



The Trans-Pacific Partnership Agreement (TPP): Challenges and Possibilities for Latin America and the Caribbean

Extra-Regional Relations

Regional Meeting on the Trans-Pacific Partnership Agreement (TPP): Challenges and Possibilities for Latin America and the Caribbean

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F O R E W O R D

This document was prepared in compliance with Activity III.1.1 of the Work Programme of SELA for the year 2016, "Follow-up and analysis of the Multilateral Free Trade Agreement or Trans-Pacific Partnership Agreement (TPP)". The document comprises six sections.

Section I explores the process from the World Trade Organization (WTO) to the new generation of international mega trade agreements (Transatlantic Trade and Investment Partnership [TTIP] and the Regional Comprehensive Economic Partnership [RCEP]. Section II describes the Mega Trade Agreements (MTA) as instruments of the new mega-economic spaces, which act in terms of opposition or seeking predominance, but they can also act in terms of "competitive cooperation". Section III analyses the structure of the TPP, the main topics of negotiation and their impact, as well as the different chapters of the partnership. Section IV examines the economic impact of the TPP, referring especially to the benefits and expected costs. Section V refers to the search for a Free Trade Area of the Asia-Pacific (FTAAP), whose onset goes back to the first stages of the creation of the Asia-Pacific Economic Cooperation (APEC) forum. Section VI analyses the benefits, unwanted impacts and challenges resulting from the signing of the TPP for the countries of Latin America and the Caribbean. Finally, the document includes a series of conclusions and another set of suggestions.

The Permanent Secretariat of SELA would like to thank Dr. Carlos Moneta for his dedication to preparing this document.

EXECUTIVE SUMMARY

Global Value Chains (GVCs) have modified the nature and the paradigms of trade. The resulting transformation of policies and trade implies that the GVCs enhance their domain, by incorporating a strong link between goods, services, knowledge; people, and capital that goes beyond territorial limits in multiple times and directions. Hence, links between trade, services, investments, and intellectual property arise.

As GVCs overcome the limits of regional blocs: (e.g.: US, EU, and Asia-Pacific blocs) and cover the global space, Mega Trade Agreements (MTA) begin to appear. These agreements incorporate new sectors, disciplines, and regulations and seek to move forward beyond the limits imposed by the WTO. They also start to generate reference frameworks and a new institutional environment for international trade.

Precisely in that context arises the Trans-Pacific Partnership Agreement (TPP), which has been already signed by its members in October 2015 and comprises the United States of America, Canada, Japan, Australia, New Zealand, Brunei, Malaysia, Vietnam, Singapore, Mexico, Chile, and Peru.

Simultaneously, the "Transatlantic Trade and Investment Partnership (TTIP)" is being negotiated between the US and the EU, and negotiations have not finished yet towards an Interregional Agreement in Asia, the "Regional Comprehensive Economic Partnership" (RCEP), led by China and comprising the member countries of ASEAN, namely Australia, New Zealand, South Korea, Japan, and India.

The TPP is moving forward in "WTO-plus" sectors (e.g.: services, intellectual property, public procurement) and "extra WTO" sectors (e.g.: investments; climate change; movement of people and capital; regulatory coherence, electronic commerce, Internet copyright.) Their members believe that these elements would allow to lay new regulation foundations for negotiations within the WTO.

In addition, the TPP constitutes a clear demonstration in the economic field of the centre of gravity shifting from North American interests to Asian-Pacific's, hoping that it would allow to invigorate and widen the economic links between the US and the countries of those regions, and to strike a balance facing the growth of China's influence on that region.

Even more relevant, the US seeks that the Agreement establishes the future economic architecture of Asia-Pacific through the harmonization of already existing agreements with their partners in the region. In that context, the TPP is proposed as an acceptable foundation for the members of the Asia-Pacific Economic Cooperation (APEC), in order to reach an agreement to establish the Asia-Pacific Trade Agreement (APTA) in the future.

For all these reasons, the many different interests behind the multiple dimensions in which the TPP and the other Mega Trade Agreements have an impact on demand that LAC can rely on appropriate assessments on these processes and their time-space evolution.

Therefore, when Latin America and the Caribbean formulate the policies and strategies of international trade, cooperation and external insertion it deems convenient, the region needs to take into account the great impact the TPP – and the remaining MTAs, if they are ever concluded –

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might have at a global and regional level, both individually and through the interactions arising among them.

Against this backdrop, the general objective of this paper is to determine how the different elements that constitute the TPP, in its trade, geo-economic, and geo-political dimensions, can influence the ongoing regional strategies for integration and international economic-trade insertion of Latin America and the Caribbean.

As specific objectives, this study sought to clarify elemental aspects pertaining the TPP, which were organized as follows for your consideration:

- a) Influence of the TPP in the evolution of contents, structures, and regulation in the international trade system;
- b) Structure and characteristics of the TPP. Main topics of negotiation and their potential impact;
- c) Global geopolitical and geo-economic dimension and impact of the TPP, taking into account its interactions with the RCEP and the TTIP;
- d) Incidence of the TPP on the ongoing regional strategies and public policies regarding integration and international economic-trade insertion of Latin America and the Caribbean;
- e) Conclusions drawn from the study and proposals.

In this context, some criteria could be presented:

Trade policy should not only be consistent with the demands of the economic theory and practice; but should also be adapted to the different political criteria resulting from the inherent complexity of regional integration.

Regional integration is greatly influenced by the problems pertaining to the international political and economic situation and the existing differences within the region with respect to the role each actor seeks to play in that sphere and in the world, based on the different ideas, objectives, and manners to carry out the processes.

Structural changes could be classified within this framework, in terms of the new productive patterns, circuits, and trade architectures, in which the Mega Agreements play a very relevant role.

Consequently, in order to properly manage the current transformation cycle of the trade system, it is deemed necessary to be able to rely on:

- Full, agreed, and shared use of tools provided by “competitive intelligence” in an articulated follow-up system of the main processes and trends in the international and regional sphere;
- Different decisions, including determining which would be the preferred axis of external economic insertion; identifying goods and services to be developed and exported in a coordinated/joint manner, as well as determining the preferred and sustainable regional value chains to be created/enlarged.
- Other areas where progress needs to be made include the broadening and deepening of connectivity; coherence and connection between productive systems; the linkage and coordination of the “trans-Latin companies,” and the adaptation of institutions and work methods to the new situations.

To this end, the requirements of “Connectivity,” “Compatibility,” and “Coherence” need to be met.

At present, in Latin America and the Caribbean, together with the SIECA and the CARICOM, there are three integration schemes – Mercosur, the Pacific Alliance, and ALBA – which foster different responses regarding the most convenient way to approach the Mega Trade Agreements, and in more general terms, to approach the transformation of the global system.

Fortunately, there have been positive reactions regarding these situations. Not long ago, the Foreign Affairs Minister of Chile, Hernando Muñoz, pointed out: “...it is possible to build a whole comprised of different and unequal parts” where there is “space for sub-regional projects which could be the bricks to build a bigger and more inclusive project of Latin American integration”.

In this context, he stated that: “we should discuss the possibility of materializing a convergence of the Pacific Alliance with the Mercosur, without prejudice of adopting the concept of the European Union of the ‘differentiated speeds,’ which would allow the countries that are able and wish so, to move forward faster than other countries in the integration process”.

Fostering “Convergence within diversity” is perfectly adjusted to the stances that the member countries of those blocs wish to materialize in practice, through cooperation programs in the productive sector, infrastructure, energy, and many other topics.

In this regard, the willingness currently being expressed by Brazil and Argentina of establishing links with the Pacific Alliance (from now on PA) grants a greater feasibility of putting that principle into practice.

“Convergence within diversity” can also arise as a principle capable of promoting feasibility, trust, and sustainability to the imperative reforms and updating processes the region must carry out in different dimensions.

Against that backdrop, we are faced to the challenge of making compatible the processes of regional integration with the external economic axis of insertion “at full speed”, which are increasingly deeper and wider in terms of their concepts and integrating contents.

Likewise, in response to the multiple elements arising from the assessment of the 30 chapters of the TPP made in this paper, the pending tasks comprise the need to make progress in coherence, in terms of access to markets; intellectual property; investments; rules of origin; services, and trade facilitation.

Its purpose is to reach an enlarged market, with free mobility of factors and goods, with gradual progresses towards macroeconomic coordination; common dispute settlement mechanisms; feasible responses adapted to the asymmetries; generation, spread, and efficient use of science and technology; completing physical integration, and move forward towards the solution of social problems.

In the same way, energy and food sector integration needs to be enhanced; and intra-regional trade has to grow by developing value chains and fostering the service industries. Moreover, exploring the possibilities of growth of the industries based on technology niches is required. Other key areas to develop include trade facilitation and disruptive technologies; as both play a critical role to increase the benefits and competitiveness of our economies in the future.

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It is necessary to examine the scenarios that should be built to properly meet the requirements previously set, taking into account the ongoing economic-trade policies and the positive role that the different institutions of the region could serve (e.g.: CAF-Latin American Development Bank, SELA, IDB, ALADI).

Also, as a positive factor, it should be taken into account that LAC has gradually advanced in its internal trade compatibility. In 2019, if the established Agreements within the framework of the ALADI are honoured, a Regional Free Trade Zone will be in place. In addition, the ongoing processes towards the interior of the Asia Pacific to face its integration problems can provide many and valid experiences, with their own flexible and multi-dimensional combination formulas.

This Latin American and Caribbean convergence process needs to incorporate the crucial dimension of the global trade system. In that regard, in a study carried out by then General Director of the WTO, Pascal Lamy, a convergence strategy with four dimensions is proposed to the governments: convergence between the members; convergence of non-multilateral trade regimes with multilateral systems; convergence between trade and internal policies; convergence between trade and non-tariff measures included in public policies.

INTRODUCTION

The new map of world power, both in its economic and political dimensions, has adopted a configuration that currently anticipates the great lines of cooperation and fracture expected for this century.

It is not an easy task grasping its evolutionary sequence, as well as identifying the driving forces and their interactions to discover in them facts leading into the future in the field of international trade relations.

Trade increases its multinational dimension through increasingly important flows of foreign direct investment; services; capital, intellectual property rules; movement of ideas, technology, and people, all included in complex processes of recombination of factor throughout the countries. It is perceived that competitiveness has been acquiring an increasingly multinational character, and in that context, there is a need to delve into the commitments that have already been reached within the WTO and to go "beyond", with the incorporation of disciplines in areas not yet covered by that organization.

The resulting transformation of trade policies implies that the GVCs widen their domain, by incorporating a strong link between goods, services, knowledge, people and capital that surpasses territorial limits in multiple moments and directions. Hence, links between trade, services, investments, and intellectual property arise.

As GVCs overcome the limits of regional blocs (e.g.: US, EU, and Asia-Pacific blocs) and cover the global space, Mega Trade Agreements (MTA) begin to appear. These agreements incorporate new sectors, disciplines, and regulations and seek to move forward beyond the limits imposed by the WTO. They also start to generate reference frameworks and a new institutional environment for international trade.

In that context arises the Trans-Pacific Partnership Agreement (TPP), which was already signed by its members in October 2015 and comprises the United States of America, Canada, Japan, Australia, New Zealand, Brunei, Malaysia, Vietnam, Singapore, Mexico, Chile, and Peru.

Simultaneously, the "Transatlantic Trade and Investment Partnership (TTIP)" is being negotiated between the US and the EU, and negotiations have not finished yet towards an Interregional Agreement in Asia, the "Regional Comprehensive Economic Partnership" (RCEP), led by China, comprising the member countries of ASEAN, namely Australia, New Zealand, South Korea, Japan, and India.

All of these agreements are related among them, not only because of the shared presence of some of its members, but also due to a complex network of geopolitical reasons and economic competences. Since the TPP covers a critical mass of global trade and includes important hubs and actors able to establish rules ("rule settlers"), the countries that are not members of the Agreement will face factors of positive and negative incidence.

In practice, the incidence of the TPP could be observed, among others, in the diversion of trade; the emergence of more demanding rules for exporters; greater difficulties to insert into GVC and the deterioration of multilateral rules, along with the reduced relevance of the WTO. Most part of the positive effects will be focused on member countries. For those countries that did not incorporate to the Agreement, the unification of their regulations could represent a benefit to

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operate in those markets, although those countries could be restricted by other regulations and standards that tend to limit their presence.

The great variety of underlying interests in the multiple dimensions in which the TPP and other Mega Trade Agreements need to be taken into account demands being able to rely on appropriate assessments about the processes and their time-space evolution.

Therefore, when Latin America and the Caribbean formulate the policies and strategies of international trade, cooperation and external insertion it deems convenient, the region needs to take into account the great impact the TPP – and the remaining MTAs, if they are ever concluded – might have at a global and regional level, both individually and through the interactions arising among them.

Consequently, it seems that the moment has arrived when the countries of LAC contemplate jointly the effects that can stem from those new Mega Agreements in the very complex regional dynamics nowadays.

The general objective of this paper is to determine how the different elements that constitute the TPP, in its geo-economic, and geo-political dimensions, can influence the ongoing regional strategies for integration and international economic-trade insertion of Latin America and the Caribbean.

As specific objectives, this study seeks to clarify elemental aspects pertaining the TPP, taking into consideration the following action scopes:

- a) Influence of the TPP in the evolution of contents, structures, and regulation in the international trade system;
- b) Structure and characteristics of the TPP. Main topics of negotiation and their potential impact;
- c) Global geopolitical and geo-economic dimension and impact of the TPP, taking into account its interactions with the RCEP and the TTIP;
- d) Incidence of the TPP on the ongoing regional strategies and public policies regarding integration and international economic-trade insertion of Latin America and the Caribbean;
- e) Conclusions drawn from the study and proposals.

For these purposes, Chapter I explains the deep changes that have taken place in the international economic-trade system, with the emergence of new needs in terms of rules, standards, and procedures that scape from the current trade rules established by the WTO.

Chapter II presents the new generation of Mega Trade Agreements: TPP, TTIP, RCEP, which appears, in principle, to try to solve the pending problems within the framework of the WTO. In reference to the TPP, its origin an evolution is presented, along with the stances and interests of the economies taking part in the Agreement and their incidence with respect to the meaningful actors that do not take part in it (e.g.: People's Republic of China, India, South Korea, BRIC).

Chapter III reviews the 30 chapters of the TPP. In that context, relevant elements of change in their regulations and their potential incidence are identified, in general terms, both regarding the future evolution of trade among its members and their impact for those States that have not entered into the Agreement.

Chapter IV offers a counterpoint of perspectives regarding the potential positive and negative economic and trade effects expected to be produced by the TPP at a global level, in light of different studies carried out by International Bodies and specialized think tanks and specialists. In addition, the chapter includes an analysis of the possible ways of evolution of the TPP and the RCEP and their impact, towards an agreement comprising the group of members of the Asia-Pacific Economic Cooperation (APEC).

Chapter V discusses the different dimensions of impact of the TPP for Latin American and the Caribbean countries, paying special attention to the different situations that arise in terms of their belonging to different integration schemes and their condition as TPP members or for being economies that have not entered into that Agreement.

Finally, the study includes a section with conclusions.

I. FROM THE WTO TO THE NEW GENERATION OF INTERNATIONAL MEGA TRADE AGREEMENTS (TPP, TTIP, RCEP)

The process of the Doha Round started in 2001 and continues until now without accomplishing its objectives. In the process, the first wave of Free Trade Agreements (FTA) – initially bi-national and then regional, focused on trade and under WTO-consistent rules – started to materialize in the 1990s (170 FTA in 1994). In the early 2000s (2004) FTAs totalled approximately 370, hitting almost the double – 625 (including notified FTAs) – in 2016 (WTO, 2015).

This increase in FTAs is not only a matter of quantity, but it also has to do with the gradual modification of its contents, searching for alternative approaches to trade liberalization capable of enhancing and deepening their reach. Hence, new elements were incorporated according to the transformations occurring in the productive system and international trade.

This process has a wide background. From a sectoral point of view, multilateral liberalization agreements were negotiated in the past decades in different state-of-the-art areas: Information Technology Agreement (1997); the Telecommunications Agreement (1998), and the Financial Services Agreement (1999). From a regional perspective, the emergence of the European Union; the North American Free Trade Agreement (NAFTA), the Association of Southeast Asian Nations Free Trade Agreement (AFTA), and the MERCOSUR can be highlighted.

Since 2000, the great Asian countries have gradually joined: China, Japan, and South Korea,¹ which had not participated in the FTA until then. In this decade, the International Mega Trade Agreements arise: the Trans-Pacific Partnership Agreement (TPP) in 2010; the Regional Comprehensive Economic Partnership (RCEP) in 2012, and the Transatlantic Trade and Investment Partnership (TTIP), in 2013.

The spread of new trade agreements had a negative impact on the WTO's dynamics, particularly on its role as a global trade arbitrator. To a large extent, negotiations throughout the last decade were unable to overcome the incompatibility of objectives between developed and developing countries in terms of market opening.

This situation led to the failure of the Geneva Ministerial Conference in 2008, followed by a partial recovery of the pace of the negotiations with the Bali Ministerial Conference, in 2013, where the Trade Facilitation Agreement was signed. Later on, in the Tenth Ministerial Conference (Nairobi, Dec. 2015) the "Nairobi Package"² was adopted, and it included, among other items, the commitment to eliminate grants for exporting agricultural products.

Despite these slow breakthroughs, the results are insufficient, both in terms of expectations and achievements, considering the dimension of the changes being faced. As Richard Baldwin remarked, the regionalisms of the 20th and 21st centuries are considerably different. Regionalism in the 20th century was consistent with the concept of trade and the needs of that time: international trade was focused on the exchange of goods across the borders. Its model was "made here and sold there" (Baldwin, 2014). Trade was linked to a concept of comparative

1 In this text "Korea" and "South Korea" are used interchangeably.

2 The "Nairobi Package" comprises six Ministerial Decisions regarding agriculture, cotton, and matters related to less developed countries. They include a commitment to eliminate grants for exports of agricultural products. The WTO Director-General deemed that the package constitutes "the most relevant result in the field of agriculture" in the 20 years of history of the Organization.

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advantages from local production; therefore, it demanded competence among local agents and factors pertaining capital, work, and technology.

This century, that *idée-force* is changing as a result of two revolutions: that of the CITs, which allowed real-time communication, and that of connectivity (transport and data transmission) (Baldwin, 2006). That concurrence allowed production to territorially move away from consumption, and productive stages were able to be distributed in different geographic areas, surpassing local limits.

Consequently, trade expands its multi-national dimension through increasingly important flows of services; capital, intellectual property rules; movement of ideas, technology, and people, all included in complex processes of recombination of factors throughout the countries. It is perceived that competitiveness has been acquiring an increasingly multinational character, and in that context, there is a need to delve into the commitments that have already been reached within the WTO and to go "beyond", with the incorporation of disciplines in areas not yet covered by that organization.

Altogether, it all comes down to companies provided with high technology, from countries where labour costs are high, combining their capabilities of management, marketing, and technological knowledge, with low-cost labour forces located in developing countries. That process results in growing and more complex flows between subsidiaries; joint ventures, contract manufacture agreements; offshore; reimport; exportation platforms, etc. (Baldwin, 2014). While in developed countries the strengthening and expansion of the GVCs is a pivotal factor for their competitiveness, in the emergent countries, the fact of being able to increasingly take part in the GVCs is becoming into a way to strengthen their development.

A new paradigm emerges, boosted by the TNCs and the developed countries. Explained in simple words, it could be explained this way: "Your market (and a limited part of mine), in exchange for my firm (and investments) located in your country" or as Baldwin notes: "Factories from the North in exchange for introducing reforms in the South" (Baldwin, 2014, p. 39).

Within a backdrop characterized by regionalism and intra-regionalism (Moneta, La Reestructuración en Marcha del Sistema Internacional-Transnacional, 2014), which has three large "factories" and supply chain systems – U.S./FTAA; EU and AP/India – Latin America and the Caribbean is divided: a part of its members is moving forward in its incorporation into a trade model of the 21st century, while others are still in the 20th century.

This situation has to do with one of the major challenges the region faces, in a context where by the end of the last decade, 51% of gross exports in developing countries were linked to their participation in international production networks.

II. THE MEGA TRADE AGREEMENTS (MTAs): INSTRUMENTS FOR THE CREATION OF NEW MEGA ECONOMIC SPACES AND OBJECTIVES

1. MTAs: Objectives and “rules of commitment”

The economic dimension of the globalization process (meaning the multidimensional integration process) has two main paths (Definition of Globalization, 2010):

- a) The “positive integration” uses as an instrument the international standardization of economic rules, laws, and policies (search for coherence; rules uniformity.)
- b) The “negative integration”, which seeks to move forward through the elimination of trade barriers. The instruments used are the FTAs, the “Strategic Economic Associations” and Mega Trade Agreements (MTA).

Consequently, there are two core dynamics in the process of economic globalization: the dynamics based on Preferential Economic Agreements, and those led by multilateral institutions (e.g.: WTO). Against this backdrop, it can be noticed that the MTAs seek to reach a synthesis of the two approaches mentioned above: They keep the elimination of barriers to trade, but incorporate the deepening of and search for coherence of rules and regulations.

In this context, political economy develops an interaction space between both dimensions. Government actors try to orientate and guide the action of economic forces, and the latter, for their part, try to influence the conduct of the former in their favour.

As a result, the MTAs need to be taken into account both in their economic and political dimensions. As for the political dimension, if the traditional realistic concept of power is applied, the creation of this type of structures can be explained by the establishment of alliances among their members.

In those scenarios, the Mega-Spaces provided in the Agreements act in terms of opposition or searching predominance, but they can also do it in terms of “competitive cooperation.” In that environment, the TPP can be seen as an instrument of the US to oppose the growing role of the People's Republic of China (PRC) in Asia-Pacific (henceforth AP), while the Regional Comprehensive Economic Partnership (RCEP) would be launched – at least partially – as a defensive response from China.³

For their part, the US and the EU cooperate through the TTIP in the imposition of new rules for global trade, while they compete between them in the typical interactions of market opening and penetration.

From an economic standpoint, it is preferable to interpret these situations as processes oriented towards the search for a “balance”, and given the mutual involvement of countries in South East Asia in the TPP and the RCEP, this could be the more appropriate concept to be applied in this case. However, when other types of elements are incorporated into economic processes, another interpretation of “balance” arises: geopolitics.

³ There are other factors related to the objectives of China's foreign policy in AP that also have an impact on its position with respect to the RCEP.

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In the previously outlined context, for a State that wishes to expand its influence, it is very convenient to establish an economic-trade agreement in which that State is the main actor, because that way it is possible to develop a “structural leadership” (Young, 1991). That way, the negotiation agenda can be outlined, and the desired foundations for the configuration of rules and procedures can be established; that is the case of the US with the TPP. As for China, although in theory it has the same privileged position, the presence and the actions of the RCEP in Japan, India, and Australia prevents China from counting on the same level of resources as the US to guide the Agreement.

For these reasons, it can be pointed out that one of the priority aspects taken into account when establishing a regional agreement is competence over the control of the agenda and membership. As for membership, the priority is not allowing the participation of rival States, or if their membership is allowed, it should be in conditions that limit their ability to modify the rules or have a great influence within the Agreement. The openness level of the Agreements – their openness in terms of accession of new member states – shall be established according to the interests of the main actor.

In this framework, the US tries to create an economic-trade structure in Asia-Pacific (AP): the TPP, with a view to serve its economic interests in the highest possible level and support its political interests, by making sure to attain positions of dominance. For its part, through the RCEP, the P.R. China seeks to establish an economic-trade structure in AP that is in line with its concept of Asian integration and allow it to control that agenda vis-à-vis Japan and the US, by maintaining as much as possible a *primus inter pares* situation.

Although the US invited China to take part in the TPP (Obama-Xi Jinping meeting, 2013),⁴ its rejection to take part in the agreement could be foreseen, because China still lacks the development levels compatible with the demands of such Agreement. Accepting the invitation to join that Mega Agreement in that opportunity meant to substantially reduce the possibility of materializing its protection goal in Asia.

2. Higher levels of integration to promote economic growth

2.1. Regional Comprehensive Economic Partnership (RCEP)

The “Regional Comprehensive Economic Partnership of East Asia” (RCEP) comprises 10 member states of the ASEAN, the P.R. China, India, South Korea, Australia, New Zealand, and Japan. The origin of the RCEP is found in the “ASEAN+3” group (ASEAN + China, Korea, and Japan), which later became a regional economic association scheme “ASEAN + 6”⁵ (the former group plus Australia, New Zealand, and India). The negotiations towards the TPP began in 2013. By including China, India, Japan, and South Korea, which have not signed bilateral trade agreements among them, the RCEP represents a very important step towards full regional economic integration.

This Mega Agreement was promoted by the ASEAN member nations and Japan. The ASEAN nations wanted to maintain the predominant position they have in the regional economic integration processes as a result of the “ASEAN + 1” agreements (e.g.: ASEAN with China, Japan,

⁴ That meeting was held in California, US, in June 2013. In that meeting, an agreement was reached to develop more solid bilateral relations, as well as tackling regional and global matters in order to attain higher integration levels.

⁵ This group turned into a Free Trade Zone in 2010, providing for the elimination of importing rights in 99% of products for ASEAN+6 and in 69% of products for ASEAN+4: Laos, Cambodia, Vietnam, and Myanmar.

Korea, India...) For its part, Japan wanted Australia and New Zealand to join the agreement in order to offset China's presence. In addition, for all of them, there was a need to solve the problems linked to the so called "noodle bowl" (meaning the complexities stemming from the different rules and standards adopted through the FTAs).

If the RCEP is finally materialized, it will create the world's largest free trade area, with a population of over 3 billion people, which account for nearly 30% of the global GDP (see Table 1).

The RCEP negotiations were launched with the signing of the constituent document in the 21st Meeting of the Heads of State/Government of the Member Countries of ASEAN in Cambodia in November 2012. Its main objectives include to step up the level of rules and standards, as well as deepen and harmonize the FTAs and other pre-existent economic agreements concluded between ASEAN y the remaining members, in order to establish a Free Trade Area among the Parties. This free trade area shall cover the trade in goods and services; investments; economic and technical cooperation; intellectual property, and competition.

By complying with the rules of the WTO and the GATT, the RCEP will seek to harmonize the contents and rules of the FTAs negotiated in ASEAN + 1. Moreover, the RCEP will aim at progressively eliminating barriers to trade of good and services, and promoting investments (see Figure 1). It establishes the principles of transparency; economic integration, and special and differential treatment to the least-developed ASEAN Member States (Cambodia, Laos, Vietnam, and Myanmar). In addition, its accession clause enables the participation of any ASEAN FTA partners that wish to participate afterwards, as well as the accession of other ASEAN "economic partners."

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TABLE 1
Economic indicators of the members of the TPP and the RCEP

| | Population | | GDP | | Per capita GDP | Trade | | |
|---------------------|--------------------|---------|--------------|----------|----------------|--------------|---------|------|
| | Millions | % | US\$ billion | % | US\$ | US\$ billion | % | |
| RCEP | China | 1.350,7 | 19,2 | 8.227,1 | 11,4 | 6.091,0 | 3.866,9 | 10,4 |
| | South Korea | 50,0 | 0,7 | 1.129,6 | 1,6 | 22.590,2 | 1.067,5 | 2,9 |
| | India | 1.236,7 | 17,6 | 1.841,7 | 2,5 | 1.489,2 | 782,6 | 2,1 |
| | Cambodia | 14,9 | 0,2 | 14,0 | 0 | 944,4 | 19,2 | 0,1 |
| | Indonesia | 246,9 | 3,5 | 878,0 | 1,2 | 3.556,8 | 378,4 | 1 |
| | Laos | 6,6 | 0,1 | 9,4 | 0 | 1.417,1 | 5,1 | 0 |
| | Myanmar | 52,8 | 0,7 | 52,5 | 0,1 | 861,0 | 20,4 | 0,1 |
| | Philippines | 96,7 | 1,4 | 250,2 | 0,3 | 2.587,0 | 117,4 | 0,3 |
| | Thailand | 66,8 | 0,9 | 366,0 | 0,5 | 5.479,8 | 477,1 | 1,3 |
| RCEP and TPP | Brunei | 0,4 | 0 | 17,0 | 0 | 41.126,6 | 17,0 | 0 |
| | Malaysia | 29,2 | 0,4 | 305,0 | 0,4 | 10.432,1 | 424,0 | 1,1 |
| | Singapore | 5,3 | 0,1 | 274,7 | 0,4 | 41.126,6 | 788,1 | 2,1 |
| | Vietnam | 88,8 | 1,3 | 155,8 | 0,2 | 10.432,1 | 228,4 | 0,6 |
| | Japan | 127,6 | 1,8 | 5.959,7 | 8,2 | 46.720,4 | 1.684,4 | 4,6 |
| | Australia | 22,7 | 0,3 | 1.532,4 | 2,1 | 67.555,8 | 517,8 | 1,4 |
| | New Zealand | 4,4 | 0,1 | 167,3 | 0,2 | 37.749,4 | 75,6 | 0,2 |
| TPP | USA | 313,9 | 4,5 | 16.244,6 | 22,4 | 51.748,6 | 3.882,7 | 10,5 |
| | Canada | 34,9 | 0,5 | 1.821,4 | 2,5 | 52.219,0 | 929,7 | 2,5 |
| | Mexico | 120,8 | 1,7 | 1.178,1 | 1,6 | 9.748,9 | 751,4 | 2 |
| | Chile | 17,5 | 0,2 | 269,9 | 0,4 | 15.452,2 | 158,1 | 0,4 |
| | Peru | 30,0 | 0,4 | 203,8 | 0,3 | 6.795,8 | 88,2 | 0,2 |
| RCEP | 3.400,5 | 48,3 | 21.180,6 | 29,2 | 18.879,1 | 10.469,6 | 28,3 | |
| TPP | 795,5 | 11,3 | 28.129,8 | 38,8 | 32.751,1 | 9.545,2 | 25,8 | |
| World | 7.046,4 | 100 | 72.440,4 | 100 | 10.280,5 | 37.006,6 | 100 | |

Sources: World Bank; Development Indicators, ASEAN Secretariat:
http://www.asean.org/?static_post=selected-key-indicators-2

FIGURE 1
Comparison of the topics included in the TPP and the RCEP

| | TPP | RCEP |
|---------------------------------------|------|------|
| Trade in Goods | • | • |
| - Market Access for Goods | • | • |
| - Textiles and Apparel | • | ◻ |
| - Rules of Origin | • | ◻ |
| - Customs | • | ◻ |
| - Trade Facilitation | | • |
| - Technical Barriers to Trade | • | ◻ |
| - Sanitary and Phytosanitary Measures | • | ◻ |
| - Trade Remedies | • | ◻ |
| Trade in services | • | • |
| - Cross-border Trade | • | • |
| - Financial Services | • | ◻ |
| - Telecommunications | • | ◻ |
| - Temporary Entry | • | |
| Investments | • | • |
| Technical and Economic Cooperation | • * | • |
| Intellectual Property | • | • |
| Competitiveness | • | • |
| Dispute Settlement | • ** | • |
| Legal and Institutional Matters | • | ◻ |
| Others | • | • |
| - Electronic commerce | • | • |
| - Environment | • | |
| - Public Procurement | • | |
| - Labour | • | |
| - Horizontal Treatment Matters | • | |

*Note: ' • ' means that the topic is covered. " ◻ " for the RCEP means that the topic is probably covered, judging from the FTA of ASEAN+1 y and the ASEAN Economic Community (AEC). * "Cooperation and Capacity-building." ** "Legal matters" for the administration of the Agreement, including dispute settlement.*

Source: Based on the paper authored by Fukunaga, with some modifications (Y. Fukunaga, 2012).

As can be observed in Figure 1, the RCEP has more simple negotiation conditions than the TPP, because it focuses more on the traditional trade policies than on the set of regulations and comprehensive internal policies constituting the core of the negotiations within the TPP.

Likewise, as can be seen in Scheme 1 of the Annex, these differences are also present in the objectives each agreement seeks to attain. Moreover, developing economies will enjoy longer terms for elimination of tariffs rates and other important advantages, by providing the implementation of rules compatible with the WTO and some WTO Plus.

From China's standpoint, given the progress that represented the signing of the TPP in October 2015, it is imperative to accelerate the RCEP negotiations. This situation could head towards an exchange of "time for quality" in order to conclude the preliminary negotiations faster. The

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competence between both MTAs might even result in some member changing sides during the negotiations. In that context, “the one who moves faster and better” will be able to establish new rules for trade and investments that will govern in the Asia-Pacific region (Yi, 2014).

Based on the current conditions of East Asia, China decided to support ASEAN as the core of a comprehensive regional economic cooperation project, and the RCEP emerges as an instrument suitable for those objectives. For these reasons, the success of the RCEP acquires strategic importance for that power. It will open a great regional market for China – with great development capacity – which is expected to offset the TPP, from which China was excluded (Ling, 2014).

Likewise, China can use the RCEP as a functional instrument aimed at unifying its bilateral and multilateral economic cooperation channels, on a par with its Free Trade Agreements and regional and sub-regional investments.

In that context, the RCEP has FTAs with ASEAN, Singapore, and New Zealand. Moreover, China takes part in the negotiation towards a possible agreement with Japan and South Korea (CJK). In addition, a feasibility study for a FTA with India has concluded, as negotiations with South Korea and Australia are still pending. These two latter agreements are expected to contribute to increasing the level of quality of the standards to be applied. Furthermore, a China-South Korea agreement – considering the high standards of Korea – could be used as a model for the CJK. If these processes are materialized, China would have substantially improved its position facing the TPP, as it develops its competitiveness conditions.

As for the US, previous studies do not seem to pose any risk for China’s exchanges with RCEP countries. However, businesspersons in RCEP countries do not share that view, as they are afraid that their exports to the US are hit by greater competence in sectors such as electronics and textiles, where they coincide with the main export lines to that destiny of the remaining members of that agreement. (World Trade Online, 2013).

2. 2. The Trans-Pacific Partnership Agreement (TPP): Origin and Evolution

The 12 member nations of the Trans-Pacific Partnership Agreement (TPP)⁶ total a GDP of approximately US\$ 28 trillion⁷, which accounts for nearly 36% of global GDP. The TPP represents 23% of global exports (some US\$ 5.3 trillion), with a population of 792 million inhabitants, accounting for 11% of the world’s population (see Table 5).

The TPP has its origin in a previous agreement established by Chile and New Zealand in the 1990’s. In 2003, those countries, along with Singapore, decided to work towards a FTA allowing them to advance in the process of economic liberalization beyond the borders and limits that were in force by then in the global scale, including the regulation of intellectual property, rules of origin, and government procurement.

Later on, Brunei joined the negotiations in 2005, and the “P-4” (“Pacific-4”) or “Trans-Pacific Strategic Economic Partnership Agreement”, which was the name given to the agreement back then, was concluded in 2006,⁸ with an enthusiastic support from the APEC Business Advisory Council (ABAC), and the Asia-Pacific Economic Cooperation (APEC).

⁶ Spanish translation note.

⁷ North American scale.

⁸ The author of this paper had the chance to take part in person in a restricted-access seminar organized by the government of New Zealand, with the participation of those four countries, shortly after its establishment. In that

The intention of George Bush's administration in joining the Agreement draw a lot of interest in Asia-Pacific, as there was an important group of countries seeking to establish economic links with the US, and in some cases (e.g: Vietnam), to forge an approach to that power.⁹

BOX 1

Why has the US trade activity increased in Asia-Pacific?

Trade within Asia-Pacific increased significantly during the last decades, with the US losing market positions:

- 1970-80: World trade focused on the USA-EU-Japan triad. E.g: US share in 1987-1989 global GPD: 54%; US share in 2000: 41%
- US share in the region's imports (2000): 16%; PR China's share 4%
- 2010: US share 8%; PR China's share 15%

Source: Moneta, Los Mega Acuerdos Transregionales: uno de los instrumentos principales de la actual fase de globalización económica, 6 March 2014.

It should be noted that during that period of government, the US has developed and set in motion a financial expansion strategy under a "competitive liberalization" formula through which 11 FTAs were negotiated with 16 countries (Ian Ferguson, 2013). Even though the US used NAFTA as an instrument for this competitive liberalization purpose since 1994, the advancement and deepening of rules achieved in the last three agreements with Colombia, Panama, and South Korea helped set a basis for the TPP, specially the US-South Korea agreement (KORUS), and were approved by the US Congress in 2011.

In March 2008, the US government decided to participate in the negotiations carried out by the TPP in terms of investments and financial services. In September, President Bush informs the Congress on his intentions of negotiating with the P-4 members, with Australia, Peru and Vietnam joining the group in December that same year.

President Obama's new administration decided to carry on its predecessor's trade policy in the context of a world financial crisis. After a necessary pause in order to evaluate the terms of agreement, President Obama manages to add the US to the TPP with the purpose of "establishing a regional agreement with a broad membership and high standards corresponding to a 21st century partnership" (Obama, 2009).

