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**Last train for Asia-Pacific Integration?
U.S. Objectives in the TPP Negotiations**

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Waseda University Organization for Japan-US Studies (WOJUSS) was established as one of the area-focused research institutes at Waseda University in 2007. WOJUSS has five study groups to conduct comprehensive inquiries and research from various perspectives, including politics, economics, culture, and history, aiming at meeting modern challenges.

Introduction

American influence has loomed large in Asia as the United States built a postwar regime predicated on its central role of security guarantor through a network of bilateral alliances and of architect of an open multilateral economic system that served well the industrial takeoff of many East Asian nations. However, the end of the Cold War, the rise of China, and the emergence of an exclusively East Asian integration movement has forced a recalibration of U.S. policy towards the region. The task has been far from easy, and this paper seeks to explain why and how a burgeoning Asian regionalism has confounded American policymakers. To that end, I develop three central arguments. First, there are important continuities in the U.S. response to East Asian regional integration that underscore core objectives for the United States: a) rejection of integration schemes that could marginalize the United States and harm its economic interests through trade and investment diversion effects; b) rejection of exclusionary trade blocs that could harm U.S. geostrategic interests and weaken its political influence in the region (by effectively displacing the United States in favor of a regional hegemon, i.e, China); and c) rejection of regional institutions that could undermine the operation of global multilateral organizations.

Second, while the “negative consensus” is clear on which future scenarios of East Asian regional integration are undesirable for Washington, devising a proactive engagement policy vis-à-vis East Asia at a time when most governments there are busy building a regional integration architecture has proven a steep challenge. Key questions for American policymakers have revolved around the extent to which the United States should seek membership in regional organizations that embrace East Asian parameters and processes for integration; and the strategies through which the United States can bring East Asian nations on board with its own vision for deeper economic cooperation in the Asia-Pacific. It is here where substantial variation is visible in U.S. policy as the American government has championed different approaches over time: from Asia-Pacific multilateralism, to a network of bilateral agreements, and lately the negotiation of a trans-regional agreement, the so-called Trans-Pacific Partnership (TPP). Hence, the American model for integration in the region has been a moving target not only in terms of the “lateralism” of choice, but also because U.S. negotiation objectives have shifted reflecting evolving domestic constraints.

Third, and related to the last observation, the largest handicap in the U.S. attempt to redirect Asian regionalism towards a transpacific track may well be self-imposed. The political imperative of negotiating trade agreements that can win domestic ratification in a climate of increasingly divisive Congressional politics and public skepticism about the benefits of free trade as the economy falters, has pushed the U.S. trade negotiating position towards more stringent environmental and labor standards and stiffer WTO plus rules. Hence, the price tag of negotiating with the United States has gone up, and perhaps most significantly, the divide between what the U.S. wants to include in the agreement and what many East Asian countries are prepared to agree to may be growing. Moreover, the ratification limbo of existing U.S. FTAs, the lack of fast track authority, and the pattern of renegotiating agreements to placate domestic opponents all militate against the credibility of the U.S. as a negotiating partner. These domestic impediments will loom large in the American ability to redirect the Asian regional integration railroad towards a transpacific track.

The paper is organized as follows. Section 1, provides an overview of U.S. responses to Asian regionalism. It underscores that consistently the United States has frowned upon regional initiatives it deems harmful to its economic or security interests in East Asia or to the operation of global multilateral organizations; but that there has been significant variation in the engagement strategies pursued to channel the integration efforts towards an Asia-Pacific direction. Section 2, analyzes the ongoing TPP negotiations and the likely ways in which the United States may leave an imprint as this trade agreement evolves from a pact among four open and small economies into a potential template for trans-regional integration beyond the current nine countries at the negotiation table. Section 3, discusses the negative impact that domestic politics has had in developing a more flexible and credible trade policy, and discusses as well the likely implications of FTA competition for the construction of a cohesive regional architecture. The conclusion summarizes the main findings.

I. Evolving strategies to deal with Asian regionalism

After initially toying with the idea of developing a multilateral security arrangement in Asia to match institutional arrangements in Europe, the strong regional distrust of Japan doomed a potential “Pacific Pact” and the United States resorted instead to a network of bilateral security alliances (Searight, 2011). In the economic field, the United States relied on a mix of an open multilateral regime through the Bretton Woods institutions plus ad hoc bilateral negotiations to address market access concerns. This Cold War framework served well the United States and Asia as it delivered both stability and prosperity, but with the tectonic changes in world politics as the Soviet Union imploded, pressures within the region to address the glaring regional institutional deficit intensified. Ever since, the United States has been trying to play a very delicate balancing act vis-à-vis East Asian regionalism: to deter initiatives that could significantly harm U.S. interests through exclusion;¹ and to gain traction in its project for Asia-Pacific integration.

