70</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> China expressed skepticism about the FTAAP in Hanoi in 2006, citing two concerns that included the adverse effect on the WTO's Doha Round and a delay in implementing the APEC's Bogor goals. It was however noted that China's main concerns lie in promoting its own bilateral and regional deals including the ASEAN+3 FTA. Japan agreed to support the FTAAP along with its own ASEAN+6 deal, indicating its preference lied in the ASEAN+6 model. *See Bergsten, supra* note 65, at 1-3.

China continued to voice its firm commitment to the ASEAN+3 or “10+3” style of regional economic integration in Asia for years after the FTAAP proposal was circulated.<sup>71</sup> A year later, the U.S. activated its mega-FTA project, the TPP, which has aroused more intensified power politics in Asia and essentially divided Asia and stalled its indigenous economic integration process. But even in 2010, when the TPP negotiations already entered a substantive stage, Chinese officials were still trying hard to sell the ASEAN+3 FTA idea to other Asian governments. Yi Xiaozhun, China’s Deputy Commerce Minister, indicated in an ASEAN media conference that the “conditions are virtually mature” for an ASEAN+3 free trade area:

Since 2005, the studies for a “10+3” FTA have been conducted for five years. . . . I think the conditions are ripe for accelerating regional integration in East Asia. We should . . . firmly make the East Asian Community the long-term goal of the “10+3” cooperation, support the core leadership role of the ASEAN in the “10+3” and East Asia integration process. All the governments concerned should fully use the “10+3” as the main vehicle to steadfastly build the “10+3” FTA in accordance with the research results and the recommendations about the “10+3” FTA, which will eventually be followed by the full realization of East Asian economic integration if

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<sup>71</sup> See Zhōngguó Zhīchí Dōngméng “10+3” Jīngjì Hézuò Jìnchéng (中国支持东盟“10+3”经济合作进程) [PRC Ministry of Commerce: China Supports the ‘10+3’ Model of Economic Integration Led by ASEAN], CHINA NET (Aug. 25, 2006), [http://www.china.com.cn/economic/zhuanli/chinaeast15/txt/2006-08/25/content\\_7256804.htm](http://www.china.com.cn/economic/zhuanli/chinaeast15/txt/2006-08/25/content_7256804.htm).

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we proceed based on the principles of “doing the easiest things first” and “doing things gradually.” . . . We stick to open regionalism . . . and will not form a self-insulated or exclusive group. . . . However, we will expand the scope of regional integration in Asia only after we can make substantial progress on the “10+3” FTA.<sup>72</sup>

This telling statement, in stark contrast with the words of Bergsten, showed that China was still unwavering in promoting an ASEAN+3 FTA, apparently excluding the official presence of the U.S. in the process, despite the signs that Asian regionalism was already being shaped—largely by the TPP—in a direction not in China’s favor in the way ahead.

## II. THE RISE AND DEMISE OF THE TPP

When the TPP negotiations were concluded and the final text was reached by the twelve Pacific Rim states on October 5, 2015, it was immediately recognized as the “largest regional trade accord in history,” with its members representing roughly 40 percent of global GDP and one-third of world trade.<sup>73</sup> Mighty as it

<sup>72</sup> Jiāqiáng Qūyù Hézuò, Gòng Chuàng Měihǎo Wèilái-yì Xiǎo Zhǔn Fù Bùzhǎng Zài Dì Sān Jiè 10+3 Méitǐ Hézuò Yántǎo Huì Shàng de Jiǎnghuà (加强区域合作，共创美好未来-易小准副部长在第三届10+3媒体合作研讨会上的讲话) [Strengthening Regional Cooperation and Creating a Bright Future for All of Us – Speech of Deputy Minister of Ministry of Commerce at the Third Workshop on ‘10+3’ Media Cooperation], MINISTRY OF COM.: PEOPLE’S REPUBLIC OF CHINA (May 22, 2017), <http://gjs.mofcom.gov.cn/article/af/ak/201004/20100406881614.shtml>.

<sup>73</sup> Kevin Granville, *The Trans-Pacific Partnership Accord Explained*, N.Y. TIMES (Oct. 5, 2015), [https://www.nytimes.com/2015/10/06/business/international/the-trans-pacific-partnership-trade-deal-explained.html?\\_r=0](https://www.nytimes.com/2015/10/06/business/international/the-trans-pacific-partnership-trade-deal-explained.html?_r=0). The twelve countries are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam. *Id.*

might have sounded, the TPP has a rather humble origin. Known originally as the Trans-Pacific Strategic Economic Partnership, it was conceived by three small economies—Singapore, New Zealand, and Chile—in 2003, and concluded by these three countries together with Brunei in 2006 when it was called the Pacific 4, or P-4 agreement.<sup>74</sup>

The U.S. entered talks with the P-4 countries on liberalization in financial services and investment in March of 2008.<sup>75</sup> President George W. Bush, not long after his call for “serious consideration” to the FTAAP,<sup>76</sup> notified Congress of his intention to participate in TPP negotiations in November and persuaded Australia, Peru, and Vietnam to join with the U.S. in December of 2008.<sup>77</sup> The Obama Administration waited until November of 2009 to commit the U.S. to continue with TPP negotiations “with the goal of reshaping a regional agreement that will have broad-based membership and high standards worthy of a 21<sup>st</sup>-century trade agreement.”<sup>78</sup> The nine negotiating parties, led by the U.S., jointly issued a statement at the 2011 APEC Leaders Meeting in Honolulu to announce their vision to make the TPP “a comprehensive, next generation regional agreement that liberalizes trade and investment and addresses new and traditional issues and 21<sup>st</sup>-century challenges.”<sup>79</sup> With the accession of Canada, Mexico, and Japan in the following years, the total number of TPP members reached twelve in 2013.<sup>80</sup>

The final text of the TPP agreement, signed by the twelve parties in February of 2016, comprises of 30 chapters, which deal not only with traditional trade issues, such as market access for goods, rules of origin, customs administration, trade remedies,

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<sup>74</sup> IAN FERGUSSON, MARK MCMINIMY & BROCK R. WILLIAMS, CONG. RESEARCH SERV., R42694, THE TRANS-PACIFIC PARTNERSHIP (TPP) NEGOTIATIONS AND ISSUES FOR CONGRESS 1 (2015).

<sup>75</sup> *Id.*

<sup>76</sup> Bergsten, *supra* note 65, at 1.

<sup>77</sup> FERGUSSON, MCMINIMY & WILLIAMS, *supra* note 74, at 1.

<sup>78</sup> *Id.* at 3.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

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technical barriers, investment, services, and intellectual property rights (“IPRs”), but also cutting-edge issues such as e-commerce, state-owned enterprises (“SOEs”), regulatory coherence, enforceable labor and environmental rules, as well as “other policy areas that are less obviously associated with trade or trade barriers.”<sup>81</sup>

It is helpful to briefly summarize the content of the TPP agreement here. On market access, approximately 99 percent of the tariff lines for trade in goods will be duty-free once the TPP would take effect.<sup>82</sup> The liberalization on trade in services is, if not revolutionary, at least tremendous, not only because it follows the “negative-list” approach. Exceptionally, it generally prohibits the requirement for local presence of service suppliers.<sup>83</sup> On investment, it establishes strong protection for investors based on the U.S. Bilateral Investment Treaty, and creates an Investor-State Dispute Settlement (“ISDS”) for private investors to seek arbitration against host states.<sup>84</sup> On intellectual property rights, the level of protection goes significantly beyond the current WTO provisions in Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) Agreement (*e.g.*, copyright increased from 50 years to 70 years).<sup>85</sup> On digital trade and e-commerce, TPP members are prohibited from setting up barriers to block cross-border flows of data over the internet.<sup>86</sup> The chapter on State-Owned Enterprises (“SOE”) offers an operational definition on SOE as well as disciplines regarding transparency, non-discrimination,

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<sup>81</sup> Daniel Ikenson et al., *Should Free Traders Support the Trans-Pacific Partnership? An Assessment of America's Largest Preferential Trade Agreement 2* (Cato Inst., Working Paper No. 39, 2016).

<sup>82</sup> See Trans-Pacific Partnership Agreement ch. 1, Feb. 4, 2016, Off. of U.S. Trade Representative., <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text> [hereinafter TPP].

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* ch. 9.

<sup>85</sup> *Id.* ch. 18; *see also* Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

<sup>86</sup> TPP, *supra* note 82, ch. 14.



commercial consideration, and general prohibition on government's commercial assistance.<sup>87</sup> TPP's labor and environmental rules require the adoption and enforcement of laws in line with relevant international labor standards and environmental agreements.<sup>88</sup> Finally, the TPP establishes a simpler institutional structure that includes a dispute settlement mechanism with only one panel process to reach the final award.<sup>89</sup>

However comprehensive and significant it may be, the U.S.-led TPP is now dead as a result of President Trump's executive order to pull the U.S. out of it. The Presidential Order indicated the rationale for abandoning the TPP was because the agreement did not meet "the intention of [the Trump] Administration to deal directly with individual countries on a one-on-one (or bilateral) basis in negotiating future trade deals."<sup>90</sup> The United States Trade Representative ("USTR") was directed "to withdraw the United States as a signatory to the [TPP], to permanently withdraw the United States from TPP negotiations, and to begin pursuing, wherever possible, bilateral trade negotiations to promote American industry, protect American workers, and raise American wages."<sup>91</sup> However, this move was interpreted by *The New York Times* as President Trump's signal "that he would not follow old rules, effectively disregarding longstanding Republican orthodoxy that expanding global trade was good for the world and America – and that the United States should help write the rules of international commerce."<sup>92</sup>

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<sup>87</sup> *Id.* ch. 17.