The first round of negotiations took place in Melbourne, March of 2010. Participating countries were Chile, New Zealand, Brunei Singapore, US, Australia, Peru, and Vietnam, with Chinese Taipei (Taiwan), South Korea, Canada, and Colombia expressing an interest to participate in the future, of which only Canada was successful in accessing. For its part, the P.R. China was invited to participate in negotiations by President Obama during a visit Xi Jinping made to the US in June 2013.

As for the APEC, the Obama administration rules out a proposal by the ABAC to advance towards the creation of a partnership between the APEC's 21 member economies in favour of the TPP. This

opportunity, the possible evolution lines of the Agreement were discussed, as well as the tasks to be developed. One of the tasks under consideration was the possibility of inviting Argentina and Peru to take part in the Agreement later on.

⁹ After the conflict with the US, the Vietnamese government adopted the political decision of seeking, in the mid-term, an economic and strategic approach to the US in the mid 1980s (The author of this paper held talks with higher authorities of the Vietnamese Communist Party and Foreign Office in Ho Chi Minh City, in 1986 and 1988).

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decision is contradictory – regarding the means to achieve that end – to the objectives established by the APEC in 1994 in its “Bogor Goals”,¹⁰ upon which it was agreed to make advancements in the reduction of barriers to trade and investments between the Forum members through a gradual advancement programme.

The Partnership's orientations and guidelines were presented at the APEC Ministerial Meeting in Honolulu (11/8-13/2011). Shortly after, Canada, Japan and Mexico started consulting with the TPP members to join the negotiations. Subsequently, Mexico and Canada were allowed to enter negotiations by mid-2012, and the Japanese Prime Minister Shinzo Abe expressed in March 2013 his country's interest in joining the negotiations.

BOX 2

TPP. Economic and Geopolitical Objectives

- Achieving a “comprehensive and high standard” FTA that makes progress in the liberalization of trade in goods and services beyond rules of the WTO (“WTO plus X”)
- Containment operations of the Chinese leadership: i) to affect the RCEP by incorporating part of its members

Requirements:

- The Partnership must be politically acceptable in the US internal framework and its demands tolerable to the other members.
- It must ensure the access of US industries and high-tech services to the Asian markets.
- To achieve a significant expansion of the number of members so as to serve as an entry point to an APEC's “Asian-Pacific Free Trade Agreement” (APTA).

Source: Prepared by the author, based on “The Trans Pacific Negotiation and Issues for Congress” (Ian Ferguson, 2013).

The members of the TPP could be grouped within this framework into two different groups, along with a predominant actor: the US.

The first group would be composed of countries seeking to gain access to its market via an FTA or, if already within an FTA, to improve and expand the access their products through new agreements: Chile, Peru, Brunei, New Zealand, Vietnam, Malaysia, Japan, Mexico, Canada, and Australia (see Figure 2).

The second group agrees on the search for economic improvements as well as taking the geopolitical factor into account (to improve regional security conditions, among others, via external associations) and it includes New Zealand, Australia, Vietnam, Japan, and Malaysia.

¹⁰ The “Bogor Goals” established that the most developed powers in the APEC must fulfill their liberalization process in 10 years' time, while countries of lesser development were given 20 years to achieve this goal.

FIGURE 2
Trade Agreements between the members of the TPP

| TPP countries | Australia | Brunei | Canada | Chile | USA | Japan | Malaysia | Mexico | New Zealand | Peru | Singapore | Vietnam |
|---------------|-----------|--------|--------|-------|-----|-------|----------|--------|-------------|------|-----------|---------|
| Australia | N/C | Yes | No | Yes | Yes | Yes | Yes | No | Yes | No | Yes | Yes |
| Brunei | No | N/C | No | Yes | No | Yes | Yes | No | Yes | No | Yes | Yes |
| Canada | No | Yes | N/C | Yes | Yes | No | No | Yes | No | Yes | No | No |
| Chile | Yes | Yes | Yes | N/C | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| USA | Yes | Yes | Yes | Yes | N/C | No | No | Yes | No | Yes | Yes | Yes |
| Japan | Yes | Yes | No | Yes | No | N/C | Yes | Yes | No | Yes | Yes | Yes |
| Malaysia | Yes | Yes | No | Yes | No | Yes | N/C | No | Yes | No | Yes | Yes |
| Mexico | No | Yes | Yes | Yes | Yes | Yes | No | N/C | No | Yes | No | No |
| New Zealand | Yes | Yes | No | Yes | No | No | Yes | No | N/C | No | Yes | Yes |
| Peru | No | Yes | Yes | Yes | Yes | Yes | No | Yes | No | N/C | Yes | No |
| Singapore | Yes | Yes | No | Yes | Yes | Yes | Yes | No | Yes | Yes | N/C | Yes |
| Vietnam | Yes | Yes | No | Yes | No | Yes | Yes | No | Yes | No | Yes | N/C |

Source: OAS, Foreign Trade Information System; ALADI, Observatory for Latin America and Asia-Pacific; Asian Development Bank.

For its part, the US sees the TPP as an instrument for establishing new rules for trade that favour the competitiveness of its companies. The dimension to be highlighted has to do with geopolitics and the ability to modify a situation in its favour: the substantial growth of the P.R. China in the region. Negotiations were officially launched in 2010, and the signing of the Agreement took place on 5 October 2015.

The accession of the US to the TPP occurs in the context of the world financial crisis (2008). In view of the need to have an FTA with the US, several APEC countries joined the TPP negotiations. The TPP guidelines were announced at the APEC Ministerial Meeting in Honolulu, in November 2011.

BOX 3
Strategic trade objectives for the US

- i) leading initiative in that area of the Obama Administration;
- ii) part of the gravity centre transfer from North American interests to Asia-Pacific;
- iii) provides a basis to move forward in new trade negotiations;¹¹
- iv) facilitates and enhances the action of financial agents in terms of Foreign Direct Investment (FDI) in AP;
- v) alternative channel to overcome the Doha Meeting impasse (WTO);
- vi) contributes to shaping Asia-Pacific's economic architecture that way the US wants it;
- vii) The TPP could "outshine" the RCEP, "of narrower goods-base".¹²

Source: Prepared by the author, based on "The Trans-Pacific Negotiation and Issues for Congress" (Ian Ferguson, 2013).

11 Moreover, the TPP establishes disciplines in new trade matters (state-run companies; supply chain facilitation, etc.) which can serve as a model for future negotiations.

12 This type of models "could be seen as disadvantageous to US workers and businesspersons, because they exclude important provisions (e.g: disciplines on services, investments, and intellectual property, employment, and labour). Moreover, the TPP approach could eclipse the alternative model of narrower goods-based FTAs that are offered by China, or other countries, or somewhat more comprehensive agreements used by the European Union and Japan."

Commentaries by Ian Ferguson, p. 4 and 5.

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Matters discussed against the backdrop of the TPP negotiations include: access to different markets – such as agricultural, industrial, and textile –; rules of origin; customs procedures; government procurement; intellectual property; competition policy; cross-border trade in services; financial services; telecommunications; electronic commerce; investments; environment; labour; institutional aspects; dispute settlement and “horizontal” matters (such as regulatory coherence; competitiveness; business facilitation; small and medium-sized enterprises (SMEs), and development (see Annex, Box 2).

The impact of the TPP in the economic scenario, both with respect to the members of the Agreement and its incidence at a global level, will be analysed throughout this study. It is necessary to verify whether certain statements made by US authorities about the TPP – in which they described it as an innovative platform and a new way of trade cooperation – have grounds or is only a new cosmetic of the traditional “hub and spoke” model, whose application was sought to be imposed in South America via the ALCA.

In that regard, US intervention has not been able to completely advance towards multilateralization of regionalism, not by replacing or harmonizing the existent bilateral FTA, but by keeping them and negotiating access to markets with the countries with which it did not have FTA, and then including those countries in a new Agreement (Capling, 2011).

Other elements lead simultaneously to assert that the TPP responds to US foreign policy concerns with respect to its exclusion from the economic architecture the region was adopting back then, which was clearly oriented towards an intra-Asian integration model led by China.

Within this framework, as it can clearly be observed after reading many documents and statements prepared by the Office of the United States Trade Representative (USTR), the Office of the Secretary of State, the Office of the Secretary of Defence, and the Congress, the Agreement constitutes an important axis of the US “pivot” policy towards Asia-Pacific established by the Obama administration.

For instance, Assistant Secretary of the Bureau of Economic and Business Affairs pointed out during a conference that “our prosperity and security are inextricably linked to the region (AP); as well as our foreign policy and our economic policy. Trade issues cannot be separated from the more important issues pertaining American global leadership” (Rivkin, 2016).

BOX 4

The US: Strategic realignment. Asia as a “pivot” of regional security

Purposes:

- Maintain the global leadership in the 21st century in the matter of defence.
- Sustain and strengthen the US leadership in AP, increasing its prosperity and promoting its values (AP is seen as an “area of vital strategic importance”).
- Protect the “economic vitality of the US”.

Source: Department of Defence of the United States of America, “Sustained US Global Leadership: Priorities for the 21st Century Defence”, January 2012.

The TPP and the strategic importance it acquires was also emphasized, among many others, by the US Secretary of Defence, who stated “I know you don't expect this from a Secretary of Defence but, in terms of our re-balancing (in the AP), in a broad sense, the approval of the TPP is as important

to me as a brand new aircraft carrier.” (Carter, 2015). This type of assertions make sense in a context where US is seeking to advance towards a trade agreement with the ASEAN, and a deeper and broader cooperation would be achieved in the field of security with Australia, Philippines, Vietnam as well as Japan.

2.3. Scanning a Mega Agreement: Interests and motivations of some member countries of the TPP

Within this framework and given the combination of economic and political factors and strategies at stake, it is advisable to investigate what were the motivations of the different participants in both dimensions.

- **Japan¹³**

The possibility of joining the TPP was being considered by the Japanese authorities since the beginning of the negotiations in 2010. The then Prime Minister, Yoshihiko Noda publically expressed in November 2011, the interest of his Administration to join. In a meeting with the President of the USA, he indicated “that it is important for the US and Japan to work together in the creation of rules for the region with respect to investment and trade, to build a “Free Trade Area in the Asia Pacific” (FTAAP).

This position was met with fierce negative reaction. Political parties, including his own, the DPJ, (Democratic Party of Japan), business organisations and the media expressed fear of the opening of the internal market, particularly with respect to its impact on the fishing industry and the automobile and electronic sectors. The important exception was Keidanren – the Association that incorporates the most important Japanese TNE – which openly supports the possibility of joining the TPP.

After his inauguration, Prime Minister Shinzo Abe (Liberal Democratic Party, 2012) met with President Obama the following year (The White House 22/02/2013). On that occasion, he again expressed interest for his country to join in the TPP negotiations, outlining the need to bear in mind the interest of Japan in maintaining the protection of its fishing industry (without receiving any assurances from its host). On his return, there were negative reactions once more.

The studies carried out by the Japanese administration during this period, indicate quantitatively the opportunities and potential costs of joining the TPP. In light of an evolving uncertain situation for the Japanese economy and politics, it is estimated that the labour force will decline by 12% over the next 15 years, expressing their concern for the unemployment and adjustments that would have to be made.

13 This section is based on the contents of different works, courses and conferences carried out by the writer of this study: (Moneta, 17/11/2015); (Moneta, What is to come: Latin America in the face of China (2020-2040), 23/06/2015); (Moneta, The Role of the Economic Strategic Association in the Asian Pacific and the configuration of new geo-economic spaces. Perspectives for Latin America, 17/09/2013); (Moneta, The Role of the FTAs and the “Strategic Economic Associations” in the restructuring of the International Economic System - Global, 2013) (Moneta, The dragon and the chrysanthemum: Japan in the Asian Pacific (1990-2015)).

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With respect to expected earnings, it is estimated, according to economic models (Lewis, 2011) that if the RCEP – in which Japan participates in the negotiations – is materialized and also with the TPP, the country would earn US\$ 27 billion and US\$ 32 billion, respectively.

There are other factors that impact the assessment: the signing of a FTA US-South Korea (KORUS), generates uneasiness, because 70% of imports of the USA from Japan and Korea are similar: vehicles, machinery and electric equipment. Also, although the TPP and the RCEP would provide important benefits, both Agreements represent significant political costs: the first because of the obligatory opening of the agricultural market and the second due to the potential increase of tensions with China.

Finally, Japan joined the TPP negotiations during mid-2013, despite the opposition mentioned above from the agricultural lobbies, given the crucial importance assigned by the Abe Administration to obtain full economic recovery of the country.

In this context, this Agreement acquires priority status. It forms a relevant part of the strategy of "Abenomics" and is coherently articulated with the rest of the measures being developed by Japan: the negotiations of a China-Japan-Korea Agreement (CJK FTA); those relating to an EU-Japan Agreement and the RCEP (Lee & Itakura, 2014).

BOX 5

TPP: Benefits expected by Japan (Kawai, 2014)

- Allow Japan to participate in the design of the regulations that defines trade and investment in the 21st century, particularly in the AP.
- Contribute and stimulate FDI in Japan.
- Expand access of Japanese exporters to the markets of goods and services of member countries.
- Improve the possibilities of investment of the Japanese TNEs through the regulations of treatment of foreign investment and protection of intellectual property.
- Create opportunities for Japanese SMEs to carry out business in other member countries.
- Contribute to strengthening political and economic trade Relations with the US. In this framework, the TPP allows the levelling with Korea of their relative positions in the US market.
- Enable diversification of Japanese trade and investments.
- As collateral effects, the TPP could increase the interest of the EU in closing the agreement with Japan.
- Contribute to modify the opening and modification of the structure of the Japanese agriculture market.

All these agreements will contribute to expanding and strengthening Japanese ties with the world's largest economies, in the belief that this would bring significant economic benefits. In this regard, it is understood that a central core of the Japanese economy is firmly tied to South East Asia and the rest to the AP through their ETN and very strong currents of DFI (Moneta C., 2013) (Moneta, The dragon and the chrysanthemum: Japan in the Asian Pacific (1990-2015)). Finally, the presence of China, who increasingly competes at a higher level with Japan, constitutes another relevant factor, based on economic and geopolitical reasons, for Japan joining the TPP.

After entering negotiations of this Agreement, Japan must make concessions – although limited – in the fishing industry (see Chapter II, Agriculture). On this occasion, the effect of the Japanese agriculture lobbies was less. The labour force participating in this sector, has been significantly reduced and with the help of the government, there is in place a restructuring aimed at focusing agricultural production and meat on products with higher aggregated value, having already initiated with certain success, their insertion in the Asian markets.¹⁴

2.4. TPP: the Absentees

Recognizing the economic and political burden of the TPP and the geographic dimension that it involves, the Agreement has left out of its limits a country, as relevant as the PR of China and the members of the BRICS among the emerging countries. It also does not include the European Union, with which the USA is developing separate and simultaneous negotiation through the TTIP.

The interests of the US and China have already been mentioned in another section of this paper. However, although there are fundamental arguments to explain their absence – particularly, within the framework of short term views – there are still unanswered questions that are significant for the development of relations between both countries and their respective role in Asia and other regions.

In one way or another, China could not be absent from the FTAAP, whatever the line of approach used (the TPP, the RCEP or another eventual agreement that would be reached), since this would be coupled with problems of feasibility and significant uncertainty regarding the future development of the integration processes in Asia, with results that would go beyond the regional limits.

Although with an impact to a certain degree less than that of China, the situation could be repeated in the case of India, another power with an important capacity to affect the course of the Asian processes, expanding these effects beyond the frontiers of the region. Within this framework, it must be remembered, that although there are significant tensions and competence for leadership between China and Japan and China and India, these two latter countries share, on a scale larger than that perceived in the West, a common interest of strengthening Asian integration in the face of the large foreign parties (Moneta, Texts from the Course on International Political Economy, Masters in International Economic Affairs, 2013-14).

With respect to the TPP, India seeks to develop its own network of FTA on a regional and global level that would allow them to diversify their trade beyond the markets of the region incorporated to this Agreement. In this latter context, the South Asia power has developed more than a decade ago, an active policy of insertion in South East Asia; expand and strengthen their economic relations with East Asia; increase its participation in the institutions and political forums of the region and awaits to finalize its admission to the APEC.

Another fundamental party not participating in this Mega Agreement is the European Union. In this regard, it could be argued that the TTIP could, in principle, satisfy their interests. However, although there is a coordination of objectives between the US and the EU with respect to the convenience of introducing new rules to the game for international trade, there has already been a

¹⁴ Conversations of the writer of this paper with Doctor Kotaro Horisaka, Professor Emérito, University of Sophia, Japan, Buenos Aires, July 2015.

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series of problems between the two in the ongoing negotiations. If the TTIP is not signed, what would be the situation of Europe? How would the profits and costs be distributed to the current most thriving region of economic growth – Asia Pacific – between a power that has been able to sign a relevant agreement with several of its members and another that has not participated in this exercise? For example, in areas where there are important differences between the two, the US is achieving through the TPP to impose their standards on pharmaceutical and biological products and on Intellectual Property (Ku 2012), which they have not been able to incorporate in other agreements where the EU participated. Other questions such as these, would have to be considered.

- **P.R. China**

In their first assessments, the Chinese analysts considered that the TPP constituted an intent of maintaining China outside the principal discussions on relevant trade agreements, constituting an embargo to its growth and foreign insertion (rivalry and strategic competition). Other interpretations placed emphasis on the use of the TPP as a useful instrument to “deconstruct” the intra-Asian cooperation, affirming in exchange a transpacific orientation (Zhang, 2013).

Within this context, the TPP was seen as a threat to the regional development strategy, given the following reasons presented in (Ross, 2011), (Devadason, 2013) and (Moneta, Texts of the Course on International Political Economy, Master in International Economic Relations, 2013-14):

- i) It did not coincide with the principal orientation imposed to the intra-regional integration generating pre-existing conflicts related to trade. In this way, for example, 6 of the 9 participants of the TPP are incorporated in the ASEAN+1; ASEAN+6 and ASEAN+3, Agreements that include China either bilaterally or sub-regionally.
- ii) A lot of its rules and regulations are contradictory to the Chinese economic interests, rules and standards;
- iii) The TPP would legitimize and enable entry of the US to the Asian markets, for which they compete.

However, contrary to the above view, it could be argued that:

- i) The intent does not appear to be able to significantly erode the relevant regional position of China, which has solid foundations (example: ASEAN + 1, ASEAN + 3, etc.).
- ii) However, a relevant concern for China is based on preferential access to the US market that may be granted by the TPP to several countries of the AP and – given its economic and political importance – in the manner in which Japan adopts with respect to both Agreements.

With respect to the question of whether it is convenient for China to enter the TPP, it is indicated that for political and economic reasons and strategies, the interest of China is focused on “an Asian route to integration”, represented by the RCEP.

In the future, as the Chinese economy continues its process of growth and gradual development, it would discover the conditions to do so. If the geostrategic situation allows, it is expected that this power could be considered beneficial to hold negotiations with the US. (For example: compatibility of RECP and TPP; negotiation of an FTAAP). Additionally, given the last agreements on matters of investment, environment and other aspects, it cannot be ruled out consideration in the future of the possibility of a bilateral FTA between the US-China (Moneta C., 2016).

From an economic point of view, the position of China as a second trade partner of the AP and the importance of its trade exchange with the US, explains their interest in considering in the future, the opportunity of joining the TPP, if they are offered satisfactory conditions. China does not wish to loose parts of such important markets (it is estimated that the US will represent 42% of Chinese trade exchange up to around 2025). However, it understands that the TPP favours and generate benefits to their members and takes into consideration the difficulties and costs that would be involved in joining this agreement at a later date.

TABLE 2
TPP: Trade with China. Total percentage of trade (selected countries)

| | |
|-------------|-------|
| Vietnam | 25.0% |
| USA | 13.0% |
| Singapore | 9.5% |
| Peru | 16.2% |
| New Zealand | 15.8% |
| Mexico | 5.1% |
| Malaysia | 24.5% |
| Japan | 20.3% |
| Chile | 22.0% |
| Canada | 6.2% |
| Brunei | 12.0% |
| Australia | 28.0% |

Source: Adrian Hearn & Margaret Myers, "China and the TPP: Asia-Pacific Integration or Disintegration?" China and Latin America Report 2015, The Dialogue, July 2015.

Partially overcoming the assessments commented on previously of a first phase where emphasis was placed on the consideration of the economic and politically conflictive aspects with Chinese interests, the position of Beijing presents an important change in 2013. From this moment, different declarations were made by the authorities of the Ministry of Foreign Affairs and the Ministry of Trade indicating a gradual modification of the position of the country with respect to the TPP.

Thus, in May 2013 the Ministry of Trade announced "that China was considering the possibility of incorporating into the TPP, providing it was on the basis of 'equality and mutual benefit'".¹⁵ It is very likely that this change in position have had an effect on the decision of the Abe Administration of Japan in April 2013 on confirming their participation in the TPP. In summary, it is suggested that although they are not in conditions to do so in the short term, China could consider it positively in the future (He Ping, 2013).

Overcoming the identification of the "six misunderstandings" (between China and the US)¹⁶ and its contrast – the focus that promoted the economic opening and immediate acceptance of the TPP –

¹⁵ Declaration by the Minister of Trade of the P.R. of China, quoted in P. Bowles, "China debates of the TPP", University of Northern British Columbia, 20 March 2014.

¹⁶ The "six misunderstandings" are: the conspiracy theory; the pessimist theory; the theory that promotes an attitude of "wait and see"; the theory of the USA and China as rivals; the theory of United States domination and the theory of exclusion. See: Z. Jianping, "The Problems and Challenges of TPP from the Angle of Negotiators' Conflicts", in Situation and Suggestion on Economic Integration in Asia Pacific and East Asia, World Affairs Press, Beijing, 2013.

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is gaining shape, of a more realistic appraisal. Within this context an interpretative line is crossed which presents the TPP as a measure of “contention of China” adopted by the US, to others of practical character, which responds to the new perspective. Emphasis is placed on the importance of the ASEAN and the APEC, highlighting the cooperation of China with these Organizations and the need to strengthen and expand. It also incorporates an exercise of experimental and objective analysis on the costs and benefits that could represent an eventual incorporation of China to the TPP.

Likewise, the limitations of China to be able to access the Agreement at this moment is being acknowledged, particularly because of the asymmetries of existing situations in the area of access to markets; regulations related to investments; trade in goods and services; employment and environmental conditions; intellectual property; government procurement and Investor-State dispute settlement (ISDS). This analysis leads to the consideration that the current limitations could be gradually overcome within the next decades through the “second phase of transformation of the PR of China” (2015-2030/40).¹⁷

- **South Korea**

South Korea have implemented successfully a strategy of incorporation to new markets with respect to the establishment of a network of FTA, which today includes over 60 sectors.

After its first FTA (Korea-Chile, April 2004), it has gradually included negotiations with China, Vietnam, Indonesia, New Zealand, Mexico, Japan, China-Japan-Korea (CJK,) and Gulf countries. Within this framework, two FTAs of significant importance must be highlighted: Korea-US (KORUS), – which will constitute one of the most important bases for elaboration of rules and regulations that the US sought to have established in the TPP – and Korea-EU. Also, discussions are being held regarding the possibility of doing this with MERCOSUR; Israel; Malaysia; Russia; Colombia and Central America. Therefore, Korea hopes that their percentage of free trade reaches 90% of the total in the near future.

This country initiated preliminary bilateral discussions with the members of the TPP in November 2013. During the first three years since the start of negotiations of the TPP, Korea adopted a prudent position of observation of the process, before deciding to join. During this period, their main interest laid in achieving an FTA with the US and conclude negotiations of another with the PR of China (Cheong, 2014).

Faced with pressure from the United States to enter the Japanese rice and meat markets – sectors fiercely protected by Korea – they decided to abandon the negotiations, bearing in mind the political consequence of strong internal resistance. In this regard, Korea now designates greater priority to the conclusion of an FTA with the PR of China.

- **India¹⁸**

For some well-known Indian specialists (Ciuriak, 2015) the rise of the TPP is seen as a negative event. In general terms, it is expected that on covering an important part of the percentage of global trade and GDP, it will generate significant overflow of negative effects on countries that are not members of the Agreement. Likewise, its regulations and standards will

¹⁷ Moneta, Article IDB INTAL.

¹⁸ Debates of the author of this paper with specialists from the Universities of Jawaharlal Nehru; Mumbai; Chennai and New Delhi, India, 14/09 to 10 October 2015.

model the markets and therefore, will expand the direct effects of the application of preferences in a discriminatory manner.

Given the significant importance that the Agreement has for the US, and the fact of negotiating simultaneously with the TTIP, it is expected that it will give rise to significant far reaching impact. Within this framework, from a geopolitical view point it is seen as an instrument of the economic policy of the United States for Asia.

It is emphasized that the TPP and the TTIP is controlled by the interests of the large transnational companies that dominate the CVI. The ETN through the Mega Agreements, seeks to eliminate the border lines between the public and private regulations. This process has relevant effect on situations of competitiveness, given that the regulations of the private sector are not subject to the obligations of the WTO with respect to the NMF and the National Agreement, not being able to be questioned through the mechanisms of settlement of disputes of the WTO.

In light of this situation, what could be the response of India?

It is assessed that their internal market is far away from incorporating wide freedom of movement of goods, services, capital and labour. Subsequently, an ambitious exercise of a "single market" under Indian control could generate pressures of competitiveness on the internal economy equivalent to the benefits that could be considered by the Parties of the Mega Agreements.

The application of industrial policies could be added to this process, such as those that were promoted by the Ministry of International Trade and Industry (MITI) during the golden era of the Japanese economy (China since some time ago, have implemented practical policies of industrial promotion, which take into consideration this experience). Finally, it is necessary to have a governmental focus on promotion and support of the industry of increasing commitment, as that being observed under the Administration of Prime Minister Narendra Modi.

These measures must be enriched with the acquisition of technology through the Indian TNEs, endogen technological development; exercises of unilateral liberalization and reduction of cross-border costs for trade operations.

In summary, the external threat represented by the TPP and the TTIP has intensified the domestic discussions in India as to how to respond to these challenges. Its focus is aimed at a reconfiguration of the internal and external political agendas in a long term effort to promote a dynamic evolution like that of China, that allows it go from "made in India" to "made by India", reducing the negative overflow linked to the exclusion. The measures indicated here would result useful for the development and adequate transformation of the country, whether or not the threats of the Mega Agreements of trade materialize. (Moneta, 2016).

Within this context, in March 2016, the Minister of Trade and Industry (Sitharaman, 2016) explained the position of India regarding the TPP during a conference dictated at the Indian Confederation of India (CII). He assured the attendants that "there was no need to worry about an adverse impact of the Agreement, because the necessary measures had been adopted to strengthen and expand India's trade and investment within the framework of an emerging new trade architecture". However, in another event, also by the CII, the Minister indicated that "there could be certain impact on exports, given the high standards of the TPP, compared with the regulations of the WTO, a circumstance that would require India to adopt measures that elevate their own standards".

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India was invited, although it declined the proposal, to participate in the TPP during the visit made by Vice President Joe Biden to that country in July 2013. Contrary to the assessment made by the Minister of Trade, one of the studies on impacts of the TPP most quoted (Peter A. Petri, 2016, page 24), considers that the exclusion of India from the Agreement could result in an annual trade loss of around US\$ 2.7 billion by 2030. This effect would be seen increasing as new countries are incorporated to the TPP (it must be mentioned here that India traded 25% of their exports in 2014 to countries of the TPP).

As part of its strategy to expand the markets, India have signed an FTA with Japan and ASEAN, obtaining preferential access to 5 South East Asian countries. Because of this, it is considered in the country that the impact of the TPP would not be that significant. India has signed 13 FTAs; one of them, considered relevant: the "Free Trade Agreement of South Asia", which is far from achieving the expected benefits, given a high level of protectionism in the SAARC (South Asian Association for Regional Cooperation) to foreign trade and investments.

Within the framework of the Reform Programs undertaken in India to strengthen its exporting capacity, it is being considering to adopt as a criteria, the rules and levels of opening that were obtained in the TPP. Among the measurers to be adopted are taxes on goods and services; reduction of subsidies and non-tariff barriers, as well as the simplification of laws relating to land and labour. Finally, within the industrial sector, the objective was established to produce manufactures with "zero defect" and enable trade operations.

III. TPP: STRUCTURE AND CHARACTERISTICS. MAIN NEGOTIATION TOPICS AND IMPACT. ANALYSIS OF THE VARIOUS CHAPTERS OF THE TREATY

This chapter – together with that relating to Latin America and the Caribbean – constitutes a main element of this paper. In this regard, they consider a more detailed coverage of the aspects discussed in each case.

1. Initial Provisions and General Definitions

This chapter establishes that the TPP can co-exist with other international trade agreements among the Parties, including the WTO and regional and bilateral agreements. It also establishes definitions of the terms used in more than one chapter of the Agreement.

2. National Treatment and Market Access for Goods

- **Market access**

Tariff liberalization on the trade of goods constitutes one of the traditional chapters in negotiations of the Free Trade Agreements. In the case of the TPP, the tariffs of the member countries are relatively reduced; they go from 0% to 10% (WTO, 2012) and cover more than 11 thousand categories of goods by each member on average, since most of these have FTAs that are interrelated. However, there is always the possibility to expand their coverage and reduce their value. As an example, such would be the case – in the perspective of the developed economies that participate in the Agreement – of Malaysia, Vietnam and Peru.

The Parties agreed to eliminate and reduce tariffs and non-tariff barriers on industrial goods and eliminate or reduce tariffs and other restrictive measures on agricultural goods. They also agreed on the publication of tariffs and other information relating to the goods and on not using

“requirements of performance”.¹⁹ They also decided not to impose restrictions on trade of re-manufactured goods, which incorporate the recycling of parts into new products and are non-compatible with the WTO.

If the countries maintain import and export licenses, they would mutually notify of their requirements. With respect to tariffs on goods, different schedules have been organized for their progressive elimination. A part would be eliminated immediately after the Agreement comes into effect and that corresponding to more sensitive products, would be reduced gradually, over different periods of time. Given that a significant number of members have previous FTAs among themselves, the TPP will take this into consideration, preparing the respective agreements bearing in mind the prior commitments acquired among the members, with the purpose of harmonizing the process of elimination of tariffs among themselves.

Following the implementation of the TPP, the elimination of approximately 75% of the tariffs of non-zero value is expected, estimating that the process would be very advanced after sixteen years and completed (at 99%) after reaching 30 years (see Annex, Table 1).

Bearing in mind the differences existing between the dimensions of the economies, the level of development and the specific sensibilities with respect to trade of each country, the Agreement contemplates different programmes of tariff reduction among them. Within this framework, the United States and Japan shall proceed with a faster liberalization of their trade with countries of lesser economic capacities and export dimensions.

The degree of liberalization depends on the tariff rates that are being applied and whether or not previous FTAs exist. For those members that do not have any, the “clause of the most favoured nation” (MFN) shall be applied.

The US has adopted the criteria that negotiations must be made on a bilateral basis with those countries where they had no FTA (New Zealand, Brunei and Vietnam), maintaining with the others in force the individual terms that were established in the respective previous agreements. This position generated significant tension with countries such as Australia, since it prevented them from expanding concessions previously obtained from the US.

The countries with FTAs will continue to receive the preferences already that already exist. For example, a Canadian exporter to the US may obtain the tariff rates already agreed with this country in the North America Free Trade Agreement (NAFTA) in the case these are less than that established by the TPP. Based on the above, different exporters – such as in the case of Malaysia and Canada – can have access to different tariffs with the US, even when the TPP has not indicated a different treatment (Tables 2A and 2B in the Annex show the values of the bilateral tariffs for exports and imports prior to the TPP).

For the purpose of considering the different situations, countries have been classified into three groups: the most open economies; those with more sensitive economies, and emerging countries, which entail processes of greater liberalization.

19 Requirements on local production that some countries impose on companies in order to obtain tariff benefits.

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- **The more open economies: Australia, New Zealand, Chile and Singapore**

Once the TPP comes into effect, the larger part of the tariffs of Australia, Chile and New Zealand that the exporters of other members of the TPP must face would be immediately eliminated, remaining approximately some 10% of the products, which would maintain tariffs after the first year. In the case of Chile, this country would eliminate 95% of their tariffs immediately, and the rest would cease within eight years.

- **USA, Japan and Canada: Countries with more sensitive sectors**

These three countries have a relatively high percentage of trade opening, with close to 60% of their tariffs below 5%. However, they maintain high tariffs on sensitive products, with long periods of protection. For example, in the case of the USA, the tariffs on import of dairy products will expire soon after twenty years, and on imported trucks will reach thirty years. In the case of Japan, the fee on imports whose tariffs will not be eliminated are in the sectors of agricultural, meat, dairy and rice products (see Figures 1 and 2 in the Annex).

- **Emerging countries that entail processes of greater liberalization**

Brunei, Malaysia, Peru, México and Vietnam are members considered with relatively less development with respect to the countries contemplated in the groups above. They generally possess higher MFN tariffs, in particular, the cases of Vietnam and Malaysia. The first one has more than 1/3 of its tariffs lines ranging between 8% and 15%, while the second one presents a group of products with 20% of protection (see Figure 3 in the Annex).

In summary, the Agreement envisions different tariffs on sensitive products – and in certain cases, with longer expiry periods – among the member countries, and particularly between the USA and Japan. Likewise, given that most of the tariffs of a large number of these countries are low, the profits that will be obtained through free trade would be relatively reduced (see Table 3 in the Annex).

- **Technical Barriers to Trade (TBT)**

The members of the TPP have agreed to follow transparent regulations, non-discriminatory and not to create unnecessary trade barriers for the development of the technical rules, standards and procedures for granting conformity, preserving at the same time the capacity of the Parties to act in compliance with their legitimate objectives.

The Parties decided to generate regulations that enable the acceptance of the procedures of assessment for granting conformity. It was also agreed to accept public participation for making comments on the technical regulation and standards that are proposed. Additionally, the TPP includes annexes tied to the regulation of specific sectors (for example: cosmetics, pharmaceutical products, technological products for information and communication, medical instruments, wines and alcohol beverages, formulas for preparation and additives and organic agricultural products), promoting the achievement of a common regulatory focus.

- **Agriculture**²⁰

The negotiation related to the reduction of trade barriers on agricultural goods and services have traditionally resulted in one of the most conflictive aspects, globally as well as bilaterally. From an internal policy view point of the States, whether developed or developing, the groups and entities dedicated to this activity have always enjoyed – with certain independence relative to their number and to the participation of the sector in the local economy – a great capacity of influence in the political economy of their countries. Agriculture has been and will continue to be a protected sector and of high sensitivity, locally and internationally. Negotiations within the TPP have not escaped these determinants.

During the first years of this decade, the countries of the TPP accounted for 25.6% of the global agricultural exports and 22% of imports. Table 4 of the Annex allows for examining the situation of each member with respect to agriculture trade (see Table 4 in the Annex). Within this context, the trade of meats, grains, sugar and dairy products, where most members participate (except for Singapore and Brunei), presented difficult and complex negotiations, arising from the significant importance that both exporting and importing countries place on this sector.

Although their percentage of participation is more reduced (from 10% to 13%), with the exception of New Zealand, farming products also presented a lot of difficulties in the negotiations. The largest exporters – USA, Canada, Australia and New Zealand – exercised strong pressure to increase the opening up of the markets of the remaining members. However, simultaneously, the USA and Canada adopted very firm positions with respect to opening up their markets. They established protection for their producers from external competition capable of providing good quality products at a much lower price. In this regard, it should be noted, for example, that the Trade Representative of the USA indicated that “whatever the result of the negotiations, the agreement could not affect the sugar program of the United States” (Pearson, 2015).

- **Livestock and Meats**

Japan, Mexico, Peru and Vietnam committed to a full and/or complete reduction of tariffs on import of meat products (beef and pork). This situation favours the producers of the USA, Canada, Australia and New Zealand.

Japan reduced their high tariffs for import of beef in chilled and frozen meats from 38% to 9% over a period of 15 years, while eliminating the tariffs corresponding to processed red meat, livestock and organs, including – with a period of 10 years reduction – that corresponding to pork.

Mexico agreed to eliminate around 20% to 25% of the tariffs corresponding to beef and 10% to 15% on lamb and mutton.

Vietnam has relatively low tariffs in view of different FTAs previously signed with other members of the TPP, and therefore the Agreement does not modify significantly the possibilities of entry for

²⁰ This section was prepared from papers of Cullen Hendrix & Barbara Kotschwar, “Agriculture”, Chapter 3, in “Assessing the Trans-Pacific Partnership”, Peterson Institute for International Economics, Vol. 1, Feb. 2016; “Trans-Pacific Partnership Summary, Council on Foreign Relations, Washington DC, 4 Oct. 2015; Debora K. Elms, “The Trans Pacific Partnership Trade Negotiations: some Outstanding Issues for the Final Stretch”, Asian Journal of WTO and International Health Law and Policy, Vol. 8, No. 2, pp. 371-391; “The Trans Pacific Partnership”, USTR, available at: <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.