Asia-Pacific multilateralism

The first such challenge took place in the late 1980s when two key allies of the United States –Australia and Japan- began to discuss with other countries in the region ways to promote economic exchange. Australia, in particular, had not intended to include the United States in the new scheme and the American government was quick to express its disapproval. Japan – reflecting its self-defined role as bridge between East and West- insisted on involving the United States, and this resulted in the establishment of the Asia Pacific Economic Cooperation forum in 1989. A year later, however, a Malaysian initiative to form an East Asian Economic Group that explicitly marginalized the United States and asked Japan to assume regional leadership as the most advanced Asian industrialized state, drew an even more spirited U.S. response, as Secretary of State James Baker warned that “no line would be drawn down in the middle of the Pacific” (Barfield and Levy, 2009: 1).

At this juncture, it seemed like the United States had successfully redirected Asian integration initiatives towards an Asia-Pacific path, especially after the establishment in 1994 of a parallel regional multilateral institution for security cooperation: the ASEAN Regional Forum.

¹ And as Terada (2011) notes, the United States has frequently enlisted Japan as its key agent to undermine regional proposals it frowns upon.

Moreover, President Clinton greatly elevated the status of APEC by introducing in 1993 the leaders' summit, and APEC adopted ambitious goals at the Bogor meeting to liberalize trade and investment by 2010 for industrialized nations and 2020 for developing countries. Yet, this optimism proved short-lived, and by the end of the decade there was widespread skepticism about the ability of these Asia Pacific multilateral organizations to deliver substantial results. The disenchantment grew first from the deep rift that existed between Western countries that stressed binding trade liberalization as APEC's end goal, and the Asian countries that emphasized voluntarism and a non-binding process (Ravenhill, 2001). Through the Early Voluntary Sectoral Initiative (EVSL), the United States attempted to achieve tangible and mandatory liberalization results in selected economic sectors, and found itself in a direct confrontation with Japan who emphasized the voluntary nature of the APEC process. The EVSL initiative came to naught.²

The unfolding Asian financial crisis also damaged severely the influence of the United States in the region for several reasons. First, the United States and East Asian countries were in deep disagreement over the causes of the financial upheaval. For the former, it reflected the weaknesses of crony capitalism and poorly regulated financial systems, and for the later it exposed the dangers of volatile capital flows. Second, the refusal of the United States to participate in the rescue package for Thailand made Asian leaders doubt the extent of U.S. commitment to the region. Finally, the forceful rejection of Japan's proposed Asian Monetary Fund (AMF) -as the U.S. argued it would weaken the IMF's disciplines- did not extinguish the desire among East Asian countries to build institutions better attuned to the region's challenges. Hence, an East Asian forum emerged from the Asian financial crisis to act as focal point in the discussion of the future regional architecture: the ASEAN+3 (APT). Its first major deliverable was the set of bilateral currency swaps known as the Chiang Mai Initiative –which did not trigger an American veto as the framework was embedded in the IMF (disbursement of more than 10% of the money required the Fund's approval).

In the space of a decade, the direction of East Asian regionalism had changed dramatically with the development of a regional mechanism to inject liquidity, with APEC further adrift as the Bush administration sought to inject a security agenda in the aftermath of 9/11 that was not widely shared by Asian members, and with East Asian nations joining the race

² Similarly, the United States was increasingly skeptical about the ARF given its consensual modus operandi and the refusal of member countries to discuss domestic issues and of China to address cross-strait relations (Cossa, 2009).

to negotiate free trade agreements that award preferential market access. Indeed, FTA fever hit East Asia with a vengeance as more than a hundred such trade negotiations were launched since the late 1990s (Kawai and Wignaraja, 2008).