<sup>88</sup> *Id.* ch. 19; *id.* ch. 20.

<sup>89</sup> *Id.* ch. 28.

<sup>90</sup> Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement, Donald J. Trump, President of the United States, The White House (Jan. 23, 2017) (on file with WhiteHouse.gov).

<sup>91</sup> *Id.*

<sup>92</sup> Peter Baker, *Trump abandons Trans-Pacific Partnership, Obama's Signature Trade Deal*, N.Y. TIMES (Jan. 23, 2017), [https://www.nytimes.com/2017/01/23/us/politics/tpp-trump-trade-nafta.html?\\_r=0](https://www.nytimes.com/2017/01/23/us/politics/tpp-trump-trade-nafta.html?_r=0).

2018 *Between Power Politics & International Economic Law* 407III. IMPACTS OF THE TPP ON U.S.-CHINA TRADE  
RELATIONS AND ASIAN REGIONALISMA. *Containing China Through a Trade Agreement?*

Not surprisingly, news on the conclusion of the TPP negotiations triggered extensive media coverage and heated debates worldwide, to some degree because China was excluded from the mega-regional deal. This author has observed elsewhere how the TPP is perceived within China:

Among Chinese experts, there exist various opinions in regard to both the perceived effects of the TPP agreement itself and the process by which parties to the agreement were chosen. Some believe that the TPP is a strategic exercise by the United States to try to “contain” China’s rise in economic power and geopolitical influence. Others have concerns as to whether the TPP represents a threat to the position of the World Trade Organization (WTO) as the standard-bearer of global trade rules. Still some view the agreement optimistically, believing this could be a stimulus for China’s further integration into the world economy.<sup>93</sup>

Media in the U.S. has not been shy about the strategic nature of the TPP. In criticizing presidential candidate Trump’s trade policy, *The New York Times* lamented:

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<sup>93</sup> Jiangyu Wang, *Decoding the Trans-Pacific Partnership: Will the U.S.-led trade agreement pose a threat to China?*, BEIJING REV. (May 20, 2017), [http://www.bjreview.com/World/201510/t20151026\\_800041255.html](http://www.bjreview.com/World/201510/t20151026_800041255.html).

The agreement, known as TPP, was intended to play a strategic role in American diplomacy. It was the economic linchpin of Mr. Obama's effort to reaffirm the nation's role as a Pacific power and counter the rising influence of China, which was not part of the negotiations. Washington's abandonment of the pact is widely seen in the region as a blow to American prestige and an opening for China to negotiate trade rules, win friends among Asian nations and assert regional leadership.<sup>94</sup>

There are, however, two ways to look at the TPP insofar as its impact on China is concerned. As noted, many, if not most, Chinese and international commentators believed that the TPP was used by the U.S. to contain China.<sup>95</sup> For those observers, the TPP was simply a geopolitical tool to limit China's influence in the region for the following reasons.

First, China's absence from the TPP as the largest economy in Asia and second largest economy in the world would make the trade agreement economically much less sensible. Clearly, a regional-level FTA would be much more meaningful economically by including China. Studies on the economic effects of the TPP by Petri, Plummer, and Zhai suggested that "the greatest economic benefits were associated with agreements that spanned China and

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<sup>94</sup> *A Retreat from TPP Would Empower China*, N.Y. TIMES (Nov. 21, 2016), <https://www.nytimes.com/2016/11/21/opinion/a-retreat-from-tpp-would-empower-china.html>.

<sup>95</sup> See, e.g., Cai Penghong, *The Trans-Pacific Partnership: A Chinese Perspective*, PACIFIC ECON. COOPERATION COUNCIL (Oct. 4, 2011), <https://www.pecc.org/resources/trade-and-investment-1/1752-the-trans-pacific-partnership-a-chinese-perspective-ppt/file> (stating that "[i]t seems that U.S. is using the TPP as a tool as part of its Asia Pacific Strategy to contain China").

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the United States.”<sup>96</sup> For instance, it was estimated—calculated through an advanced computable general equilibrium (“CGE”) model—that “expanding the TPP from 12 to 17 members [to include China, Indonesia, South Korea, Philippines, and Thailand] would triple global benefits from 285 to 893 billion in U.S. dollars in 2025.”<sup>97</sup> Specifically:

1. Adding China to a 16-member TPP increases global benefits from \$451 to \$1,908 billion per year, or from 0.4 percent to 1.8 percent of world GDP. China’s benefits account for 2/3 of these changes, as Chinese gains increase from -\$82 billion under the TPP16 (suggesting trade diversion losses) to \$809 billion. These and other values are for 2025 relative to baseline projections, expressed in billions of 2007 dollars.
2. Every TPP16 economy benefits from adding China. The gains are roughly three times as high as under the TPP16 for Australia and the Americas. Gains more than double for Japan, Korea and Singapore. Smaller increments are estimated for Asian middle-income economies which are more competitive with China. Substantial additional losses are calculated for Taiwan, Hong

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<sup>96</sup> Peter Petri, Michael Plummer & Fan Zhai, *The TPP, China, And FTAAP*, in NEW DIRECTIONS IN ASIA-PACIFIC ECONOMIC INTEGRATION 78, 81 (Tang Guoqiang & Peter A. Petri eds., E.-W. Ctr. 2014).

<sup>97</sup> *Id.* at 83.

Kong and the ROW, economies  
excluded from the TPP17.<sup>98</sup>

Hence, one would be curious about how the TPP members were selected. If it was about the members' stage of economic development on the presumption that the higher the members' developmental level, the more likely for them to conclude a high-quality FTA, then China was obviously better positioned in this regard than some other TPP members, such as Vietnam and, arguably, Malaysia. On this basis, the fact that China was excluded must find its answer in geopolitics, not common economic welfare for the region.

Second, the numerous statements, speeches, commentaries, and analyses from official and private sources in the U.S. overwhelmingly suggested that the TPP represented a strategic move to counterbalance and restrict China's rising influence in Asia. Aston Carter, Obama's Defense Secretary, famously remarked that "in terms of our rebalance in the broadest sense, passing TPP is as important to me as another aircraft," because "[i]t would deepen our alliance and partnerships abroad and underscore our lasting commitment to the Asia-Pacific. And it would help us promote a global order that reflects both our interests and our values."<sup>99</sup> President Barak Obama also constantly maintained that the TPP dealt a way for the U.S. to "write the

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<sup>98</sup> Peter A. Petri, Michael G. Plummer & Fan Zhai, *China in the TPP*, ASIAN-PACIFIC TRADE (Feb. 4, 2014), <http://asiapacifictrade.org/wp-content/uploads/2012/10/Adding-China-to-the-TPP-4feb14.pdf>.

<sup>99</sup> Ash Carter, U.S. Sec'y of Def., Remarks on the Next Phase of the U.S. Rebalance to the Asia-Pacific, Speech Before the McCain Institute, Arizona State University (April 6, 2015) (transcript available on the Dep't of Def. website), <https://www.defense.gov/News/Speeches/Speech-View/Article/606660/remarks-on-the-next-phase-of-the-us-rebalance-to-the-asia-pacific-mccain-institut/>.

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rules” for Asia-Pacific and reassert primacy over China.<sup>100</sup> In an op-ed he wrote for *The Washington Post* urging U.S. Congress to pass the TPP, President Obama emphasized the geopolitical nature of the agreement as follows: “The world has changed. The rules are changing with it. The United States, not countries like China, should write them. Let’s seize this opportunity, pass the Trans-Pacific Partnership and make sure America isn’t holding the bag, but holding the pen.”<sup>101</sup>

The logic and need to hedge against China with the TPP, from the perspective of many American politicians and commentators, would sound simple and powerful. Since the TPP is an agreement to check China’s power, its failure would mean a huge defeat to the U.S. and benefit only China, America’s primary geopolitical competitor.<sup>102</sup> It was imagined that, without the TPP, Beijing would dictate policy and make rules for Asia.<sup>103</sup> Indubitably, the views based on this logic have been made understood (or misunderstood) in China and planted seeds of mistrust as to the U.S.’ intention behind the TPP.

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<sup>100</sup> Jerry Seib, *Obama: If We Don’t Write Trade Rules, China Will*, WALL ST. J. (Apr. 27, 2015), <http://www.wsj.com/video/obama-if-we-dont-write-trade-rules-china-will/2E2F928C-1747-435D-9CAB-EB3346FDEEB9.html>; see also Ikenson, *supra* note 81; David Francis, *Obama: Failure to Pass TPP Benefits Beijing*, FOREIGN POL’Y (Sept. 16, 2016), <http://foreignpolicy.com/2016/09/16/obama-failure-to-pass-tpp-benefits-beijing/>; Nathan Vanderklippe, *TPP Deal a Way for U.S. to Reassert Primacy over China*, GLOBE & MAIL (Oct. 5, 2015), <https://www.theglobeandmail.com/news/world/tpp-deal-a-way-for-us-to-reassert-primacy-over-china/article26660167/>.