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this country. Paradoxically, two great exporters of meats – USA and Canada – strongly resisted to the opening up of their markets.

TABLE 3
Effects of the TPP on the value of agricultural imports of TPP members by 2025

| | | Australia | Canada | Chile | Japan | Malaysia | Mexico | New Zealand | Peru | Singapore | USA | Vietnam |
|---|---|-----------|--------|-------|--------|----------|--------|-------------|-------|-----------|--------|---------|
| Projected baseline imports of TPP partners for 2025 (US\$ millions) | Cereals | 33 | 610 | 362 | 5983 | 331 | 3.181 | 60 | 490 | 83 | 1410 | 326 |
| | Fruits/Vegetables | 459 | 3565 | 41 | 2268 | 201 | 831 | 167 | 80 | 337 | 9022 | 89 |
| | Oilseeds and related products | 363 | 1015 | 42 | 4080 | 259 | 2.291 | 175 | 23 | 274 | 2469 | 307 |
| | Meat | 614 | 2756 | 85 | 11826 | 192 | 2.879 | 221 | 30 | 559 | 8134 | 256 |
| | Dairy products | 473 | 561 | 18 | 1783 | 792 | 1.094 | 89 | 55 | 547 | 914 | 301 |
| | Others | 3.071 | 9.765 | 255 | 15.179 | 1140 | 4.019 | 1430 | 395 | 1.169 | 22.897 | 822 |
| | Total Agriculture | 5.013 | 18.271 | 804 | 41.118 | 2.915 | 14.296 | 2.141 | 1.074 | 2.968 | 44.846 | 2.100 |
| | Changes in the values related to the baseline by 2025, due to the TPP (US\$ millions) | | | | | | | | | | | |
| Cereals | 1 | 2 | 2 | 951 | 15 | -4 | 1 | 1 | 2 | 4 | 10 | |
| Fruits/Vegetables | 5 | 5 | 2 | 317 | 4 | 2 | 2 | 1 | - | 10 | 58 | |
| Oilseeds and related products | 3 | 20 | 1 | 10 | 1 | - | 1 | 3 | 4 | 11 | 47 | |
| Meat | 16 | 451 | - | 2.829 | -1 | 41 | 6 | - | - | 247 | 76 | |
| Dairy products | 3 | 367 | - | 804 | 1 | 187 | 2 | 9 | 10 | 187 | 15 | |
| Others | 14 | 26 | 3 | 918 | 171 | 8 | 16 | 9 | 9 | 484 | 183 | |
| Total Agriculture | 41 | 871 | 8 | 5.830 | 191 | 235 | 28 | 23 | 25 | 908 | 388 | |

Source: Based on USDA, Economic Research Service, TPP model.

- **Rice**

Despite pressure from the US, Australia and New Zealand to open the Japanese rice market, the concessions on this product were almost symbolic.

It should be noted that the average tariff (Most Favoured Nation-MFN) of Japan for agricultural products is 14%, but its peaks can exceed 700% (WTO, 2014). In this framework, Japan has only conceded previously agreed reduced quotas of access to their market. With the TPP, an increase of 50 thousand metric tons is also obtained with respect to the previous quota of access that was available, conceding another 6 thousand metric tons for Australia. This increase will continue with another quota of 70 thousand and 8.400 metric tons respectively for both, in the 13th year of the Agreement.

Meanwhile, Vietnam, one of the largest global exporters of rice that enjoy comparative advantages because of their proximity to Japan, obtained only small profits.

In summary, as can be seen in Box 6, Japan, despite a lot of internal concern caused by its opening, maintained significant barriers with respect to this product.

Because of sociocultural reasons, rice continues to be an almost untouchable product; it is considered a fundamental part of Japanese identity. However, the fishing sector has been modified. To deal with internal agriculture lobbying, the Abe Administration relied on an advantage with respect to previous negotiations. Given the vegetative process and the evolution of the market, the population dedicated to agricultural activities has decreased substantially. To this is added the exodus to the urban centres and that the young population works part-time in the rural

environment sharing their time with activities in other sectors. These factors have significantly reduced the capacity of political pressure on the central government.²¹

BOX 6

Japan. Effect of the TPP on the agriculture and fishing sectors²²

- On 8 March 2016 the Cabinet of Prime Minister Abe approved a series of documents related to the implementation of the TPP.
- Japan must reduce their tariffs by 95.1% on products in the farming, industrial and other sectors.
- In December 2015, the Japanese central government estimated that the negative impact for concessions to be made in the forestry and fishing sectors, would correspond to a decrease of 130 billion to 210 billion yens. There is now more precise estimates on its effects in each state and in each sector and the government is preparing financial assistance and other compensatory measures for these sectors.
- The tariffs on importation of meat, currently at 38.5%, is reduced to 27.5% in the first year of the Agreement and will continue to decrease up to 9% in the sixteenth year. In light of fierce external competition (annual imports of 870 thousand tons, with 520 thousand originating from Australia, USA and New Zealand) the Japanese strategy for this sector is to specialize in the export of the highest quality meat (high consumption markets), and the same criteria will be applied for rice (for instance: rice for sushi).
- Earnings expected by Japan from its entry into the TPP will have an effect on GDP growth of 13.6 trillion yens, which represents 2.59% of the total for fiscal year 2014.

Source: Prepared by the author, based on Yurikokoike (2016).

Within the framework of the TPP, its members ensure to liberate most of the agricultural products (with the objective of reaching 99% of all of these including livestock, dairy and beverages). When the agreement is ratified, it will have an effect on 32% of the Japanese tariff lines, 31% on the Vietnamese and 92% on the Malaysian; above all, less one, in Australia and 99% of these in New Zealand will be eliminated. The opening of the remaining lines would be programmed throughout the period of 15 to 20 years (Cullen Hendrix, 2016).

The TPP has made significant advances in the highly protected agricultural sectors. For example, with respect to rice. Likewise, 40% of the Vietnamese tariffs on this product will be eliminated when the Agreement enters into effect, together with 20% of the Mexicans ten years after and, one year later, 40% of the Malaysians. As expected, the party with the hardest positions in this negotiation was Japan, who will maintain high tariffs in this sector, but has promised to duplicate the volume of the quotas of rice which has been allowed to date to enter into their supply market by Australia and USA. Additionally, Vietnam, Peru, Mexico and Japan accepted an important opening up in their markets for the access of beef and pork products coming from other members of the Agreement.

21 Conversations of the author of this paper with Dr. Kotaro Horisaka, Professor Emeritus of the Sofia University, Buenos Aires, March 2016.

22 Yurikokoike, "How the TPP transforms Japan's economy?", The Japan Times, Tokyo, 3 Nov. 2015; The Japan Times, "Japan's prefectures map out damage to agriculture sectors by the TPP". Osaka, 07 March 2016; The Japan Times, "Cabinet approves TPP bills, to step up explaining pact's benefits", Kyodo, 8 March 2016.

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- **Dairy Products**

Historically, Japan has maintained high tariffs on dairy products, conceding also small quotas of access to cheese, non-fat milk, powdered milk and butter.

Under the TPP, Japan expanded their quota in milks and butter within a period which recently opened from 16 to 21 during the period of the Agreement. Powdered milk will have a quota of 1,500 metric tons free of tariffs, which would be extended to 4,750 metric tons after six years and condensed milk will be 750 metric tons (US Department of Agriculture, 2015). These quotas will be of free access, with all members being able to participate. For their part, the USA and Canada strongly protected their dairy products and poultry markets.

These levels of protection generated problems between the US and New Zealand, between which there is no FTA, given that previous negotiations aimed and achieving one did not reach its objective because of differences in the dairy sector. The USA has a sophisticated structure of measures of protection in different sectors, among these, dairy products. This sector includes subsidies and price support for dairy production and quotas and high access tariffs.

With the addition of the participation of Canada and Mexico to the negotiations, the process became complicated, allowing for potentially different trade-offs. For example, an opening in New Zealand could maybe be compensated with a greater access to the Canadian market, but this latter country previously withheld from entering negotiations aimed at signing the TPP (Findlay, 2012), precisely because of their resistance to include the dairy product sector in the negotiations (Elms, 2014).

- **Sugar**

Another highly sensitive market, sugar, brought together in the TPP three large producers: Australia, Mexico and the US, which together covers 80% of the exports of the TPP members.

Within the framework of NAFTA, it took 14 years to open up the sugar sector, a highly sensitive product for Mexico and the USA. (Gary Hufbauer, 2005). In the TPP, the context resulted more complex, given that sugar was completely omitted in the FTA Australia-USA (AUSFTA, 2005), as part of a negotiation where the USA accepted this omission in order to continue protecting their local producers. For its part, Australia "lost" in this opportunity the possibility to increase its access to the United States market in exchange for not accepting the inclusion of the *Investor-State Dispute Settlement* (ISDS) in the FTA.

The inclusion of a negotiation on sugar in the TPP could affect the terms negotiated previously in the AUSFTA. To avoid problems, the USA imposed the criteria of not negotiating new access into the market with any country with which they have signed an FTA that had covered this aspect.

Within the framework of the TPP, Australia obtained significant benefits in the United States market, adding a quota of 65 thousand tons to what they had already possessed (109 tons in 2015). However, this resulted less in terms of the expectations of its government, which was to reach a quota of 750 thousand tons.

However, its position is weaker vis-à-vis the 1.5 million tons that the USA imports from Mexico within NAFTA. It is not yet known whether this increase for Australia will be compensated with a reduction of the imports from Mexico, or with a decrease of the internal production of the United

States, bearing in mind the current agreements of local production of sugar in the USA. (Pearson, 2015).

- **Tobacco**

The US supplies a quarter of the exports of tobacco to the TPP countries. In this context, this power was able to open up new markets, particularly in Japan, Malaysia and Vietnam. However, liberalization periods for this product are long: 11 years for Japan (free 30% of the market) and 16 years for Malaysia and Vietnam. In turn, the US will eliminate its tariffs (currently in the order of 350%) in 10 years, while New Zealand and Brunei will do so when the Agreement enters into force.

The TPP contains significant restrictive measures with respect to tobacco given its negative impact on health. Article 29.5 allows members to exclude all claims relating to tobacco from investors. Under the TPP, tobacco products are excluded from claims through the ISDS. The control measures on tobacco of a member State can only be claimed through the standard channels.

FIGURE 3
Some of the issues contested in the negotiations of the TPP (at June 2014)

| Areas | Countries with relevant interests in the disputes | Issues |
|------------------------------|---|---|
| Market access | USA vs. Japan | The USA requires that the Japanese tariffs on agricultural products be substantially reduced. Japan requests that the tariffs on automobiles in the USA should be eliminated. |
| Intellectual Property Rights | USA and Japan vs. Malaysia and Vietnam | The two powers require that information on pharmaceutical products and copyrights (for novels, films, music, etc.) should have protection for longer periods. Malaysia, Vietnam and other countries requires that this protection be established for shorter periods. |
| Competition Policies | USA, Australia and Japan vs. Malaysia, Vietnam and Brunei | The USA requires that policies that favour state owned enterprises (SOEs) (for example, subsidies) should be abolished and establish conditions for equivalent activity between SOEs and private companies. Malaysia and other countries reject this claim. |
| Government procurement | Singapore, USA and Japan vs. Malaysia, Vietnam and Brunei | Singapore, Japan and the USA request that government procurement be completely open to the participation of foreign companies. Malaysia and other countries do not agree with this criteria. |
| Investments | USA and Japan vs. Australia, New Zealand and Malaysia | USA and Japan argue that the Investor-State Dispute Settlement Mechanism (ISDS) should be introduced in the TPP. Australia and other countries are against this proposal. |
| Environment | USA, Canada and Japan vs. Vietnam and Malaysia | The USA and others argue that the environmental standards for the activity of the companies must be improved. Vietnam and other countries show resistance to this measure. |

Source: Masahiro Kawai "Japan's Approach to the TPP". Art. Cit. Table 1, p 30.

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- **Sanitary and Phytosanitary Measures (SPS)**

SPS refers to the restrictions related to health in the trade of certain goods, with the purpose of providing safety conditions to the consumer and to the sustainability of the products. There is a focus of tension here given that the USA considers that several of the SPS constitutes devices that are politically motivated, aimed at avoiding or restricting access of different products to foreign markets (for example: genetically modified meat and poultry products).²³

As a consequence, the chapter on sanitary and phytosanitary standards omits the discussion of the genetically modified organisms (GMOs) and the related bio-technological goods (the consideration of these goods with respect to the Local Agreement and Access to Markets is included in Chapter 2 of the TPP).

Article 7.9 of the Agreement establishes that the measures of conformity relative to the SPS should be adequate to the most important international agreements (Codex Alimentarius and the SPS Agreement of the WTO) and that deviations of these agreements could be taken into consideration only on the basis of scientific, objective and documented evidence (Article 7.9.2).

- **Trade Restrictions**

The members established firmer disciplines than those established by the WTO with respect to the restriction of exports: they prohibited the use of Rights of Export – except for products included in an Annex – and they promised not to apply subsidies to the exports on intra-block trade, and they also approved measures aimed at improving conditions of transparency and access to information with respect to regulations that affect the trade of biotechnological products.

Article 26.2 of the TPP is aimed at reducing the negative effects of the restrictions on exports. It acknowledges the right of governments to apply restrictions on exports with the purpose of avoiding the surge of critical situations of absence or shortage of goods (for example: foods). These measures require prior notification to members of the Agreement that import these products from this country. If the restriction to the export exceeds the period of 12 months, a period of consultation will be open with the importers.

Conclusions:

As can be observed throughout this chapter, one of the sectors with greater tension among members of the TPP was agricultural trade and, in this context, the problems arising with and between the US, Japan and an important group of other large producers were highlighted – namely: Canada, Australia, New Zealand and Mexico.

Generally, agriculture remains protected by quotas with high tariffs and a wide spectrum of non-tariff barriers. A clear contrary is presented here between “what must be done” with the Agreement – liberalization of agricultural trade – and the strong interests of the producers and the different lobbies by companies in each country, which generally have a strong influence on government policies.

Within this context, the clear application of double standards is observed. The case of the USA gives a perfect example of the fierce pressure exercised to open up the foreign markets for their

²³ Genetically Modified Organisms (GMOs) is one of the main aspects in the TTIP negotiations, between the USA and the EU.

products, while it preserves – with a wide range of measures – its access to their internal market. Thus, this great power enters the negotiations with no will to reduce significantly the restrictions that involve entering their territory agricultural products that affect those interests.

Based on the above, with respect to agricultural goods, the TPP assumes a complex figure given different structures of agreement between some members, which is far from advancing in concrete parameters between all members for the reduction of existing barriers. Agriculture, very often remains protected by high tariffs and restrictive quotas. Thus, for example, it is observed a very limited bilateral access to markets in different products (for example: sugar, dairy products, rice, tobacco) (Peter A. Petri, 2016). In this manner, important barriers to access the markets of Canada, Japan and the USA, remain in effect.

In this context, it is in the interest of Latin America and the Caribbean to know that, despite these limitations, countries such as the USA and New Zealand obtained, through lower tariffs and expansion or opening up of quotas, access to the beef markets in Canada and Mexico; poultry in Vietnam; pork in Japan; processed meats in Japan and Canada (and in the USA); dairy products in Canada, Japan, Malaysia, Mexico, Vietnam (and USA); wines in Japan, Malaysia, Mexico, Peru, Vietnam and Canada; soya oil and fruits and vegetables in Japan (and in USA).

The TPP also includes relevant provisions in the area of the GMO and restrictions to exports. The chapter on SPS excludes discussions on the aspects relating to health with respect to the GMO and are treated as an aspect of intellectual property.

With respect to agricultural goods, in addition to reducing tariffs, they agreed to promote reforms that include the elimination of subsidies to exports, working together within the framework of the WTO to develop relative disciplines to export by state companies; credits to export and limitations to the temporary framework relating to restrictions imposed on the export of foods. Finally, they promised to increase transparency and cooperation in selected activities related to agricultural bio-technology.

3. Rules of Origin and Origin Procedures

Normally, to prevent external actors from taking advantage of an FTA, the "rules of origin" are set. These stipulate that imported resources used in the production of a good receiving preferences have to be "substantially transformed" in the member country. The problem that arises is that the countries that give this preference define this phase of transformation by a broad spectrum of ways and degrees of transparency and complexity (Estevadeordal, 2008).

In order to provide relatively simple rules of origin, to promote chains of regional provision and ensure that it is the members of the TPP and no outside countries that result as the main beneficiaries, the Contracting Parties agreed to a single set of rules of origin, which define when a particular good is "original" – and therefore eligible – for preferential TPP tariffs.

The Agreement also allows the "accumulation of origin" in the process of production, in which generally the resources from one of the Party receive equal treatment than the resources from another member of the TPP, if they are used to generate a product in any member.

Sets of rules that seek to ease the activity of businessmen to operate within the area covered by the Agreement have also been fixed, by creating a comprehensive system to verify that goods produced in the TPP comply with the rules of origin. Importers may request preferential tariff

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treatment to the extent that they have adequate documentation to support their request. In this context, this chapter provides the procedures for verifying those requests.

Also, anticipating the impact of changes in technology and production form, the agreement gives room for the parties to consider changes in the rules of origin so as to facilitate their adaptation to the new context.

Chapter VI, "Different situations, benefits and challenges", deals with a case for Central America strongly involving the issue of rules of origin, a matter of great interest to the countries of Central America: the advantages and difficulties that are generated within the TPP regarding Vietnam – its powerful competitor in the US market – and the potential impact of this process for producing countries of the isthmus.

4. Textiles and Apparel

Textiles have been presented as another complex issue in the TPP negotiations. The difficulties stem from a highly complicated system of protections for textiles that three countries that have very competitive industries in this sector display: USA, Vietnam, and to a lesser extent, Malaysia.

Since neither Vietnam²⁴ nor Malaysia have an FTA with the US, both countries have negotiated bilaterally the access to the US market. The textiles – and footwear – face relatively high tariffs in the USA, but the main problems arose with the rules of origin.

The USA has created a much elaborated system of rules to prevent firms from avoiding the rules of origin and obtain preferences by way of an FTA. Basically, most of FTAs with this power require virtually every step of the manufacturing of textiles for export to the USA to use materials from yarn made in that country. For this reason, any attempt to change this system in the TPP would mean an erosion of existing rules in previous FTAs (Elms, 2014, p. 380).

As a result of the negotiations, the solution was to create a "short list" of materials that cannot be provided by US producers, which includes permanent items (e.g: silk) and other temporary items, that can be modified. The latter list would allow countries like Vietnam to use materials that are not originated in the USA for a period of three years.

The subsequent entry of Mexico, which has great interest in the textile industry, complicated the negotiations (under the regime of NAFTA, Mexico has significant benefits in the US market, which naturally wants to protect) (Carriere, 2005).

The chapter includes specific rules of origin requiring the use of yarn and fabrics originated in member countries which promotes investment chains in the sector. It includes a "short list" of provisions that allows the use of certain yarns and fabrics that are not found in the region. It also includes cooperation commitments between customs to prevent evasions and fraud in the payment of fees and specific guides for textiles to respond to severe damage.

²⁴ Sports footwear is also a delicate issue in negotiations. It represents around 7% of Vietnamese exports. Vietnam is the number one exporter of this product to the USA.

5. Customs Administration and Trade Facilitation

TPP Parties agreed on rules to facilitate trade, to improve transparency and customs procedures and ensure the integrity of its administration. The purpose is to facilitate the task of entrepreneurs, by improving processes in customs and border procedures. In the Annex, Box 3, the differences between the WTO and the TPP Agreement on Trade Facilitation can be observed.

Similarly, they agreed on establishing more transparent rules, the publication of laws and customs procedures and improvements to accelerate the delivery of goods. They also advanced in terms of determining values for products and penalties for violations. Finally, they agreed, depending on its importance, on differential treatment for express shipping.

6. Trade Remedies

This Chapter promotes the transparency and appropriate troubleshooting procedures related to trade, based on the recognition of best practices, without affecting the rights and obligations of the parties under the WTO.

It contains temporary safeguard mechanisms. They allow any Party to apply such measures for a certain period of time if imports increase as a result of tariff reductions implemented under the TPP which may cause serious damage to domestic industries. Parties to impose such measures must comply with the corresponding requirements of notification and consultation.

This chapter also establishes rules that require that a Party applying transitional safeguard measures provides mutually agreed compensation. The Parties may not impose more than one safeguard measure for the same product at the same time and cannot do it for all imported products under the tariff quotas regime. Finally, the TPP products may be excluded from safeguard measures of the WTO if such imports do not generate threat or serious damage.

7. Sanitary and Phytosanitary Measures

In developing the SPS rules, the USA has made their criteria in the matter to be accepted: The Parties have reaffirmed that the rules to be applied should be based on scientific criteria. They reiterated their rights to protect human, animal and plant's health; to publish and report on SPS measures proposed and to make an effort for traders to fully understand them.

It was agreed that emergency measures taken by either Party for the protection of health must be notified to the other members. The country facing the emergency must analyse on a scientific basis the protective measures adopted within six months after the arrival of this situation and must share the results of the analysis to the other parties, if they so request. They also agreed to promote systems for evaluating the effectiveness of regulatory controls that apply to exports and the establishment of mechanisms for consultation among governments on emergency issues.

8. Technical Barriers to Trade

This chapter encourages the implementation of appropriate processes in solving business problems by the use of best practices, but does not affect the rights and obligations of the Parties according to the WTO.

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The Parties agree to rules that will facilitate the acceptance of results of conformity procedures of a Party by the authorities in charge of that task in other member countries, enabling companies to access TPP markets.

By the Agreement, the Parties must allow the public to comment technical regulations, standards and consent procedures. They must also ensure that there is a reasonable interval between the publication of technical regulations and procedures for entry into force and its actual implementation.

The TPP includes Annexes related to the regulation of specific sectors (cosmetics, medical instruments and pharmaceuticals, ICTs, wines and spirits, agricultural organic products, prepared foods).

9. Investment

Although the TPP is basically a trade agreement, many of its core elements are linked to the desire to expand the FDI and this, in turn, refers to the central role of TNCs. On trade, in 2012 the 500 largest USA companies concentrated between 60% and 70% of trade in that country and just under 5,000 companies belonging to the USA and other developed countries, controlled more than 70% of global trade in goods and services (Soroka, 2014).

With respect to FDI, in 2014 100 TNCs controlled 10% of total world foreign direct investment and again, fewer than 5,000 companies dominated 80% of global FDI (UNCTAD, 2015).

In this context, the TPP promotes the role of FDI, regarding the possibilities offered in incoming and outgoing investment flows from specific measures adopted in this chapter of the Agreement.

By introducing rules for investments Parties established a criterion of non-discrimination, including protective measures that preserve the ability of the governments of the State Member to achieve legitimate objectives through their public policies. Similarly, the TPP provides basic protection for certain investments determined in other related matters agreements, including the National Treatment; Clause of Most Favoured Nation and minimum standards, in accordance with the principles of international law.

Exports that are not based on a public purpose without due process or without compensation are not allowed and it is not allowed to apply "performance requirements" companies, such as percentages of local content or technology location.

The TPP ensures the free transfer of funds related to investments – subject to the exceptions established in the Agreement – designed to assure governments that have the necessary management flexibility in situations of volatility of capital flows. Non-discriminatory temporary safeguard measures (capital controls) that restrict transfers related to investments in a crisis of balance of payments, or the threat of it, and other economic measures to protect the integrity and stability of the financial system are included.

The TPP adopts "negative lists" that allow their markets to be completely open to foreign investors, except when they have adopted an exception (measures of non-compliance) in one of the two annexes arranged by country: 1) Current measures by which a Party accepts an obligation not to adopt more restrictive measures or restrict liberalization in the future; 2) Measures and policies in which the Parties retain full discretion in the future.

The chapter also provides that disputes over investments must have international, neutral and transparent arbitration, providing strong safeguards to prevent abusive claims and ensure the right of governments to adopt regulations of public interest, including measures relating to health, safety and environmental protection. Safeguard procedures include: transparent arbitration proceedings; amicus curiae; non-participation of actors who are not a party; fast processing of frivolous claims; restricts joint interpretations by Parties of TPP; time limits for filing claims and rules that prevent the claim is presented in parallel proceedings.

The TPP ensures the TNCs that they do not need to meet "performance requirements" (e.g: degree of local content, technology, geographical location, exports orientation, etc.).²⁵ However, the agreement allows governments some assistance to the development of local suppliers in other ways, for example through public-private partnerships for technology transfer and management associations.

The TPP also reassures international investors the freedom to appoint professionals from any country as their managers and it facilitates the entry of TNCs into new markets. It also imposes new regulations regarding SOE, trying to prevent the application of "unfair" advantages compared to the possibilities of other firms and investors.

The agreement also includes clauses that improve intellectual property and increase the consistency and transparency of regulatory regimes through different media. Similarly, reducing trade barriers and market access improvements included in other chapters of the TPP, favour the increase in FDI, given the close link trade-investment.

Finally, TPP members agreed to include the clauses related to FDI from the "negative lists", a fact that offers better possibilities for further progress in the liberalization process, by addressing to the contents of these lists in future negotiations.

As is possible to observe the TPP progresses in this important component of the international economy, beyond the FTA so far established, with rules and standards of new generation that will influence, besides the economies of the member countries of the Agreement, those that are not part of it. In particular, note the superlative protection provided to the FDI, which involves a substantial reduction in the ability of the States to implement measures they consider necessary and appropriate to defend their interests.

10. Cross-Border Trade in Services

TPP members agreed on commitments on National Treatment (NT), on Most Favoured Nation (MFN) market access and on rules applicable to financial services providers.

Trade in services is among the sectors that can bring with it greater benefits – albeit unequal – for members of the TPP. In this context, the US enjoys enormous comparative advantages in the production and sale of these services.

Annually, the US gets more than US\$ 200 billion profit for cross-border service transactions, while its FDI in the sector reaches the figure of US\$ 3.7 trillion, receiving foreign investment in services at around US\$ 1.2 trillion (US Bureau of Economic analysis, 2014). With reference to the TPP,

²⁵ Even though the "performance requirements" had already been prohibited in the Treaty for Regulations of Investment Measures" (TRIM), in practice they are still applied especially in developing countries contexts.

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estimates made in the USA suggests that if a complete elimination of the barriers to business services is obtained, the increase in exports in this sector would bring the country US\$ 300 billion (David Kasmodel, 2015).

According to the study that has been adopted as the basis for this analysis (Peter A. Petri, 2016), the total exports of services, including all members of the TPP would increase to US\$ 225 billion by 2030; US\$ 149 billion of that total would correspond to the US, i.e., almost two-thirds of the total.

Gradually and consistently, the US has expanded – by means of various FTA signed (ex.: Australia, Chile, Peru and Singapore) – its interests in trade in services. In particular, on access for providers of financial services (including insurance and banking) and professional services (e.g.: private and educational telecommunications services, express shipping and electronic commerce). The criterion used was attempting to gradually expand the commitments made to the WTO under GATS.

The agreement covers 12 service sectors representing 168 subsectors. Four Chapters cover unbundled services: this chapter, dedicated to cross-border Trade in Services, number 11, with Financial Services; 12, Temporary Entry of Business People; and 13 Telecommunications. In addition, Chapter 9, investments, includes foreign direct investment in services and goods. Chapter 14, Electronic Commerce, incorporates the sale of various services (e.g.: entertainment, education, etc.) as well as the sale of goods. Finally, Chapter 17, state-owned enterprises, covers both companies that sell services and goods.

Each of the chapters cited herein contains articles related to the release of services. However, the Annexes to those chapters contain numerous exceptions and reservations. There are also 4 Annexes covering the entire Agreement:

Annex I: "Non-Compliance Measures" (Non-Conforming Measures), subject to future negotiations; Annex II: "Measures of non-compliance" of permanent nature; Annex III: "Financial Services"; Annex IV: "State-owned enterprises. The TPP takes the approach of "negative lists" regarding Non-Conforming Measures.

The commitments have been adopted in the form of "negative lists".

With exceptions and various time periods for compliance, TPP members have committed to provide fair and equal treatment to foreign firms seeking to enter in their service markets via trade and investment.

The Chapter ensures that service firms can establish operations in partner countries with the protection and fair treatment of their counterparties, as well as compensation in case of expropriation.

In this context, new restrictions on access are not allowed, and in the case of unilateral liberalization, it will be extended to all members. In addition, quantitative restrictions are not allowed in the provision of services (limits on the number of suppliers or transactions) or requiring a specific type of legal entity. Similarly, foreign suppliers will not need to establish their location/residence in other TPP members to access these markets, whether for goods or services.

However, in this context, the US maintains a number of barriers in the field of temporary movements of businessmen and specialists; in the licenses granted to professionals; in sectors such as the property of a radio, TV and newspapers and on cabotage laws. This short list only indicates

some areas, but after the examination of the four annexes mentioned above, shows numerous "measures of non-compliance" by the US.

Naturally, this USA position allowed other members of the Agreement to maintain their own lists of "non-compliance". Even in these circumstances, it was possible for Japan, Malaysia and Vietnam to move ahead with liberalization of trade and services to a greater extent than in the GATS.

11. Financial Services

The TPP covers a substantial part of global finance; its members account for more than US\$ 26 trillion in banking assets and equivalent levels in stocks of capital markets.

It brings together great financial powers, such as the US and Japan, and countries with lower weight in this sector; such as, among others, Chile, Malaysia, New Zealand and Vietnam.

Under the Treaty, the largest trading partners in the USA financial services are the countries with which this nation has investment agreements (Australia, Canada, Chile, Mexico, Peru and Singapore)

The TPP aims to achieve increased access to important financially growing markets, such as Malaysia and Vietnam, and with this, although it is not mentioned, there are desirable future markets, particularly Korea and China.

The Chapter on Financial Services comprises financial institutions, investors and cross-border trade in financial services (Art. 11.2). In this context, the Chapter contains principles of national treatment; Clauses for Most Favoured Nation and principles related to market access that apply to financial services. The basis for the advances incorporated in the contents of this chapter correspond to the last TLC previously negotiated by the USA (e.g: Korea-US, KORUS). TPP members accept to deal with financial institutions, investors and service providers in a no less favourably way than they do with their own national business or in the way that corresponds to the Most Favoured Nation clause.

They also agreed not to limit the number of financial institutions operating in their jurisdiction; the total value and number of transactions in which they participate and the number of people they employ. Similarly, Member States may not require financial institutions to be organized in a particular legal form.²⁶ Specific commitments for portfolio management, electronic payment card services and transmission and data processing are also incorporated.

These institutions are also protected with regard to expropriations and are guaranteed a "minimum standard of treatment" (MST) and this is included in the Chapter on ISDS.

MST guarantees for foreign institutions recognize that they may be vulnerable to attempts to abuse when they act in another State, for which the latter should provide security and fair dealing (Article 9.6).

The situation mentioned above shows that these rules tend to locate external financial actors in a relatively advantageous position against its domestic peers. On general principles, under

²⁶ Article 155 establishes some limitations to the freedom granted to companies of financial services regarding the legal form to be adopted.

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international law, it progresses with an interpretation of them which most likely violates significantly the capacity of host States in this field accordingly to their interests. In this context, it should then be discussed the case of Malaysia, which will be considered below. That country rejected the application of relevant rules that the TPP seeks to apply.

In addition, the Agreement seeks to expand access and raise the level where the balance between the treatment of domestic and foreign financial firms in different areas is established. Among them it is worth quoting the relevant cross-border financial services (Annex 11-B of this chapter). In this context, other States are governed by individual commitments (Annex 11-A).

For example, a foreign financial institution established in a TPP country member can access public funding and payment systems for the development of its operations (the exception is the national provider of last resort). On the other hand, the rules also provide – in cases that correspond – the advantages of national postal entities in terms of insurance (e.g: Japan). That includes offering insurance services by licensed suppliers.

Regarding financial state-owned enterprises – which play a very important role in Asia Pacific (e.g: in Vietnam) – the TPP includes them in the rules of this chapter, only partially achieving that goal. Finally, Sovereign Funds were not incorporated into the TPP.

The "Malaysian exception": An important case for the consideration of LAC countries

Malaysia fought a tough battle during the negotiations and despite the great resistance encountered, it managed to make significant reservations to the contents of the chapter "Financial Services". These were incorporated in an Annex and included many specific measures designed to protect its application of the Islamic financial services system and to preserve its right to decide independently whether or not to authorize the activity of foreign financial institutions in its territory.

In this regard, the Ministry of Finance and/or Central Bank retains the ability to decide – based on the request for entry of an external financial institution – if it is approved. The criterion that those authorities apply in their assessment, responds to a point of central importance: whether or not it complies with the best interest of Malaysia, noting the need for the Malaysians "to retain an economically substantial percentage of the financial sector in their hands" (Annex III).

Having successfully managed to defend its rights in an area of such high sensitivity and influence for developing countries, the case of Malaysia offers an experience of great interest to Latin American and Caribbean countries.

12. Temporary Entry of Business Persons

This Chapter encourages the authorities of the TPP countries to provide information to employers on the necessary documents to obtain a temporary entry to other TPP markets, thus ensuring that the tax levied for this purpose are reasonable and that decisions on access orders can be reported in the shortest time possible.

The Parties also agreed to provide information on the requirements for temporary entry, and to have it available to the public.

Similarly, they agreed to cooperate in the proceedings concerning the issuance of visas for temporary entry. Since all members of the Agreement made their commitment explicit regarding access for businessmen, this information was included in Annexes.

13. Telecommunications

The interest of the parties with respect to this Chapter is to ensure that they can count on telecommunication networks between their countries that are efficient and reliable. Its activity is critical for companies wishing to offer services.

The rules of access to these communication networks include mobile providers. In this regard, the Parties seek the largest providers of telecommunications services in its territory to give interconnections and lease of circuits and co-location and access to ports and other facilities in appropriate terms and time. They also agreed, when a license is required, to ensure that regulations do not discriminate against specific technologies and are transparent.

Similarly, they agreed to manage the procedures that apply to the location and use of telecommunications resources, including frequencies, numbers and other rights, in an objective, fair, transparent and non-discriminatory way. Finally, they also agreed to take steps to promote competition in mobile services "roaming" measures. It states that if a party wishes to regulate prices for all international "roaming" services that country must give operators of other TPP members that do not to regulate those prices, the opportunity to benefit from cheaper rates.

14. Electronic Commerce

The twelve members agreed not to require the data collection companies (data centres) to store them as something necessary to operate in their markets. Additionally, they are not required to transfer their software code.

Imposing customs duties on electronic transmissions is prohibited, and it was agreed not to favour domestic producers or suppliers of these products by means of discriminatory measures. Also, in order to protect consumers, the laws that offer protection regarding fraudulent online business activities will be maintained and improved. Similarly, measures will be taken to ensure the privacy of consumers in those markets.

Countries should have procedures to stop unsolicited commercial electronic messages. To facilitate electronic commerce, this Chapter promotes the use of electronic means for activities to be made by entrepreneurs and the governments (e.g.: electronic forms of customs; provision of electronic authentication and signatures for commercial transactions).

The purpose of the TPP in this field is to promote access to telecommunications networks by foreign providers of services, as well as the development of standards and procedures for the safest and transparent use of the media.

Certain obligations of this Chapter are subject to relevant measures of non-compliance of several members of the TPP. The Parties shall cooperate to assist small and medium enterprises to use e-commerce advantages. Finally, cooperation is promoted in the adoption of policies regarding the protection of personal information from online consumers and cyber security threats.

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15. Government Procurement

The issues related to government procurement have a long history in trade agreements. A principle widely shared by many countries is to "national procurement" at both the state level and for the political and administrative sub-units in which each country is organized. These issues gain prominence when economic crises arise and countries adopt rules to protect their domestic market.

In the TPP, Parties agree to implement rules that take into account national treatment and non-discrimination; the use of fair and objective technical specifications for awarding contracts; and establishing appropriate processes for review and resolution of claims related to a concession. In this context, the TPP simultaneously represents both a first substantive exercise in liberalization for some of its members (e.g: Vietnam, Malaysia) and an extension of what was already granted in previous negotiations to other signatory countries.

While it presents numerous exceptions, temporary measures and differential treatments among members, the agreement seeks to lay the groundwork for deeper liberalization movements in the future. It aims to expand the possibility of participation of foreign companies under the rules of "fairness and transparency" in a part of the national markets – the one of the government – that is protected the most (Hufbauer, 2015).

For an important group of members of the TPP (see Table No. 4) – the USA, Canada, Japan and Singapore – it is about raising opening-up levels reached in previous agreements, including the "World Trade Organization's Agreement on Government Procurement" (GPA) signed in 1994 and revised in 2012 (when New Zealand was added). Of the remaining signatories, Australia, Chile, Mexico and Peru have previous negotiations contained in bilateral FTAs with the US, while Vietnam and Malaysia did not have any prior negotiation.