Competitive liberalization: the onset of trade bilateralism

The onset of the 21st century saw the United States attempt a very different approach towards Asian regionalism: a bilateral FTA strategy. Ever since the negotiation of the North American Free Trade Agreement (NAFTA), U.S. trade negotiators had watched helplessly as non-U.S. FTAs proliferated in all corners of the world. NAFTA was a watershed not only because it indicated the willingness of a major economy to deviate from an exclusive focus on the multilateral system (hence encouraging others to follow suit) or because it was the first of the string of North-South FTAs that have become so prominent lately. It also drew sharp domestic cleavages on trade policy which translated into Congress's refusal to renew "fast-track" authority for the remainder of the Clinton administration.³ When fast track authority was finally re-established under the new name of Trade Promotion Authority (TPA), the Bush administration's USTR Robert Zoellick quickly fleshed a new and ambitious trade policy: "competitive liberalization."

The new trade approach was spurred by the perceived need to restore the level playing field for American companies since out of 130 FTAs, the United States had only negotiated two (Quiliconi and Wise, 2009: 100). But it was more than defensive catch-up. As Zoellick explained, the United States would negotiate with "can-do" nations willing to undertake the multiple WTO commitments that the U.S. intended to put in the negotiation table. Thus, this competition for preferential market access to the United States would help disseminate cutting-edge rules on trade and investment that could eventually be adopted at the global level too. The number of U.S. FTA initiatives grew quickly to over a dozen during the 2000s.

The competitive liberalization strategy has been criticized from many different angles. Some observers, for instance, point out that as a trade policy this approach has generated meager economic gains since the United States has negotiated bilaterals with small trading partners, many of whom were in fact rewarded by their cooperation on the war on terror (Feinberg, 2005). Others have noted with concern that the United States has disproportionately benefited from its

³ All these points are discussed in more depth in the last section of the paper.

asymmetrical leverage in negotiating bilaterally with developing countries to extract multiple concessions (Quiliconi and Wise, 2009). And Aggarwal (2010) makes the case that competitive liberalization in fact weakens the pro-trade coalition in the United States since exporters and investors lose their appetite to fight for the far more significant Doha Round.

But in the particular case of East Asia, one of the main criticisms is that the bilateral FTA strategy accomplished very little in moving the region towards the type of economic integration promoted by the United States. The United States did negotiate successfully FTAs with Singapore (in force since 2004) and Australia (enacted in 2005), both industrialized nations willing to sign on to the ambitious agenda of WTO plus rules championed by the United States.⁴ But the United States made no progress in negotiating with the middle level economies of ASEAN. Negotiations with Thailand and Malaysia started in 2004 and 2006 respectively, and both were eventually suspended. In the case of Thailand, the far reaching American demands on intellectual property protection, investment, services, and competition policy generated significant grassroots opposition to the agreement and the political instability at the top (with the ouster of Prime Minister Thaksin) further doomed the chances of agreement (Sally, 2007). The Malaysian government refused to adopt a negative list for services liberalization, to significantly liberalize investment, and to open the government procurement market arguing these measures would go against the bumiputra policy protecting the ethnic Malay population. Consequently, negotiations were put on hold.

Without doubt, the free trade agreement signed with South Korea in 2007 (known as KORUS FTA) is the most significant initiative of the U.S. bilateral trade strategy in the region. For both countries the stakes have been very high. South Korea undertook sensitive reforms from the get-go in order to pave the way for these negotiations by for instance halving the screen quota, abolishing the ban on beef imports, and adopting a grace period for imported vehicles on car remissions (Koo, 2009: 189). The South Korean government aimed to achieve a number of important economic and political objectives through this FTA: securing the market share of Korean companies in the American market in the face of stiffer competition, obtaining reform of U.S. trade remedy measures it deemed discriminatory, ensuring preferential access for goods produced in the Kaesong industrial complex in North Korea (an important component of the

⁴ Although as will be discussed later, there are some significant reservations on Australia's part that have surfaced during the TPP negotiations.

sunshine policy), and boosting the bilateral alliance. For the Americans as well the KORUS agreement held great promise at it represented the largest economic deal after NAFTA, and could offer substantial market access gains in agriculture, pharmaceuticals, and financial services; in addition to consolidating bilateral security ties, scoring major points in the competitive liberalization campaign, and increasing U.S. presence in the region in view of a rising China (Cooper et al, 2010, Koo, 2009). However, due to domestic opposition in the United States (especially from car companies and beef exporters) the KORUS FTA remained in suspended animation for several years as the prospects for Congress ratification were slim.