<sup>101</sup> Barack Obama, *President Obama: The TPP would let America, not China, lead the way on global trade*, WASH. POST. (May 2, 2016), [https://www.washingtonpost.com/opinions/president-obama-the-tpp-would-let-america-not-china-lead-the-way-on-global-trade/2016/05/02/680540e4-0fd0-11e6-93ae-50921721165d\\_story.html?utm\\_term=.015159983ea4](https://www.washingtonpost.com/opinions/president-obama-the-tpp-would-let-america-not-china-lead-the-way-on-global-trade/2016/05/02/680540e4-0fd0-11e6-93ae-50921721165d_story.html?utm_term=.015159983ea4).

<sup>102</sup> Roger Cohen, *If the Trans-Pacific Partnership Crumbles, China Wins*, N.Y. TIMES (June 2, 2016), <https://www.nytimes.com/2016/06/03/opinion/the-right-asian-deal-trans-pacific-partnership.html> (“If T.P.P. falls apart, China wins. It’s as simple as that.”).

<sup>103</sup> *Id.*

One may argue that the above statements and speeches should be read with contextual considerations. After all, they might only carry sensitivity for an American audience in the context of American politics. For example, President Obama, because of the significant opposition he faced domestically, might find naming China as a convenient strategic move to win over American voters, especially when Donald Trump's critique of U.S.' trade policy toward China garnered massive support in the American public. This, arguably, did not necessarily mean the Obama Administration sought to contain China with the TPP. This argument, however, does run against the third reason why the TPP is believed by many Chinese as a geopolitical tool against China, which has much to do with the agreement's rules. In today's international trade, China is well-positioned at the central place in the global supply chains as a major manufacturing center, now producing about one-quarter of global output, largely thanks to China's ability to match developing-world labor costs with world-class infrastructures.<sup>104</sup> Nevertheless, the TPP might aim to deprive China of its position as a global production hub, or at least undermine it. As pointed out by the Office of the U.S. Trade Representative, one of the key features of the TPP is its "regional approach to commitments."<sup>105</sup> That is, the TPP was intended to facilitate "the development of production and supply chains, and seamless trade," among others, implicitly within the areas connected and covered by the TPP.<sup>106</sup>

The objective of establishing regional production and supply chains within the TPP area was designed to be achieved, in part, through a system of stringent rules of origin, which requires that only "originating goods," or goods genuinely produced by TPP members, could receive the lower tariffs or other benefits in

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<sup>104</sup> *The Future of Global Supply Chains: Insights from a CFR Workshop*, COUNCIL ON FOREIGN REL. (June 27, 2016), <https://www.cfr.org/report/future-global-supply-chains>.

<sup>105</sup> Press Release, U.S. Trade Representative, Summary of the Trans-Pacific Partnership Agreement, Off. of the U.S. Trade Representative (May 22, 2017) (on file with author).

<sup>106</sup> *Id.*

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accordance with the TPP.<sup>107</sup> Under the concept of cumulation, TPP members would treat materials from one TPP member in the same way they treat materials from any other TPP member when these materials are used to make a TPP product.<sup>108</sup> As noted by the USTR, the “cumulation” rule “strengthens incentives for TPP businesses to integrate production and supply chains within the TPP region, making it more attractive to do business with producers in the U.S. and other TPP countries than with producers in other countries.”<sup>109</sup>

The threat to Chinese exports was especially vivid with regard to textile trade, for which the TPP adopts a “yarn forward” rule of origin, requiring the end product to use yarns and fabrics from TPP countries in order to qualify for preferential treatment under TPP.<sup>110</sup> Currently in the American market, China and Vietnam are the two largest sources of imports for garment and footwear.<sup>111</sup> Yet Vietnam’s textile industry heavily relies on importing raw materials from China. In 2014, it imported 4 billion in U.S. dollars worth of fabrics from China, about a half of its total annual imports.<sup>112</sup> The “yarn forward” rule, however, would mandate Vietnam to cut back on imports from China, thus

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> TPP, *supra* note 82, ch. 3; *Rules of Origin and Origin Procedures Chapter Summary*, OFF. OF THE U.S. TRADE REPRESENTATIVE <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Rules-of-Origin-and-Origin-Procedures.pdf> (last visited May 21, 2017).

<sup>110</sup> *Textiles and Apparel Chapter Summary*, OFF. OF THE U.S. TRADE REPRESENTATIVE (last visited Mar. 25, 2018), <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Textiles-and-Apparel.pdf> (last visited Mar. 25, 2018); *see* TPP, *supra* note 82, ch. 4, art. 4.2.

<sup>111</sup> *See 2016 Nián Yuènnán Zài Měiguó Chéngyī Jìnkǒu Shìchǎng de Zhànyǒu Lǜ Shàngshēng* (2016年越南在美国成衣进口市场的占有率上升) [*Vietnam’s Shares in US Garment and Footwear Market Increased in 2016*], SHANGHAI INT’L COTTON EXCH. (Mar. 7, 2017), <http://www.cottonsh.com/news/show.action?id=7b1f45e92ac54183a402b9bbb4a4ecb3> (reporting that China’s market share was 41.5% and Vietnam’s was 12.45% in the garment and footwear markets in the U.S.).

<sup>112</sup> *Id.*



diverting Vietnam's sourcing of yarns and fabrics from China to TPP countries, hopefully the U.S. and Mexico.<sup>113</sup>

Some TPP rules, especially those concerning free flow of information on the internet and establishment of independent trade unions, challenge the authoritarian nature of China's political system on certain highly politically sensitive issues. This challenge, intentionally or unintentionally (from the American perspective), creates barriers that prevent China from joining the TPP in the capacity of an authoritarian state with socialist market economy.<sup>114</sup>

<sup>113</sup> Tom Wright & Mark Magnier, *Fabric of a Trade Deal: U.S. Asks Vietnam to Cut Out Chinese Textiles*, WALL ST. J. (June 24, 2015, 6:28 AM), <https://www.wsj.com/articles/fabric-of-a-trade-deal-u-s-asks-vietnam-to-cut-out-chinese-textiles-1435125498>.

<sup>114</sup> For instance, the TPP's "Electronic Commerce" Chapter requires a TPP member to ensure free flow of the global information and data. *See* TPP, *supra* note 82, ch. 14. "Each Party shall allow the cross-border transfer of information by electronic means." *Id.* ch. 14, art. 14.11. It also prohibits any party to require business to locate computing facilities in its territory "as a condition for conducting business in that territory," among others. *Id.* ch. 14, art. 14.13. These requirements run directly against Chinese laws and regulations such, as the PRC Cyber Security Law that took effect on June 1, 2017. *See* Zhōnghuá Rénmín Gònghéguó Wǎngluò Anquán Fǎ (中华人民共和国网络安全法) [Cybersecurity Law of the People's Republic of China] (promulgated by the Standing Comm. People's Cong., Nov. 7, 2016, effective June 1, 2017), [WWW.LAWINFOCHINA.COM](http://www.lawinfochina.com) [hereinafter PRC Cybersecurity Law]. China's notorious Great Firewall, an internet technological system of limiting access to foreign websites, has been used to block foreign web domains or even particular pages with websites which contain "harmful" foreign content from being accessed by residents in China. *See* E.H., *How does China censor the Internet?*, THE ECONOMIST (Apr. 22, 2013), <http://www.economist.com/blogs/economist-explains/2013/04/economist-explains-how-china-censors-internet>; *The Great Firewall: The art of concealment*, THE ECONOMIST (Apr. 6, 2013), <http://www.economist.com/news/special-report/21574631-chinese-screening-online-material-abroad-becoming-ever-more-sophisticated>. Further, Article 37 of the PRC Cyber Security Law, as a data-localization requirement, compels the operators of "critical information infrastructure" to store "individuals' personal information or important data" within China. *See* PRC Cybersecurity Law, *supra* note 114, art. 37. Clearly, these rules and policies are contrary to the TPP.

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Finally, it is important to point out that perception is not necessarily reality. What the above discussions have demonstrated is that the TPP was perceived by many as a China-containment tool. Containment may or may not work. Empirical evidence about the containment policy adopted in other parts of the world submits that this policy hardly works. For example, the U.S. embargo on Cuba, which started in the 1960s to bar Americans from trading with, investing in, or travelling to Cuba, has been described as a “half-century of failure.”<sup>115</sup> In December of 2014, President Obama called for Congress to end the embargo, admitting that, while this policy “has been rooted in the best of intentions,” it “has had little effect.”<sup>116</sup> With respect to the TPP, it is certainly open to doubt how much it could do to affect the Chinese economy. Furthermore, to the extent there is any containment element in the TPP, it was a half-hearted policy since the U.S. was pursuing collaboration on trade with China through other channels while simultaneously excluding China from the TPP. For instance, the U.S. and China engaged in formal negotiations for a Bilateral Investment Treaty (“BIT”) almost in tandem with the TPP negotiations.<sup>117</sup>

*B. Competitive Liberalization to Push China to Adopt Higher Standards?*

A different perspective that looks at the positive side of TPP’s impact on China asserts that the TPP can encourage “competitive liberalization” in trade policy, which shall eventually

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<sup>115</sup> Daniel Griswold, Dir., Ctr. for Trade Pol’y Stud. at the Cato Inst., *Four Decades of Failure: the U.S. Embargo against Cuba*, Speech Before the James A. Baker III Inst. Program (May 21, 2017) (transcript available on [www.cato.org](http://www.cato.org)).