The liberalization of government procurement requires TPP members to eliminate discriminatory measures in contracts hitherto received differential treatment to enable companies from other member countries to compete on an equal footing with nationals. The inclusion and implementation in this chapter of the Treaty varies according to the value of contracts (there are many specifications on this point). Thus, for example, it was allowed to less developed countries (e.g: Malaysia, Vietnam and Brunei) to maintain higher values unaffected by these rules in terms of goods and services purchased by their governments than those of more developed countries, and to have longer time frames for final adjustments to the standards set.

TABLE 4
Government Procurement in the TPP

| Member of TPP | Government Procurement (% of GDP) | Situation vis-à-vis the GPA* | Entities listed in the TPP |
|---------------|-----------------------------------|------------------------------|----------------------------|
| Australia | 12 | Pending adhesion | 67 |
| Brunei | 4 | - | 12 |
| Canada | 13 | Member | 95 |
| Chile | 6 | Observer | 23 |
| Japan | 16 | Member | 25 |
| Malaysia | 13 | Observer | 25 |
| Mexico | 5 | - | 22 |
| New Zealand | 15 | Member | 31 |
| Peru | 10 | - | 32 |
| Singapore | 8 | Member | 23 |
| USA | 10 | Member | 86 |
| Vietnam | 22 | Observer | 21 |

* Government Procurement Agreement.

Source: Prepared by the author, based on various sources: WTO Trade Policy Reviews, OECD Country Fact Sheets and Statistics.

Only those entities included in the Annex of Chapter 15 must comply with the requirements of this chapter, other governmental/administrative bodies can reserve government procurement to domestic suppliers.

The model of "negative list" was adopted (commitments covered all goods except those expressly included in the Annex. With regard to services, the approach varies from country to country. Some used the negative list (e.g: USA and Australia) and others, positive (e.g: Canada and Japan).

Sub-national entities

The TPP takes different approaches to purchases of sub-national entities ("Section B" of the Annexes of Chapter 15). Ten countries, including Chile and Peru, have included some degree of coverage for sub-national entities. These commitments do not extend to those countries that do not offer comparable coverage (e.g: the USA did not include any sub-national entity), but can be extended to "other entities" (entities equivalent to companies) listed in Section C of Chapter 15.

Exceptions

They generally cover those elements that correspond to "national security". Other exceptions relate to programs that governments preferentially allocated to certain suppliers and are linked with issues of social policy. In the case of Malaysia, there were problems given their "bumiputera" (active policies to favour the native Malaysian population; in this context, Malaysian suppliers would benefit from preferential prices).

Evaluation

An actor that showed high resistance to implementation of the agreements of this Chapter was the USA. Washington faced strong pressure from its partners to open its own State-owned sector, particularly at sub-state and local levels. However, a sophisticated range of measures related to

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"buy American" prevents it. On this basis, the USA's ability to impose opening-up rules to the remaining members was diminished.

16. Competition Policy

Treaty members share an interest in establishing a framework of fair competition among them. To that end, this chapter seeks to establish a legal regime prohibiting anti-competitive business behaviour, fraudulent or deceptive commercial activities that may affect consumer interests.

This chapter 16 and Chapter 17, "State Owned Enterprises", represent two of the key instruments available to the TPP in order to progress in achieving more open markets for goods, services and investments via trade agreements. In this regard, they are perceived as essential to achieve the type and degree of economic integration and regulatory coherence pursued (Gadbaw, 2016).

To that end, the Parties agree to establish or maintain, as appropriate, authorities responsible for the implementation of national competition laws, in addition to regulations that proscribe fraudulent business activities. The parties agree to cooperate and consult each other in all matters relevant to the competition policy (Art. 16.4), holding fair procedures and accepting the actions of a private nature generated by a violation of national competition law (Article 16.3).

The analysis of this chapter suggests that the route chosen for the implementation of these rules, consultation and cooperation, when compared with the penalty to be applied under Chapter 17 "state-owned enterprises", is more flexible in dealing with problems arising from competition. In that regard, dispute settlement related to the implementation of this Chapter are excluded from Chapter 28, "Dispute Settlement", and this highlights that in principle a more cooperative way has been adopted. In this context, members of the Treaty can keep some room for manoeuvre to exercise their jurisdiction against anti-competitive policies that they consider generate perverse effects on their economies.

Based on the discussed in previous TLCs, the contributions that are considered important from the point of view of entrepreneurs are the rules and procedures that via Article 16.2 are applied to "discipline" state-owned enterprises (SOE). These rules aim to strengthen the USA view that currently justifies them, noting that its purpose is to foster economic efficiency and consumer protection.

Consequently, the objectives of competition policy would be to "promote economic efficiency and consumer welfare" (Article 16.1). For its realization, the parties agree on actions of cooperation and coordination between national competition authorities, so that they can be applied effectively in the free trade area (Article 16.4).

Faced with this conception of the objective of competition policy that the USA managed to impose within the TPP, it should be noted that there are other perspectives that point strongly to the existence of other extremely valid targets. Thus, a WTO study (Taylor, 2009) identifies ten objectives for national competition laws whose central axis is not the "consumer" but "development" and a more equitable distribution between the parties involved. This notion prioritizes regional development, employment and protection of SMEs.

In this connection, it seems appropriate to note that Article 16.1 states that "the Parties should take into account the principles of the APEC" and these principles recognize that policies and

regulations can have different objectives to those of promoting competition and that members have the flexibility to take account of this diversity of interests (Taylor, 2009, p. 89).

To sum up, this chapter of the TPP is designed to generate a platform from which progress can be made in future years in "deepening" the orientation assigned by the USA, under the assumption that this way could lead to the gradual modification of the rules and approaches so far supported by the WTO. However, as noted, there are in both the WTO and APEC, principles and criteria to which one can go if it is necessary to defend other positions.

17. State Owned Enterprises and Designated Monopolies

This chapter was also part of the "hard core" of discussion among members of the Agreement. They all have state companies, although of different magnitude. The USA has AMTRAK; Vietnam, among others, Telecommunication Services; Singapore, the Government Investment Corporation and TEMASEK; and Japan, the National Postal Service, which carries a significant role in financing and insurance; Chile has CODELCO, in charge of the national copper. Generally speaking, these companies receive different types of differential treatment, which may include subsidies, exceptions in compliance with regulations and favourable treatment in government procurement.

The purpose of this chapter is to make progress with the "levelling of the playing field" between private and state companies. Again, this exercise is based on the progress made in this area by the USA in previous FTAs as those established with Australia, Chile, Korea, Peru and Singapore (the latter, the most advanced of all in this matter). In essence, the chapter demanded greater transparency; that the SOEs act taking into account the considerations and interests of commercial agents; not to abuse in the exercise of their powers; and particularly, to prohibit governments from exercising direct influence over them.

Both the US and Australia have advocated the implementation of a policy of "competitive neutrality" between private and public companies, for the latter to reduce an impact on the market that is considered harmful, generating advantages in its favour against the private firms.

In this context, some problems arose and countries defended the existence and action of its State owned enterprises. Such is the case, for example, of Singapore, a country extremely open and market-friendly, which energetically defended its national entities. It is also noted that the role of the SOEs is even more relevant in other Southeast Asian economies (e.g: Vietnam). These situations refer to the practical difficulty of putting into effect the terms agreed in this chapter.

In essence, the chapter is aimed at large-scale business oriented SOEs. The Parties agree to have state enterprises carrying out their buying and selling activities from commercial considerations. An exception is the case where the SOE is operating to provide public services. Also, it is agreed to prevent these companies or monopolies linked to them from discriminating against firms, goods and services from other members of the Agreement.

It is also appropriate that their courts have jurisdiction over trade activities of foreign SOEs in their territory and that the administrative entities in charge of regulating relations between the two types of companies do so impartially.

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Similarly, Partners agreed on the need to prevent that the provision of non-commercial assistance to SOEs affects the domestic industry of another Party, by providing non-commercial assistance to an SOE that produces and sells goods in the territory of another Party.

Finally, it was agreed to share the lists of national SOEs with the remaining members of the TPP and provide, upon request, additional information concerning the involvement of governments about the control, ownership and non-commercial assistance they provide their SOEs.

Some exceptions and obligations are referred to in this Chapter. In general, these are cases where an emergency arises in the national or global economy. Partners also agreed on exceptions for different member countries, which are also listed in the Annexes.

18. Intellectual Property

While many TLCs have incorporated into their texts commercial aspects related to intellectual property rights according to the TRIPS, others have expanded both the field of coverage and the nature of the rules to apply.

Such is the case of KORUS, which includes patents (data exclusivity, temporary extension, etc.); trade secrets; e-commerce and internet services. This agreement provides a basis for the USA position in the TPP (see Annex, Box 4).

The US wanted to get a "TRIPS plus", since it has a high competitive advantage: it holds two thirds of the world's most important patents in the sectors covered by the Treaty. One of its main objectives is to "promote trade in investments in innovative products and services, including measures related to the digital economy and green technologies, ensuring a competitive business environment for all members of the TPP (Office of the USTR, 2012). In setting these targets, intense and sustained major lobbies of large companies in the pharmaceutical industry and USA's ICT industry have had an effect.

Both Australia and New Zealand and other countries in the TPP did not coincide with the goals set by this nation, particularly in the provisions on recognition and protection of genetic resources and others on the use of associated traditional knowledge. They also disagreed on the duration and terms of patent protection. So did they in electronic commerce, measures related to transborder data flows, privacy of information and application rules.

This chapter has perhaps received the strongest criticism, both within the Agreement and abroad. Thus, groups of legislators in the US Congress noted that the Chapter would restrict access to generic medicines at a much lower price by developing countries, while NGOs and civil associations in the US and other countries had this privilege, affecting also the Agreements reached in other sensitive chapters (e.g: investor-State disputes, government procurement, competition policy, etc.)

Intellectual property rights (IPR) represented one of the core areas of discussion in the agreement, since there were significant differences between levels of obligation that other members were willing to accept in the aforementioned areas, like those for the copyright and pharmaceutical sector (Hufbauer G., 2015).

Thus, the TPP strongly criticized the attempt to continue expanding and deepening IPR obligations. For example, different countries argued that excessive regulation on intellectual

property reduces the possibilities of generating innovation, substantially raises the price of medicines and places the countries importing technologies in a situation of great competitive disadvantage.²⁷

The chapter on Intellectual Property Rights covers patents, trademarks, industrial designs, geographical indications, copyright, trade secrets and other intellectual property and its implementing rules.

The chapter sets standards for patents based on the TRIPS and international best practices. With respect to trademarks, it ensures protection of the names and other elements that entrepreneurs use to distinguish their products in the market. Also, safeguards and transparency criteria and process are set that corresponds to the protection of new geographical indicators (including those already recognized from international agreements).

"Geographical indicators" (GI) refers to those names associated with specific products based on their geographical origin (e.g: Champagne). This topic also generated intense debates within the TPP. The measures regarding the GI are included in the chapter corresponding to Intellectual Property, but in practice, it affects market access for certain agricultural goods.

While the USA protects GI, the EU trade mark regime does it under a broader special system of coverage. The first hot point corresponds to the fact that many GI protection designations are considered "generic" in domestic markets. Since different members of the TPP have protections designations via other agreements, US producers have a high interest on GI regimes not restricting their participation in foreign markets. For example, the EU has agricultural products protected by GI for a long time now (e.g: Gouda and gorgonzola cheese, wine, etc.) and has proceeded to expand that protection by way of FTAs with other countries (e.g: Vietnam, Canada) (Cullen Hendrix, 2016).

The TPP includes some measures to protect the rights of owners of existing trademarks for terms of GI (Article 18.20), establishing guidelines to determine when a product can be considered "generic" (Article 18.33). The Agreement provides the basis to oppose and cancel the protection of GI applicable to agreements that members established after the TPP had entered into force (Article 18.36). In the case of GI protection under existing agreements with third parties, they are not affected, but such agreements should have certain obligations of transparency.

In the controversial section on the pharmaceutical sector, rules are adopted that seek to facilitate the development of innovative medicines and the availability of generic medicines, taking into account the periods of time that different parts required to meet these standards. The chapter includes commitments related to the protection of classified information and tests concerning their application for market entry, new pharmaceutical products and other chemicals used for agriculture.

The TPP requires Member States to grant new drugs a monopoly referred to as "information exclusivity" or "protection of information". Such protection is separated from that corresponding to the patents. The "information exclusivity" applies to medicines that companies send to the regulatory agencies to demonstrate their condition in terms of safety and efficacy. While they are

²⁷ It should be noted that also in the TTIP, both the EU and the US seek to set high standards in the IPR chapter, given the importance of intensive sectors' intellectual property in their economies.

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under this protection system, no other company is allowed to act on the market with a competitive product made with the same information base.

Therefore, the "exclusive information" prevents another generic drug from competing with the original drug, the duration of effect. When the protection period ends, the remedy becomes protected only by its patent. The TPP requires that both the present and future TPP members provide this type of protection, establishing for it a minimum period of 5 years in the case of chemically synthesized drugs, and 8 for drugs based on biotechnology (*biologics*) (Branstetter, 2016), the purpose of this rule is to protect the company testing the drug with the authorities from copies and sale of biologically similar products without having to spend on their development financial resources originally destined for the testing period.

In this context, it is established that the parties can take the necessary measures to protect public health, including cases of epidemics.

In copyright, commitments are attached to the protection of works, performance and phonograms (e.g: songs, films, books and software), including technological protection regulations and rights to information management. Parties also agree to continue to strive to achieve a balance between copyright systems. The chapter requires the Parties to establish or maintain a secure structure for copyrights corresponding to "ports" for internet service providers.

Finally, the Parties agree to provide strong application systems including, for example, civil proceedings, interim measures and border measures, before criminal actions, applying penalties for piracy on a commercial scale on counterfeiting of trademarks and copyright. Similarly, these will be applied with regard to misappropriation or theft of trade secrets, including cybernetically.

19. Labour

Beginning with the FTA with Peru (in force since 2009), the US has included in the following TLCs the "Four Fundamental Principles and Rights at Work" adopted in 1998 by the ILO: a) freedom of association and the effective recognition of the right to collective bargaining; b) the elimination of all forms of forced or compulsory labour; c) the abolition of child labour; and d) the elimination of discrimination in respect of employment and occupation.

In addition, in the FTAs signed with Colombia, Panama and Korea, the US has agreed to hold consultations between States and to establish dispute settlement mechanisms.

In the TPP, the US negotiators wanted to include the ILO declaration, which was previously mentioned, using the procedures under the Dispute Settlement chapter as mechanisms contributing to its effective implementation (Brown, 2016). This goal caused problems in countries like Brunei, Malaysia and Vietnam. For example, the latter has not allowed the existence of labour organizations other than those unions controlled by the State.

Finally, the Parties agreed to enforce and maintain in practice the core rights recognized by the ILO. In this framework, provisions governing basic salary, working hours, safety and health, including within the scope of its application, the Special Production Zones for Export Processing are envisaged.

They also agreed not to enact new laws that erode fundamental labour rights, in order to attract trade or investment; the elimination of forced labour in their countries; the importation of goods

produced by forced child labour and a fair and equitable treatment from an administrative and judicial point of view in case of violations of labour laws. Finally, a cooperation mechanism on employment issues was established.

20. Environment

This chapter has been considered by many experts as the most important of its kind ever drafted. It presents advances in the treatment for the protection of the ozone layer and environmental pollution, among other things. It includes important obligations to reduce fisheries subsidies, wildlife smuggling, protect the marine environment and promote sustainable forest management. It also seeks to promote the conservation of biodiversity, strengthening cooperation in order to reduce global warming emissions.

As in the case of the KORUS and other FTAs signed by the US, the TPP includes measures to ensure the full enforcement of national environmental laws and obligations regarding the non-diversion of existing practices in order to distort trade and investment flows (Article 20.3.6). All the provisions of the chapter are subject to the dispute settlement procedures of the treaty (in this regard, there were some differences between countries keen to give an assertive character to the compliance with environmental laws and other nations that sought to lower its assertiveness).

21. Cooperation and Capacity Building

All the Parties to the Agreement recognized that its members with less relative development had to face greater challenges to meet the TPP requirements. For this purpose, they would also use the opportunities provided by the Treaty. To that end, a Committee for Cooperation and Capacity Building is set up to develop information and identify areas for the implementation of cooperative actions.

22. Competitiveness and Business Facilitation

Through this chapter, the TPP aims to improve the competitiveness of member countries and the entire Asia-Pacific region. To that end, it establishes mechanisms to assess the impact of the Agreement on the competitiveness of the Parties through dialogue between governments, businessmen and civil society. Its focus is aimed at deepening regional supply chains; the determination of processes achieved and the better use of new opportunities as they arise, facing jointly the challenges that may occur as the TPP is in force.

Among these mechanisms, it is worthwhile mentioning the Competitiveness and Business Facilitation Committee. This Committee will meet regularly to examine the aforementioned points. It will issue recommendations on several issues and will advise on the performance of supply chains under the terms of the Agreement.

23. Development

In order to ensure that the TPP constitutes a high-level model for trade and economic integration, and that the societies of its Member countries can obtain the greatest benefits, this chapter includes three specific areas that are expected to develop their task in a cooperative way when the TPP comes into effect:

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- 1) Build a broad-based economic growth that includes sustainable development, poverty reduction and promotion of SMEs;
- 2) Improve and expand the capabilities of women, their access to the market, the provision of technology and financing, and the establishment of networks of women's leadership, identifying best practices for workplaces;
- 3) Education, science and technology, research and innovation.

The chapter establishes a Committee on Development that shall hold regular meetings and promote voluntary cooperative activities in those areas where new opportunities arise.

24. Small and Medium Enterprises (SMEs)

The Parties share an interest in promoting the participation of SMEs in trade, and ensure that they are included in the benefits of the Treaty.

Complementing the commitments throughout other chapters on market access; paperwork reduction; Internet access; trade facilitation; express delivery and others, this chapter includes commitments of the parties to create websites targeted at SMEs, enabling them to have accessible information about the ways small firms can take advantage of the Agreement (e.g: regulations on FDI, labour, taxation, business registration procedures, etc.).

Similarly, the chapter establishes a Committee on SMEs, which is responsible to consider and propose ways to further enhance the benefits of these companies and the possibilities for cooperation in their activities (e.g: export counselling, training programs, trade finance, etc.).

25. Regulatory Coherence

Within the framework of the activities of the member countries to reduce traditional barriers to trade and investment, regulatory non-tariff barriers (NTB) are becoming increasingly important among NTB. The WTO Agreement on Technical Barriers to Trade (TBT) seeks to ensure that regulations, standard regulations and certification procedures do not constitute barriers to trade.

In this context, this chapter seeks to create an open, fair and predictable environment for businessmen operating in TPP markets. Coordination between governments with respect to regulations is one of the central points to achieve that end.

The way to reach that goal is based on having organizations that allow for effective consultation and coordination between different agencies. The chapter also includes measures to ensure public access to information; periodic review of regulations to check their effectiveness and inclusion of improvements.

As will be noted, the chapter is focused on the design of institutional mechanisms for coordination, but the harmonization of regulations is oriented in practical terms to certain chapters; for example: Sanitary and Phytosanitary Measures (SPS) for food and agricultural products, and Technical Barriers to Trade.

26. Transparency and Anti-Corruption

The chapter aims to strengthen governance and address the negative impact of bribery and corruption in their economies.

Within this framework, the Parties undertake to ensure that their laws, regulations and administrative rulings of general application with respect to any matter covered by the TPP are published and made available to their members. In particular, those rules which may affect trade and investment between the Parties shall be subject to information and comments.

Similarly, the rights to due process in relation with administrative procedures, including impartial administrative or judicial tribunals, are guaranteed. They also agree to adopt (or maintain, as appropriate) laws criminalizing the request of undue advantages for officials, and other corrupt activities affecting international trade or investment.

These actions will be supplemented by codes of conduct for officials and measures to identify and manage conflicts of interest as well as the adoption of measures to discourage and punish acts of corruption. In an Annex to this chapter measures and procedures to promote transparency and procedural fairness for pharmaceutical products and medical devices are included, which in this case are not subject to the dispute settlement procedures.

27. Administrative and Institutional Provisions

This chapter establishes the institutional structure through which the Parties assess and guide the operation of the TPP. It sets up the Trans-Pacific Partnership Commission, composed of Ministers or senior officials of governments to oversee the implementation or operation of the Agreement, and guide its future evolution.

The Commission shall review the economic relationship and partnerships among the Parties on a periodic basis, in order to ensure that the Agreement remains relevant to trade and investment challenges faced by the Parties.

Each Member shall designate a contact point to facilitate communication and create a mechanism by which the Parties which have a specific transition period for any obligation shall report on their plans and progress in this regard.

28. Dispute Settlement

One of the issues that created the greatest tensions in the TPP negotiations is related to the clauses relating to the Investors-State Dispute Settlement (ISDS). In this regard, a review of Box 5 of the Annex allows to determine the sectors and issues that different members have not wanted to hold to the rules imposed by Chapter 28 of the TPP.

The most important rules that are finally established in this chapter impose limits on expropriation; provide foreign firms the same rights and benefits as local ones (national treatment) or firms from third countries (Most-Favoured-Nation clause), requiring governments a fair and equitable treatment to foreign companies.

In order to strengthen the implementation of these standards, there are arbitration tribunals (see Annex, Box 6) allowing foreign firms to oppose what they consider as "unfair treatment" by local

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governments, obtaining compensation for their claims if these are justified. The purpose of this chapter is to encourage the Parties to reach a quick settlement of their disputes concerning the implementation of the Agreement. First of all, the Parties must carry out every effort to settle their disputes through cooperation and consultation by resorting to the use of other settlement dispute mechanisms, where appropriate.

If this is not possible, the Parties shall resort to panels that are deemed to be impartial. The mechanisms that with that purpose are included in the chapter are applied throughout the whole Treaty with few exceptions (see Figure 4).

When the Parties require the establishment of a panel, this must be operational sixty days later for consultations and 30 days in the case of perishable goods. They will be composed of three independent experts in international trade of the Parties in dispute. They are subject to a code of conduct to ensure their integrity. They will submit a special report to the Parties within 150 days from the moment of being established, and 120 days, in case of urgency.

FIGURE 4.

Characteristics of the panel in the dispute settlement mechanisms in the TPP

| Characteristic | TPP |
|--|---|
| • Panel composition (how many) | Three members (Article 28.9) |
| • Panel composition (set list or by agreement) | Each Party appoints one member and endeavours to agree on the appointment of the Chair. The roster is used in cases where panellists are not nominated or the Parties cannot agree on the appointment of the Chair (Article 28.9) |
| • Limitations on composition | The chair cannot be a national of any of the disputing Parties or a third party (Article 28.9) |
| • Voting | The decisions are ideally taken by consensus; if the Parties are unable to reach consensus, decisions are by majority vote (Article 28.11) |
| • Jurisdiction | Disputes regarding the interpretation or application of the Agreement; actual or proposed measure that is or would be inconsistent with the obligations of the Agreement or failure of a Party to carry out its obligations; instances in which a Party considers that a benefit it could have expected to accrue is being nullified or impaired (Article 28.3) |
| • Appeals | None |
| • Binding nature of results | Binding on the Parties (Article 28.18) |
| • Applicable law | The Agreement (Article 28.11) |
| • Choice of Forum (if there is any violation under another international trade agreement of which the disputing parties form part) | The complaining Party may select the forum (Article 28.4) |
| • Confidentiality | Open to the public, unless the disputing parties agree otherwise (Article 28.12) |

Source: Prepared by the author, based on Article 28 of the TPP.

In order to maximize its applicability, the chapter allows the use of punitive measures (e.g: suspension of benefits) if one of the parties fails to meet its obligations.

The TPP defines, through the application of concepts and rules contained in recent agreements previously signed by the US and the EU – in a more precise and narrow way in terms of the limits imposed – what is meant by "fair and equitable treatment." The Agreement specifies that the investor that brings a case against a government – for example, when it considers that a regulation established by the State may reduce its benefits – must provide the elements justifying the claim; it allows for the participation of social organizations which are not part and it defines what can be understood as "legitimate targets aimed for the public good", as a basis to defend the measures or regulations that the host country may have taken. It also establishes a code of conduct for ISDS arbitrators (IDB-INTAL, 2015).

Within this framework, different investment experts working in the most developed countries consider that the ISDS regulations are key to establish the credibility and effectiveness of the Bilateral Investment Treaties (BITs) when one of the parties is a developing country.

In this context, it should be noted that a study on the advisability of applying the ISDS in an agreement between the US and England assessed that its benefits would be small, since the US government evaluates the UK as "a very safe place to invest".

Therefore, the ISDS system appears to be less useful when it comes to investments in developed countries. Extending these findings, since the TPP is an agreement that includes developed and developing countries, the application of the ISDS measures should not be limited in those disputes that may arise, since national tribunals "are not often able to carry adequate efforts, and sometimes, these are incompetent "(Paulsen, 2013).

These different ISDS applications have been heavily criticized and there have been attempts by many social actors and governments to restrain its application. The issues that have been mostly criticized are related to the following topics: a) the increased relevance assigned to the use of national tribunals; b) the fact that the ISDS is only applied to transnational corporations (TNCs); c) that many times, its decisions violate local laws and/or take precedence over them; d) challenges to the integrity of jurors.

It is also important to note that while the TPP includes ISDS measures that were part of KORUS, it does not contain clauses that allow governments to enforce their own regulations. By contrast, although the FTAs signed by South Korea – with Canada and Australia – contain identical measures, they specify that these governments retain their sovereign right to create and enforce their own regulations. The TPP, in its Article 9.15, only points out some limitations for its application in health and environmental areas.

The dispute settlement system allows private investors to sue States before the International Centre for Settlement of Investment Disputes (ICSID, the World Bank).

In some aspects, this chapter goes beyond existing agreements; such is the case of the investment provisions that apply to State-Owned Enterprises (SOEs). These provisions cannot take discriminatory measures on investors from other TPP members. The parties also undertook to ensure that transactions made by the SOE take place under market conditions. They also undertook not to provide assistance to these companies that may have a negative impact on the partners.

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For these reasons, the TPP is the first Mega-Agreement establishing new rules and standards able to affect not only the economic activity of the Parties, but also the activity of external actors to the Agreement; such is the case of the barriers that seem to arise on market access (G. Hufbauer, 2016).

29. Exceptions and General Provisions

In this chapter, one intends to provide flexibility to all the member countries which will enable them to exercise their rights to adopt regulations, taking into account their essential security interests and other reasons of public good. To that end, it includes the exception provided by Article XX of GATT linked to provisions of trade in goods, which state that nothing in the TPP may limit the adoption or implementation, by a member country, of the necessary measures to protect public morals, human, animal and plant life; health and Intellectual Property, as well as measures relating to the conservation of exhaustible natural resources. The chapter also contains a text equivalent of exceptions referred to provisions under the trade in services (Article XIV of GATS).

The chapter also sets out the circumstances and conditions under which the Parties may take temporary safeguard measures (e.g. capital controls); restrict transfers of profits and dividends, interest payments and payments linked to contracts related to investments; ensure that governments retain the required flexibility to manage situations of volatile capital flows in contexts related to balance of payments and to financial threats or in situations of economic crisis.

Similarly, it specifies that the Parties are not required to furnish access to information under the TPP if this is contrary to the public interest or may prejudice the legitimate commercial interests of particular enterprises. Finally, parties may choose to reject the benefits of the Investor-State Dispute Settlement mechanism concerning a claim that challenges the tobacco control measures adopted for such mechanism.

30. Final Provisions

This chapter defines the ways in which the TPP will become effective; it will come into force when the process of ratification is completed. If within two years of its signing (February 2016) the Treaty has not been ratified by the twelve States Parties, it will come into effect when at least six countries representing more than 85% of trade of the bloc have agreed to its implementation.

- **Accession of new members, withdrawal and amendments to the Agreement**

It also determines the ways in which amendments and rules establishing the process by which other States may enter the TPP in the future may be introduced. Article 30.4 provides for:

"This Treaty is open to accession by: a) any State or separate customs territory that is a member of APEC; b) any other State or separate customs territory as the Parties may agree, that is prepared to comply with the obligations in this Agreement, subject to such terms and conditions as may be agreed between the State or separate customs territory and the Parties, and following approval in accordance with the applicable legal procedures of each Party and acceding State or separate customs territory (accession candidate)".

According to Article 30.4, the entry of new members into the TPP is open to the economies of the Asia-Pacific Economic Cooperation (APEC) and other States as the Parties may agree. However, it

has been decided that in this first phase, APEC members wishing to do so have the priority to enter the Agreement.

There is already a group of countries that at some point have expressed their desire to join the Agreement. On the one hand, ASEAN members (e.g.: Indonesia), but also South Korea, although it is not expected to do so in the short term, and Chinese Taipei (Taiwan). In Latin America, the first of them is Colombia, which is the only country in the Pacific Alliance that has not entered into the Agreement since it does not belong to APEC. Then, Costa Rica and Panama, which are in the negotiation process to enter the Pacific Alliance. There have been recently, expressions of interest from authorities, officials and businessmen in the Southern Cone, particularly from Uruguay, Brazil and Argentina.

However, in addition to a yet undetermined period of time that these countries must wait, the Treaty has very restrictive conditions for those wishing to join it.

According to the rules that were established, the new members to be admitted must make a formal request to existing Parties and must pass the corpus of standards and measures that has been already determined without modification. In addition, they shall negotiate bilaterally with each Member the conditions of different chapters of the Treaty (e.g: tariff elimination schedule/reduction of tariff barriers).

Therefore, the Treaty does not have a fully open mechanism, but a semi-closed one, since the member Parties shall have, implicitly, a veto power. In sum, all of these requirements keep, to some degree, the TPP away from its condition of regional agreement, under the set of bilateral agreements of which it is composed.

The Treaty also determines the means by which the Parties may withdraw from it and the languages that must be used under the Agreement. It also appoints a Depositary, responsible for the receipt and distribution of documents.

The chapter states that the TPP can be modified if it has the consent of all parties and after each Party completes the legal procedures that are applicable and has notified the Depositary in writing.

Finally, the chapter also specifies the procedures under which a Party may withdraw from the Agreement.

- **Will the TPP be ratified?**

This Treaty would lose its transforming character and capacity and its degree of impact on the global level if it is not ratified by the US. The fact that it must be approved by a Congress whose internal distribution of power between the Democratic and Republican parties will be modified as a result of upcoming elections, casts doubt on whether it will be eventually approved.

If one considers the statements made on this point by the candidates of both parties, apparently the TPP would not be approved since both Donald Trump and Hillary Clinton have spoken out against the agreement.

It is very difficult to speculate on decisions that the current candidates for president might adopt if they were elected; or to make hypothesis on the possibilities of each Party to win elections and finally, on what would be the course of action as a result of the new configuration of Congress.

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Then, one can only speculate that if Democrats were elected to the White House, the Agreement will be finally approved by Congress. One can expect that, since it is part of the government policy adopted and that has been in effect for a decade; due to the great lobbying power of the TNC whose interests are protected in the text of the agreement and other factors of domestic and international origin (e.g: the TTIP evolution, the adoption of or not of the RCEP).

Conclusions

As can be seen so far, whether the contents of its chapters or geopolitical and geo-economic reasons that led to its realization are considered, the TPP seems to create more questions than answers; more uncertainties about the viability and sustainability of its operation, as well as the consequences of its impact on Asia-Pacific, the Transpacific ties and their impact on the international trading system in different regions of the world.

For example, it is difficult to determine its effects on the new ASEAN Economic Community and the changes that can occur within that organization. Similarly, to what extent the WTO Plus and WTO extra (WTO XX) rules that it tries to establish will impact in China, India and the RCEP. Further consideration also needs to be given to what might be the WTO's defensive responses and – of particular interest to our region – its impact on the integration process in Latin America and the Caribbean: on the productive and commercial restructuring policies and the economic integration ways and means that our countries will adopt and implement from now.

From another perspective, it is worth noting the new possibilities that the character of "living agreement" – which has been granted to the TPP – brings to its evolutionary process, and the consequent potential impact on the rest of the world.

The fact of having introduced clauses that ensure the periodic review of its chapters to deepen its scope and adapt to new conditions, allows to consider it as a body endowed with a capacity for self-transformation which is clearly higher to that of its counterparts. It maintains, according to the external environment, the possibility of changing its course and speed of change. This would be another feature that should be taken into account; we are dealing with an entity that, from this point of view, seems endowed with a capacity of resilience which is vital in an international environment in constant flux.

IV. ECONOMIC IMPACT OF THE TPP

1. The Glass Bead Game: Benefits and expected costs of the TPP

According to the data of an economic model often used as a reference (see Annex, Table 5) (Peter A. Petri, 2016), the Agreement could increase annual income gains of the world to US\$ 492 billion by 2030. Within this framework, the TPP would increase annual real income in the US by US\$ 131 billion, or 0.5% of US baseline GDP.

In the same year, Japan would raise its annual income by US\$ 125 billion (2.5% of GDP). Mexico would increase its annual income by US\$ 22 billion (1.0% of GDP). Peru would benefit with a US\$ 11 billion increase (2.6% of GDP). Finally, Chile would get a GDP increase of US\$ 4 billion per year (0.9% of its GDP) (Peter A. Petri, 2016).

TABLE 5
Main mega-regional agreements by figures (million inhabitants and US\$ billions, 2012)

| Agreement | No. countries | Population | GDP | Exports | Imports | FDI | |
|-----------|---------------|------------|--------|---------|---------|---------|----------|
| | | | | | | Inflows | Outflows |
| RCEP | 16 | 3.398 | 21.189 | 5.236 | 5.232 | 329 | 325 |
| TPP | 12 | 792 | 27.558 | 4.339 | 5.188 | 406 | 609 |
| TTIP | 29 | 817 | 32.269 | 7.349 | 8.273 | 426 | 652 |
| WORLD | | 6.941 | 71.707 | 18.401 | 18.601 | 1.351 | 1.391 |

Sources: IMF, WTO and UNCTAD.

It is noted that other countries which would have the largest relative gains in income are, apart from the US and Japan, Malaysia (US\$ 52 billion) and Vietnam (US\$ 41 billion). According to this econometric model the Asian countries with the highest losses (in terms of revenue) would be China, which by 2030 would reduce its revenue by US\$ 18 billion; Korea, US\$ 8 billion; Thailand, US\$ 7 billion and India, US\$5 billion, due to the competition of TPP members in the markets of that Agreement.

In terms of increased exports by 2030, the United States would increase them by US\$ 357 billion (9.1% of GDP), compared to the baseline of 2015 while Japan would have a US\$ 276 billion increase (23.2% of GDP). Vietnam would have a US\$ 107 billion increase (30.1% of GDP). Meanwhile, Malaysia would export US\$ 99 billion more, (20.1% of GDP). Mexico exports would increase by US\$ 32 billion (4.7% of GDP), while Peru's exports, would increase by US\$ 14 billion (10.3% of GDP), and Chile, US\$ 8 billion (5.3% of GDP) (see Annex, Table 6).

Inward investment stocks FDI in the TPP countries would expand by US\$ 446 billion over the 2030 baseline (see Annex, Table 6), and their outward investment stocks would increase by US\$ 305 billion.

With regard to the Latin American members of the TPP, Mexico would receive US\$ 8 billion more of FDI and Peru over US\$.7 billion.²⁸

This incidence is due, in part, to the growth of GDP in different regions and the reduction of barriers to investment. The main intra-Agreement recipients of FDI would be the US, Canada, Japan and Malaysia, while the main sources of foreign investment would be again, US and Japan.

As a whole, the members of the TPP would attract more intra-Agreement investment than the outward flows. In terms of outward FDI, Mexico and Peru would share the first place among the members of the Pacific Alliance (see Annex, Table 6).

As for the reduction of trade barriers (see Annex, Table 3), the values are relatively low, given the FTA previously established by the US with Australia, Canada, Chile, Mexico, Peru and Singapore. On average, the United States tends to impose lower tariffs than its partners. However, these tariffs have high peaks in some sectors, particularly with respect to US imports of textiles and apparel and US exports of food and beverage products (Peter A. Petri, 2016, p. 11).

²⁸ No data available for Chile.

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Regarding non-tariff barriers (NTB), these include, for instance, quotas in agriculture and energy as well as standards and regulations that may favour local producers. The NTBs are relatively low for a large number of goods, but are of particular importance in the field of food products, textiles and apparel (see Annex Table 3), and in some service industries. The study cited above estimates that the initial portion of NTBs is calculated as 56.3% for goods and 37.5% for services (Peter A. Petri, 2016).

By the year 2030, nearly all tariffs among members would be eliminated and most products are assumed by then to have regional supply chains that would make them eligible for preferences. The NTBs would be reduced, but they would still be far from achieving the desired optimum levels.