Retooling competitive liberalization: A minilateral trans-Pacific initiative

As the second term of the Bush administration drew to an end, its hallmark trade strategy of “competitive liberalization” via a string of bilateral FTAs had very little to show for in East Asia since negotiations were suspended with Thailand and Malaysia, and the FTA with Korea was in ratification limbo. Moreover, an exclusively East Asian integration movement had gained unprecedented momentum. As part of the ASEAN+3 process, countries in the region launched an East Asian Summit in 2005. Membership in the EAS followed ASEAN parameters: to sign the Treaty of Amity and Cooperation, to be a dialogue partner with ASEAN, and to have substantial relations with ASEAN countries. The EAS entertained an ambitious, if vaguely defined agenda, to tackle multiple regional problems such as economics, the environment, security and education.

As part of these discussions, blueprints for region-wide trade blocs that could supersede the patchwork of bilateral trade agreements were also considered. On the one hand, China favored a purely East Asian group circumscribed to the ASEAN+3 countries. On the other hand, Japan advocated a larger grouping to include as well India, Australia, and New Zealand (ASEAN+6) with the aim of neutralizing Chinese influence by including other democracies. Notably, neither the Chinese nor the Japanese blueprints included the United States.

These developments raised the very real possibility that the United States would remain on the margins of Asian regionalism. The Bush administration had been wary of signing the TAC out of concern that the no-intervention clause would prevent it from promoting human rights in the region, uncertain as well about the value added of the vague agenda in the EAS, the traditional dislike for forums that focused on process and not results (talk-shops versus work-

shops),⁵ and concern over rapid institutional proliferation with potential duplications of functions (Cossa, 2009). Vis-à-vis the ASEAN+3 and ASEAN+6 proposals for economic integration, and after some vacillation, the United States decided to endorse in 2006 the Free Trade Area of the Asia-Pacific (FTAAP) as a long term goal. Pundits argued that the FTAAP would deter the formation of an exclusionary East Asian regional bloc, would help ameliorate the spaghetti bowl phenomenon, improve U.S.-China relations, raise the quality of economic integration as the U.S. pursues high standard trade agreements, and increase the chances of successfully concluding the Doha Round (Bergsten, 2007a). Critics, however, pointed out that the large U.S. trade deficit with China would make it very difficult to sell at home a free trade deal, and that given APEC's incipient institutionalization an attempt to turn it into a negotiating forum might be counterproductive (Aggarwal, 2009). In addition, given the large and heterogeneous membership of APEC and the limited success that the United States had had in negotiating its "gold standard" agreements with developing countries in South America and Southeast Asia, the FTAAP did not appear as a feasible counterweight to the other proposals for Asia-only integration.

Indeed, critics argued that the Bush administration's track record of unilateralism and neglect of the trans-regional institutions that the Americans had prioritized in the past (APEC and ARF) had resulted in dwindling US influence as the region proceeded with its own plans for economic integration (Pempel, 2008). It was only in the last months of the Bush presidency, that USTR Schwab announced that the United States would join the investment and services negotiations of an obscure trade grouping, the so-called P-4 signed in 2005 by Singapore, Chile, New Zealand, and Brunei. Reeling from a severe financial crisis and the worst economic contraction since the Great Depression, and emerging from a presidential campaign where public opinion was widely skeptical of free trade agreements blaming them for the export of jobs, the incoming President Obama immediately put the U.S. participation in TPP talks on hold as it announced a review of U.S. trade policy that lasted close to a year.

Although this was far from an auspicious start for a proactive trade policy, the Obama administration did orchestrate a major turnabout on the diplomatic front vis-à-vis East Asian regionalism. The administration went out of its way in signaling its new engagement with the region. Secretary of State Clinton's first overseas trip was to East Asia, and at a speech in Tokyo in November of 2009 President Obama referred to himself as America's first Pacific President

⁵ This phrase comes from Emerson (2010).

(Searight, 2011: 117). Moreover, as Emmerson notes, American officials seemed much less critical of the process-oriented talk-shop approach. In the words of Secretary Clinton: “I don’t know if half of life is showing up, but I know half of diplomacy is showing up” (cited in Emmerson, 2010:7). The United States proceeded to sign the TAC agreement in July 2009, to join the EAS in October 2010, and President Obama will be the first American president to attend an EAS meeting scheduled for 2011 in Jakarta.