<sup>116</sup> Alan Rappeport, *Obama Calls Cuba Embargo a Failure*, N.Y. TIMES (Dec. 17, 2014), <https://www.nytimes.com/politics/first-draft/2014/12/17/obama-calls-cuba-embargo-a-failure/>.

<sup>117</sup> TOWARD A US-CHINA INVESTMENT TREATY 3 (Peterson Inst. Int’l Econ. 2015), <https://piie.com/sites/default/files/publications/briefings/piieb15-1.pdf> (noting the talks for the U.S.-China BIT were launched in 2008 by the U.S. President George W. Bush and Chinese President Hu Jintao).

drive China into the fair game of economic liberalization. The concept of “competitive liberalization” denotes that free trade can be pursued as aggressively as possible at all three levels—bilateral, regional, and multilateral—simultaneously.<sup>118</sup> Not only are all three pursuits mutually reinforcing, they also induce and encourage each other. Thus, “an FTA can encourage movement in WTO negotiations, and vice versa.”<sup>119</sup> Proponents argue that the TPP would enable the U.S. to shape the directions of international trade and investment at the following levels:

[1] Encouraging market opening and economic reforms among TPP’s current members, particularly in emerging markets such as Malaysia and Vietnam;

[2] Creating incentives for other Asia-Pacific nations to follow suit, to match the preferential access that TPP members would gain in major markets such as the United States and Japan; and

[3] Addressing new trade barriers through new trade rules and disciplines, laying groundwork to influence and potentially spur future multilateral or plurilateral negotiations at the WTO or future

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<sup>118</sup> See generally C. Fred Bergsten, *Competitive Liberalization and Global Free Trade: A Vision for the Early 21<sup>st</sup> Century* (Inst. Int’l Econ., Working Paper No. 96-15, 1996), <https://piie.com/publications/working-papers/competitive-liberalization-and-global-free-trade-vision-early-21st>.

<sup>119</sup> Raj Bhala, *Competitive Liberalization, Competitive Imperialism, and Intellectual Property*, 28 LIVERPOOL L. REV. 77, 79 (2007).

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FTA negotiations, and update critical gaps in existing trade rules.<sup>120</sup>

Thus, it is argued that instead of being anything to contain China, the TPP is simply a trade agreement to advance economic liberalization at regional level. This argument goes by saying that China is not actually excluded from the TPP. Rather, it is expected to join the agreement after, of course, the fundamental rules and principles are hammered out. Even President Obama made an informal comment indicating that China could be open to eventually joining the TPP.<sup>121</sup>

Responses from China suggested mixed feelings about the TPP. As noted previously, on the one hand, viewed as an indispensable part of the Obama Administration's "pivot to Asia" strategy, the TPP was received with widespread skepticism in China.<sup>122</sup> Certain Chinese foreign economic policies, including the "FTA Strategy" and One Belt One Road initiative, appear to be

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<sup>120</sup> BROCK R. WILLIAMS ET AL., CONG. RESEARCH SERV., R44361, THE TRANS-PACIFIC PARTNERSHIP: STRATEGIC IMPLICATIONS 5 (2017).

<sup>121</sup> See Kai Ryssdal, *President Obama says China open to joining trade partnership*, MARKETPLACE (June 3, 2015, 9:55 AM), <http://webcache.googleusercontent.com/search?q=cache:lia6pFnwNqYJ:https://www.marketplace.org/2015/06/03/world/president-obama-talks-trade/president-obama-says-china-open-joining-trade-&num=1&strip=1&vwsrc=0>. Discussing China and the TPP in an interview with American business media *Marketplace*, President Obama said: "[T]hey've already started putting out of feelers about the possibilities of them participating at some point." *Id.*

<sup>122</sup> See Wang, *supra* note 93.

have been strategic and geopolitics-driven.<sup>123</sup> However, China's official response to the conclusion of the TPP deal appeared cool and even neutral. A spokesperson from the PRC Ministry of Commerce ("MOFCOM") commented that "China always keeps an open mind toward the construction of systems that are in accordance with WTO rules and are helpful for promoting economic integration in the Asia-Pacific region."<sup>124</sup> More significantly, China has embarked on economic reforms to experiment with new legal and regulatory environments—possibly due to pressure from the challenging rules of the TPP—to deal with the new trade and investment issues through its newly established Free Trade Zones ("FTZs"). The new FTZ measures, some of which have already been codified into national laws and regulations, include lowered or zero tariffs, pre-establishment national treatment, "negative lists" for foreign investment, zero-registered capital requirement, much simplified registration

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<sup>123</sup> As noted by the WTO, "the creation of [FTAs] cannot be fully understood without considering the political context within which they are formed." See MARC BACCHETTA ET AL., *WORLD TRADE REPORT 2011: THE WTO AND PREFERENTIAL TRADE AGREEMENTS: FROM CO-EXISTENCE TO COHERENCE* 95 (2011). A World Bank report observed that "[r]egional integration is good politics: it meets] politics needs, such as security or enhanced bargaining power, and it satisfies influential lobbies." See WORLD BANK, *TRADE BLOCS 11* (Oxford Univ. Press 2000). On the motivations behind China's FTA approach, Jiangyu Wang has observed that "China's [FTA] approach, as a strategic movement, must be viewed in a larger context that embraces both economic and geopolitical considerations, with the latter playing a relatively more important role at this stage." See Jiangyu Wang, *supra* note 16, at 129. See Jean-Marc F. Blanchard & Colin Flint, *The Geopolitics of China's Maritime Silk Road Initiative*, *GEOPOLITICS*, Apr. 2017, at 223 & Charlie Campbell / Khorgos, *Ports, Pipelines, and Geopolitics: China's New Silk Road Is a Challenge for Washington*, *TIME* (Oct. 23, 2017), <http://time.com/4992103/china-silk-road-belt-xi-jinping-khorgos-kazakhstan-infrastructure/>, for the strategic and geopolitical dimensions of China's One Belt One Road initiative.

<sup>124</sup> Shannon Tiezzi, *What Does China Think of the TPP?*, *THE DIPLOMAT* (Oct. 7, 2015), <https://thediplomat.com/2015/10/what-does-china-think-of-the-tpp/> (quoting a MOFCOM spokesman); see also *MOFCOM Spokesman comments on the conclusion of TPP negotiations*, MINISTRY OF COM.: PEOPLE'S REPUBLIC OF CHINA (Oct. 8, 2015), <http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201510/20151001132863.shtml>.

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procedures for corporate establishment, liberalization of capital controls, and simplified customs clearance procedures, among other things.<sup>125</sup> Although the FTZs still have much to prove, their establishment and the continuous promulgation of liberalization-oriented rules might have attested to the effect of TPP-driven competitive liberalization.

*C. Post-TPP Asian Regionalism: ASEAN+6 (RECP) to FTAAP?*

One impact of the TPP on Asian regionalism is that the TPP adjourned the process for several years by diverting the interests and resources of some—but certainly not all—Asian countries from the original economic integration path. As noted previously, Asian economic integration progressed on the ASEAN-centered approach for years, beginning with the ASEAN-China FTA. Although there was a debate about whether Asian regionalism should proceed on an ASEAN+3 or ASEAN+6 model, at least both models involve all of the major countries in Asia. The TPP, in contrast, is an FTA between a minority of Asian economies and a few non-Asian countries. In this sense, it is not even an Asian regionalism project. In terms of regional economic integration, the TPP divided the Asians rather than joined them together.

The withdrawal of the U.S. from the TPP has given Asian economies no other choice but revert to the ASEAN+X type of regionalism. This time, the only politically feasible model seems to be the ASEAN+6 way, known now as the Regional Comprehensive Economic Partnership (“RCEP”), the negotiations

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<sup>125</sup> Daniel Ren & Eric Ng, *Beijing further relaxes rules on foreign investment in FTZs*, S. CHINA MORNING POST (Jul. 19, 2016, 3:29 PM), <http://www.scmp.com/business/china-business/article/1991765/beijing-further-relaxes-rules-foreign-investment-ftzs>.

for which are ongoing as of this writing.<sup>126</sup> This mega trade pact aims to establish an integrated Pan-Asian market for half of the world population and a third of global GDP.<sup>127</sup> With a vision of “a modern, comprehensive, high-quality and mutually-beneficial economic partnership agreement among the ASEAN Member States and ASEAN’s FTA partners,” the RCEP negotiations cover trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, legal and institutional matters, and other issues, presumably covering almost every aspect of the economy.<sup>128</sup> Like the TPP, negotiations for the RCEP have been conducted with a high degree of secrecy. It is widely believed that the RCEP, assuming it can be completed, will represent “shallow” rather than “deep” integration in trade regionalism.