Assuming that the TPP takes effect in 2017, there would be a significant reduction of tariffs in the following years; 75% of tariff lines fall to zero immediately as the TPP enters into force and, and 99% would be eliminated in 2030.²⁹

Despite the high level achieved in the elimination of tariffs, they only cover approximately 12% of services for all TPP members. The greatest benefits are achieved in the NTB liberalization of goods. These are especially important for Japan, Malaysia, Mexico and Vietnam. For some advanced economies, the reduction of NTB in services and in FDI is important, accounting for more than half of the gains in Australia, Canada, Singapore and the US, and nearly half for Japan (Peter A. Petri, 2016).

Within this framework, non-members of the Agreement competing in the goods sector will face a serious challenge. It occurs to a lesser extent in the service sector within the TPP (since the US is the only dominant exporter) and the non-preferential portion of service liberalization by the US tends to favour external exporters (e.g: the European Union).

In the TPP tariff reduction generates lower profits. NTB reduction is the one that becomes more important in terms of gains and this situation could be possible in the new generation of trade agreements. In the case of TPP, it is estimated that the distribution of benefits accounts for approximately the following percentages: 12% are linked to tariff reductions; 43% come from reductions in goods NTBs; 25% from reductions in service NTBs and 20% from reductions in investment barriers (Peter A. Petri, 2016).

Effects of the TPP on its members and countries outside the Treaty

The study cited in the preceding pages is the most frequently used to assess the potential effects of TPP. There are other studies, carried out by various think tanks and experts, which offer different results.

²⁹ A few tariffs, like the 25% US tariff on trucks, remain for longer periods, which can be as long as 30 years.

FIGURE 5
Impact of Mega-Regional Agreements on non-member countries

| Baseline study | Benefits for members | Impact on non-members |
|--|--|---|
| TPP | | |
| Petri, Plummer and Zhai (2012) | 0.8% growth of GDP | -0.037% loss of GDP |
| Cheong (2013) | GDP growth of 0.11% (0.28% excluding the US, which reports zero gain) | Loss of -0.11% for China and Korea; -0.5% including India and -0.7% for the rest of the world |
| Lee and Itakura (2013) | +0.28 of GDP (2020) | -0.01% (-0.01% in India) |
| Kawasaki (2014) | Growth of 0.4% (tariffs only), income rises to 1.8%, including reductions in "non-tariff measures" | Negative impacts for almost all non-member countries are reported; increase of negative scenarios if the "non-tariff measures" are taken into account; the negative impact on India will be 0.2%, in both cases |
| Ciuriak and Xiao (2014) | 0.24% growth of GDP | -0.11% of GDP for Korea; -0.07% for India and -0.04% for the rest of the world |
| Sundaram (2016) | 10 years after its entry into force, the GDP of the US would be 0.54% lower than it would be without the TPP. Similarly, Japan's GDP would drop by 0.12% | |
| TTIP | | |
| (2009) | 0.7% growth of GDP for the EU and 0.3% for the US in an ambitious scenario | No impacts reported |
| CEPR (2013) | + 0.48% of GDP for the EU and + 0.39% for the US in the best case scenario | Positive impact of 0.14% on third countries because of the "spillover effect", accounting for 1/5 of the extent of harmonization of gains for the EU and the US |
| CEPII (2013) | 0.3% gains for both the US and the EU | No impacts reported |
| RCEP | | |
| Petri, Plummer and Zhai (2015) | 1.92% gain of GDP for the RCEP countries combined; India would grow 4.3% | 0.19% loss for third countries, including 0.09% loss in the US and 0.05% for the EU |
| ASEAN Economic Community | | |
| Petri and Plummer (2014) | 5.3% growth of GDP | 0.04% loss of GDP for third countries |
| Notes: | | |
| 1) Cheong does not submit aggregated results for the TPP; the aforementioned figures are based on the impacts reported on TPP's individual economies, through GDP projections for the year 2016. | | |
| 2) Lee and Itakura (2013) have no reports on the TPP. The data provided are based on impacts by 2020 reported on TPP's individual economies through GDP projections for the year 2016. | | |

Sources: Prepared by the author, based on: Peter A. Petri, Michael G. Plummer and Fan Zhai (2011); Inkyo Cheong (2013); Hiro Lee and Ken Itakura (2014); Dan Ciuriak and Jingliang Xiao (2014); Jomo Kwame Sundaram, Jeronim Capaldo and Alex Izurieta (2016) and Kenichi Kawasaki (2016).

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3. Back to Earth: An assessment of the impact of the TPP after its entry into force³⁰

- Given the economic clout that the TPP would have in global trade, its internal standards represent a competitive advantage in the formulation of new rules aimed at the global regime.
- The discriminatory features of the TPP go beyond the trade diversion generated by preferential tariffs. Different elements of the Agreement rules regime tend to create preferences for intra-TPP trade.
- Given its nature as an "evolving" Agreement, any constraints imposed will have a dynamic character and it is possible to expect that they will be modified over time (e.g: mechanisms aimed at harmonizing regulations and/or mutual recognition agreements).
- As a result of its participation in different TPP mechanisms, the role of private firms in developing standards will expand. This situation will be presented with particular strength in the "new areas" (e.g: digital economy).
- Given the way in which the TPP proceeds to make the cooperative regulation of its members a reality (harmonization through recognition of equivalence exclusive to the Parties), excluded countries will suffer additional costs when competing with them.
- In some areas, constraints are likely to affect, to a greater extent, the Parties to the Agreement themselves, thus allowing non-members to have greater room for manoeuvre relative to the implementation of its policies. This situation can encourage the development of competitive advantages in niche areas such as generic medicines and derivative innovations. However, limits on ability to sell into markets covered by the Agreement will be held, a fact which naturally diminishes the value of this policy space.
- The economies with aspiration to join the TPP must accept the standards set until that moment in the Agreement, and will not be able to modify them.
- The TPP will tend to favour certain models of innovation over others. For example, the pharmaceutical package restrains and delays the re-innovation in pharmaceutical products, as it delays and raises the costs of introducing generics. For its part, copyright extension impedes progress in derivative innovation.³¹ Furthermore, digital rights management is not aligned with open-source/community-based innovation models, which involve many small players making a cumulative effect of innovation. As with the previous point, although there will be an opportunity to compete, it will be subject to access limits imposed by the TPP.
- The Agreement has also opened up opportunities to excluded Parties to use the developmental role of the State. In sum, the new rules governing the Small and Medium Enterprises (SMEs) provide for competitive opportunities, subject to the potential costs of limited access to mega-regional markets.

³⁰ Prepared by the author based on Dan Curiak and Harsha Varchana Singh "Mega Regional Trade Agreements: How excluded countries can meet the challenge". International Institute for Sustainable Development. India, 2015.

³¹ A derivative innovation is a secondary product or service derived from an innovation platform, which consists of slight modifications of the original product.

- As the TPP zone grows through accession of other members, the value of policy space remaining to excluded parties will shrink. Consequently, this dynamic feature needs to be carefully weighed by excluded parties of the Treaty, in terms of adopting strategies to meet the challenge of the TPP.
- With regard to the introduction of private standards in different areas – for example, employment; ISDS; FDI adopted by the TPP (and also by the TTIP) – these will raise the requirements to be met by firms located in developing countries that are excluded from the Agreement.

The answer adopted by the latter will generate more and better support to facilitate the possibility that their firms will be able to participate in global value chains. However, it should be noted in this context that the new rules adopted within the Mega Agreements will have the ability to model the standards that will become internationally adopted.

FIGURE 6
Regulations and trade measures: potential effects on non-member countries

| Implications of the regulation, by type and capacity to influence non-member countries | |
|---|--|
| Impact of trade diversion by preferences | |
| <ul style="list-style-type: none"> • Preferential tariff reductions • Liberalisation of preferential services • Rules of Origin • Customs Administration facilitation mechanisms • Government procurement • Investment pre- and post-establishment of rules • Mutual recognition | <p>It can occur:</p> <p>a) Trade/investment diversion away from non-members; b) Encouragement to value chains formed with producers within the Agreement zone through discriminatory tariff and non-tariff measures; and c) Reduced access to firms outside the Agreement.</p> |
| Trade measures with strong implications for non-member countries | |
| <ul style="list-style-type: none"> • Data transfer • Privacy Rules • Intellectual Property Rules • Competition Policies • State-Owned Enterprises • Labour and Environmental Measures | <p>The effects will be the result of the highest standards applied that would condition market access for third countries, "de facto" imposing compliance costs without the benefit of access to intra-TPP facilitative mechanisms. Labour and environment concerns will also generate private standards and stricter conditions. These will increasingly dovetail with the mandatory public standards in these areas, creating additional market access cost.</p> |

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Implications of the regulation, by type and capacity to influence non-member countries

Positive spillovers on third countries

- Harmonized standards in TPP reduce trade costs for third countries
- Greater transparency within the Agreement would also benefit non-members
- Activities vacated due to higher standards to which the TPP member countries with higher levels of development are submitted, become available for third countries
-

Scale of these positive spillovers is likely to be modest. Many of the transparency measures would emerge from the WTO Trade Facilitation Agreement; and activity vacated because of higher standards will also face reduced access to the Agreement zone.

Source: Prepared by the author, based on Daniel Ciuriak and Verdhana Singh (2015).

V. THE GOLDEN FLEECE. IN SEARCH OF A FREE TRADE AGREEMENT FOR ASIA AND THE PACIFIC (FTAAP)

To finally reach a Free Trade Agreement comprising the whole Asia-Pacific area constitutes an idea-force that could be traced back to the first stages of the creation of APEC. However, it reaches its project nature after a proposal made by APEC Business Advisory Council (ABAC), presented at the "Leaders' Meeting" of this Forum in Santiago, in November 2004.

The initiative did not flourish, since some of APEC's economy chiefs expressed their concerns about the idea, and at the time it was only registered as an ABAC suggestion in the "Santiago Declaration." It gained some strength because the US, which practically since its joining APEC wanted to move in that direction, enthusiastically expressed its support at the "Leaders' Meeting," that took place in Hanoi, in November 2006, considering it a long-term project.

However, there again was some resistance among several Asian members, led by China. This power clearly saw that a project of this nature could open an important path for US penetration in the Asian integration processes. This situation led to it been included merely as a paragraph on the subject in the "Hanoi Declaration."³²

As pointed out before, the US, in the face of the difficulties it found to move forward in the APEC, resorted to the P-4, using it as a base of what would then become the TPP. This way the power counted on the capacity to select the members that would be invited. It could also, at the beginning, select the best time to present the TPP as a proper base to move towards the FTAAP.

Thus, at the meeting of APEC leaders held in Beijing, in November 2014, it was established that the FTAAP could play a valuable role as a project that would motivate governments and economic

³² "We share the criterion (ABAC's) that in the face of practical difficulties that come up at the time of negotiations (of the FTAAP); however, it seems timely for APEC to seriously consider more effective ways aimed at trade and investment liberalization in the Asia-Pacific region," Hanoi Declaration, Nov. 2006

agents to maintain and perfect the effort for the materialization of Bogor's objectives.³³ And so the decision to carry out a study that would allow setting the path to reach the FTAAP was adopted. Its results would constitute the "road map" for APEC.

To this end, "a collective strategic study is started on the matters related to the creation of the FTAAP." This study was intended to "provide an analysis on the potential benefits and social and economic costs corresponding to the materialization of the FTAs already active or in their project phase that exist in the region, analysing the different ways through which the FTAAP could be reached" (APEC, 2014). This study shall be finalized by the end of 2016, to be subjected to the consideration of ministers and economic leaders.

Then, both the TPP and the RCEP – although not exclusively – are seen as Agreements suitable to move towards the FTAAP. The ABAC sees the latter as the instrument to achieve: i) an optimum state of integration of Asia-Pacific economies; ii) the alignment of the region's trade system with the deep changes that have been taking place in the business and technology models; iii) the linking of the three most important world economies with the most dynamic emerging markets under the rules of opening, finally becoming a powerful locomotive for world trade (Petri, Findlay, & Plummer, 2015, page 2).

ABAC drafted a document (Petri, Findlay, & Plummer, 2015) aimed at highlighting the importance of the FTAAP, the contribution this project represents for the growth of the region and how it could be carried out. In this framework, it points out that it can promote foreseeable growth policies based on four pillars: "inclusion," which would ensure benefits for the low-income economies and SMEs; "comprehensibility", by including industries and all kinds of business operations; "consultations", through the knowledge of criteria and opinions of business men and financiers; and "transparency", to ensure the validity of clear and foreseeable rules and regulations.

Towards the materialization of the FTAAP:

There is consensus on the need to reach the FTAAP based on some selected ways: the regional economic agreements that could be its basis. To this end, ABAC identifies three main ways: the TPP, the RCEP and the Pacific Alliance. The study would tackle these and other options on this basis.

The TPP was signed in October 2015, but its ratification and implementation will require a longer term. On the other hand, the RCEP is still in the negotiation phase, and its final content is still unknown, as well as the time required for its conclusion. The Pacific Alliance is also going through its development process, based on the different agreements that have been reached at the leaders meetings. Also, there are other APEC economies (and some that are not members yet) that have not been included in these Agreements, but that could participate in the FTAAP.

Since the type of links to be established between the FTAAP and the APEC is yet to be determined, different alternatives could be considered in terms of the number of participants in the different Agreements to be analysed.

The scenarios that could be conceived as potential frameworks for the TPP-RCEP-FTAAP interactions are the following:

³³ In 1994, at a meeting of leaders of APEC economies held in Bogor, Indonesia, the "Bogor Declaration" was established. Through this declaration, the decision to move towards the objective of the economic integration of the region is made, on the basis of trade, investments and development cooperation liberalization.

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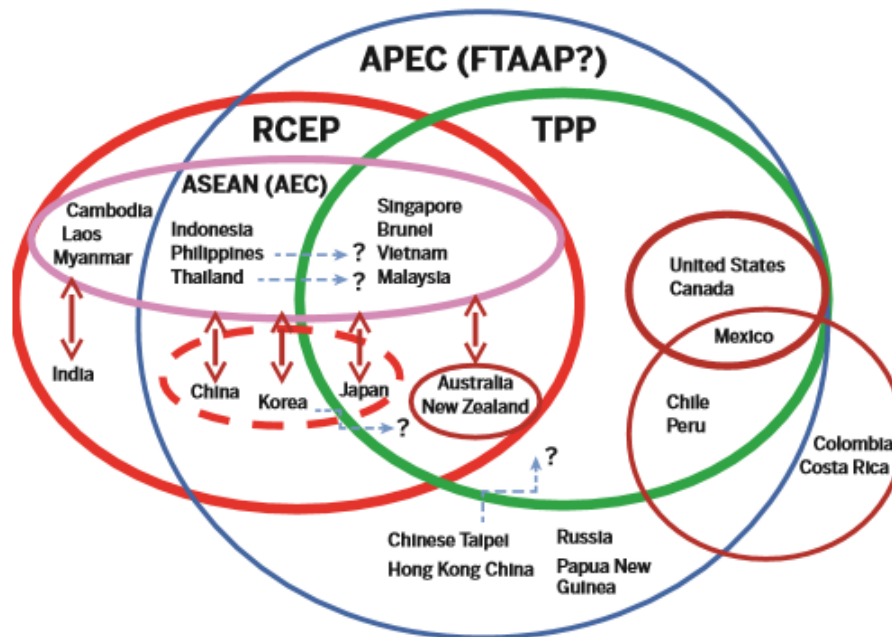
- i) **Expansion by an Agreement:** the TPP or the RCEP evolves towards the FTAAP; one of which is the framework to which the other has to adapt
- ii) **Coexistence:** both the TPP and the RCEP are still in force, acquiring the character of FTAAP components
- iii) **Generation of a new agreement based on the TPP and the RCEP:** this Agreement would incorporate elements from both, and would eventually absorb them

It is still unknown which will be the proposals of the study on the FTAAP, and what will the leaders of the APEC economies decide. The TPP has a certain edge, as it was already signed and is now pending for ratification; while the RCEP is still in negotiations and it is unknown when they would end.

Each of them presents certain advantages over the other.

FIGURE 7

Regional Integration Initiatives: Current configurations and potential future evolution



Source: Ambassador Tang Guoqiang, Peter A. Petri, "New Directions in Asia Pacific Economic Integration", East West Centre, Honolulu, 2014 p. 238.

The RCEP represents the option with the easier relative access for Asian economies, as it is more flexible and considers the existing asymmetries between its members, making it the best alternative for an Intra-Asian integration model.

On the other hand, the TPP offers the opportunity – with high costs for most of its members – to adapt to new forms, more functional for the requirements of companies and CVI, that more developed countries try to impose as the new framework of reference for international trade.

In this context, three lines of evolution can be identified towards the FTAAP, based on the TPP and the RCEP. One would encompass the totality (current) of the APEC members: 21 economies. Another option is based on the possibility of incorporating RCEP and TPP members, including those that are not APEC members (India, Cambodia, Myanmar and Laos), for a total of 25. The third

one would correspond to circumscribe the initial negotiations to the APEC member economies along with those that currently participate in the RCEP and/or the TPP, for a total of 17.

CUADRO 6:
Towards the FTAAP: Gains in income according to alternative Mega Trade Agreements
(estimations at 2025)

| Alternative | GDP baseline | TPP | RCEP | FTAAP-17 | FTAAP-21 | FTAAP-21 |
|-----------------------|--------------|-------|-------|----------|----------|----------|
| Template | | TPP | RCEP | TPP | TPP | RCEP |
| Americas | 24.867,0 | 101,7 | 2,5 | 468,0 | 452,3 | 228,5 |
| <i>Canada</i> | 1.978,0 | 8,7 | -0,1 | 33,2 | 31,4 | 14,3 |
| <i>Chile</i> | 292,0 | 2,5 | - | 7,8 | 8,6 | 2,2 |
| <i>Mexico</i> | 2.004,0 | 9,9 | 2,8 | 91,1 | 76,3 | 43,0 |
| <i>Peru</i> | 320,0 | 3,9 | - | 8,4 | 7,7 | 2,5 |
| <i>United States</i> | 20.273,0 | 76,6 | -0,1 | 327,6 | 328,2 | 166,6 |
| Asia | 34.901,0 | 125,2 | 627,0 | 1.442,1 | 1.653,4 | 947,2 |
| <i>Brunei</i> | 20,0 | 0,2 | 1,2 | 1,7 | 1,4 | 0,6 |
| <i>China</i> | 17.249,0 | -34,8 | 249,7 | 808,6 | 837,1 | 520,6 |
| <i>Hong Kong</i> | 406,0 | -0,5 | 46,8 | -1,9 | 118,8 | 51,6 |
| <i>India</i> | 5.233,0 | -2,7 | 91,3 | -29,3 | -37,1 | -20,6 |
| <i>Indonesia</i> | 1.549,0 | -2,2 | 17,7 | 82,0 | 60,3 | 26,1 |
| <i>Japan</i> | 5.338,0 | 104,6 | 95,8 | 237,3 | 233,1 | 154,2 |
| <i>Korea</i> | 2.117,0 | -2,8 | 82,0 | 136,3 | 132,7 | 97,7 |
| <i>Malaysia</i> | 431,0 | 24,2 | 14,2 | 45,4 | 44,7 | 16,5 |
| <i>Philippines</i> | 322,0 | -0,8 | 7,6 | 30,6 | 22,5 | 11,2 |
| <i>Singapore</i> | 415,0 | 7,9 | 2,4 | 27,1 | 26,5 | -0,7 |
| <i>Chinese Taipei</i> | 840,0 | -1,0 | -16,1 | -31,5 | 83,8 | 30,5 |
| <i>Thailand</i> | 558,0 | -2,4 | 15,5 | 64,9 | 43,7 | 19,2 |
| <i>Vietnam</i> | 340,0 | 35,7 | 17,3 | 71,9 | 81,1 | 37,9 |
| <i>Otehr ASEAN</i> | 83,0 | -0,4 | 1,6 | -1,1 | 4,6 | 2,4 |
| Oceania | 1.634,0 | 10,7 | 21,7 | 41,3 | 39,4 | 17,4 |
| <i>Australia</i> | 1.433,0 | 6,6 | 19,8 | 34,1 | 32,5 | 15,3 |
| <i>New Zealand</i> | 201,0 | 4,1 | 1,9 | 7,2 | 6,9 | 2,0 |
| Others | 41.820,0 | -14,1 | -6,8 | -43,4 | 213,4 | 122,0 |
| <i>Europe</i> | 22.714,0 | -3,7 | 5,1 | 0,9 | -40,9 | -23,9 |
| <i>Russia</i> | 2.865,0 | -1,4 | -5,3 | -8,8 | 339,5 | 199,3 |
| <i>ROW</i> | 16.241,0 | -9,0 | -6,6 | -35,5 | -85,2 | -53,4 |
| World | 103.223,0 | 223,4 | 644,4 | 1.908,0 | 2.358,5 | 1.315,1 |
| TPP (12) | 33.045,0 | 285,0 | 155,1 | 892,8 | 878,6 | 454,5 |
| RCEP (16) | 35.290,0 | 137,4 | 617,9 | 1.516,8 | 1.490,2 | 882,4 |
| APEC (21) | 58.951,0 | 239,2 | 553,0 | 1.973,0 | 2.517,1 | 1.410,7 |

Source: Petri, Plummer and Zhai (2011) *The Trans-Pacific Partnership and Asia-Pacific integration: A quantitative assessment*. Washington, DC: Peterson Institute for International Economics.

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Naturally, each of the options present important – although in principle considered as solvable – difficulties to overcome. Without going into detail, a general obstacle is related to the existence of different dimensions and objectives of liberalization and modernization of norms and rules between the TPP and the RCEP. Another relevant obstacle is in its members belonging or not to the APEC, and the diversity of development situations there are among potential members.

In this context, the economies that have negotiated high standards of liberalization, such as the case of the TPP, should establish some kind of concessions to those actors – those of the RCEP – governed by norms and rules that only move slower compared to WTO rules.

Considering that a scheme that works for the FTAAP has to take into consideration this difference in parameters, this body should act as a sort of “umbrella,” adopting positions and regulations that in some subjects might be absent in at least one of the agreements, simultaneously harmonizing those that are included in both (Petri P. y., 2014). The result could be a multi-level system in which the RCEP, the TPP or the FTAAP would represent successively higher standards in processes of gradual convergence. In this situation, perhaps the FTAAP could be conceived as a “living agreement”, with the capacity for self-modification.

A recent study (Petri P. y., 2014, pages. 15-16), based on computable models of general balance, simulates different scenarios: a) The TPP with twelve members (current situation); b) the RCEP with sixteen members, and c) Two FTAAP alternatives: one with seventeen economies (based on APEC members that participate in the RCEP or the TPP), and another with twenty one economies corresponding to the current total of APEC members). The benefits that could be yielded by the FTAAP are assessed by two levels of standards: the ones expected to be included in the TPP and those corresponding to the RCEP (see Table 6).

It is observed that potential profit is increased with the integration scale adopted. For instance, by expanding the way of the TPP with twelve members towards the FTAAP to a seventeen member agreement, would increase global benefits from US\$ 216.4 billion to US\$ 1,908 billion in 2025. If Hong Kong, China Taipei (Taiwan), Russia and Papua New Guinea were also added – in other words, FTAAP-21 – the figure would increase to US\$ 2,358.5 billion, and it would grow even more if India, Cambodia, Laos and Myanmar were added (FTAAP-25).

VI. LATIN AMERICA AND THE CARIBBEAN VIS-À-VIS THE TPP: DIFFERENT SITUATIONS, BENEFITS AND CHALLENGES

The participation of members of the Pacific Alliance (PA) – Chile, Peru and Mexico – in the TPP, which Colombia is expected to join in the future, and the not belonging of the rest of the LAC to the agreement, demands the assessment of the different situations emerging in terms of the benefits and unwanted impacts and challenges deriving from the signing of this Mega Intra-Regional Agreement for the different countries of our region.

On the one hand, the TPP generates opportunities to enhance the trade and investment link of participant economies, and offers a space of a larger dimension and relief to the private sector in Latin America and the Caribbean (LAC) for its participation in the dynamic chains of value linked to Asia. However, simultaneously, this Mega Agreement generates very significant challenges for Latin American and Caribbean countries that are not part of it. These countries would need to implement deep reforms in multiple areas, aimed at restructuring their economies and strengthen their competitiveness.

1. The PA countries that participate in the Agreement: Chile, Peru and Mexico:

According to the evaluation made by the Chilean Minister of Foreign Affairs, Heraldo Muñoz, the results have been “very satisfactory.” He stated that the Chilean representatives in the negotiations acted vigorously and firmly to protect the interests of the country, and that the balance was positive (Núñez, 2015).

Particularly, he highlighted the improvement in the access to products, the link with chains of value and the opening of areas such as government purchases and services, not included in previous agreements Chile has with the remaining 11 TPP partners.

The Minister explained that the Agreement will allow Chile to gain additional markets, mainly in Japan, Canada, Malaysia and Vietnam, with dairy and meat products (pigs, poultry, salmon), among others. Likewise, he highlighted the express commitment of TPP countries not to apply subsidies to their agricultural goods, and the possibility of using negotiation mechanisms in the phytosanitary area (Chile’s Deputies Chamber, 2015).

Also, the Minister of Agriculture and the Secretary of Economic Affairs of the Ministry of Foreign Affairs held a meeting for the analysis of the Agreement with the Agriculture Commission of the House of Representatives. This time, the Minister made emphasis in pointing out that the TPP will not imply negative effects for the country, which will keep the surplus in the balance of trade in the agricultural sector (Chile’s Deputies Chamber, 2015).

- **Peru**

In the case of Peru, a country that in 2014 sent to TPP members 32.6% of its total exports, the Agreement will facilitate access to new markets, with which it has no FTA (see Figures 2 and 8) in Australia, Brunei, Malaysia, New Zealand and Vietnam; and will allow it to deepen the custom preferences with Japan and Canada, as well as with Chile, Mexico and Singapore. This situation presents a great opportunity for Peruvian agricultural products.

At the same time, it is expected that the TPP will contribute to the development of the local productive chain, and drive Peru’s non-traditional exports in the sectors of agro-industry, fishing, manufacturing, cotton and alpaca clothing, as well as of other manufactures, and a positive evolution of the intraregional value chains, thus extending the productive diversification and a heightening of their technological level (BBVA Research, 2015).

In that sense, Lima’s Chamber of Commerce (CCL) indicated that the Agreement consolidates the advances made in the Peruvian opening to foreign trade, offering better opportunities for producers to act in new markets (Terra Argentina, 2015).

In turn, the Foreign Trade Manager of Peru’s National Society of Industries (SIN) indicated that the TPP will benefit SMEs, promoting their participation in the commercial flows to be generated. In this context, the Minister of Foreign Trade and Tourism said that, “Peru could become a hub for Asia-Pacific, attracting investments from other countries to export with TPP preferences to the other members comprising the block” (Communications Office of MINCETUR, 2015).

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FIGURE 8
FTAs of Members of the Pacific Alliance with Asia Pacific countries

| Member Country | FTAs with AP countries |
|-----------------|--|
| Chile | <ul style="list-style-type: none"> • Australia (in force, 2009) • "P-4": Chile, Brunei, New Zealand and Singapore (in force, 2005). Background of the TPP • China (in force, 2006) • Korea (in force, 2004) • Japan (in force, 2007) • TPP (signed in 10/5/2015) |
| Colombia | <ul style="list-style-type: none"> • Korea (2013, not yet ratified) • Japan (in negotiations since 2012) |
| Mexico | <ul style="list-style-type: none"> • Korea (in negotiations since 2007) • Japan (in force, 2005) • TPP (signed in 10/5/2015) |
| Peru | <ul style="list-style-type: none"> • China (in force, 2010) • Korea (in force, 2011) • Japan (in force, 2012) • Singapore (in force, 2009) • Thailand (in force, 2011) • TPP (signed in 10/5/2015) |

Source: Prepared by the author, based on data from the OAS (2014).

The situation is presented in very favourable terms for Peru, which this year will host APEC's Meeting. In this framework, according to what was expressed by the High Representative of Peru before the APEC, Peru's strategic objectives are the following: 1) to consolidate Peru as the leading hub in terms of production and logistics between Asia and Latin America; 2) to establish multilateral strategic alliances; 3) to deepen commercial and financial relations between Peru and other APEC economies (Restrepo, 2016).

- **Mexico**

In the case of Mexico, the country has 85% of its exports and 59% of its imports placed in the framework of the members of the Agreement.³⁴ It has signed FTAs with 3 TPP countries – Canada, the US and Japan – but does not have any FTAs with countries from the Asia-Pacific area. According to a communiqué issued by the Secretariat of the Economy, once the TPP enters into force, Mexico will have new business opportunities in six markets in Asia and Oceania: Australia, Brunei, Malaysia, New Zealand, Singapore and Vietnam (Secretariat of the Economy, Government of Mexico, 2015).

The TPP was considered an Agreement of the "utmost importance" that allows strengthening the integration of the productive chains of Mexico, the US and Canada (NAFTA/TCLAN), thus contributing to the goal of "turning North America into the most competitive region in the world" (Secretariat of the Economy, Government of Mexico, 2015). Also, the bulletin indicates that

³⁴ ECLAC, based on COMTRADE data base.

preferential access to the markets of Chile and Peru, priority partners of Mexico in Latin America, is consolidated; and deepens access preferences to the Japanese market.

According to the Secretary of the Economy, Mexico achieved proper balances between the offensive interests and the sensitivities, in areas such as the chains of auto parts-automotive, textile-clothing, and agricultural products such as rice, meat and dairy products (Secretariat of the Economy, Government of Mexico, 2015).

On the other hand, the Business Coordinating Council, which was part of the Consulting Committee that accompanied the delegation of the Mexican Government in the TPP negotiations (as part of a wide structure of participation in the negotiations), in its analysis of the Agreement estimated that the following was achieved:

- a) Establishing of clear rules for certification and verification of origin, to prevent abuses or wrongful uses in the declarations used to determine the origin of commercial goods in the framework of the TPP;
- b) The inclusion of provisions in the Agreement indicating that the TPP will coexist with previous treaties, including TLCAN/NAFTA (this situation allows to protect Mexican rights in the American market, in virtue of this Agreement);
- c) Establishing of rules for the joining of new members that acknowledge the founding members – such as the case of Mexico – the right to negotiate access conditions with new countries interested in joining the TPP.

In summary, thanks to the TPP, Mexico expects to increase its exports in 150 billion USD in a period of five years. The sectors that would benefit the most are the following: automotive, electric, electronics, agro-industrial, chemical, steel, perfume and cosmetics (Business Council, Government of Mexico, 2012).

- **Colombia and the TPP**

Colombia expressed its desire to participate in the negotiations of the TPP in January 2012, but it was not considered feasible since it was not part of the APEC.

Previously, Colombia had requested access to APEC in 1995. However, an extension established at the time for the joining of new members kept the country from entering the Forum. Although APEC membership does not constitute an official pre-requirement to join the TPP, member States of such Agreement gave priority to start it with the access, in fist instance, of APEC members that wanted to do so.

The Colombian government worked with the American to get its support and overcome these limitations. However, the Obama administration, which wanted to complete the negotiations as soon as possible, considered at the time that the joining of a new member would only delay them (Meachamp, 2013).

Colombia incorporated Asia-Pacific as a relevant area for the development of its foreign economic and political relations since early this century, when after making progress in the materialization of Free Trade Agreements with Latin American countries, it started negotiations for an FTA with the US, incorporating the purpose of establishing the same kind of agreements with Asia-Pacific in the “National Development Plan 2006-2020” (National Department of Planning, 2007).

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In this context, besides the bilateral agreements it has with Chile, Mexico, Canada, the US and the European Union, and multilateral ones with the CAN, MERCOSUR, a group of Central American countries, the EFTA and the Pacific Alliance, the government has managed to sign – besides Costa Rica and Panama – Commercial Agreements with Korea (not yet in force) and continues negotiations with Japan (Organization of American States (OAS)) (see Figure 8).

In light of this situation, Colombia decided to make new and more extensive efforts to strengthen its economic and commercial relation opportunities in the Asia-Pacific area. In the framework of an effort that jointly commits the government and the private sector, the Executive Director of Colombia's Amcham Chamber, indicated that the corporate sector had to play a key role in overcoming the disadvantages Colombia may face by not been a part of the TPP, including as a positive factor in this sense, its participation in the Pacific Alliance and the trade agreement entered into with the US (Colombia, 2015).

In turn, the chief international negotiator of the Ministry of Commerce, Industry and Tourism indicated during a meeting of this Chamber, that from the point of view of his Ministry the future of the country depended upon been able to fully integrate the Colombian Pacific area. This development would allow for making the best of the commercial opportunities (Colombia, 2015)

BOX 7

TPP: Impacts on the Pacific Alliance

POSITIVE ASPECTS:

- Better access conditions to economies with which there was no FTA
- Increase of IED possibilities of TPP countries
- Improvement of its image in global markets for co-participating in last-generation schemes and economic-commercial norms
- Increase its access capability to chains of value from Asia and North America
- Possibility to benefit with intra-TPP economic cooperation schemes
- Increase of the interest of other Latin American countries to be a part of the Pacific Alliance

NEGATIVE ASPECTS

- Important restriction to the capacity to define public policies in matters related to growth and development (i.e.: government purchases, employment, intellectual property, State-ETN relation)
- Potential losses related to the harmonization with TPP rules of previously signed FTAs with members of the agreement
- Asymmetries in the core of the Alliance that could generate the long-term postponement of the joining the TPP of one of its members
- Potential disruptive costs in the processes of concertation of LAC integration

TABLE 7
Expected per capita GDP variation caused by the TTIP (after 15-20 years)

| | Tariff Elimination | Deep Liberalization |
|-----------------|--------------------|---------------------|
| Chile | -0.4% | -5.6% |
| Colombia | -0.2% | -2.6% |
| Mexico | -1.1% | -7.2% |
| Peru | -1.1% | -2.2% |

Source: Prepared by the author, based on Felbermayer, G. et al. "Transatlantic Trade and Investment Partnership (TTIP): Who benefits from free trade deal? GED, 2013.

2. Central America

Besides the three members of the Pacific Alliance already incorporated to the TPP and of the abovementioned Colombian case, other countries with coasts facing the Pacific could, in principle, gain access to this agreement in the (although far) future: Ecuador, El Salvador, Guatemala, Honduras, Nicaragua and Panama and Costa Rica (these last two countries are already negotiating to join the PA).

In this context, it is worth mentioning that the importance given to Asia-Pacific as a commercial partner presents major variations. For Central American countries the importance of the Asian region is largely based on the imports generated in it.

Its role as exporter secondary, as most of its exports are concentrated in the American market. Costa Rica is different from the rest in the sense that it established, over a decade ago, an important link with Asian chains of value in important technological sectors (ICTs).

Within this framework, several Central American countries – among which the Dominican Republic, Haiti, El Salvador and Nicaragua stand out – could be affected in a main item of their exports: textiles and clothing, based on a better competitive position in the US market achieved by Vietnam via the TPP.

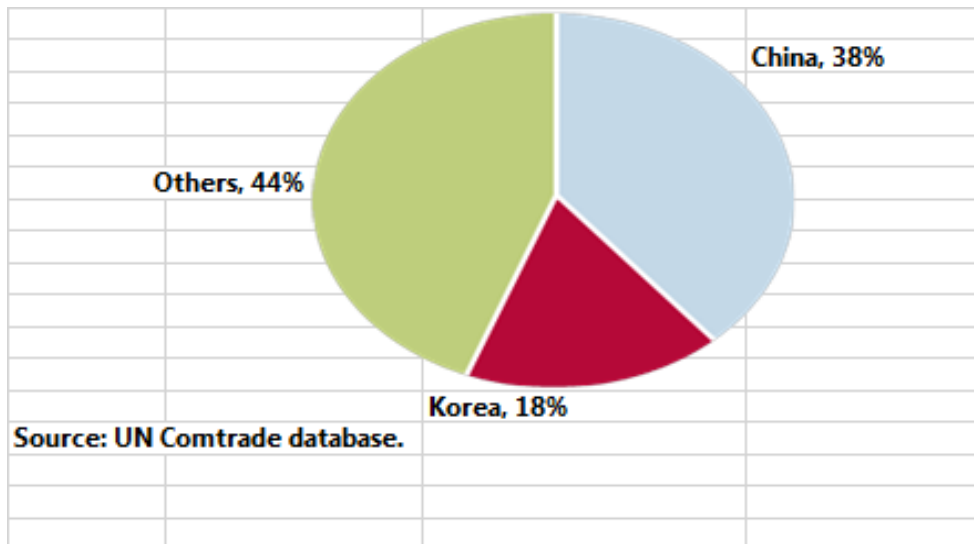
In 2014, Vietnam was the most important exporter in this sector to the US (selling to that market up to US\$ 9 billion – between 44% and 45% of its total exports - (UN COMTRADE, 2013)) supplying most of the knit-cotton pullovers, jeans, cotton shorts and other clothing to the American market. In this sense, Vietnam accumulated 62% of clothing exports of the total of the TPP countries.³⁵

³⁵ Ibid. Mexico is the second exporter of the group with 26% of the total, followed by Malaysia with 3%.