However, if American officials have been more forthcoming about joining institutions shaped along Asian preferences and sign on to a meeting-heavy process (with annual summits for APEC, EAS, and US-ASEAN); they have established a clear division of labor in that the economic integration agenda will still follow the legalistic, results-oriented approach and will be pursued through the TPP. Indeed, when President Obama announced in December 2009 that the United States would return to TPP negotiations, the United States adopted yet a new approach (a minilateral agreement among committed APEC members) to push for Asia-Pacific integration. It is to the analysis of this last turn in U.S. policy that I turn next.

II. An American design for the TPP?

Why has the United States selected the TPP as the lynchpin of its economic strategy for the Asia-Pacific? How will the American participation in these trade talks affect the substance and scope of the old P4 agreement as it aims to establish a template for deep economic integration in the 21st century? These are the two central questions addressed in this section. For starters, it is important to note that the concern with rapidly expanding American exports is not driving American interest in the TPP. The share of American trade covered by negotiating countries is not very large as can be seen in Table 1. Individually TPP countries do not rank high as U.S. trade partners, and as a whole the TPP grouping (as it stands today) ranks number 5. The share of trade with the TPP as a percentage of U.S. trade with the Pacific Rim is only 17% and as a percentage of U.S. world trade a mere 6%. Moreover, the United States already has FTAs with several of the TPP nations, so how much additional market opening can be achieved through the TPP is in question.

Table 1			
Economic Stakes for the United States in the TPP			
(2009, million dollars)			
Country	Rank	Trade Value*	TPP share
Singapore	15	35,511.5	
Malaysia	18	32,163.8	
Australia	21	26,241.5	
Vietnam	30	15,333.4	
Chile	31	14,740.7	
Peru	42	8,590.4	
New Zealand	55	4,584.6	
Brunei	152	138.4	
TPP total	5	137,304.3	
Pacific Rim		805,268.0	17%
World		2,485,908.5	6%

Source: Adapted from Fergusson and Vaughn 2011.

Rather, the American commitment to the TPP project derives from three main considerations. First, the original P4 is widely regarded as a high standard trade agreement fully compatible with the U.S. FTA template.⁶ Particularly striking, is the almost zero tolerance in the P4 for the exclusion of sensitive sectors. Singapore, New Zealand and Chile agreed to scrap all tariffs and Brunei agreed to 99% tariff elimination (Elms, 2009). For American policymakers, building up from a compatible P4 agreement towards a larger TPP presents the advantage of gathering like-minded countries willing to undertake major liberalization commitments. Because the United States will be ‘preaching to the converted,’ so to speak, it expects less resistance in negotiating an agreement with cutting edge rules on trade and investment.

Another important distinctive trait of the TPP that is deemed highly by the United States is its open membership clause and its origins as an APEC members’ initiative. Singapore, New Zealand and Chile first met to discuss a possible trade agreement on the sidelines of the APEC leaders’ meeting in 2002, and were later on joined by Brunei. Hence, as the TPP expands from

⁶ Gao (2009) is skeptical about the high quality of the P4. His main reservations are that P4 countries have on occasion granted faster liberalization schedules on other of their FTAs, that the regional content value rule of origin rule of 45-50% is fairly restrictive, that bilateral cumulation is allowed but not extended cumulation, and that the agreement does not tackle head on non-tariff barriers. Elms (2009) also notes that the P4 did not eliminate existing FTAs among members and therefore did little to mitigate the spaghetti bowl effect. While these are all very insightful observations, the TPP does compare favorably to other FTAs plagued by sectoral exemptions or with limited issue scope.

four to nine and beyond, the United States is able to realize its vision for Asia-Pacific integration embedded in the APEC platform (as a pathway towards a future FTAAP). And since most other FTAs do not easily incorporate new members, the open membership clause of the TPP is key to the American vision of an Asia-Pacific wide grouping.⁷

Finally, the TPP represents a savvy retooling of the competitive liberalization strategy. While the bilateral trade agreements failed to generate a cascade of “gold standard” FTAs, USTR officials have now opted for a tipping point strategy. The bet is that if they gather a critical mass of countries in the TPP, the costs of exclusion for other countries will go up creating an incentive for them to seek TPP membership. The fact that soon after the US first announced its interest in the TPP Australia, Peru, Vietnam and Malaysia also decided to join in seemed to justify these hopes.

Hence, as Elms (2009: 4) notes, the TPP is first and foremost a political strategy to reinsert the United States into the regional integration game, as well as an economic tool to reap long-term gains as the membership expands to comprise larger trading partners. But if the United States has now diplomatically re-engaged Asia and has gained unprecedented traction in its revamped trade strategy as the TPP emerges as a focal point for trade negotiations, what kind of agreement is the U.S. pushing for? Although a full assessment is not possible at this juncture since these are on-going negotiations, crucial architectural issues have already come to the fore, and in what follows I discuss the U.S. position.