Much has also been said about the geopolitical aspect of the RCEP, largely because pro-TPP politicians in the U.S. used the

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<sup>126</sup> See Carmen Ho, *RCEP offers hope after TPP leaves the table*, ACCA GLOBAL (Apr. 1, 2017), <http://www.accaglobal.com/sg/en/member/member/accounting-business/2017/04/insights/rcep-tp.html#> (noting that “[w]ith the new US administration’s rejection of the Trans-Pacific Partnership, Asian economies are eyeing the Regional Comprehensive Economic Partnership”); Yizhe (Daniel) Xie, *The World Needs RCEP*, E. ASIA FORUM (Apr. 25, 2017), <http://www.eastasiaforum.org/2017/04/25/the-world-needs-rcep/> (noting that, after the death of the TPP, “the world desperately needs a quick and big globalization win, and RCEP is the best possible choice”); see also Reuters Staff, *China, Singapore seek to expedite RCEP trade talks*, REUTERS (June 12, 2017), <https://www.reuters.com/article/us-china-singapore-trade/china-singapore-seek-to-expedite-rcep-trade-talks-idUSKBN1930RR> (noting that “RCEP has been given new impetus by U.S. President Donald Trump’s withdrawal from the Trans-Pacific Partnership (TPP) trade agreement”).

<sup>127</sup> See generally ASS’N OF S.E. ASIAN NATIONS, <http://www.asean.org> (last visited Jan. 23, 2018), for information about RCEP at the ASEAN Secretariat’s website.

<sup>128</sup> MINISTRY OF TRADE & INDUS. SING, FACTSHEET: WHAT YOU NEED TO KNOW ABOUT REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP) 1, [https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/FACTSHEET-WHAT-YOU-NEED-TO-KNOW-ABOUT/Factsheet%20on%20RCEP%20\(June%202014\).pdf](https://www.mti.gov.sg/MTIInsights/SiteAssets/Pages/FACTSHEET-WHAT-YOU-NEED-TO-KNOW-ABOUT/Factsheet%20on%20RCEP%20(June%202014).pdf) (last updated June 2014).

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RCEP to push for the passage of TPP by the U.S. Congress. President Obama, referring to the RCEP in his own writing said: “China is negotiating a trade deal that would carve up some of the fast-growing markets in the world at our expense, putting American jobs, businesses and goods at risk.”<sup>129</sup> One commentator even characterized “TPP vs. RCEP” as a battle between America and China “for control of Pacific trade.”<sup>130</sup>

In a working paper published by the *Asian Development Bank* (“ADB”), Shintaro Hamanaka contended that “TPP vs. RCEP” signified a battle for control of membership and agenda in regional integration groupings.<sup>131</sup> Specifically, “the formation of regional integration and cooperation frameworks can be best understood as a dominant state’s attempt to create its own regional framework where it can exercise some exclusive influence.”<sup>132</sup> In establishing its own regional system, the dominate/leader state plays two games simultaneously: control of membership and control of the agenda. “The core of the first game is the exclusion of rivals. The essence of the second game is to set the agenda that is convenient to the leader.”<sup>133</sup> Hence, the essence of the politics of regional economic grouping is exclusion “because the exclusion of rival states is necessary for countries seeking to assume leadership.”<sup>134</sup>

This theory may explain China’s intention to exclude the U.S. at the early stage of Asian regionalism, as discussed previously, and the notable exclusion of China from the TPP.

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<sup>129</sup> Obama, *supra* note 101.

<sup>130</sup> Gordon Chang, *TPP vs. RCEP: America and China Battle for Control of Pacific Trade*, NAT’L INT. (Oct. 6, 2015), <http://nationalinterest.org/feature/tpp-vs-rcep-america-china-battle-control-pacific-trade-14021>.

<sup>131</sup> Shintaro Hamanaka, *Trans-Pacific Partnership versus Comprehensive Economic Partnership: Control of Membership and Agenda Setting*, (Asian Dev. Bank Inst., Working Paper No. 146, 2014), <https://www.adb.org/sites/default/files/publication/152753/reiwp-146.pdf>.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 4.

<sup>134</sup> *Id.* at 1.



However, it can hardly be relied upon to expound the political logic of RCEP. The logic is simple. In the RCEP, China controls neither the membership nor the agenda. It is even submitted that, contrary to the prevailing rhetoric that it is a China-backed trade deal for balancing the TPP, the RCEP is simply an optional extra in China's regional vision. The relationship between China and the RCEP can be seen from three angles.

First, the membership of the RCEP has never been determined by China, let alone any form of Chinese control. As noted previously, the RCEP, in terms of its membership, represents exactly the ASEAN+6 model, which was the regional integration pattern proposed by Japan—and objected by China—in the early years of Asian regionalism.

Second, contrary to the popular belief that the RCEP was a Chinese initiative in response to the upsurge of the TPP, it was actually a proposal of the ASEAN. In 2012, a year after the TPP partners issued the TPP Leader Statement in which they agreed to the broad outlines of a high-standard trade agreement at the 2011 APEC Leaders meeting, which marked the official start of the U.S.-led TPP negotiations, the ASEAN countries, driven by Indonesia, decided to launch the RCEP at the 21st ASEAN and Related Submits in Phnom, Cambodia.<sup>135</sup> A year later, the negotiations for RCEP commenced. China happily joined the RCEP negotiations not because it could be a tool to exclude the U.S., but because it saw this as an opportunity for it to overcome its exclusion from the TPP and, accordingly, the Asian economic integration process.

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<sup>135</sup> Ass'n of Southeast Asian Nations [ASEAN], *Joint Declaration on the Launch of Negotiations for the Regional Comprehensive Economic Partnership* (Nov. 20, 2012), <http://asean.org/storage/2016/10/SEOM-AFPs-Bali-Annex-4-Joint-Declaration-on-the-Launch-of-Negotiations-for-the-RCEP.pdf>.

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Third, clearly the RCEP negotiations are championed by ASEAN, not by China.<sup>136</sup> As the *Philippine Daily Inquirer* put it, “Southeast Asian nations will put priority on creating an Asia-focused trade pact that includes China, India and Japan,” and they were glad that “[w]ith China putting its weight behind, RCEP has emerged as the best alternative to lowering tariffs in the region.”<sup>137</sup> However, as stated by the Philippine Trade Secretary Ramon Lopez: “All the countries are looking at what’s mutually beneficial for all, it won’t be lopsided, let’s say, in favor of China. China is one of the participants.”<sup>138</sup>

Although China indicated the intention to conclude a RCEP deal as quick as possible, it is not the major driving force behind the negotiations. The reported difficulties and differences currently faced by RCEP negotiators hardly suggest that China is playing a leading role or serving even as a coordinator. One of the major differences lies under the contest between China and Japan, as well as the suspicion of Chinese leadership in the negotiations. As the *Financial Times* reported:

China is pushing for a rapid conclusion to the Regional Comprehensive Economic Partnership, with a “low-quality” deal mainly focused on lowering tariffs between the Association of Southeast Asian Nations and its neighbours. . . . But officials in Japan and ASEAN insist RCEP should not be Chinese-led. Beijing

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<sup>136</sup> See, e.g., *ASEAN Pushes for Trade Pact; China Eyed*, PHILIPPINE DAILY INQUIRER (Apr. 27, 2017), <https://www.pressreader.com/philippines/philippine-daily-inquirer/20170427/281492161207574> (noting the remarks of the Philippine Trade Secretary Ramon Lopez that “Southeast Asian countries this year will prioritise creating an Asia-focused trade pact that includes China, India and Japan, while trade issues with the United States will be put on the back burner”).

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

wants to cast itself as a defender of global free trade for political reasons, they say, after the US quit another huge deal, the Trans-Pacific Partnership. Tokyo and Canberra want a high-quality RCEP deal covering services and investment—half hoping this will bring the US back to the TPP table.<sup>139</sup>

In addition, China's ambition for an early deal must face the protectionist stance of India. Interested in opening other countries' services markets but reluctant to grant Chinese exporters lowered or zero tariff rates on manufactured products, India poses a major hurdle to the successful conclusion of any economically meaningful agreement.

In short, the differences and difficulties, arising out of the distrust and different levels of economic development of RCEP partners, are likely to lead to the conclusion of a low-grade FTA, if an agreement can be reached at all. But still, if completed, the RCEP will be a historically significant deal in terms of regional integration in Asia for the following reasons. First, it will instill confidence in free trade and globalization. The retreat from the TPP and resort to economic nationalism of the Trump Administration has tremendously undermined such confidence. If the sixteen Asian countries, without the U.S., can reach a massive FTA, such as the RCEP, this will undoubtedly give the free traders a boost of motivation. Second, even though the RCEP becomes an agreement for shallow integration, it can still "keep markets open, deepen economic integration and narrow the development gap

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<sup>139</sup> Robin Harding, Tom Mitchell & Michael Peel, *China and Japan vie for control of Asia trade deal*, FIN. TIMES (Mar. 14, 2017), <https://www.ft.com/content/d34d324c-03d8-11e7-ace0-1ce02ef0def9>.