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Figure 9

Destination of Vietnamese textile exports 2013 (Percentage of total exports)



The flip side of this is a response to the very important incomes in terms of pricing taxes the US receives from Vietnam. In 2014, American Customs imposed an imports tariff of 20% to Vietnamese exports on manufactured clothing (Thomasson, 2014). These products are among the most tariff protected by the US, which is why the liberalization granted in the framework of the TPP is so significant: a 35% reduction in the tariff of many of such products immediately after the entering into force of the Agreement and the gradual reduction for the others, in a period of 10 to 12 years.

The problem Vietnam faces has to do with the regime of Origin Regulations adopted in the TPP after tense discussions. Given the US imposes that the criterion to be used has to be that of the "yarn-forward". Its objective is to make sure that the clothing manufactured at a TPP member country, using fabrics or fibers originated in a country foreign to the Agreement, would not benefit from such tax reduction.

It is necessary to bear in mind that Vietnam imports 38% of its raw materials from China (see Figure 9) and 18% from Korea (where part of the rest of the imprinted material corresponds to the US). It is worth clarifying that not all of the Vietnamese exports of this item enjoy tax-free entrance to the US. However, as long as it does not manage to transfer the volume of the imports from these two Asian countries to a production in its own territory, it runs a high risk of losing benefits granted by the TPP. In this sense, Chinese manufacturers of raw materials are already planning the establishment of industrial plants to manufacture them in Vietnam.

In this context, Salvadorian and Nicaraguan entrepreneurs informed that missions of the sector of the textile factories, which operate under the Nicaraguan free-trade-zone regime, had been sent to Washington to express before the American authorities their "concern" for the possible negative impact the TPP might have on this sector, which for Nicaragua, Honduras and El Salvador represents over 50% of their total exports (Xinhua Agency).

The Director of the Nicaraguan Textile and Manufacturing Association (ANITEC), Dean Garcia, in a statement made to the press in reference to this subject, confirmed the concern of the entrepreneurs of the region. They fear they might be at a serious disadvantage in terms of their

capacity to compete with Vietnam and other Asian countries. A second factor related to this matter is the fear of a reduction of the Asian IED in Central American textile factories. He indicated that they are trying to get "the TPP to have more favourable rules than those of CAFTA-DR (Free Trade Agreement between the US, Central America and the Dominican Republic). We consider we should be able to compete under the same terms and conditions" (Navas, L. (February 23, 2015). Tax-Free Zone trembles by the TPP. La Prensa, digital version: <http://www.laprensa.com.ni/2015/02/23/economia/1787317-zona-franca-tiembla-por-el-tpp>).

The main concern of the corporate and government sectors is that the national textile industry in December 2014 lost the protection that was being given to it by a program of US tax benefits known as "Tax Preferences Level" (TPL). This program allowed Nicaragua, for instance, to export to the US clothing manufactured with raw materials coming from countries that were not CAFTA-DF members. In the estimation of the business sector, over 7,000 workers of the textile factories could lose their jobs. (Navas, L. (February 23, 2015). Tax-Free Zone trembles because of the TPP. La Prensa, digital version: <http://www.laprensa.com.ni/2015/02/23/economia/1787317-zona-franca-tiembla-por-el-tpp>).

A CAMTEX report,³⁶ referring to the statement of the Operations Director of an important textile company, said that "it would very likely reduce the Central American textile and manufacturing industry, not just the Salvadorian... Between us and Vietnam there is a relevant difference: 93% of El Salvador exports entered with a 0% duty, while Vietnam did it with 7% and 32% in duties... Now, with the payment of duties it can have cheaper or even prices equal to ours... if tomorrow the TPP takes away their duties, they'll be 50% below our prices" (Pilenga, 2012).

Economic authorities from El Salvador confirm the travelling of a mission of officials and entrepreneurs to Washington, with the same purpose of their Nicaraguan counterparts. The delegation, led by the Salvadorian Minister of Economy, held meetings with senators, American trade officials, and members of the Congress of that country.

In this context, the US would try to decrease Vietnamese competition based on the TCLAN/NAFTA Agreements (for Mexico) and CAFTA-DR (for Central America), since both include the rule of "yarn-forward."

Besides the threat represented by the TPP in the textile sector for Central American countries, there is much uneasiness in relation to what is expected to be an important increase in the prices of medications due to the bigger difficulties for the entering of generic versions into the Central American market (ECLAC, 2015). This situation would be generated in virtue of the new norms that will be applied to the sector, based on the heavy restrictions applied to the use of generics, along with an extensive protection of innovation rights in pharmaceutical products achieved by the major American companies working in that sector. To this end, the way of the provisions contained in the chapter on Intellectual Property of the Treaty has been used. It is worth mentioning that in the case of Nicaragua, 2015 registered a 12.2% price increase in medications and pharmaceutical products.

³⁶ Salvadorian Chamber of the Textile, Manufacturing Industry and Free Trade Zones.

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3. CARICOM

The situation of CARICOM in terms of its economic-commercial relation with Asian countries members of the TPP is different from the different integration schemes from South and Central America. Although their exports are the smallest in the region destined to the ASEAN, and that they are mainly concentrated in primary goods, there is an important diversification in them with the incorporation of products with a higher technological sophistication in the exports basket (SELA, 2015). Also, CARICOM and SICA are showing progress in the modification of their exports when compared to those from MERCOSUR and CAN (SELA, 2015, page 39).

The “Strategic Plan of the Caribbean Community 2015-2019” (CARICOM, 2014), aimed at resetting the position of member countries in the regional and international context, clearly states the arising of an external context that is less favourable for small developing countries, such as the case of CARICOM members.

In this sense, it is indicated that the integration into global chains of value would be beneficial, but that the option in policies and measures aimed at this objective also poses some risks – which should be carefully managed – related to the position each country has in the production processes (CARICOM, 2014, page 3).

It is stated that the TTIP, the TPP and the Trade in Services Agreement (TISA) signed by the major industrialized countries and by some developing countries, represents the most important initiative aimed at harmonizing the governability of the operations linked to the different production networks. However, these mechanisms can also be seen from another perspective: a response to the strengthening of the position of emerging economies in world production and trade. In this sense, its rules could substantially undermine the wiggle room for the policies of developing countries, such as the case of CARICOM members, which are not part of those Mega-Agreements (CARICOM, 2014).

In this context, CARICOM countries face low growth rates and an increase in their foreign debt. This situation presents itself when 64% of the levels set forth by the strategies contemplated in the Caribbean Single Market Economy (CSME) has been implemented, aimed at promoting the development and the resistance capability to threats in the global scenario. It is observed, however, that they did not reach the production and intraregional levels planned, along with some coordination elements of the macroeconomic policies that did not reach the expected level of compliance either.

In this framework, there are geopolitical changes in neighbouring regions and the modification of the priorities of traditional partners that generate larger challenges – a certain undermining of the economic and diplomatic strength of CARICOM and of its mode of insertion in the world economy – in its attempt to reposition itself (CARICOM, 2014, page 4).

Although the reinsertion process of the economies of CARICOM takes place in a global economic scenario, in which uncertainty and high volatility prevail, there is space for its member States to move forward with the transformation of their productive structures, turning them into endogenous drivers of growth. To this end, there is a need to make an emphasis on measures that promote macroeconomic stability, increase foreign investment and improve productivity levels (CARICOM, 2014, page 5).

The aspirations to reach a “Caribbean Single Economy Market” may also depend, to an important extent, on the existence of proper cooperative answers from other States in the external framework. These not only include the different traditional forms of economic assistance, but also technical ones, aimed at preparing institutions and governments to successfully adapt to transformation leaps in the structure and rules of the game of international economy as represented by the TPP and the TTIP.

According to some specialists (Inniss, 2015), such technical assistance is insufficient to cover CARICOM's needs related to new requirements originating from central chapters of such agreement. That is the case, for instance, of the Chapter on Intellectual Property, which introduces – as stated in previous chapters – important modifications aimed at, according to its authors, the development of innovation and international and intra-regional trade.

That chapter talks about the great interest and urgency of the more developed members of the Agreement in making substantial progress in the configuration and application of a new international structure of intellectual property law, in spaces where it was not possible via TRIPS. Given the economic and political dimension of some member countries promoting it, it puts non-member emerging countries having the need to generate a structure that would allow them to adapt to the new challenges.

This situation puts CARICOM and CSME in the position of receivers, with more reduced possibilities to modify the new structure of intellectual property law resulting from TPP negotiations.

A potential opportunity to try to modify this situation could come from the constitution of a new space for discussion with the US. It is about the holding of the First US-CARICOM Meeting of the Trade and Investments Council in November 2015. This Council has been created in virtue of the “Trade and Investment Framework Agreement” (TIFA), signed on May 2013 between the US and CARICOM.

This first meeting considered the subjects of Intellectual Property, the development of an electronic commerce structure, and the removal of bilateral trade barriers, all of them relevant in the framework of the increase of exports from CARICOM to the US.³⁷

As pointed out by the former Prime Minister of Barbados, “the Caribbean seems to be in a ‘breaking point’ at a time when key world countries and regions are seeking to institutionalize the creation of trading mega-blocks like the TPP and the TTIP” (Arthur, 2014).

Given the aforementioned factors, different academics and Caribbean government officials suggest that the development strategy to be followed for the future should adapt to a dynamic of almost constant changes of technological niches, in the framework of the global political economy.³⁸

In summary, according to this proposal, the Caribbean would have to insert itself in its own terms, in the context that governs the modern forms of global trade. From a more favourable point of view, the nature of the contemporary production processes presents a believable opportunity, but

³⁷ In 2012 CARICOM exported US\$ 11 billion worth of goods to the US, and imported US\$ 11.7 billion from there.

³⁸ See, among others, Anthony Payne, *The End of Green Gold? Comparative development options and strategies in the eastern Caribbean banana-producing islands*, Studies in Comparative International Development, Vol. 41, N°3, 2006; A. Payne & Paul Sutton, *Repositioning the Caribbean within globalization*, CIGI Caribbean Paper N° 1, Waterloo, Canada, 2007.

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also risks for the region to begin developing new niches and production processes in CARICOM (Bishop, 2015).

Therefore, participating in the international chains of value (ICV) by means of new FTAs does not necessarily constitute a strategy in itself. The action in this area needs to be considered strategically. For this reason, counting on the initiative capacity of public institutions both nationally and regionally is crucial.

4. Brazil

- **Opinions on the TPP**

During the period of validity of the Administration of President Dilma Rousseff there was a certain difference in criteria between government and the business sector. However, during this period, a "National Exports Plan" was adopted in order to move towards the establishment of commercial agreements with different countries.

Meanwhile, in the business realm it is already possible to see a growing consensus in favour of more commercial opening from Brazil at a global level, among other ways, through its participation in the EU-MERCOSUR Agreement; the negotiation of an agreement with the US and other countries, and its preparation for a possible future incorporation to the TPP.

- **Government stances**

The Brazilian Minister of Foreign Affairs estimated that in terms of "trade distraction, the Agreement would not have too big an impact on the industrial sectors, but it could cause some damage in the agricultural area" (Infolatam, 2015).

In turn, the Minister for Development, Industry and Foreign Trade pointed out the agreements made between Brazil and the Pacific Alliance, by which trade is expected to be extended. Likewise, he highlighted the strategic importance of strengthening the exchanges with the US, and the need to complete the free trade agreement between MERCOSUR and the EU. In order to be able to make this possible, he considers that it would be necessary to previously harmonize the positions of MERCOSUR countries. In this framework, he estimated that if the agreement with the EU is finalized, it would be possible to make progress for a future agreement with the members of the TPP (LRM, 2015).

After Michel Temer assumed as acting presidency of Brazil, on 12 May of this year, some changes in the orientation of the Brazilian foreign policy began to take place. Although this fact is too recent, after the first statements made by the new Minister of Foreign Affairs, there has been some vagueness as he refers to the position to be adopted by the country in reference to multilateralism, the bilateral trade agreements, Mercosur and the Pacific Alliance.

In his statements when he assumed his post, the Minister made emphasis, among other things, on avoiding an ideological link with economic multilateralism, valuing multiple centres and the relations with China, India, the remaining members of BRICS, the US, the EU and Japan. (The BRICS Post, 2016) In the regional framework he highlighted that there are common references in economy and politics with Argentina and Mexico, and said to be in favour of giving a new thrust to MERCOSUR to integrate its member countries with the Pacific Alliance (Dinatale, 2016).

- **The business sector: an important force in the inclusion of Brazil in different FTAs and Mega Trade Agreements**

Although there is a wide spectrum of shades, major business actors from Brazil – the Federation of Industries of the State of Sao Paulo (FIESP) and the National Confederation of Industry (CNI) – agree that the identification of the main harms that could be caused by the TPP, and in the need for Brazil to face a deep commercial opening, is by diversifying its commercial link axis through – besides the MERCOSUR-EU – new agreements with bigger economic powers, such as the US and Japan. This opening incorporates the need to set the stage – an action that would require to move towards a deep transformation of MERCOSUR – to be able to try to join the TPP in the future.

In November 2015, the FIESP officially announced the creation of a study mechanism to analyse TPP rules. A month later, the High Council for Foreign Trade of that institution summoned a meeting of relevant specialists to generate elements that would contribute to the drafting of a work agenda on the matter.

In this sense, the president of FIESP said that “before making any political movement, we need to understand the rules and incidence of this Agreement, so as to determine the troublesome subjects. The next step would be to establish the measures we need to implement at the time of negotiating” (Indusnet FIESP, 2015). In later statements, he indicated that FIESP has sent missions to the US and to other countries to know about and consider the scope and implications of the TPP in detail.

In turn, the Director of FIESP’s Foreign Trade Department estimated that the closing of the economy does not constitute an option for Brazil anymore. The analysis of the TPP is essential for Brazil, to be able to strategically negotiate its joining, so as to preserve the employment and SMEs situation (Indusnet FIESP, 2015).

In the framework of the CNI, the negotiation of Free Trade Agreements to strengthen the Brazilian economy is defended. Agreeing with FIESP on the negative impact of the TPP, Industrial Development Director for CNI makes emphasis on the need of Brazil and MERCOSUR to fast-track negotiations with the EU, and to move forward in the materialization of other commercial agreements that include the US. He highlights the need to go from the negotiations on tariffs to the inclusion of non-tariff barriers, investments, services, intellectual property and government purchases. Otherwise, Brazil will lose its preferences and competitiveness in the American market, in Asia-Pacific and in Latin America (CNI, 2015).

Lastly, the CNI established the US Chamber of Commerce with its American counterpart, an agreement to present a joint document of the private sectors of both countries that could serve as a model for a trade agreement between Brazil and the US during the first months of 2016. This exercise is of the same nature as the one made by the CNI with its Japanese counterpart – the KEIDANREN – in September 2015 (Bonomo).³⁹

In his opinion, it should be clear that “a negotiation with the Americans is essential for the integration of the Brazilian economy into the world economy,” also serving to stimulate other big partners, such as the EU, to accelerate the negotiations.

³⁹ Interview with the Executive Manager of the CNI, Diego Bonomo, in the News Bulletin of Brazil’s National Confederation of Industries.

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Different Brazilian specialists also evaluated harms and risks Brazil might face if the TPP finally happens. Among them, it is worth mentioning that Brazil could lose its role as maker of global trade rules and, as a consequence, its central position in the framework of the major emerging countries. It could be forced to adopt regulation patterns similar to those of the TPP, to avoid isolation with respect to the CVIs and the markets in Latin America (BBC-Brazil, 2015).⁴⁰

Lastly, the Corporate Council for Latin America highlighted that Brazil has been actively working to sign trade agreements with the US, Mexico and Peru. In this context, the Council indicated that conversations with the US include matters that go beyond the tariff dimension, to include technical rules and business facilitation. The Council observed that the TPP could present elements that could favour Latin American countries that are not members of it, giving the example of Japan and its traditional policy of closing access to agriculture and livestock imports, which the TPP managed to reduce to a certain extent (Infolatam, 2015).

In this context, another element arises that tenses the positions of the Brazilian business sector: the situation of MERCOSUR, which sees as secondary, separated from the dizzying increase in regional FTAs and Mega Agreements, and paying enough attention to the commercial aspects of integration. The block is suffering important drops in its extra-zone exports and in trade among its members. At some point, Brazil participated in MERCOSUR with 16% of its total trade, and is currently in the order of 8.6%. Also, the companies of the block are facing major difficulties to integrate themselves into productive chains, with a relative low capacity for technological innovation (Barbosa, 2014).

- **Impact of the TTIP and the TPP on Brazil**

The positions of the business sector and different government officials presented here – besides being for the most part favourable to the EU-MERCOSUR Agreement negotiations – indicate, with differing degrees of intensity, the need to move ahead with an agreement with the United States and get ready to apply to join the TPP in the future.

These positions find support in an important study conducted by the Getulio Vargas Foundation, with the collaboration of the School of Economics of São Paulo: “The impacts of TTIP and TPP on Brazil” (Thorstensen, 2014). The purpose of the study is to analyse the effects for Brazil of the hypothetical conclusion of the TPP and the TTIP. It contains different hypotheses and simulations considering the reduction of tariff and nontariff barriers. In the case of the TTIP, in one of its simulations, the participation of Brazil is considered, and as for the TPP, another simulation is included that assumes China’s accession to the agreement.

In the summary (Barbosa, 2014, page 4), the role of both agreements are highlighted in the definition of an emergent structure and modalities for all types of nontariff trade barriers, together with rules having to do with investment and competition, as well as different approaches relating to the environment, labour, food, standards for the private sector, and pressures of consumption.

In this context, it points out that Brazil opted for giving priority to the multilateral path in international trade, assuming that it could thus best defend its interests. On the other hand, it notes that a considerable number of countries have chosen an alternative path: that of increasing trade via Preferential Trade Agreements (PTAs). In this regard, the TPP and the TTIP are presented

⁴⁰ Joao Augusto de Castro Neves, Director for Latin America of consultancy firm Consultora Eurasia im Washington in “Aprovação de mega-acordo comercial acende alerta para Brasil”, BBC Brasil, 5 Oct. 2015; Flavio Lirio Carneiro in “Parceria TPP: um acordo megarregional na fronteira da regulação do comércio internacional? in Texto para discussão N° 2108, IPEA.

as “revolutionary initiatives” (Barbosa, 2014). While they benefit the Parties to the agreement, they create a highly uncertain scenario for non-members. Owing to their size, they establish new systems of rules that, in part, expand the agreements reached within the WTO and, in another, amply surpass them (extra-WTO rules).

- **Impact of the TTIP on Brazil**

In the hypothesis of a USA-European Union agreement, in principle, Brazil would not suffer significant losses on its trade balance. However, the competitiveness gains for both powers could have a negative impact on Brazilian trade. If, moreover, nontariff barriers (NTBs) were eliminated, the negative impact for Brazil would be greater. The trade gains of the TTIP would be obtained basically through NTB negotiations, which would include technical, sanitary, and phytosanitary barriers and facilitating trade, among other things. Last of all, if Brazil manages to join the TTIP, it would substantially increase its exports, with major gains for all its agricultural sectors. On the industrial front, its participation in this mega agreement poses losses and gains, depending on the industrial sector analysed (Thorstensen, 2014).

In short, Brazil’s joining the TTIP would bring with it significant gains for agriculture but losses in different industrial sectors.

The findings of this study on the TPP have been organized based on four different hypotheses: i) total lifting of tariffs between members of the TPP; ii) total lifting of tariffs, plus a 50% reduction in nontariff barriers (NTBs); iii) the incorporation of China into the agreement and total lifting of tariffs; and iv) the incorporation of China into the agreement, total lifting of tariffs, plus a 50% reduction in NTBs (see Box No. 8).

BOX 8:

**Expectable impacts of the TPP on Brazil
(Reduction of tariffs and NTBs; entry of China in the TPP)**

- While there would be a total lifting of tariffs upon the agreement going into effect, it would generate a 0.4% reduction in Brazil’s overall exports and imports.
- The total lifting of tariffs and a 50% reduction in NTBs would result in a 2.7% reduction in Brazil’s exports and a 2.6% reduction in its imports, overall.
- In the case of China being incorporated into the TPP, the elimination of tariffs would lead to a 1.4% reduction in exports and a 1.3% reduction in imports, overall. If a 50% reduction in NTBs were to be added to the elimination of tariffs, this would lead to a 5% loss in Brazil’s exports and a 4.7% loss in its imports, overall.
- Similarly, in agriculture many sectors would post small losses and some would post bigger losses in a limited number of members. That situation is worse if a reduction in NTBs and the accession of China are added.
- Industry would also experiences losses in a limited number of sectors. This impact would increase in terms of numbers and size, when NTBs are reduced.
- As for services, there would be small gains in the majority of sectors.

There is no denying that, alongside the risks, there are some attractive elements for Latin American countries that are able to join the TPP. In that regard, advances in “profound integration” that cover issues relating to production, investment, technology and new standards, and institutional

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reforms that favour insertion in the CVIs are attractive not only for Brazil's business sector but also for the President Temer administration. Both have become aware of the need to move ahead with introducing the reforms that are necessary to adapt to the new configuration being adopted by the international trade structure.

This reorientation of approach is also gaining ground in government circles. In this context, there is room for the governments of Brazil and the other FTA countries to build the framework of regional political-cooperation agreement that would safeguard the conditions and spaces of autonomy that are considered necessary for our development.

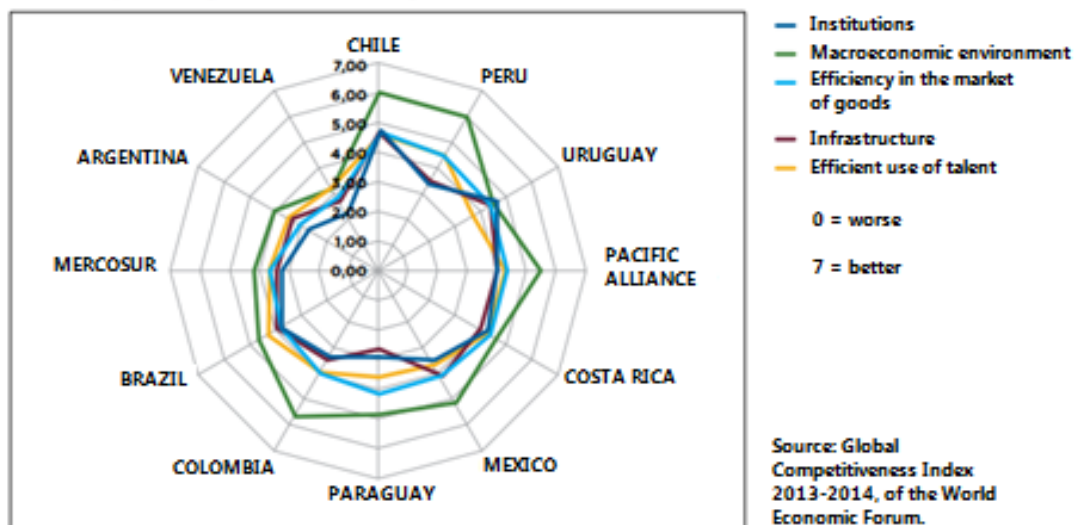
5. MERCOSUR – TPP Quo Vadis?

- **Potential impacts of the TPP**

In the Latin American context, it has been observed that, since the start of the new millennium, MERCOSUR, led by Brazil and Argentina – which does not mean that its other members have not expressed different shades of opinion and dissension on the matter –, has adopted more defensive positions in the area of international trade. Concepts of economic policy that assumed the need to protect those of its means of production that were more sensitive to external competition led to the adopting of policies that made it difficult to gradually make progress in adopting the changes required by the transformation dynamic of the world economy.

This situation affected the institutional framework and economic-trade decisions, both within MERCOSUR and in its external relations on different fronts, reducing its competitive capacity (see Figure 10). In the words of the president of the FIESP (Federação das Indústrias do Estado de São Paulo), "MERCOSUR gradually isolated itself from the new forms of trade –the global production chains that currently account for 56% of world trade– and the negotiations of bilateral FTAs and regional mega agreements."

FIGURE 10
The outlook for Latin America in terms of competitiveness



Source: Bárbara Kotschwar, "Los Mega Acuerdos: nuevos actores y nuevas reglas", *Boletín Informativo Techint*, N°345, November 2014, p. 8.

During this period, MERCOSUR spent much of its energy strengthening and expanding the Latin American integration process – it played a relevant role in the creation of UNASUR and CELAC – by incorporating new members: Venezuela and subsequently Bolivia and Ecuador.⁴¹

In this context, its productive-competitive structure with the United States on the agricultural front as regards that sector's exports simultaneously found more intense protection in the markets of Europe. Thus clear difficulties for approaching trade agreements with the United States and the European Union arose, particularly with the former.

While trade with Chile and Bolivia is practically decontrolled, in the case of the Andean Community (CAN) countries, a process of eliminating tariffs is underway that will permit full reciprocity in tariff treatment in 2019 (except with Mexico, with which there are bilateral agreements of partial decontrol).⁴² After withdrawing from the FTAA negotiations and while it maintains negotiations for an FTA with the European Union, the bloc has only concluded four more agreements: FTAs with Israel, the South African Customs Union (SACU), India (Partial Scope Agreement), and Tunisia (see Table No. 9). There have also been talks for some time now with Japan, Australia-New Zealand, Korea, the People's Republic of China, and countries of Southeast Asia that have not managed to reach agreements so far (IDB, INTAL, 2015).

Today, this situation is starting to change. The new administrations in Brazil and Argentina have made it clear that they are in favour of revitalizing the bloc (which includes reform measures) and in bringing about a major change in its insertion in world trade. This would now consist – in an exercise that has the support of Paraguay and Uruguay – of opening up more, forging closer ties with the Pacific Alliance and seeking agreements with a wide range of relevant external actors, which, in a long-term vision, could include the TPP.

TABLE 9
MERCOSUR's Trade Agreements

| Country | Situation | Type of Agreement | Exports (%) | Imports (%) |
|------------------|--------------|-------------------------|-------------|-------------|
| Egypt | Not in force | FTA | 1.2 | 0.1 |
| Israel | In force | FTA | 0.3 | 0.4 |
| India | In force | Partial Scope Agreement | 1.6 | 2.2 |
| Palestine | Not in force | FTA | 0.008 | 0.0001 |
| SACU | Not in force | Partial Scope Agreement | 0.9 | 0.4 |

Source: Prepared by the author. The trade figures are from the Fundación INAI (Tejeda Rodríguez, 2015).

MERCOSUR is a major exporter of agro-industrial products. If account is taken of the three main mega regional initiatives as a whole, just over 70% of international agro-industrial trade is covered by its current negotiations. In terms of products, it accounts for 80% of world purchases of wool,

⁴¹ These three countries have not yet complied with the technical and economic commitments that are requirements for joining MERCOSUR.

⁴² MERCOSUR has Economic Complementation Agreements (ECAs) with Chile, Bolivia, Peru, Colombia, Ecuador, and Venezuela; a Partial Scope Agreement with Cuba; and a Framework and Automotive Agreement with Mexico.

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cowhides and leathers, meat-based preparations, oil seeds, cotton, animal feed, and beverages (Tejeda Rodriguez, 2015, page 14).

From the point of view of exports, given the presence of major food suppliers in the TPP – United States, Canada, Australia, New Zealand, and Malaysia – a more extensive deviation of trade could be generated in this area. The aforementioned TPP members enter on preferential terms for exporting to tightly closed markets, such as Japan and Malaysia, as direct competitors of MERCOSUR countries.

It is worth pointing out that the TPP negotiations include almost all trade of secondary transformation agricultural and livestock products. These products – which already account for half of total trade in agro-industrial goods – have unit values per ton that are practically four times their average values before transformation. It is on these secondary transformation products that the members of MERCOSUR are focusing in an attempt to participate with greater added value in the CVIs, particularly in those of North America and Asia.

Given the situation described above, it can be expected that the agreement will have a negative impact on MERCOSUR's exports (see Box No. 9). The new agreement absorbs approximately 28% of the bloc's external sales, the most relevant being Venezuela's exports, mainly hydrocarbons, and to a lesser degree, the sales of Brazil and Argentina, whereas the United States is the main destination for MERCOSUR's exports to the TPP, followed by Chile and Japan.

As an exporter, the distribution of MERCOSUR's products varies depending on the sub-region or country considered in the Asia-Pacific region. China accounts for more than 80% of the exports and the remainder is distributed among other APEC countries. The list of products includes fuels and lubricants, primary products, food, and mining. It also includes manufactured products in the cases of exports by Brazil and Argentina to the United States and Latin American countries that are members of the TPP.

While these latter manufactured products account for only 6.33% of what MERCOSUR exports, they consist of around 60% industrially manufactured products and steel products (SICA, 2014). For that reason, it is reasonable to expect that the entry into force of the TPP will have an impact on a large segment of MERCOSUR's exports, both traditional products and industrial goods (see Box No. 9).

With regard to manufactured goods, the threat to MERCOSUR would not be so significant in its present state of development in this sector, given that there is already competition in the US market from exports to that market from other countries in our region and from members of the TPP that already enter duty free. Nor does it seem that there will be a substantial increase in risks for countries such as Venezuela, whose exports are concentrated in a high-need sector for the Pacific Alliance countries: hydrocarbons.

Lastly, unless modifications are made, the establishment of new rules – either by raising standards or by harmonizing existing ones – will probably generate new non-tariff barriers in the markets of TPP member countries.

BOX 9
Impact of the TPP on MERCOSUR

- Loss of market share in Latin American manufactured goods markets, such as the automotive, agricultural machinery, footwear, fertilizer, and herbicide markets.
- Less attraction of FDI.
- Fewer possibilities of access in services and procurement in Latin American countries.
- Deviation of trade in agriculture and livestock sectors in TPP member countries as a result of greater capacity of competition on the part of the United States, Australia, New Zealand, and Malaysia.

Source: Prepared by the author, based on Abeceb.com.

In the area of investments (Gaya, 2014), the absence of preferential access to the TPP and the difficulties of joining the CVIs makes MERCOSUR less attractive as a space for FDI, particularly to Latin American and Asian TPP members (see Box No. 9), which could have adverse effects on the possibilities of development.

Also, there would be serious obstacles for Brazil and other countries of the bloc to having some degree of influence in the process of international investment regulation. As has already been pointed out, the TPP has adopted an investor-state dispute settlement (ISDS) system that allows private investors to bring actions against States before international courts when States adopt measures contrary to the commitments undertaken.

This regime is very similar to the one in the Reciprocal Investment Promotion and Protection Agreements (RIPPA), signed by a number of countries in the 1990s and at the start of this century. The members of MERCOSUR took part in different RIPPAs, but in Brazil they did not go into effect as they were not ratified by Parliament and in both Argentina and Venezuela they were highly questioned because of the large number of lawsuits filed by foreign investors (Rozember & Gaya, 2014).

At the moment, Brazil is promoting the signing of Cooperation and Investment Facilitation Agreements (CIFA), which differ from the RIPPA in that they restrict dispute settlement to the State-State framework (as happens in the WTO) and grant foreign investors more limited rights in this area. So, the extension of the ISDS system generated by the TPP – in which the TTIP is also trying to advance – may limit the capacity of MERCOSUR member states and the capacity of other LAC integration schemes to maintain the legitimate rights of States in this matter.

In short, the establishment of new parameters in setting standards; the unification and simplification of rules of origin; and agreements on the intellectual property regime and services, together with important advances in trade facilitation measures are some of the issues addressed by the MTAs that substantially improve the capacity of their members to participate in those markets and in new ones and in increasingly complex international chains of value. In this context, both MERCOSUR countries and the rest of LAC countries that do not participate in those agreements run the risk of finding themselves excluded from production chains that could increasingly favour the area of Asia and the Pacific.

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- **ALBA y Venezuela**

Venezuela, Cuba, Bolivia, Nicaragua, the Dominican Republic, Honduras, and Ecuador are the members of the Bolivarian Alliance of the Peoples of America (ALBA), an integration scheme that promotes fair trade, complementarity, reciprocal solidarity, and South-South Cooperation.

In this forum, considerable emphasis has been put on cooperation in energy, the social sphere, education, communications, and finance (ALBA Fund and Banco del ALBA). On the trade side, priority is given to barter and compensation, giving rise to the lowering of tariffs, economic complementation, and the creation of joint ventures and mega corporations. The Trade Treaty of the Peoples (Bolivia, Cuba, and Venezuela) functions basically as a series of compensated trade agreements.

As for the Dominican Republic and Nicaragua, they are part of the Free Trade Agreement between the United States, Central America and the Dominican Republic (CAFTA); Honduras and Nicaragua are signatories of the Central America-European Union Agreement; Venezuela is a member of MERCOSUR; and Bolivia is in the process of becoming a member.

Venezuela also has a Free Trade Agreement with Chile and Partial Scope Agreements with countries of Central America and the Caribbean, and with Colombia and Peru. However, it does not have preferential trade instruments with countries or integration schemes outside the region.

In the opinion of a number of specialists, these countries do not have conditions that allow them to be competitive with countries that are part of treaties such as the TPP. In the case of Venezuela (Porcarelli & Arellano, 2016), in order to overcome this situation, it would be necessary to solve the problems that exist in the production sector, trade, and investment, giving greater value to the industries that are most suitable for incorporation into the CVIs (e.g: SIDOR, ALCASA, VENALUM, CVG).

- **Uruguay**

Both Uruguay and Paraguay are countries that, while maintaining MERCOSUR as their nucleus, have expressed their desire in recent years to be able to establish FTAs with other countries outside the region. In that context, during a meeting they held in Montevideo, President Bachelet of Chile and President Mujica (PARLASUR, 2014) address the issue of the TPP. On that occasion, President Bachelet highlighted that it was Chile's intention to contribute to getting more countries of Latin America to join that agreement, commenting that the intention was for Uruguay to be invited to take part in the near future, once negotiations among the founding members had been concluded.

While the present administration has some differences of criteria, it seems to be in favour of a program that not only improves the country's competitiveness and protects it in the economic-trade sphere from the TPP's potential negative impacts – the case of the competition from Australia and New Zealand when it comes to entering difficult markets such as the Chinese-Japanese market, for example –, but is also preparing it for a future tie with that agreement.

A few months ago, Uruguay's Minister of Foreign Affairs highlighted the fact that the group was still maintaining the idea of negotiating from MERCOSUR as a "priority" but not as an "exclusive platform," thus keeping open the possibility of negotiating all possible areas of trade individually. In this regard, acknowledging the need to have more in-depth knowledge of the TPP process, he

said that they were evaluating different possibilities, as belonging to MERCOSUR "cannot be the excuse for postponing the agenda and the work schemes with other countries" (Novoa, 2015).

An economic model prepared by a group of Uruguayan economists and foreign trade specialists who analysed the impact of the TPP on Uruguay estimates that it could mean a drop in agricultural goods and food exports of 0.29% in real terms and a real contraction in GDP of 0.045% a year associated with a loss of market for its exports, in particular to Mexico, Colombia, the United States and Japan, mainly dairy products, meat, food, and some manufactured goods. While these figures are relatively small, the impact would increase substantially in 20 years (Bartesaghi & Vaillant, 2015).

The model also explores potential alternative strategic linkage hubs that Uruguay might develop to compensate for its exclusion from the integration processes that are taking place in the Pacific (TPP and PA). As for the potential benefits that might be obtained, the first place goes to the TPP, which would make it possible to achieve significant growth in the economy. In decreasing order of importance, it is followed by the Pacific Alliance with entering into a trade agreement with Japan in third place.

- **Paraguay**

The present administration in Paraguay, through its "Paraguay Development Plan 2030," has undertaken a broad, modern structural transformation program that covers both domestic and external aspects. With regard to the latter, it has given priority to expanding the country's economic and commercial ties with a view to conquering new markets.

As part of those activities, Paraguay joined the Pacific Alliance as an observer. Following its reincorporation as a full member of MERCOSUR (August 2015), it estimates that the present global situation provides its members with a key moment.

With the materialization of the TPP, it is necessary to avoid a breach occurring with the Pacific Alliance (ACB Color, 2015) by establishing what type of international insertion the bloc wants and what long-term policies and measures need to be adopted by Paraguay and MERCOSUR to those ends.

- **Argentina**

Ties with members of the TPP are relevant for Argentina when it comes to trade. In 2014, 21.6% of exports and 21.9% of imports were geared to those markets, with operations involving goods and services exports to a value of approximately US\$ 14.75 billion and imports valued at around US\$ 14.3 billion (CAC, 2016). Argentinean sales were made up mainly of food products, livestock, manufactured goods and chemicals, and imports consisted of transport machinery and equipment and fuels.