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among the member states.”<sup>140</sup> Importantly, as Rebecca Fatima Sta Maria put it, the RCEP model “may not be equivalent to the ‘gold standard’ that the TPP espoused to be, but it will provide a clear pathway toward that goal.”<sup>141</sup> Further, the RCEP will provide a platform to consolidate all of the ASEAN+1 agreements, thus doing away the noodle-bowl effect to unifying the different rules of origin and other regulatory formalities. Lastly, and probably most significantly, the RCEP will be the first Pan-Asia FTA to bring together all of the major economies in East, South, and Pacific Asia into an integrated market, with profound implications on the building of both a common Asian market and common Asian identity.

In the long run, the exclusion of the U.S. and other Asia-Pacific countries is not desirable, for both economic and geopolitical reasons. Economically, Asian countries that do not currently have an FTA with the U.S. would always be keen on joining a mega-FTA in which the U.S. is a member, and that is probably the reason why they found the TPP appealing. Strategically, the sheer size of China’s economic and military might would make smaller Asian countries feel that strong U.S. involvement in Asia must be welcomed.<sup>142</sup> In light of the recent developments in Asian regionalization, as discussed above, the concept of regional economic integration should not be geographically limited to Asia in the traditional geography. Instead, it should be Asia-Pacific in the long run, eyeing also countries in the Americas side of the Pacific. The path to regionalism in this vast area is ineludibly the FTAAP, an agreement that covers possibly all of the Pacific Rim economies.

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<sup>140</sup> Rebecca Fatima Sta Maria, *RCEP: More relevant than ever*, JAKARTA POST (Feb. 20, 2017, 8:49 AM), <http://www.thejakartapost.com/academia/2017/02/20/rcep-more-relevant-now-than-ever.html>.

<sup>141</sup> *Id.*

<sup>142</sup> MEREDITH KOLSKY LEWIS, *THE TRANS-PACIFIC PARTNERSHIP: A QUEST FOR A TWENTY-FIRST CENTURY TRADE AGREEMENT* 232 (C.L. Lim, Deborah K. Elms & Patrick Low eds., Cambridge Univ. Press 2012).

D. *TPP and the Rule-Making in International Law: Implications for Future Trade Agreements and China's Pursuit to Become a Rule-Maker*

Even though the TPP as a trade agreement was abandoned by the U.S., it is still a significant instrument from the perspective of international economic law, and is already in the process of shaping the direction of the international economic order. As noted by Hufbauer and Cimino-Isaacs, the two “mega regionals—[the TPP and TTIP]—will undoubtedly change the multilateral trading system.”<sup>143</sup> This will be true even if both crash as formal FTAs, but “their negotiating objectives and ultimate stumbling blocks will shape the future of the WTO.”<sup>144</sup> This is certainly not something that is very new in the history of the international economic system. Pro-regionalism commentators have long argued that FTAs can be the stepping stone to multilateral trade liberalization.<sup>145</sup> The proliferation of regional trade agreements may not only spur multilateral negotiations, but also create new rules which might eventually be ratified by the multilateral trading system.<sup>146</sup> For example, “NAFTA’s achievements in the realms of intellectual property and services paved the way for new accords in the Uruguay Round in 1994.”<sup>147</sup>

In the case of the TPP, for example, it has been suggested that the WTO—lagging so far behind BITs and FTAs on regulating investment—will eventually have to incorporate into its system the now widely accepted investment rules developed by the bilateral and regional deals regarding national treatment and pre-establishment rights, negative-listing, compensation and expropriation, and the investor-state dispute settlement mechanism,

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<sup>143</sup> Gary Clyde Hufbauer & Cathleen Cimino-Isaacs, *How will TPP and TTIP Change the WTO System?*, 18 J. INT’L ECON. L. 679, 679 (2015).

<sup>144</sup> *Id.*

<sup>145</sup> MAURICE SCHIFF & ALAN WINTERS, REGIONAL INTEGRATION AND DEVELOPMENT 221-23 (Melissa Edeburn & Nancy Levine eds., World Bank & Oxford Univ. Press 2003).

<sup>146</sup> *Id.* at 229.

<sup>147</sup> Hufbauer & Cimino-Isaacs, *supra* note 143, at 696.

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among others.<sup>148</sup> This will be more obviously embedded in the ongoing negotiations among the 23 WTO members on the Trade in Services Agreement (“TiSA”), which currently excludes China’s participation.<sup>149</sup> The overlapping of TiSA’s membership and objective with that of the TPP and the Transatlantic Trade and Investment Partnership (“TTIP”) will ensure that the TiSA is a high standard service agreement. Given that the TiSA is the major forum for services negotiations under the umbrella of the WTO, it is highly likely that the rules of TiSA will be absorbed into the WTO if the multilateral trading system would have any progress on liberalization of service trades.<sup>150</sup>

A wide range of the TPP rules, especially those WTO-plus provisions on further liberalization of trade and investment, are widely accepted and even embodied in China’s ongoing bilateral trade negotiations with existing and potential FTA partners. At the very least, some of the TPP rules will become part of international economic law binding upon China by way of incorporation into China’s FTA deals, as well as an upgraded multilateral trading system.

The success of the TPP in rule-making exemplifies the explicated strategy of the U.S. in using FTAs like the TPP to export American laws and make rules for the rest of the world. As Barak Obama wrote in *The Washington Post*, “America should

<sup>148</sup> *Id.* at 682.

<sup>149</sup> TiSA is said to cover about 70% of the global trade in services. EUROPEAN COMMISSION FACTSHEET ON TRADE IN SERVICES AGREEMENT (TiSA) 2 (Sept. 26, 2016), [http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc\\_154971.doc.pdf](http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154971.doc.pdf).

<sup>150</sup> Hufbauer & Cimino-Isaacs, *supra* note 143, at 689. TiSA is a plurilateral agreement currently being negotiated by 23 WTO members of the WTO. The negotiations, conducted under the umbrella of the WTO, aim to further global liberalization of trade in services based on the WTO’s General Agreement on Trade in Services. TiSa is open to all WTO members, which “means that if enough WTO members join, TiSA could be turned into a broader WTO agreement and its benefits extended beyond the current participants.” *See Trade in Services Agreement*, EUR. COMM’N, <http://ec.europa.eu/trade/policy/in-focus/tisa/> (last visited March 28, 2018).

write the rules. America should call the shots. Other countries should play by the rules that America and our partners set, and not the other way around.”<sup>151</sup> Monopolizing the rule-making power in international trade was the first strategic objective of the Obama Administration in promoting the TPP.<sup>152</sup> As noted by Michael Froman, the last USTR in the Obama years, “[t]he Trans-Pacific Partnership presents an unprecedented opportunity to update the rules of the road.”<sup>153</sup>

Obama’s rejection of allowing China any power to “write the rules,” however, touched a highly sensitive nerve in China, resulting in China’s recent painful chase of the “discursive power” in international affairs.<sup>154</sup> The discursive power, or *huayuquan*, is defined, in part, as the power to create norms and make rules in international relations.<sup>155</sup> A 2014 decision of the Chinese Communist Party called for national efforts to be made to:

Vigorously participate in the formulation of international norms, promote the handling of foreign-related economic and social affairs according to the law, strengthen our country’s discourse power and influence in international legal affairs, use legal methods to safeguard our country’s sovereignty,

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<sup>151</sup> Obama, *supra* note 101.

<sup>152</sup> Michael Froman, *The Strategic Logic of Trade: New Rules of the Road for the Global Market*, FOREIGN AFF. (2014), <https://www.foreignaffairs.com/articles/americas/strategic-logic-trade>.

<sup>153</sup> *Id.*

<sup>154</sup> See generally Kejin Zhao, Note, *China’s Rise and Its Discursive Power Strategy*, CHINESE POL. SCI. REV., Sept. 2016, at 539.

<sup>155</sup> *Id.* at 544 (noting that, in the Chinese understanding, discourse power includes, in part, a country’s ability to “operate politically” which is embodied in “agenda-setting, rule-making capacity and international mobilization ability”).

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security and development  
interests.<sup>156</sup>

In an article titled *Geopolitics, International Discursive Power, and the Rule-Making Power in International Law*,<sup>157</sup> this author pointed out that, for a country to own the rule-making international discursive power, the following conditions must be met: (1) the hard power including economic—and military power if necessary—to influence other countries; (2) the soft power to develop ideology and discourse that are appealing to other countries; (3) the ability to create ideas as well as to process ideas into concrete rules and policies; (4) the possession of public media which can be used to communicate to the public at domestic and international level; and (5) the political will to pro-actively participate in international affairs.<sup>158</sup> Using these criteria to evaluate China's discursive power, the article made the following conclusion with respect to China's rule-making ability at the international level:

China's discursive power in the international society is rather weak. First, China does not have the ability to develop ideas about international affairs, international situation and international relations, as well as to convert the ideas into systems of theories which can be used to analyze international issues. The lack of the ability to produce ideas

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<sup>156</sup> Robert Williams, *A New Vocabulary for Engagement in US-China Relations?*, THE DIPLOMAT (Nov. 10, 2014), <https://thediplomat.com/2014/11/a-new-vocabulary-for-engagement-in-us-china-relations/>.

<sup>157</sup> See Wáng Jiāngyǔ (王江雨) [Wang Jiangyu], *Dìyuán Zhèngzhì, Guójiā Huànyǔ Quán Yǔ Guójìfǎ Shàng de Guīzé Zhìdìng Quán* (地缘政治, 国家话语权与国际法上的规则制定权) [*Geopolitics, International Discursive Power, and the Rule-Making Power in International Law*], 2 *ZHONGGUO FALÜ PÍNGLUN* 39, 45 (2 中国法律评论 39, 45) [2 CHINA L. REV. 39, 45] (2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2970391](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2970391).

<sup>158</sup> *Id.* at 42-43.



and theories stems from the low level of academic and policy research in China. Second, China does not possess the ability to propose new international rules, or change or improve existing international rules. As widely known, the West has dominated international rule-making in the past several centuries. Very few rules were proposed by non-Western countries, including China. At the inception of the People's Republic, it did propose some theories and doctrines in the international society, such as the "Five Principles of Peaceful Co-existence," the doctrine of the "Three Worlds," etc., which, as discourse and analytical frameworks, generated significant impacts on the research and practice in international relations. However, when China entered the age of *taoguang yanghui* (keeping a low profile and biding one's time), it was more inclined to be a rule-taker rather than a rule-maker at the international level. Furthermore, China tends to be indifferent to and keep a distance from those global affairs which it believes its own interests are not directly involved. . . . Third, the number of Chinese employees in international organizations is rather small, and very few of them hold decision-making or executive positions. Fourth, China's expressions in speaking about

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international affairs and communicating its own position are rather difficult to be understood by their audience in the international society. . . . Lastly, but not least, China is seriously short of public media, which are regarded as reputable and credible at the international level.<sup>159</sup>

To the extent the contest for rule-making power is an issue in U.S.-China trade relations, it is a battle that China cannot win at this stage of its national development. It may be able to resist and refuse to accept certain rules made by the U.S., but it does not have the ability to create a new system of rules for FTAs or any other area of the global economy, at least at this stage. This explains why the China-led Asian Infrastructure Investment Bank (“AIIB”) decided to adopt a high-standard governance structure that conforms to international best practice.<sup>160</sup> This case suggests that, even though China is in possession of the power to make rules, it would choose to adopt the existing rules made by the West—specifically the U.S.—rather than make a different set of rules of its own.

#### IV. U.S.-CHINA TRADE RELATIONS IN THE POST-TPP/TRUMP ERA

Bilateral trade relations between China and the U.S. are experiencing interesting times now, in ways full of mysterious surprises. Donald J. Trump, in the campaigning months in 2016,

<sup>159</sup> *Id.* at 43-44.

<sup>160</sup> Zhōu Xiāoxiāo, Zhèng Qīngtíng & Wáng Léishēng (周潇枭;郑青亭;王雷生) [Zhou Xiaomiao, Zheng Qingting & Wang Leisheng], Yà Tóuxíng Kāiyè: Dǎzào Gāo Biāozhǔn Zhìlǐ Jiégòu de Duōbiān Jīgòu (亚投行开业: 打造高标准治理结构的多边机构) [AIIB Opens: Building a High-Standard Governance Structure for a Multilateral Institution], 21<sup>ST</sup> CENTURY ECON. DAILY (Zhang Xing ed., Jan. 19, 2016), [http://epaper.21jingji.com/html/2016-01/19/content\\_29341.htm](http://epaper.21jingji.com/html/2016-01/19/content_29341.htm).

vigorously attacked China's "unfair trade practices" and almost labeled China as America's economic enemy No.1.<sup>161</sup> He vowed to nominate China as a currency manipulator immediately after he became President.<sup>162</sup> Having been in the White House for more than a year, Trump, however, has not adopted anything policy-wise or institutionally to dramatically alter the status quo of U.S.-China trade relations. On the other side, China remained rather cool in dealing with Trump, generating an impression that it has the will and capacity to face up to any challenges from the U.S. side, but is still willing to talk with U.S. leaders about bilateral trade issues. Suddenly, China and the U.S. announced a 100-day plan to improve their strained trade ties at the Xi-Trump Summit in Florida in early April of 2017.<sup>163</sup> It was positively confirmed that the 100-day, surprisingly proposed by the Chinese side, is aimed to reduce China's trade surplus with the U.S., for which China also proposed unilateral economic concessions.<sup>164</sup> However, the threats of trade war between the two countries have always been looming in U.S.-China relations in recent years.<sup>165</sup>

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<sup>161</sup> See *Trump accuses China of 'raping' US with unfair trade policy*, BBC NEWS (May 2, 2016), <http://www.bbc.com/news/election-us-2016-36185012>; see also Keith Bradsher, *In China-U.S. Trade War, Trump Would Have Weapons*, N.Y. TIMES (Nov. 10, 2016), <https://www.nytimes.com/2016/11/11/business/international/trump-china-us-trade-war.html>.

<sup>162</sup> Doug Palmer & Ben Schreckinger, *Trump vows to declare China a currency manipulator on Day One*, POLITICO (Nov. 10, 2015), <https://www.politico.com/story/2015/11/donald-trump-china-currency-manipulation-215679>.

<sup>163</sup> See Andrew Galbraith & Dominique Patton, *U.S.-China trade talks sputtering at 100-day deadline*, REUTERS (July 16, 2017), <https://www.reuters.com/article/us-usa-china-trade/u-s-china-trade-talks-sputtering-at-100-day-deadline-idUSKBN1A109V>.

<sup>164</sup> *Id.*

<sup>165</sup> See John Authers, *China bulls should be worried their view is now the consensus*, FIN. TIMES (Jan. 18, 2018), <https://www.ft.com/content/589e9880-fb8d-11e7-9b32-d7d59aace167>; *America, China and the risk of trade war*, THE ECONOMIST (Jan. 28, 2017), <https://www.economist.com/news/finance-and-economics/21715656-trade-tensions-will-mount-destructive-trade-war-can-still-be>.

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Seen in a broader context, the bedrock of U.S.-China trade relations is undergoing critical and fundamental changes. In the several decades since the two countries revived their trade relations in the 1970s, bilateral trade between the two had several distinctive features. First, for the U.S., trade with China was not only about trade. Instead, it was part of the America's grand strategy to engage China, bring China into the Western dominated international order, and promote economic liberalization, marketization, and even political reform within China.<sup>166</sup> Second, the U.S. was largely a true believer, protector, and faithful practitioner of free trade, and promoter of globalization.<sup>167</sup> Third, the U.S. opened its markets to China in exchange for China's acceptance of American leadership in the world, especially in the Asia Pacific.<sup>168</sup> On the Chinese side, starting from a low basis, economic liberalization and marketization progressed steadfastly and solidly for many years.<sup>169</sup> For the above reasons, the U.S. demonstrated "strategic forbearance" of formal and informal

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<sup>166</sup> See Kurt M. Campbell & Ely Ratner, *The China Reckoning: How Beijing Defied American Expectations*, FOREIGN AFF., Mar./April, 2018, at 60, 62 (noting that generations of U.S. presidents and officials believed that "[g]reater commercial interaction with China was supposed to bring gradual but steady liberalization of the Chinese economy" and that "debt, inefficiency, and the demands of a more advance economy would necessitate further reforms").

<sup>167</sup> See generally G. JOHN IKENBERRY, *LIBERAL LEVIATHAN: THE ORIGINS, CRISIS AND TRANSFORMATION OF THE AMERICAN WORLD ORDER* (Princeton Univ. Press 2012); see also John Ikenberry, *The Future of the Liberal World Order: Internationalism after America*, 90 FOREIGN AFF. 56 (2011).

<sup>168</sup> See generally G. John Ikenberry, *The Rise of and the Future of the West: Can the Liberal System Survive?* 87 FOREIGN AFF. 23 (2008).

<sup>169</sup> See generally SUSAN L. SHIRK, *THE POLITICAL LOGIC OF ECONOMIC REFORM IN CHINA* (1993) (discussing China's economic reform); ORVILLE SCHELL & DAVID SHAMBAUGH, *THE CHINA READER: THE REFORM ERA* (1999) (same); NICHOLAS R. LARDY, *INTEGRATING CHINA INTO THE GLOBAL ECONOMY* (2011) (same); C. FRED BERGSTEN, CHARLES FREEMAN, NICHOLAS R. LARDY & DEREK J. MITCHELL, *CHINA'S RISE: CHALLENGES AND OPPORTUNITIES* (Peterson Inst. Int'l Econ. 2008) (same); DOUG GUTHRIE, *CHINA AND GLOBALIZATION* (Routledge 2006) (same).

economic and trade policies and restrictions in China, which the U.S. believes to be “unfair trade practices.”<sup>170</sup>

The ascendancy of President Trump in American politics indicates that the fundamentals of the U.S.-China trade relations are to be changed, fundamentally in some areas at least. Two such changes are happening. First, a new consensus is being formed in Washington, which holds largely the following view about U.S.-China relations:

Because the American effort to ‘integrate’ China into the liberal international order has now generated new threats to U.S. primacy in Asia—and could result in a consequential challenge to American power globally—Washington needs a new grand strategy toward China that centers on balancing the rise of Chinese power rather than continuing to assist its ascendancy.<sup>171</sup>

That is, the policy elites in the U.S. increasingly believe that their country should give up the naïve idea of “peaceful transformation” through which China would someday become a democratic market economy and a responsible stakeholder in the international system dominated by the U.S. Instead, it should view China as a competitor, rivalry, and enemy if necessary, and abandon the “strategic forbearance” of illegal or unfair Chinese behaviors.