As in the case of the other members of MERCOSUR, following the signing of the TPP agreement, Argentina faced a serious problem in that it was disconnected from the new prevailing forms of relating in international trade. Quite apart from the process of negotiating an FTA with the European Union -which has stretched out for a decade and a half-, like its counterparts in the bloc, it only has a small number of agreements with markets of limited significance. Moreover, its participation in the CVIs is limited to part of the agricultural and livestock sector and its competitive capacity is weak.

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MERCOSUR's need to incorporate profound changes into its foreign trade policy, increase its competitiveness, and promote a profound reorientation of its objectives and ways of operating in the economic-trade field has found a prompt echo in the new administration that took office in December 2015.

In this context, the introduction of reforms to the economic policy and the visits, in quick succession, of the President of France, the Prime Minister of Italy, and the President of the United States have helped to start up an external economic policy that – without detracting from the importance previously given to the PA – aims to reposition the country within the region and puts special emphasis on rebuilding ties with the European Union and the United States.

In this context, in one of its documents (CAC, 2016) the Argentinean Chamber of Commerce (CAC) conveys its members' interest in Argentina being able to join the TPP in the future. On this matter, the CAC requests the new administration to "analyse and understand the transcendence of the decontrol of trade" and to pay attention to "the signals of the world market, which is tending increasingly towards forming groups and dividing borders via internationally integrated value chains," stressing "the risks of not doing so" (MERCOSURABC 2016). It highlights that existing trade relations with TPP members account for nearly 25% of Argentina's foreign trade, a situation that poses a risk to our exports owing to the deviation of trade. So it considers that "seeking new markets to a value of US\$ 15.0 billion seems an almost impossible challenge faced with the potential loss of those buyers" (CAC, 2016).

This position seems to coincide to a large extent with the one adopted by the new administration. Thus, during an official visit to Washington at the end of last February, at a conference given at the Atlantic Council the Secretary of Trade explained to US government officials the position of the administration that "Argentina should aspire to participating in as many trade agreements as possible, as – provided they protect sensitive sectors of the Argentinean economy – they are very positive for our well-being." In this context, he pointed out that the desire was to form ties with "strategic partners such as the United States in initiatives such as the TPP." Similarly, in a meeting with authorities of the US Trade Representative's Office, he said that "in the short term, the priority is to move ahead with MERCOSUR-EU; the Pacific Alliance; Mexico; Colombia, and with developing trade and investments with the United States" (UCR-SINTESIS) (Online newspaper Mundo Empresarial) (Page 12, 2016).

A few months later, at the end of May this year, Argentina's Minister for Foreign Affairs confirmed President Mauricio Macri's participation in the Pacific Alliance Summit to be held in Santiago on June 30. The request to join this bloc as an observer was also formally submitted. According to diplomatic sources, this request has ample support among the members of the PA. In this context, the Foreign Minister highlighted that "there is a clear objective of the President of starting to work on a real alliance with the countries of the Pacific and unite those wills with those of MERCOSUR" (Dinatale, *Giro estratégico: Macri busca un acercamiento a la Alianza del Pacífico*, 2016).

On this matter, Chile's Ambassador to Argentina said that "Argentina can also benefit from the treaties Chile has with the United States, China, and Europe" (Dinatale M., 2016). As part of the strategy of strong rapprochement, the President is to first to pay an official visit to Colombia, where Argentina's application to the PA forms part of the agenda of both presidents.

As for the TPP, in a long-term context, Argentina's possible inclusion would contribute to regulating a large number of issues, including trade in dairy products and labour regulations, copyright, patents, State investments, and the environment.

6. The TPP in Latin America and the Caribbean: Impact scenarios

Chapter IV analysed both the potential benefits for its members and for the rest of the world and the negative effects its implementation could give rise to.

This section presents some considerations referring specifically to our region with regard to the economic-trade and political-strategic impacts associated with the TPP. The TTIP is also partly included in those considerations given the coherence required by the systemic vision guiding this study.

For the analysis of the economic-trade aspects, besides the elements already presented in previous chapters, contributions from a recent study by qualified experts of ECLAC are included (Herreros, 2014).

A first difference worthy of note is the one between different groups of countries in the region based on the configuration of their institutional ties and trade flows with members of the TPP.

Included here are the agreement's Latin American members – Mexico, Chile, Colombia, and Peru – to which the Central American countries should be added as they all have, as mentioned previously, an FTA with the United States and the European Union that permits them free access to their markets.

A second group consists of countries whose exports to the United States and the European Union depend on preferential tariffs provided for under nonreciprocal programs (e.g. GSP for the European Union and APTA for the United States).⁴³ Preferences of this type have major limitations, as many products are not covered by them (e.g. agricultural products) and they have safeguards. Besides, the countries included in those programs may lose their membership.⁴⁴

Countries that do not have an FTA with the United States and the European Union – Ecuador, Venezuela, Bolivia, Brazil, Argentina, Uruguay, and Paraguay – are the ones that may experience a bigger deviation of their exports. In this situation, the risks increase for those: a) that concentrate their exports in those markets; b) that do not enjoy tariff preferences; and c) whose exports are similar to those of TPP members.

Ecuador and Venezuela are the countries that would be most exposed, given that a relatively high percentage (between 40% and 45%) of their exports are oriented to the US market. They are followed by Bolivia and Brazil (between 10% and 15%) and, to a lesser extent, by Argentina, Uruguay, and Paraguay (exports below 5% of the total). The European Union represents a relatively bigger market for these countries, with exports in the order of 20% in the case of Brazil and of 10% for the rest (except for Bolivia and Venezuela).

This group of countries would not find the exports of some of their products to the United States and the European Union particularly affected as they enjoy duty free entry or the application of the MFN clause. However, they do not have those advantages for the rest of their commodities. Another risk stems from the improvements in competitiveness that TPP members exporting those

⁴³ GSP: the European Union's General Scheme of Preferences; APTA: Andean Preferential Trade Agreement with the United States.

⁴⁴ Effective from 2014, Argentina, Brazil, Venezuela, and Uruguay were no longer eligible for the benefits under the GSP given the increase in their level of development.

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types of products to these two markets will enjoy. So, Brazil as well as Argentina and Uruguay could find their exports of beef and wine (Argentina) affected.

In the case of Mexico and Central America/Dominican Republic, as already commented, given their close ties with the value chains of the textile and clothing sector in the United States, there could be negative impacts owing to the competitiveness of Vietnam and other countries in Southeast Asia.⁴⁵ The impact of some of the key chapters of the TPP warrants a more general evaluation.

The Chapter on Financial Services and Control of Capital grants the same protection and freedom of movements to financial flows as to the trading of goods, without taking into account the more than sufficiently proven capacity of financial flows to destabilize and generate crises.

Similarly, in the area of Intellectual Property, the agreements reached on biotechnology, patents, new drugs, and generic products (see Chapter II, the section on Intellectual Property) grant large TNCs in the sector protections and privileges that increase the serious asymmetries that already exist in the health sector, surpassing by an ample margin the regulations of the TRIPS Agreement. Also worthy of note are the new restrictive conditions for access and provision of Internet services and copyright protection.

The chapters on government procurement, labour conditions, and environmental conditions should also be added here. To a greater or lesser extent, all LAC countries could suffer undesirable consequences in these areas resulting from the entry into force of the TPP.

By way of example, even the Latin American countries that have an FTA with the United States have already come up against restrictions during the negotiation of these prior agreements. In the future, the entry into force of the TPP and the rules established therein regarding the periodic revision of its norms with the purpose of developing their decontrol could bring with it greater obligations, restricting their freedom of action in public policies relating to these sectors.

Other key concerns for the region have to do with the deviations that can be expected not only in trade flows but also in investment flows. The entry into force of new rules and standards applied under the TPP and the TTIP, which will transform the structure of international trade and how it functions, is another factor that should be added here with due emphasis.

Their magnitude leads one to expect that, in a few years' time – in the next decade, perhaps – the lion's share of world trade will be subordinated, directly or indirectly, to a series of rules that have emanated from the new mega agreements. In this scenario – unless the application of a wide range of reforms that need to be agreed at the regional level intervenes – LAC countries will find their autonomous policy space, their possibilities in international trade, and the capacity to implement a variety of public policies that are relevant for their development restricted.

7. Into the future: Scenarios that may emerge in the coming decades (2025-2030)

It has already been mentioned that the realization of the TPP – but also the possibility that the TTIP and the RCEP materialize –, given its dimensions and geo-economic and geo-political impact, clearly indicates that MTAs have the capacity to profoundly change the tectonic plates of trade and the world economy (Moneta, 2014).

⁴⁵ See Chapter II, section on "Textiles" and the sections in this chapter on Mexico and Central America.

Nevertheless, different processes linked to the evolution of these mega agreements and their interactions, together with the absence of or participation in them of countries with considerable pull – as in the case of China and India – will influence the future configuration of global geo-economic and geo-political system.

In this context, it is advisable to reflect on the different scenarios that might arise as a result of the different FTAs currently in progress, apart from the RCEP, the China-Japan-Korea (CJK) Agreement, and the ASEAN Economic Community (AEC). Besides, account needs to be taken of the FTAAP when considering the situation of these countries with regard to the APEC (whether or not they are members of this forum).

While CJK, RCEP and AEC can coexist in principle, their possibilities of evolution are different. China, Japan, and Korea have held several negotiation meetings on an irregular basis and, as insofar as it has been possible to determine, without any substantial progress having been made. Given the increase in tensions between China and Japan, the chances of it moving ahead fairly fast in the short term seem to be scant.

ASEAN faces a challenge and potential benefits. All its members are taking part in the RCEP negotiations, but only Singapore, Vietnam, Malaysia, and Brunei are doing it. This situation could weaken its process of integration, given the difference in standards, contents, and game rules between the TPP and the RCEP.

There is another possible reading of this situation: Emphasis is put on the positive role that the aforementioned group could play, thus contributing to raising the level of ASEAN's rules and commitments and the extent to which it opens up. It would thus be possible to obtain major advances along the path mapped out by the ASEAN Economic Community (AEC), which envisages turning ASEAN into a first class world industrial and FDI platform (Moneta, *ASEAN en el proceso de transformación económica de Asia Pacífico e India ¿Hacia una posible vinculación intraindustrial con América Latina?*, 2014).

Those factors could perhaps contribute to ensuring the central position of ASEAN/AEC in the macro context of Asian integration since, with the differences between them having been reduced, they would favour to some extent the rapprochement of the two mega agreements. Thus, progress in the AEC could reduce the gravitational force that the TPP might represent for those of its members that do not take part in the treaty.

As for the RCEP, if, under Chinese leadership, it respects the role that the ASEAN tries to play in the complex scheme of intra-Asian FTAs, this agreement could be presented for the consideration of the region as the most convenient base platform for bringing about the "Free Trade Area of the Pacific Basin" (FTAAP).

This potential scenario would facilitate a fuller incorporation of India (which is not a member of APEC) and other developing countries in Southeast Asia (e.g. Cambodia, Myanmar, and Laos) and would contribute to the gradual future linkup with South Asia. On another front, it could also strengthen the WTO in its reform process and the G20 in terms of the defence of the interests of developing countries.

These mega agreements contribute to the generation of differentiated – but profoundly interactive – economic zones that cover a large part of Asia, North America, the countries of the Latin American Pacific, and the European Union, thus forging closer ties between the CVIs that

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correspond to the three big world “factories”: the United States/North America, the European Union and China/PA.

Mega trade agreements are only one part of the geo-economic changes. When considering the competition between the TPP and the RCEP, it seems to be necessary to evaluate them bearing in mind the complex processes of Euro-Asian economic and political articulation that are being led by China.

Over the coming decades, profound advances will be made in the infrastructures of overland and sea links between China and Central Asia, Southeast Asia and India. Simultaneously, China is deploying a system of sea, overland, and railway links that include entry via both the Mediterranean and Russia and Central Asia (Moneta C., *Otra mirada: la evolución del desarrollo chino en el 2030-2040/50*, 2016).

This leap of digital and road and sea infrastructure connectivity will be established via the “Silk Road Economic Belt” started by the People’s Republic of China in 2014 with the creation of the Asian Infrastructure Investment Bank and other similar initiatives (Moneta C., *Otra mirada: la evolución del desarrollo chino en el 2030-2040/50*, 2016). All these processes converge, in principle, during the period 2025-2030.

These developments would, moreover, need to be linked up with the next phases of the scientific-technological revolution, which will continue to transform the forms of production and content and management of international trade at great speed.

Based on the elements examined earlier in this study, it can be assumed that there is little likelihood that a scenario in which the three mega agreements will occur. As for the TPP, there is still the question of whether or not it will be accepted by the US Congress. If the Democratic Party wins the elections, despite candidate Clinton’s present current stand against it, it is estimated that it would ultimately be approved.

Based on the elements presented, several scenarios can be assumed:

- I. **That none of the three mega agreements comes to fruition:** In this case, the “TPP storm” would become a preventive exercise. It would be a kind of message of “what is in store,” as it is foreseeable that, one way or another, the existing drive in favour of transforming the international trade system will continue.
- II. **That the TPP becomes a reality:** This occupies a central place in the reflections of this study and is the alternative that has been examined in detail.
- III. **That two mega agreements become a reality:** In this case, two sub-scenarios emerge: TPP-RCEP or TPP-TTIP.

The first scenario has already been considered throughout this study. As for the second –which has also been commented on-, it would mean that the European Union would suffer a relevant loss: the advantages it hoped to achieve in its agreement with the United States. It could not be ruled out, then, that it would direct its efforts to another long-sought objective: a European Union-China/PA agreement. The chances of this scenario playing out would be better if progress were to be made in the process of Euro-Asian connectivity during this period.

Last of all, these scenarios will be modified by the dynamic of the impact that the scientific-technological revolution has. This implies, among other crucial elements (e.g. 4F industry), a transformation of the means of sea transport (besides the means of air and overland transport), which would considerably reduce transport time and costs in two vital areas: the Atlantic and the Pacific. This situation would have a significant impact on LAC by substantially modifying the competitiveness of its members, while at the same time facilitating the outlet of trade flows via the Latin American coasts of the Pacific.

The scenarios proposed above attempt to outline some of the main lines of evolution that feasibly could occur in the coming decades. These forecasts aim to be an approximation of an actual situation in the future that, in any of their versions, will be a complex one.

It seems necessary then to bear them in mind when examining our region's situation and formulating policies and strategies that fit the situations that it could be faced with.

CONCLUSIONS

Throughout this study, an attempt has been made to examine the potential impact of the TPP in a context marked increasingly by uncertainty and complexity. In order to overcome the restrictions imposed by both factors as far as possible, it is necessary to have a comprehensive “vision” of the future that will allow us to explore medium- and long-term scenarios.

The costs of not having an articulated vision, with agreed routes, could turn out to be extremely high. It is worth remembering changes in past decades that evolved gradually but to which proper attention was not paid at the time: the rise of the People’s Republic of China and later of the BRIC, are one example.

In short, the capacity of a region and its members to identify and grasp the profound trends in transformation that are taking shape through a multiplicity of elements is a key factor for determining the changes it is advisable to make in Latin America and the Caribbean both internally and in its external positions.

The complexity inherent in regional integration increases enormously with the problems in the international political-economic situation and the differences that exist regarding the desired role within LAC and in the world. In this context, the political and economic dimensions influence one another. Trade policy should not only be compatible with economic theory and praxis, it also has to be in line with different political criteria.

Among the many opinions on the matter expressed by authorities and leaders in the region, one offered by the present Foreign Minister of Uruguay could well describe the present situation in a nutshell: “With multilateral scenarios in doubt, integration processes questioned, and a new framework for discussing the rules and guidelines for international finance, world governance bodes uncertainties that are as radical as they are demanding”... “in this context, in our opinion, integration processes in Latin America have not reached the expected level of development and demand adjustments that cannot be postponed in order to match up to the present international context...” (Novoa, 3/03/2015).

In another part of his speech, the Foreign Minister stated that “with regard to the near future, it is necessary to promote the facilitation of regional agreements, with encompassing projections, in earnest. The world is moving in that direction and we cannot remain outside the large trade flows. Our countries can combine attending to our national interests with real strategies of regional concerted actions for integrated development. Together we can better strive for a competitive and less vulnerable international insertion in such an unpredictable and demanding world.” (Novoa, 3/03/2015).

Broadening the horizon of perception – not only in terms of space but also in terms of the scientific-technological, economic-trade, political and cultural dimensions – is a requirement that is difficult to avoid. By way of example, in the area of the external factors and processes associated with the economy and international trade, the following are just some of the factors that are worthy of note (Moneta, 2012-14):

BOX 10

Factors that have an impact on the global context

- Indecisiveness regarding the future configuration of the “World Order” – “traditional” powers vs. “emerging powers and countries”?
- Growing role of regionalism and inter-regionalism (regional orders and patterns of inter-regionalization).
- Strengthening of the transnational aspect (interactions between State and TNCs/Investors).
- Greater complexity, speed of change, and number of actors intervening in the processes.
- Multidimensional impact of Mega Trade Agreements.
- Advances in Euro-Asian interconnectivity (as a case of an alternative path for integration).
- Dynamic of “continuous transformation” in international chains of value – interactions with “live rules and standards”?
- World middle class: location of its central nucleus – PA; what insertion plans for LAC?
- Evolution of FDI and transformation in the international financial system and in some regional systems.
- Impacts of the fourth phase of the scientific-technological revolution on production, marketing, and transport – Possibilities of further levelling the playing field or of making asymmetries deeper?
- The role of services in the regional export basket.

Thus, structural changes arise in terms of new production patterns, trade circuits and architectures (Estevadeordal, 2016), in which mega agreements play a highly relevant role. It is estimated that, in order to properly deal with the present cycle of transformation in the trade system, it would be necessary to be able to count on:

- Determining the preferred hubs of external economic insertion (by country, integration scheme, and subregional level);
- An articulated system for monitoring the main processes and trends on the international and regional levels (e.g. observatories; evolution of mega agreements);
- Full, concerted and shared use of the tools provided by “competitive intelligence”;
- Adaptation of institutions and work methods to the new situations (Peña, 2016);
- Identification of goods and services to be developed and exported in a coordinated fashion/jointly;
- Determining preferential and sustainable regional chains of value to be created/expanded;
- Expansion and development of connectivity;
- Convergence and connection among production systems;
- Linkage and coordination of “Latin TNCs”;

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- Institutionalization of established trade and economic ties among the subregions (Peña, 2016)

In order to be able to move ahead with bringing about the aforementioned suggestions in favour of regional economic integration and the strengthening of the possibilities of autonomous external action, it would seem that it is necessary to meet three requirements: "Connectivity" (in all its dimensions); "Compatibility" (of perceptions, values and objectives); and "Convergence" (of systems, policies, and actions) (Erbs, 1965). These criteria are necessary in order to undertake concerted actions in both the external and internal contexts (e.g. in dealing with mega agreements and negotiating other inter-regional trade undertakings).

Nevertheless, criteria of reality and of unavoidable respect for diversity impose limits – which change over time – on those criteria, but do not prevent progress being made in terms of "Connectivity," "Compatibility" – as regards objectives –, and "Convergence" with regard to public policies and actions.

The regional situation in this aspect presents a series of weaknesses, but they can be overcome. For example, as far as "Compatibility" is concerned, whereas Mexico, Chile, Peru, and Colombia have been incorporating new rules and standards, other countries in the region have not. In this regard, the TPP is contributing to generating a degree of division in LAC. Fortunately, there is full awareness in the region of the risks that a potential division between countries of the Pacific and the Latin American Atlantic stemming from different perceptions and policies could pose.

At the moment, in Latin America and the Caribbean there are three integration schemes, apart from SIECA and CARICOM – MERCOSUR, the Pacific Alliance, and ALBA – that promote different responses with regard to the most convenient way of acting in the face of the mega trade agreements and, in more general terms, in the face of the process of transformation in the global system.

It seems, therefore, that the time has come for the countries of LAC to jointly consider the effects that could stem from the TPP, the TTIP, and the RCEP in the present extremely complex Latin American dynamics.

There have been positive reactions to that possibility. Under the leadership of the President of Chile, a ministerial meeting of representatives of MERCOSUR and the PA was held in November 2014 in Santiago, which was joined by a group of distinguished specialists. The idea of holding the meeting was first explained by Chile's Foreign Minister in an article published previously in the Chilean press in March that year (Muñoz, 2014).

The article proposes a tremendously important guiding criterion for Chile's external policy: that its development should have no ideological bias and that it should promote bridges of agreement between the countries of the region above ideological or subregional differences.

Noting that the paths of regional integration are currently diverging in different economic and political directions and that this diversity is eroding its influence in a world organized in regional blocs, the Foreign Minister highlighted the lack of convergence and concerted positions in Latin America and the Caribbean (Muñoz, 2014). On this matter, he states that "...it is possible to build an integrated whole from different and unequal parts" where there is "space for subregional projects that can be bricks for the construction of a bigger and more inclusive project of Latin American integration" (Muñoz, 2014).

In this context, he points out that “we should discuss the possibility of materializing a convergence of the Pacific Alliance and MERCOSUR, without detriment to adopting the European Union’s concept of “differentiated speeds,” which would permit the countries that wish and are in conditions to do so to advance more rapidly than the rest in the integrating process” (Muñoz, 2014). This concept, applied to the region as a whole, also permits articulating the Bolivarian Alliance for the Peoples of Our America (ALBA) and the integration schemes of Central America and the Caribbean into one whole.

Promoting “Convergence in diversity” adapts perfectly to the positions that the countries making up these blocs wish to achieve in practice, based on cooperation programs in the production sector, infrastructure, energy and numerous other issues.

In this context, the desire expressed by Brazil and Argentina to forge closer ties with the PA makes putting this principle into practice more viable.

So, “Convergence in diversity” may also arise as a principle capable of providing the indispensable reforms and modernization processes that the region must carry out on different fronts with viability, confidence and sustainability.

The diversity of external insertion hubs also has a place in this context. Today, when the multilateral decontrol phase has still not been completed, FTAs and MTAs emerge as another form of integrative articulation, which, depending on the case in question, strengthens the regions or promotes and establishes strong interregional production, financial, and trade ties.

Consequently, we have before us the challenge of making the regional integration processes compatible with external economic insertion hubs that are “at their height” and whose concepts and integrating contents are increasingly profound and broad.

In this regard, the processes under way inside the Asia-Pacific region can provide our region with numerous and valid experiences. For example, how to compensate the “bilateral attraction” of large centres of gravity, such as the People’s Republic of China and the United States, with our own flexible and multidimensional combining formulas (e.g. countries that are part of the TPP and the RCEP at the same time).

It is in accordance with this vision that a brief reference is made to the “outstanding issues” known to all: the need to advance in matters concerning convergence in market access, intellectual property, investment, rules of origin, services, facilitating trade, and other issues and disciplines.

Its purpose, as already mentioned (ECLAC, 2015) (ECLAC, 2014), is to achieve an extended market endowed with free movement of factors and goods, with gradual progress being made towards macroeconomic coordination, common mechanisms for solving differences, viable and adequate responses to asymmetries, and the generation, diffusion and efficient use of science and technology; complete physical integration; and move ahead with solving the social problems. In short, a vision of a shared future.

It is necessary to examine the scenarios that might arise from this situation taking an approach of cooperation, bearing in mind the economic-trade policies currently being implemented and the positive role that different institutions in the region might play (e.g. CAF, SELA, IDB and ALADI).

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SUGGESTIONS

LAC has made gradual progress in its internal trade processes. In 2019 it will have a Regional Free Trade Zone, if the agreements established in the ALADI framework are complied with. Divergence, then, occurs to a greater extent on the external front, as it was there that the rules of international trade were modified.

Through the different chapters of this study, an attempt has been made to identify the possible impacts of the TPP and other mega agreements on our region, in particular on those countries that are not members of that agreement.

So, LAC either accepts the part of undesired effects of incorporating new trade disciplines or it stays on a path that removes part of its members from the changes that are taking place in the world. An undesirable interaction between the two processes will probably lead to a deepening of divisions on which a consensus has been forged: not to give rise to them. Each country will do its cost-benefit calculations with regard to these dilemmas.

Faced with this situation, working in favour of intraregional convergence becomes extremely important. Advancing along that path with a set of rules and standards applicable to different disciplines agreed upon by the countries of the region will perhaps be more valuable than solving tariff issues.

Likewise, physical integration, energy integration, and integration of the food sector should be increased; intraregional trade should be increased by developing chains of value and promoting service industries. It is also necessary to explore the possibilities for growth of industries based on technological niches. Other key areas to be developed in depth are facilitation of trade and disruptive technologies. Both take on a critical role for increasing the benefits for and competitiveness of our economies in the future (IDB, 2015).

This process of convergence should incorporate the crucial dimension of acting on the external front. With regard to the global trade system, a relatively recent study called for by the then Director General of the WTO, Pascal Lamy, sets governments the challenge of carrying out a strategy of convergence that coordinates four dimensions (Panel on Defining the Future of Trade, 2013, page 39):

- I. Convergence among members (to gradually and amicably achieve convergences of their trade regimes).
- II. Convergence of non-multilateral trade regimes with multilateral systems (gradual alignment of different trade regimes, in particular the alignment of Preferential Economic Agreements with the multilateral trade system).
- III. Convergence between trade and internal policies (develop coherence and compatibility between trade and other internal policies, such as education, acquisition of capacities, and innovation).
- IV. Convergence between trade and non-tariff measures included in public policies (increasing coherence between trade rules and policies, rules, and standards in other areas of international cooperation).

This proposal offers useful guidelines for formulating an Action Program in this field on the regional level that incorporates the elements of this study considered to be relevant to those ends by member countries.

SYNTHESIS OF SCHEDULES FOR ELIMINATION OF MFN RATES AND TARIFFS IN THE TPP (%)

TABLE 1
Synthesis of schedules for elimination of MFN rates and tariffs in the TPP (%)

| Country | Simple average of the value of MFN tariffs | Maximum value of MFN tariffs | Non-zero tariff trade eliminated under the TPP | Non-zero tariff trade eliminated in the implementation | Average of years for tariff elimination | Maximum of years for tariff elimination |
|-------------|--|------------------------------|--|--|---|---|
| Vietnam | 10,6 | 135 | 47 | 97 | 3,1 | 16 |
| Mexico | 6,9 | 254 | 48 | 99 | 5,0 | 16 |
| Chile | 6,0 | 9 | 95 | 100 | 0,3 | 8 |
| Peru | 5,1 | 17 | 59 | 100 | 4,8 | 16 |
| Japan | 4,6 | 62 | 77 | 95 | 1,9 | 16 |
| USA | 4,6 | 350 | 85 | 99 | 1,2 | 30 |
| Canada | 3,9 | 238 | 89 | 97 | 0,6 | 12 |
| Malaysia | 3,6 | 60 | 61 | 100 | 3,0 | 16 |
| Australia | 2,9 | 10 | 87 | 100 | 0,4 | 4 |
| New Zealand | 2,4 | 10 | 88 | 100 | 0,7 | 7 |
| Brunei | 0,3 | 30 | 68 | 100 | 2,1 | 11 |
| Singapore | 0,0 | 0 | 100 | 100 | 0,0 | 0 |
| Average | 4,2 | 98 | 75 | 99 | 1,9 | 13 |

MFN: Most Favoured Nation.

Source: Tariff Tables of the TPP: <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.

A N N E X I I

VALUES OF BILATERAL EXPORT TARIFFS PRE TPP, LAST YEAR AVAILABLE (PERCENTAGE)

TABLE 2A
Values of bilateral export tariffs pre TPP, last year available (percentage)

| | | Exporter | | | | | | | | | | | Average value of tariffs applied | |
|----------|----------------------------------|-----------|--------|--------|-------|-------|----------|--------|-------------|------|-----------|---------|----------------------------------|-----|
| | | Australia | Brunei | Canada | Chile | Japan | Malaysia | Mexico | New Zealand | Peru | Singapore | Vietnam | | USA |
| Importer | Australia | | 0,0 | 1,2 | 0,0 | 3,0 | 0,0 | 3,3 | 0,0 | 2,9 | 0,0 | 0,7 | 0,0 | 1,0 |
| | Brunei | 0,7 | | 4,5 | 0,1 | 0,2 | 0,0 | 5,1 | 0,5 | 0,0 | 0,0 | 0,0 | 2,6 | 1,2 |
| | Canada | 0,9 | 0,6 | | 0,2 | 2,1 | 1,3 | 0,1 | 5,0 | 0,1 | 0,8 | 4,9 | 0,4 | 1,5 |
| | Chile | 3,1 | 6,0 | 3,3 | | 4,5 | 6,0 | 3,7 | 4,0 | 1,7 | 4,0 | 6,0 | 1,4 | 4,0 |
| | Japan | 4,1 | 0,0 | 3,6 | 0,7 | | 0,5 | 0,3 | 5,0 | 0,3 | 0,4 | 8,0 | 2,7 | 2,3 |
| | Malaysia | 2,2 | 1,2 | 3,7 | 0,2 | 8,5 | | 9,2 | 3,4 | 0,1 | 1,9 | 4,2 | 5,4 | 3,6 |
| | Mexico | 3,2 | 14,5 | 0,0 | 0,1 | 3,5 | 5,3 | | 9,5 | 5,7 | 3,2 | 12,2 | 0,2 | 5,3 |
| | New Zealand | 0,0 | 0,0 | 0,2 | 0,0 | 2,9 | 0,3 | 3,1 | | 4,5 | 0,0 | 2,8 | 2,1 | 1,4 |
| | Peru | 1,5 | 11,0 | 2,6 | 0,0 | 1,8 | 1,2 | 0,5 | 2,2 | | 0,5 | 4,3 | 1,7 | 2,5 |
| | Singapore | 0,0 | 0,0 | 0,3 | 0,0 | 0,0 | 0,0 | 4,2 | 0,0 | 0,0 | | 0,0 | 0,0 | 0,4 |
| | Vietnam | 1,7 | 1,0 | 14,9 | 4,7 | 8,4 | 1,6 | 9,7 | 8,8 | 6,4 | 2,2 | | 8,7 | 6,2 |
| | USA | 0,2 | 2,6 | 0,1 | 0,1 | 1,5 | 1,5 | 0,0 | 2,3 | 0,1 | 0,0 | 4,4 | | 1,2 |
| | Average value of tariffs applied | 1,6 | 3,4 | 3,1 | 0,6 | 3,3 | 1,6 | 3,7 | 3,7 | 2,0 | 1,2 | 4,4 | 2,3 | 2,6 |

Source: WITS Database, World Bank.

TABLE 2B
Values of bilateral import tariffs pre TPP, last year available (percentage)

| | | Exporter | | | | | | | | | | | Average value of tariffs applied | |
|----------|----------------------------------|-----------|--------|--------|-------|-------|----------|--------|-------------|------|-----------|---------|----------------------------------|-----|
| | | Australia | Brunei | Canada | Chile | Japan | Malaysia | Mexico | New Zealand | Peru | Singapore | Vietnam | | USA |
| Importer | Australia | | 0,0 | 1,7 | 0,0 | 3,4 | 0,0 | 2,3 | 0,0 | 1,6 | 0,0 | 0,2 | 0,1 | 0,8 |
| | Brunei | 0,1 | | 0,7 | 0,1 | 0,0 | 0,0 | 0,8 | 0,0 | 0,0 | 0,0 | 0,0 | 1,9 | 0,3 |
| | Canada | 1,9 | 0,4 | | 0,0 | 2,1 | 1,2 | 0,0 | 2,5 | 0,0 | 1,7 | 6,4 | 0,0 | 1,5 |
| | Chile | 1,6 | 5,6 | 2,1 | | 2,7 | 6,0 | 2,8 | 2,9 | 2,0 | 2,5 | 4,3 | 0,8 | 3,0 |
| | Japan | 1,6 | 0,0 | 1,2 | 0,5 | | 0,3 | 1,2 | 7,6 | 0,3 | 1,7 | 0,7 | 1,9 | 1,5 |
| | Malaysia | 1,4 | 0,4 | 1,2 | 0,3 | 7,1 | | 5,1 | 1,5 | 0,1 | 1,6 | 4,7 | 2,1 | 2,3 |
| | Mexico | 3,0 | 28,6 | 0,2 | 1,0 | 2,4 | 1,9 | | 21,3 | 3,7 | 1,9 | 18,7 | 0,2 | 7,5 |
| | New Zealand | 0,0 | 0,0 | 0,1 | 0,0 | 4,3 | 0,1 | 2,3 | | 1,4 | 0,0 | 1,8 | 1,8 | 1,1 |
| | Peru | 0,4 | 11,0 | 2,1 | 0,0 | 2,0 | 3,1 | 0,6 | 0,2 | | 1,0 | 5,2 | 1,1 | 2,4 |
| | Singapore | 0,0 | 0,0 | 0,0 | 0,0 | 0,0 | 0,0 | 0,0 | 0,0 | 0,0 | | 0,0 | 0,0 | 0,0 |
| | Vietnam | 1,8 | 1,0 | 2,1 | 2,4 | 2,7 | 1,9 | 3,3 | 3,7 | 1,1 | 4,6 | | 3,2 | 2,5 |
| | USA | 1,5 | 4,3 | 0,0 | 0,0 | 1,2 | 0,8 | 0,0 | 5,2 | 0,0 | 0,0 | 6,2 | | 1,7 |
| | Average value of tariffs applied | 1,2 | 4,7 | 1,0 | 0,4 | 2,5 | 1,4 | 1,7 | 4,1 | 0,9 | 1,4 | 4,4 | 1,2 | 2,1 |

Source: WITS Database, World Bank.

COMPARISON OF OBJECTIVES BETWEEN THE TPP AND THE RCEP

Box 1
Comparison of objectives between the TPP and the RCEP

| | TPP | RCEP |
|---------------------------------|---|---|
| Acces to market of goods | <ul style="list-style-type: none"> • Elimination of tariff barriers with significant WTO plus commitments. Elimination of non-tariff barriers. • Negotiation and facilitation of access to markets for textiles and apparel. | <ul style="list-style-type: none"> • Progressive elimination of tariff and non-tariff barriers in almost all trade in goods. • High and broad liberalization of tariffs. |
| Trade Facilitation | <ul style="list-style-type: none"> • Predictable, transparent and swift trade procedures. • Strong, common rules of origin. • Sanitary and phytosanitary measure (SPS) and technical barriers to trade (TBT), both based on the commitments with the WTO. • Facilitation of regional value chains. | <ul style="list-style-type: none"> • Trade and investment facilitation; raise the level of transparency in trade and investment. • Facilitation of regional value chains. |
| Services | <ul style="list-style-type: none"> • Fair, open and transparent markets for cross-border services; preserving the right of regulation. • Open trade and investment in financial services, e-commerce and telecommunications. • Negotiations on the basis of negative lists. • Transparency and efficiency in temporary entries. | <ul style="list-style-type: none"> • Substantial elimination of restrictions and discriminatory measures in trade in services. • Make progress on the basis of the made by the members of the RCEP, under the WTO rules and the FTAs of ASEAN+1. • Negotiate in all sectors and provision modes. |
| Investments | <ul style="list-style-type: none"> • Free access to investments and legal protection for investors. • Investor-State dispute settlement mechanisms in an expeditious and transparent manner, in a context of mutual good faith. | <ul style="list-style-type: none"> • Liberalization that facilitates a competitive investment regime. • Negotiations based on promotion, protection, facilitation and liberalization. |
| Competition | <ul style="list-style-type: none"> • Promote a competitive context for business; protect consumers and ensure the "levelling of the playing field". • Establish and maintain laws on competition, and on the part of the authorities, fair rules of the game, transparency, as well as protection of consumers' and private rights. | <ul style="list-style-type: none"> • Promote competitiveness, economic efficiency and consumer welfare, while reducing anti-competitive practices. • Recognize the differences in capabilities, within the framework of the RCEP, on competition policy. |

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| | TPP | RCEP |
|-------------------------------|--|---|
| Intellectual Property | <ul style="list-style-type: none"> • Ensure effective and balanced property rights. • Strengthen and extend the TRIPS agreement of the WTO. • Include trademarks, geographical indicators, patents, copyright, trade secrets and data exclusivity. • Include putting into force of intellectual property rights, genetic resources and traditional knowledge | <ul style="list-style-type: none"> • Reduce barriers to trade and intellectual property-related investment. • Promote cooperation in the utilization, protection, and implementation of intellectual property rights. |
| Dispute settlement | <ul style="list-style-type: none"> • Clear and effective rules for dispute settlement | <ul style="list-style-type: none"> • Effective, efficient and transparent processes for consultations and dispute settlement. |
| Cooperation | <ul style="list-style-type: none"> • Focus on the needs of the economies of developing countries relating to the implementation of provisions for higher standards. • Establish institutional mechanisms for cooperation and capacity building. | <ul style="list-style-type: none"> • Make progress with cooperation agreements between ASEAN and its dialogue partners. • Focus on the gaps as regards development issues in the RCEP, while maximizing mutual benefits. |
| Access | | <ul style="list-style-type: none"> • The partners included in the FTAs with ASEAN can be incorporated to the negotiations whenever the negotiating members agree to do so. • Clause to allow access to other partners in FTAs with ASEAN to subsequently join the RCEP. |
| Environment | <ul style="list-style-type: none"> • Face challenges concerning trade and environment. • Discuss issues such as maritime fishing, conservation, biodiversity, invasive species, climate change, and environmental goods and services. | |
| Government procurement | <ul style="list-style-type: none"> • Ensure fair transparent and non-discriminatory government procurement. • Comparable coverage for all economies; agreements on transition for developing economies. | |
| Labour | <ul style="list-style-type: none"> • Consider the issues of protection of labour rights and ensure cooperation, coordination and dialogue. | |

Source: United States Trade Representative for TPP, 2011, and ASEAN for RCEP, 2012.