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<sup>170</sup> See Campbell & Ratner, *supra* note 166, at 62-63 (noting that the U.S. engaged China while “Beijing has resisted pressure from Washington and elsewhere to level the playing field for foreign companies”).

<sup>171</sup> ROBERT D. BLACKWILL & ASHLEY J. TELLIS, COUNCIL SPECIAL REPORT NO. 72, REVISING U.S. GRAND STRATEGY TOWARD CHINA 4 (Council on Foreign Rel. Press 2015), <https://www.cfr.org/report/revising-us-grand-strategy-toward-china>.

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The second change is the rise of economic nationalism in the U.S. represented by the election of the populist candidate Donald Trump as the American President. President Trump openly condemned free trade in his inaugural address by saying: “We must protect our borders from the ravages of other countries making our products, stealing our companies, and destroying our jobs. Protection will lead to great prosperity and strength.”<sup>172</sup> Shortly after he took office, he pulled the U.S. out of the TPP,<sup>173</sup> signaled his Administration’s intention to bypass WTO decisions when necessary,<sup>174</sup> issued a new “Buy American, Hire American”

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<sup>172</sup> Donald J. Trump, Remarks as Prepared for Delivery at the Inaugural Address (Jan. 20, 2017) (transcript available on [www.whitehouse.gov](http://www.whitehouse.gov)).

<sup>173</sup> Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement, Donald J. Trump, President of the United States, The White House (Jan. 23, 2017) (on file with WhiteHouse.gov).

<sup>174</sup> See, e.g., Evelyn Cheng, *To get tough on China, Trump may throw out the trade rulebook*, CNBC NEWS (Jan. 8, 2017), <https://www.cnbc.com/2017/01/05/trade-with-china-trump-may-get-tough-by-bypassing-the-wto.html>; Shawn Donnan & Demetri Sevastopulo, *Trump team looks to bypass WTO dispute system*, FIN. TIMES (Feb. 27, 2017), <https://www.ft.com/content/7bb991e4-fc38-11e6-96f8-3700c5664d30>.

executive order,<sup>175</sup> and threatened to launch trade wars with trading partners like China and Germany.<sup>176</sup>

China, the country with which the U.S. has the largest trade deficit, realized that it must manage U.S.-China relations, including trade issues, with great caution during the Trump era. That possibly explains why President Xi Jinping was willing to offer unilateral concessions to address the trade imbalance between China and the U.S. This approach, it is submitted, might only suppress the symptom without treating the condition, or, in Chinese words, *zhibiao bu zhiben*. Truthfully, trade and economic policies in both the U.S. and China have contributed to the imbalance. In the U.S., it is the over-spending and over-borrowing problems. In China, it is the lack of progress in economic reform. China became the world's second largest economy in 2010,<sup>177</sup> but economic reform has stalled for years. That is, the many

<sup>175</sup> Exec. Order No. 13788, 82 Fed. Reg. 18837 (Apr. 18, 2017).

<sup>176</sup> See Shawn Donna, *Trump's top trade adviser accuses Germany of currency exploitation*, FIN. TIMES (Jan. 31, 2017), <https://www.ft.com/content/57f104d2-e742-11e6-893c-082c54a7f539>; Ana Swanson, *Trump lashes out at Germany's Trade Practice – and he may have a point*, WASH. POST (May 30, 2017), [https://www.washingtonpost.com/news/wonk/wp/2017/05/30/trump-lashes-out-at-germanys-trade-practices-and-he-may-have-a-point/?utm\\_term=.b24752ecb91f](https://www.washingtonpost.com/news/wonk/wp/2017/05/30/trump-lashes-out-at-germanys-trade-practices-and-he-may-have-a-point/?utm_term=.b24752ecb91f); Der Spiegel Staff, *Donald Trump's Attack on German Prosperity*, SPIEGEL ONLINE (Mar. 12, 2018) <http://www.spiegel.de/international/world/donald-trump-trade-war-theatens-germany-and-europe-a-1197357.html>; see also Michael Nienaber, *Germany, China warn Trump tariff moves threaten global trade*, REUTERS (Mar. 11, 2018), <https://www.reuters.com/article/us-usa-trade-germany/germany-china-warn-trump-tariff-moves-threaten-global-trade-idUSKCN1GN0BQ>; Keith B. Richburg, *Does Trump Even Have an Endgame on Trade War with China*, S. CHINA MORNING POST (Apr. 7, 2018), <http://www.scmp.com/week-asia/business/article/2140661/does-trump-even-have-endgame-trade-war-china>; *China 'not afraid' of trade war with Trump*, FIN. TIMES (Apr. 6, 2018), <https://www.ft.com/content/11416168-3948-11e8-8b98-2f31af407cc8>; Xi Jinping warns against 'arrogance' amid threat of trade war with US, THE GUARDIAN (Apr. 10, 2018), <https://www.theguardian.com/world/2018/apr/10/xi-jinping-warns-against-arrogance-amid-threat-of-trade-war-with-us>.

<sup>177</sup> David Barboza, *China Passes Japan as Second Largest Economy*, N.Y. TIMES, Aug. 16, 2010, at B1.

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restrictions maintained in the economy, which constraints both foreign and domestic private business, do not match China's developmental stage and its status as a global economic power.

#### V. CONCLUSIONS AND RECOMMENDATIONS

Regional economic integration/trade regionalism in Asia started at the outset of this century. Although regional integration makes great economic sense for Asian countries, it has progressed rather slowly. China-Japan competition for regional leadership plagued the beginning stage of economic regionalization in East Asia. The rise of the TPP suspended the internal regionalization process in Asia, and its demise—or the abandonment of it by the Trump Administration—offers an opportunity for Asian countries to revive Asia's own regional integration projects, currently in the form of the negotiations for the RCEP, which is more likely to be a trade pact for shallow integration.

Several brief conclusions can be drawn from this Article's discussions. First, unconstrained power rivalry can be a permanent curse for Asia's economic integration, if the key players in the region, including U.S., China, and Japan, always intend to exclude each other from the integration process. Asian regionalism must adopt an inclusive approach; otherwise it will never succeed. Significantly, any integration process should be open to both China and the U.S. A regionalization project without China will divide Asia. If such a project purposefully excludes the U.S., it will be wrecked by geopolitics. In this sense, the RCEP might be a low-grade agreement if ever reached, but it will still be a landmark agreement in the history of Asian regionalism because it is the first trade pact that brings almost all of the economies in the region together. In the long run, however, regional integration should go beyond Asia to include the economies on the other side of the Pacific, especially the U.S. The FTAAP is thus an avenue in this sense, with both economic and strategic significance, to realize Asia-Pacific economic integration.



Second, the TPP was believed to be a geo-political tool to contain China in Obama's "rebalance to Asia" strategy. However, it has also generated "competitive liberalization" effects, pushing China to deepen its domestic economic reform as well as to engage its trading partners on more friendly terms.

Third, although the TPP was deserted by the Trump administration, it is still a landmark instrument for the making of international economic law. The cutting-edge rules made in the TPP laid a solid foundation for the development of high-standard template agreements for FTAs of next generation. Many of those rules are likely to be incorporated into the multilateral trading system if the WTO is upgraded to a second version. Consequently, China should understand that the death of the TPP does not amount to the end of TPP rules. It must prepare itself for meeting the high-standards of TPP-style agreements at some point in the future.

Fourth, the landscape of U.S.-China trade relations has fundamentally changed, symbolized by the intensified Chinese effort to pursue global leadership and the rise of "America First" policy with the election of President Trump. The "strategic forbearance" in U.S.-China relations is fading away, and the U.S. will demand more unilateral concessions from China, which has economically benefited from trading with the U.S. The trade relationship between the world's two largest economies does not need to be reset, but structural changes might have to be carried out to further liberalize the Chinese market, as well as curtail the over-spending in the U.S. In addition, China and U.S. should work to rebuild confidence between them. This would require leaders of the two countries to seriously consider the following: (1) what they want from each other; (2) what international order they want to live in; and (3) what their shared responsibility to the world is.

To conclude, if there is anything this author can recommend for improving the China-U.S. trade relations, it would be the following two advices. First, China should embark on a new wave of economic liberalization, opening its markets wider to both domestic private sectors and foreign business. Second, the

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two countries should begin to consider the negotiations for a U.S.-China FTA. Such an FTA is doomed to be difficult and complicated, but the advantages it can offer cannot be paralleled by any other arrangement. Such an agreement—and even the negotiation for it—can be used by the U.S. to pry open the Chinese market. On the Chinese part, it can be used to push for domestic reform, as the WTO did for China in the 1990s.