A N N E X I V

FULL LIST OF CHAPTERS OF THE TRANS-PACIFIC ASSOCIATION TREATY (TPP)

BOX 2

Full list of chapters of the Trans-Pacific Association Treaty (TPP)

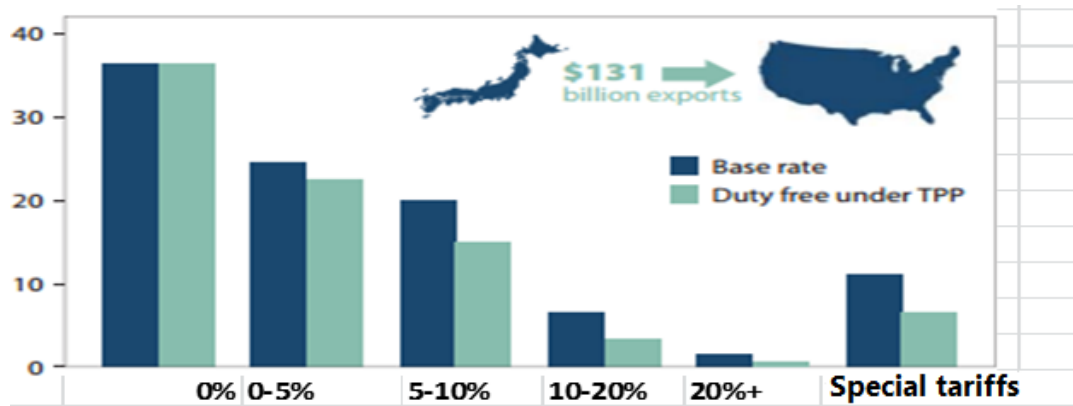
0. [Preamble](#)
1. [Initial provisions and general definitions](#)
3. [Rules of origin and origin procedures](#)
4. [Textiles and apparel](#)
5. [Customs administration and trade facilitation](#)
6. [Trade remedies](#)
7. [Sanitary and phytosanitary measures](#)
8. [Technical barriers to trade](#)
9. [Investment](#)
10. [Cross border trade in services](#)
11. [Financial services](#)
12. [Temporary entry for business persons](#)
13. [Telecommunications](#)
14. [Electronic commerce](#)
15. [Government procurement](#)
16. [Competition policy](#)
17. [State owned enterprises and designated monopolies](#)
18. [Intellectual property](#)
19. [Labour](#)
20. [Environment](#)
21. [Cooperation and capacity building](#)
22. [Competitiveness and business facilitation](#)
23. [Development](#)
24. [Small and medium sized enterprises](#)
25. [Regulatory coherence](#)
26. [Transparency and anti corruption](#)
27. [Administrative and institutional provisions](#)
28. [Dispute settlement](#)
29. [Exceptions and general provisions](#)
30. [Final provisions](#)

Source: Secretariat of Economy of Mexico, 27 April 2016.

BILATERAL TARIFFS TO BE IMMEDIATELY LIBERALIZED UNDER THE TPP

FIGURE 1
Bilateral tariffs to be immediately liberalized by Japan to the US under the TPP

Trade in goods (percentage)

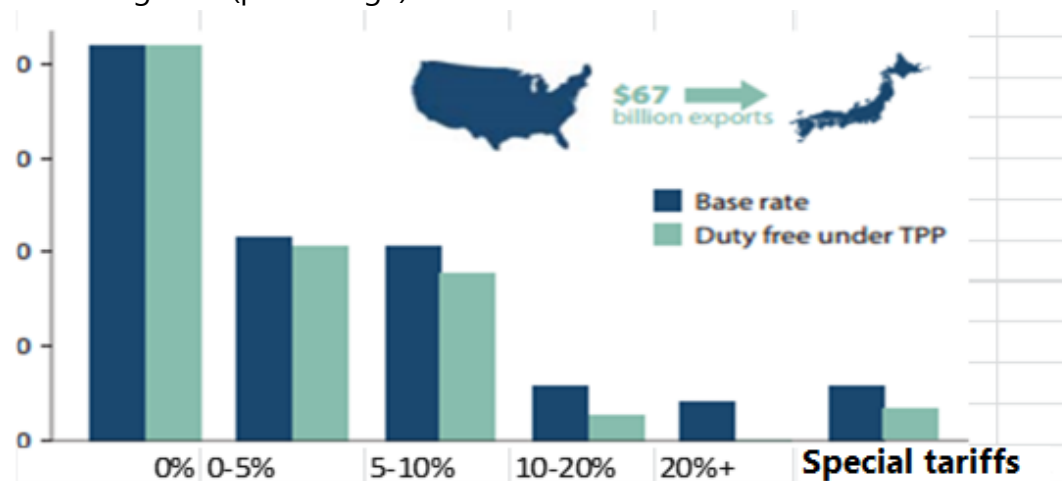


Note: The chart represents only the tariff schedules for the bilateral relation between Japan and the US (2014).

Source: *Tariff tables of the TPP*: <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.

FIGURE 2
Bilateral tariffs to be immediately liberalized by the US to Japan under the TPP

Trade in goods (percentage)

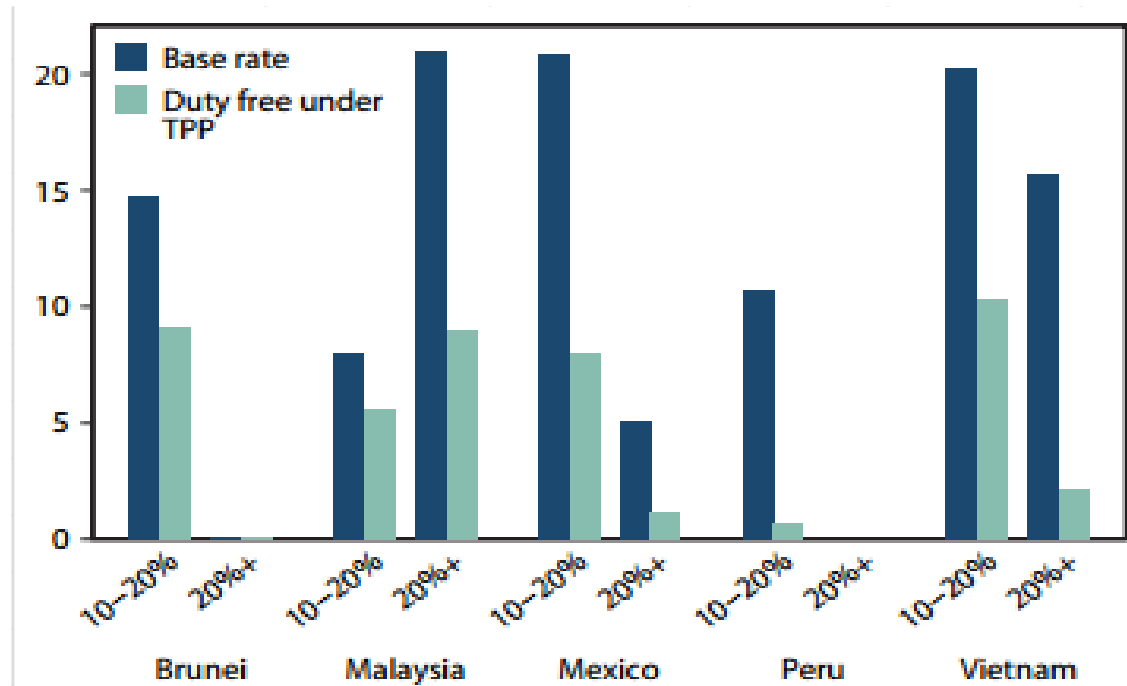


Note: The chart represents only the tariff schedules for the bilateral relation between Japan and the US (2014).

Source: *Tariff tables of the TPP*: <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.

TARIFFS ABOVE 10% THAT WILL IMMEDIATELY EXPIRE UNDER THE TPP

FIGURE 3
Tariffs above 10% that will immediately expire under the TPP
Trade in goods (percentage)



Source: Tariff tables of the TPP: <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.

A N N E X V I I

**TRADE BARRIERS BETWEEN THE US AND THE MEMBERS OF THE TPP
(PERCENTAGE, INCLUDING AD VALOREM EQUIVALENT TO NON-TARIFF BARRIERS)**

TABLE 3
Trade barriers between the US and the members of the TPP (percentage, including ad valorem equivalent to non-tariff barriers)

| Sector | US barriers to imports | | | | Foreign barriers to imports from the US | | | | |
|-----------------------------------|------------------------|------------|------------|------------|---|------------|------------|------------|------------|
| | 2015 | 2020 | 2025 | 2030 | Tariffs | 2015 | 2020 | 2025 | 2030 |
| Primary goods | | | | | | | | | |
| Grains | 0 | 0 | 0 | 0 | 4,8 | 0,3 | 0,3 | 0,3 | 0,3 |
| Others (agriculture) | 0,1 | 0 | 0 | 0 | 1,9 | 0,5 | 0,4 | 0,3 | 0,3 |
| Mining | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Manufactures | | | | | | | | | |
| Foodstuff, beverages, tobacco | 1 | 0,4 | 0,4 | 0,3 | 8,9 | 1,4 | 0,9 | 0,8 | 0,8 |
| Textiles | 3,8 | 1,7 | 0,9 | 0,3 | 0,6 | 0,1 | 0,1 | 0,1 | 0,1 |
| Apparel and footwear | 11,2 | 4,8 | 3,2 | 0,7 | 3,9 | 0,3 | 0,3 | 0,3 | 0,3 |
| Chemicals | 0,6 | 0,1 | 0,1 | 0,1 | 0,3 | 0,1 | 0,1 | 0,1 | 0,1 |
| Metals | 0,2 | 0 | 0 | 0 | 0,2 | 0,1 | 0,1 | 0 | 0 |
| Computers & electronics | 0,1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Machinery | 0,3 | 0,1 | 0,1 | 0,1 | 0,2 | 0,1 | 0 | 0 | 0 |
| Transport equipment | 0,2 | 0,1 | 0,1 | 0,1 | 0,3 | 0,1 | 0,1 | 0,1 | 0,1 |
| Other manufactures | 0,2 | 0 | 0 | 0 | 0,4 | 0,2 | 0,1 | 0,1 | 0,1 |
| Total (goods) | 0,6 | 0,2 | 0,2 | 0,1 | 0,1 | 0,2 | 0,1 | 0,1 | 0,1 |
| | | | | | Non-tariff barriers | | | | |
| Primary goods | | | | | | | | | |
| Grains | 10,6 | 10 | 9,5 | 9 | 22,5 | 20,1 | 18,1 | 17 | 17 |
| Others (agriculture) | 5 | 4,4 | 3,9 | 3,6 | 10,3 | 8,9 | 7,5 | 6,9 | 6,9 |
| Mining | 1 | 0,9 | 0,8 | 0,8 | 2,5 | 2,4 | 2,3 | 2,1 | 2,1 |
| Manufactures | | | | | | | | | |
| Foodstuff, beverages, tobacco | 8,2 | 7,2 | 6,1 | 5,7 | 15,5 | 13,7 | 11,9 | 11,1 | 11,1 |
| Textiles | 17,9 | 14,1 | 10,7 | 9,6 | 5,8 | 5,4 | 4,5 | 3,5 | 3,5 |
| Apparel and footwear | 13,1 | 9,3 | 5 | 3,9 | 6,2 | 5,3 | 3,5 | 2,7 | 2,7 |
| Chemicals | 1,6 | 1,4 | 1,1 | 0,9 | 3,6 | 3 | 2,5 | 2,1 | 2,1 |
| Metals | 0 | 0 | 0 | 0 | 2,4 | 2,3 | 2,1 | 1,9 | 1,9 |
| Computers & electronics | 0,7 | 0,6 | 0,5 | 0,5 | 5,9 | 4,8 | 3,7 | 3,3 | 3,3 |
| Machinery | 3,4 | 2,9 | 2,4 | 2,2 | 5,4 | 4,7 | 4,1 | 3,7 | 3,7 |
| Transport equipment | 2,6 | 2,4 | 2,2 | 2,1 | 2,8 | 2,6 | 2,3 | 2,1 | 2,1 |
| Other manufactures | 1,3 | 1,1 | 0,9 | 0,8 | 2,3 | 2 | 1,8 | 1,5 | 1,5 |
| Services | | | | | | | | | |
| Utilities | 1,3 | 1,3 | 1,2 | 1,1 | 1,2 | 1,2 | 1,1 | 1 | 1 |
| Construction | 55,5 | 46,5 | 36,8 | 33,6 | 20,5 | 17,2 | 13,7 | 12,5 | 12,5 |
| Trade and transport | 23,5 | 20,9 | 17,9 | 15,9 | 25,7 | 22,3 | 18,5 | 16,4 | 16,4 |
| Communications | 11 | 9,7 | 8,2 | 7,3 | 17,5 | 15,7 | 13,4 | 11,9 | 11,9 |
| Finances | 26,3 | 23,2 | 20,1 | 18,7 | 21,6 | 19,2 | 16,2 | 14,3 | 14,3 |
| Business services | 20,2 | 17,9 | 14,9 | 13,2 | 23,2 | 18,8 | 13,8 | 12,2 | 12,2 |
| Social services | 4,8 | 4,2 | 3,5 | 3,3 | 20,3 | 17,9 | 15,5 | 14,4 | 14,4 |
| Total (goods and services) | 4,1 | 3,6 | 3 | 2,7 | 7,9 | 6,9 | 5,8 | 5,3 | 5,3 |

Source: Based on Peta Petri and Michael Plummer, "The Economic Effects of the Trans Pacific Partnership. New Estimates", Working Paper 16-2, Peterson Institute for International Economics, Washington DC, January 2016, Table 1.

A N N E X V I I I

VALUE OF AGRICULTURAL TRADE, IMPORT-EXPORT BALANCE IN TPP COUNTRIES (2012)

TABLE 4
Value of agricultural trade, import-export balance in TPP countries (2012)

| Country (TPP) | Total agriculture and livestock trade (exp+imp) (US\$ thousand) | Agriculture and livestock trade (percentage of trade among TPP countries) | Agriculture and livestock exports (US\$ thousand) | Agriculture and livestock imports (US\$ thousand) |
|---------------|---|---|---|---|
| Australia | 49951.666 | 7,8 | 37.672.837 | 12.278.829 |
| Brunei | 446.039 | 0,1 | 2.440 | 443.599 |
| Canada | 76399.395 | 11,9 | 43.978.254 | 32.421.141 |
| Chile | 16305.702 | 2,5 | 10.598.793 | 5.706.909 |
| Japan | 69.772.750 | 10,9 | 3.286.981 | 66.485.769 |
| Malaysia | 49.716.467 | 7,7 | 30.875.159 | 18.841.308 |
| Mexico | 49304.578 | 7,5 | 21.656.035 | 26.648.543 |
| New Zealand | 24342.008 | 3,8 | 20.310.597 | 4.031.411 |
| Peru | 8.552.680 | 1,3 | 4.203.358 | 4.349.322 |
| Singapore | 20.008.602 | 3,1 | 8.482.359 | 11.526.243 |
| Vietnam | 250.918.978 | 39,1 | 114.889.596 | 106.029.382 |
| USA | 27.016.066 | 4,2 | 14.728.767 | 12.287.299 |

Source: FAOSTAT, 2015.

EFFECTS OF THE TPP ON REAL INCOME

TABLE 5
Effects of the TPP on real income

| | Baseline (US\$ billion, 2015) | | | | Changes with the TPP (US\$ billion, 2015) | | | Percentage change from baseline | | |
|-------------------|----------------------------------|--------|---------|---------|--|------|------|------------------------------------|------|------|
| | 2015 | 2020 | 2025 | 2030 | 2020 | 2025 | 2030 | 2020 | 2025 | 2030 |
| Canada* | 1.981 | 2.227 | 2.472 | 2.717 | 8 | 22 | 37 | 0,4 | 0,9 | 1,3 |
| Chile* | 269 | 329 | 397 | 463 | 0 | 2 | 4 | 0,1 | 0,5 | 0,9 |
| Mexico* | 1.339 | 1.598 | 1.868 | 2.169 | 3 | 11 | 22 | 0,2 | 0,6 | 1,0 |
| Peru | 219 | 2.877 | 363 | 442 | 1 | 6 | 11 | 0,4 | 1,6 | 2,6 |
| USA* | 18.154 | 20.736 | 23.372 | 25.754 | 29 | 88 | 131 | 0,1 | 0,4 | 0,5 |
| Asia | 22.806 | 29.754 | 38.179 | 47.386 | 52 | 135 | 203 | 0,2 | 0,4 | 0,4 |
| Brunei* | 20 | 24 | 27 | 31 | 0 | 1 | 2 | 1,1 | 3,3 | 5,9 |
| China | 11.499 | 16.058 | 21.689 | 27.839 | -1 | -8 | -18 | 0,0 | 0,0 | 0,0 |
| India | 2.210 | 3.086 | 4.179 | 5.487 | 0 | -2 | -5 | 0,0 | -0,1 | -0,1 |
| Indonesia | 927 | 1.240 | 1.687 | 2.192 | 0 | -1 | -2 | 0,0 | -0,1 | -0,1 |
| Japan* | 4.214 | 4.462 | 4.698 | 4.924 | 39 | 91 | 125 | 0,9 | 1,9 | 2,5 |
| South Korea | 1.384 | 1.672 | 1.967 | 2.243 | -1 | -5 | -8 | -0,1 | -0,2 | -0,3 |
| Malaysia* | 349 | 444 | 553 | 675 | 7 | 28 | 52 | 1,6 | 5,0 | 7,6 |
| Philippines | 329 | 436 | 547 | 680 | 0 | -1 | -14 | 0,0 | -0,1 | -0,1 |
| Singapore | 320 | 380 | 437 | 485 | 2 | 8 | 19 | 0,5 | 1,9 | 3,9 |
| Taiwan | 511 | 619 | 707 | 776 | 0 | 1 | 1 | 0,1 | 0,1 | 0,2 |
| Thailand | 411 | 516 | 656 | 812 | -1 | -4 | -7 | -0,2 | -0,6 | -0,8 |
| Vietnam | 209 | 281 | 378 | 497 | 7 | 22 | 41 | 2,3 | 5,8 | 8,1 |
| ASEAN | 124 | 175 | 228 | 283 | 0 | -1 | -1 | -0,1 | -0,2 | -0,4 |
| Australia* | 1.704 | 1.986 | 2.292 | 2.590 | 1 | 8 | 15 | 0,0 | 0,4 | 0,6 |
| New Zealand | 192 | 217 | 241 | 264 | 1 | 4 | 6 | 0,5 | 1,5 | 2,2 |
| Rest of the world | 34.371 | 39.492 | 45.506 | 52.017 | 16 | 44 | 62 | 0,0 | 0,1 | 0,1 |
| European Union | 17.893 | 19.746 | 21.451 | 23.189 | 12 | 34 | 48 | 0,1 | 0,2 | 0,2 |
| Russia | 2.244 | 2.462 | 2.908 | 3.371 | 0 | 1 | 2 | 0,0 | 0,0 | 0,1 |
| Rest World | 14.235 | 17.283 | 21.152 | 25.465 | 3 | 8 | 12 | 0,0 | 0,0 | 0,0 |
| World | 81.035 | 96.623 | 114.690 | 133.801 | 111 | 319 | 492 | 0,1 | 0,3 | 0,4 |
| Members | 28.969 | 32.971 | 37.094 | 41.011 | 98 | 291 | 435 | 0,3 | 0,8 | 1,1 |
| Non-Members | 52.066 | 63.652 | 77.596 | 92.790 | 13 | 28 | 27 | 0,0 | 0,0 | 0,0 |

ASEAN: Association of Southeast Asian Nations

(*) Member countries of the TPP

Source: *Ibid*, Table 2.

**MAIN DIFFERENCES BETWEEN
THE WTO TRADE FACILITATION AGREEMENT AND THE TPP**

BOX 3

Main differences between the WTO Trade Facilitation Agreement and the TPP

| Issue | Article | WTO | Article | TPP |
|---|---------|---|----------------|---|
| | | Description | | Main Differences |
| Publication of customs laws and regulations | 1 | Requires each party to publish procedures, fees, rules, and laws. | 5.11 | Similar; TPP requires publication in English, TFA in WTO language |
| Consultations | 2 | Allows each party to comment on changes in customs rules or duties. | 5.11 | Similar; TPP and TFA encourage publication of new regulations and opportunity to comment. |
| Advance rulings | 3 | Requires advance rulings issued in reasonable time and information published | 5.3 | TPP limits advance rulings to 150 days, TFA is "reasonable, time-bound". |
| Procedures for appeal | 4 | Provides for the right of appeal | 5.5 | Language allowing administrative or judicial appeal is similar. |
| Other measures | 5 | Provides guidelines for countries seeking to issue new regulations because of risk. | 5.9 | TFA offers more specific language on new regulations because of risk and time limit on any such regulations. |
| Disciplines and fees | 6 | Proposes disciplines on fees and penalties other than duties | 5.8 | Language on penalties is the same; TPP adds finite time period in which customs proceedings can be initiated and restrictions on initiation outside of time period. |
| Release and clearance of goods | 7 | Issues guidelines on trade facilitation, fees, and treatment of expedited goods. | 5.7, 5.9, 5.10 | TPP includes goal of customs clearance in 48 hours, 6 hours for express shipments, TFA encourages members to publish average release times, but does not list targets; TFA includes language on appropriate risk criteria to discourage arbitrary use of risk management as trade barrier. TPP does not present risk management criteria. |
| Border agency cooperation | 8 | Encourages coordination with other customs agencies, especially bordering countries. | 5.2 | Similar, but TFA also covers border communication between neighboring countries. |
| Movement of goods | 9 | Smooths movement of goods between customs authorities within a territory. | | Not in TPP |
| Formalities | 10 | Issues guidelines on documentation, use of international standards, single window, pre-shipment inspection, customs brokers, and related areas. | 5.6, 5.7 | Similar; both encourage use of international standards and single electronic window. TFA includes additional restrictions, including on pre-shipment inspection and customs brokers. |
| Freedom of transit | 11 | Proposes disciplines on traffic in transit to other member. | | Not in TPP |
| Customs cooperation | 12 | Encourages exchange of information and protection of confidentiality. | 5.2, 5.4, 5.12 | Restrictions on information sharing differ. TFA allows postponement or refusal of information for various reasons. TPP states that a party can decline to provide information requested if the requesting party does not maintain agreed confidentiality. |
| Sectio II- Special and Differential Treatment | 13-24 | Gives special treatment to developing countries. | | Not in TPP |

Source: WTO Trade Facilitation Agreement, Chapter 5, TPP.

INTELLECTUAL PROPERTY RIGHTS: CURRENT PROVISIONS AND STANDARDS

BOX 4

Intellectual Property Rights: Current provisions and standards

| Agreement | Exclusivity of information | Nexus of patents |
|--|---|---|
| Agreement on trade aspects of intellectual property rights | No requirement is made to those countries that provide exclusive rights to the generators of information for a certain period. | It is not required to link "drug" regulatory agencies with patent issues (e.g: the approval of generic marketing is not linked with the expiry date of the patent of the creator of the "drug"). |
| Agreement of 10 May 2007 | Provides for 5 years of exclusivity as regards the information. It prohibits a State to use other information to obtain marketing approval. | It is not required to link "drug" regulatory agencies with patent issues Under a patent nexus system, the possible infringement of the rule is automatically checked, when a new product appears on the market. After the agreement of 10 May 2007 such screening is voluntary. |
| KORUS: Free Trade Agreement between South Korea and the United States | Incorporates the rules of the agreement of the 10 May 2007 | The nexus of patents is mandatory. No government can approve the promotion of any generic drug while the original patent continues in force. |

Source: OMC, 1994; USTR, 2007; Ministry of Foreign Affairs and Trade of South Korea, 2012.

A N N E X X I I

**DISPUTE SETTLEMENT MECHANISM:
PROVISIONS OF THE TPP SUBJECT TO CHAPTER**

BOX 5

Dispute Settlement mechanism: Provisions of the TPP subject to Chapter 28

| Chapter of the TPP | Subject to Chapter 28 |
|---|------------------------------|
| Annexes | |
| Annex I: Non-compliance measures | No |
| Annex II: Non-compliance measures | No |
| Annex III: Financial Services | No |
| Annex IV: State-Owned Enterprises | No |
| Related Instruments | |
| <i>Related to access to markets</i> | |
| Exchange of letters between the US and Australia recognizing tariff quotas in the TPP | Yes |
| Exchange of letters between the US and Australia on a review on sugar | No |
| Exchange of letters between the US and Canada on agriculture transparency | Yes |
| Exchange of letters between the US and Chile on distinctive products | No |
| Letter from Japan to the US on security regulations for automobiles | No |
| Exchange of letters between the US and Japan on the functioning of the simultaneous purchase-sale mechanism | Yes |
| Exchange of letters between the US and Japan on the functioning of the safeguard of protein from whey concentrate | Yes |
| Exchange of letters between the US and Japan with respect to standards of fill | Yes |
| Letters from the US and Japan related to the procedure of preferential handling | No |
| Exchange of letters between the US and Malaysia on imports of cars | Yes |
| Exchange of letters between the US and Malaysia on distinctive products | No |
| Exchange of letters between the US and New Zealand on distinctive products | No |
| Exchange of letters between the US and Peru on distinctive products | No |
| Exchange of letters between the US and Peru on tariff quotas and safeguards | Yes |
| Exchange of letters between the US and Vietnam on distinctive products from the US | No |
| Exchange of letters between the US and Vietnam on distinctive products from Vietnam | No |
| <i>Related to textiles and apparel</i> | |
| Exchange of letters between the US and Brunei on textiles and apparel | Yes |
| Exchange of letters between the US and Malaysia on textile and registered apparel enterprises | No |
| Exchange of letters between the US and Singapore on textiles and FTA between the US and Singapore | No |
| Exchange of letters between the US and Vietnam on textile and registered apparel enterprises | Yes |
| <i>Related to sanitary and phytosanitary measures</i> | |
| Exchange of letters between the US and Chile on salmonid eggs | No |
| Exchange of letters between the US and Canada on milk equivalents | No |
| Exchange of letters between the US and Vietnam on catfish | No |
| Exchange of letters between the US and Vietnam on offal | No |
| <i>Related to intellectual property (IP)</i> | |
| Exchange of letters between the US and Australia on selected provisions on IP | No |
| Exchange of letters between the US and Australia on Article 17.9.7 (b) of the Australia-US FTA (AUSFTA) | No |
| Exchange of letters between the US and Canada on the application of limits to IP | Yes |
| Exchange of letters between the US and Chile on geographic indicators | No |
| Exchange of letters between the US and Chile on Article 17.10.2 of the US-Chile FTA | Yes |
| Exchange of letters between the US and Japan on the term copyright | No |

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| Chapter of the TPP | Subject to Chapter 28 |
|--|------------------------------|
| Exchange of letters between the US and Malaysia on Articles 18.41.50 and 18.41.52 | No |
| Exchange of letters between the US and Malaysia on geographic indicators | No |
| Exchange of letters between the US and Mexico on geographic indicators | No |
| Exchange of letters between the US and México on tequila and mescal | No |
| Exchange of letters between the US and Peru on Article 16.14.3 of the US-Peru Trade Promotion Treaty | No |
| Exchange of letters between the US and Vietnam on biological products | Yes |
| Exchange of letters between the US and Vietnam on geographic indicators | No |
| <i>Services, financial services and electronic commerce</i> | |
| Exchange of letters between the US and Chile on express shipping services | No |
| Exchange of letters between the US and Vietnam on pharmaceutical distribution | Yes |
| Exchange of letters between the US and Vietnam on electronic payment services | Yes |
| Exchange of letters between the US and Australia on privacy | No |
| <i>Temporary entry</i> | |
| Exchange of letters between the US and Japan on temporary entry | |
| <i>Government procurement</i> | |
| Exchange of letters between the US and Australia on thresholds of government procurement in the AUSFTA | No |
| Exchange of letters between the US and Canada on thresholds of government procurement | Yes |
| Exchange of letters between the US and Mexico on procedures for government procurement | Yes |
| <i>State-Owned Enterprises</i> | |
| Exchange of letters between the US and Singapore on transparency in State-Owned Enterprises | No |
| <i>Environment</i> | |
| Understanding between the US and Chile on subsidies to fisheries and natural disasters | No |
| Exchange of letters between the US and Malaysia on a committee to coordinate the implementation of chapters on environment | No |
| Understanding between the US and Peru on biodiversity and traditional knowledge | No |
| Understanding between the US and Peru sobre conservation and trade | No |
| Joint Declaration on currency manipulation | No |
| Annex on transparency and fair litigation for pharmaceutical products | |
| <i>Medical devices</i> | |
| Exchange of letters between the US and Australia on transparency and fair litigation for pharmaceutical products and medical devices | No |
| Understanding between the US and Japan on transparency and fair litigation for pharmaceutical products and medical devices | No |
| Understanding between the US and Peru on transparency and fair litigation for pharmaceutical products and medical devices | No |

Source: Final text of the TPP.

A N N E X X I I I

**TIMES REQUIRED TO SETTLE DISPUTES UNDER
THE SYSTEMS OF THE TPP AND THE WTO**

Box 6: Times required to settle disputes under the systems of the TPP and the WTO

| Procedural step | Chapter 28 of the TPP | Understanding for Dispute Settlement of the WTO |
|--|--|---|
| Initial dispute | | |
| Consultations | 60 days (30 days for perishable goods) | 60 days (20 days for perishable goods) |
| Establishment of panel | 60 days from the request for consultations | Second meeting of the Organ for Dispute Settlement (usually no more than 50 days) |
| Request for designation of panellists | 20 days from the establishment of the panel | 20 days from the establishment of the panel |
| Designation of the panellists (or Chairman of the panel) if the parties do not reach an agreement | 20-65 days | 10 days (the Director General makes the designation) |
| Consideration by the panel and issue of the preliminary report | 150-180 days (120-150 days for perishable goods) | 6-8 months |
| Issue of the final report by the panel | 30 days for the parties, 45 days for the public | 3 weeks |
| Total time, excluding appeal | 350 days | 12-15 months |
| Appeal | | |
| Appeal report | Not applicable (There is no appeal process) | 60-90 days |
| Adoption of final report | Not applicable | 30 days |
| Total time, including appeal | 350 days | 16-20 months |
| Others | | |
| Arbitration during a reasonable period of time | 90 days from the submittal (60 days from the issuance of the final report) | 90 days from the adoption of the report |
| Implementation | 15 months maximum | 8-15 months |
| Total time | | |
| Time from the request for consultation to the end of the reasonable period of time for compliance. | 26-27 months | More than 35 months |

WTO: World Trade Organization.

Note: Time can be extended well beyond of the time periods described here if the parties agree to extend it or, in the WTO, if the panel decides to take additional time to issue its report.

Sources: Chapter 28 of the TPP; WTO Understanding on Rules and Procedures for Dispute Settlement.

A N N E X X I V

**IMPACT OF THE TPP ON TRADE AND INVESTMENTS
(IN US\$ BILLIONS, 2015)**

TABLE 6
Impact of the TPP on trade and investments (in US\$ billions, 2015)

| | Exports | | | | FDI stock in the country | | | | FDI stock abroad | | | |
|-------------------|----------|--------|-------------|------|--------------------------|--------|-------------|------|------------------|--------|-------------|-----|
| | Baseline | | TPP by 2030 | | Baseline | | TPP by 2030 | | Baseline | | TPP by 2030 | |
| | 2015 | 2030 | Change | % | 2015 | 2030 | Change | % | 2015 | 2030 | Change | % |
| Canada* | 560 | 835 | 58 | 7.0 | 934 | 1487 | 107 | 7.2 | 851 | 1383 | 16 | 1.2 |
| Chile* | 87 | 147 | 8 | 5.3 | 149 | 281 | - | - | 54 | 114 | 2 | 1.7 |
| Mexico* | 396 | 670 | 32 | 4.7 | 424 | 774 | 8 | 1.1 | 141 | 265 | 2 | 0.6 |
| Peru | 46 | 135 | 14 | 10.3 | 49 | 117 | 7 | 5.8 | 2 | 5 | - | 3.9 |
| USA* | 2184 | 3.906 | 357 | 9.1 | 4.236 | 6.690 | 128 | 1.9 | 5980 | 10.002 | 149 | 1.5 |
| Asia | 6.168 | 12.095 | 509 | 4.2 | 6.788 | 16.055 | 220 | 1.4 | 5152 | 11.931 | 140 | 1.2 |
| Brunei* | 10 | 16 | 1 | 9.0 | - | - | - | 11.3 | 7 | 18 | 1 | 3.3 |
| China | 2339 | 4.976 | 9 | 0.2 | 3.078 | 8.153 | 19 | 0.2 | 750 | 2.064 | 8 | 0.4 |
| India | 488 | 1.360 | 1 | 0.1 | 322 | 999 | 1 | 0.1 | 119 | 359 | 2 | 0.6 |
| Indonesia | 205 | 446 | -4 | -1.0 | 233 | 621 | 5 | 0.8 | 22 | 58 | 1 | 1.1 |
| Japan* | 849 | 1.190 | 276 | 23.0 | 222 | 310 | 92 | 29.8 | 983 | 1.575 | 63 | 4.0 |
| South Korea | 623 | 1.089 | -11 | -1.0 | 177 | 327 | 1 | 0.2 | 277 | 628 | 2 | 0.3 |
| Malaysia | 261 | 491 | 99 | 20.1 | 128 | 279 | 48 | 17.2 | 140 | 345 | 24 | 7.0 |
| Philippines | 74 | 184 | -1 | 2.0 | 60 | 145 | 1 | 0.5 | 13 | 38 | - | 0.3 |
| Singapore | 304 | 470 | 35 | 7.5 | 847 | 1.555 | 28 | 1.8 | 450 | 1.018 | 23 | 2.2 |
| Taiwan | 348 | 506 | 4 | 0.8 | 41 | 69 | - | 0.7 | 69 | 155 | 1 | 0.7 |
| Thailand | 275 | 561 | -9 | -1.6 | 176 | 386 | 1 | 0.2 | 66 | 179 | 1 | 0.4 |
| Vietnam | 161 | 357 | 107 | 30.1 | 40 | 108 | 16 | 14.4 | 2 | 4 | - | 7.2 |
| ASEAN | 31 | 93 | -3 | -2.8 | 11 | 33 | - | 0.1 | 2 | 6 | - | 0.7 |
| Australia* | 296 | 589 | 29 | 4.9 | 609 | 1.049 | 10 | 0.9 | 414 | 751 | 23 | 3.0 |
| New Zealand | 53 | 84 | 9 | 10.2 | 90 | 145 | 2 | 1.4 | 30 | 51 | 2 | 3.2 |
| Rest of the World | 11.784 | 17.689 | 91 | 0.5 | 23.745 | 37.846 | 65 | 0.2 | 24.401 | 39.942 | 21.3 | 0.5 |
| European Union | 7.472 | 9.706 | 49 | 0.5 | 17.526 | 26.052 | 48 | 0.2 | 19.780 | 30.566 | 169 | 0.6 |
| Russia | 575 | 851 | 5 | 0.5 | 660 | 1.078 | 1 | 0.1 | 502 | 821 | 2 | 0.2 |
| RTW | 3.736 | 7.132 | 37 | 0.5 | 5.559 | 10.716 | 17 | 0.2 | 4.119 | 8.555 | 41 | 0.5 |
| World | 21.575 | 36.149 | 1.106 | 3.1 | 37.025 | 64.443 | 5.47 | 0.8 | 37.025 | 64.443 | 5.47 | 0.8 |
| TPP Members | 5.208 | 8.890 | 1.025 | 11.5 | 7.730 | 12.794 | 4.46 | 3.5 | 9.053 | 15.530 | 305 | 2.0 |
| Non TPP Members | 16.366 | 27.260 | 81 | 0.3 | 29.295 | 51.649 | 101 | 0.2 | 27.972 | 48.913 | 242 | 0.5 |

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