Market opening negotiations

At the most fundamental level, FTA negotiations represent the exchange of market access concessions among participants. Interestingly, there has been substantial disagreement on the basic approach to undertake in these negotiations. On the one hand, the United States has advocated a bilateral approach whereby the tariff liberalization schedules of its existing FTAs will remain in place, and will only make market access proposals to those countries with which there is no trade agreement in force: New Zealand, Vietnam, Malaysia, and Brunei. On the other hand, Singapore, New Zealand and Australia have endorsed a plurilateral approach that would generate a unified market access schedule for all members. TPP members agreed to a

⁷ Solís and Katada (2009: 11) show that enlargement of FTAs represents a fraction of greenfield FTAs notified to the WTO, and that most of these are circumscribed to the growth of EU membership.

compromise “hybrid” solution in that countries may choose to make bilateral or plurilateral market offers, and so far only the United States and Peru have opted for the bilateral approach (*Inside U.S. Trade*, May 13, 2011).

Thus, the United States has already shaped significantly the negotiation process since the old P4 did have a common tariff schedule (which was allowed to coexist with the tariff schedules of the other FTAs negotiated by members). American officials have explained their preference for a bilateral approach noting that existing U.S. FTAs are at different stages of implementation complicating a uniform approach, and that in a second phase of negotiations bilateral schedules will be multilateralized to preserve the single undertaking spirit. But it is worth noting that the other TPP members are also signatories to multiple other FTAs and this has not deterred them from signing on to the plurilateral approach.

In fact, the US insistence on keeping intact the bilateral U.S. FTAs schedules for the time being has very significant implications. First, the market access negotiations will probably be more lengthy and complex in that different TPP members are adopting distinct approaches (bilateral/plurilateral), and the process for multilateralization at the second stage has not yet been established. Second, because existing US FTAs have several carve-outs to protect sensitive sectors, the U.S. move creates uncertainty regarding its willingness to negotiate without exclusions. Australia for instance had hoped to use the TPP to secure market access concessions in sugar, but so far these hopes have been dashed.⁸ Finally, and as Kolsky Lewis (2011: 49) points out, the U.S. insistence on maintaining the bilateral approach to tariff concessions dulls the appeal of the agreement and makes it harder to convince other East Asian countries to join: “what would arguably exist under the U.S. approach would not be a single unified FTA, but rather a series of spoke-and-wheel bilateral arrangements existing under a veneer of commonality.”

From gold to platinum standard?

The Obama administration has championed a comprehensive agenda for the TPP which it has dubbed a ‘trade agreement for the 21st century.’ This implies further commitments in the issues that have long been a hallmark of U.S. FTAs (labor rights, environmental standards,

⁸ Negotiations over dairy and beef with New Zealand are also expected to be difficult since there is significant domestic resistance in the United States to opening these products.

intellectual protection, and investment); as well as the introduction of a host of new “horizontal areas”: regulatory coherence, small and medium sized enterprises, competitiveness, development, regional integration, and supply chains, plus a new focus on state-owned enterprises. In order to understand the evolving U.S. position on these issues two important factors must be taken into account: a) there is significant internal disagreement among Republicans, Democrats, and interest groups on the specific clauses that should be included, and b) the United States motivation in including many of the new rules derives not only from desire to reform the trade practices of current negotiating parties, but also largely from their potential utility if and when other larger economies join in (China or India). In that sense, China in particular looms large as a “shadow” negotiator.

On labor and environment, there is no consensus yet on whether the United States should go further than the provisions agreed on by a Democratic Congress and then President Bush on May 10, 2007. This internal pact established a higher bar for FTA partners in that they would have to abide by ILO labor standards on collective bargaining, freedom of association, prohibition of forced and child labor, and discrimination in employment; as well as to sign several international environmental agreements. As Barfield (2011: 6) explains, labor unions and House Democrats are pushing for stricter labor standards in the TPP (implementing enforceable ILO labor conventions) but Republicans are likely to oppose this campaign.

There has been significant back and forth in the United States regarding the IP provisions that should be included on the TPP, especially for pharmaceuticals. Most of the discussions center on whether the provisions of the May 10 agreement or of the KORUS FTA should be used in drafting the U.S. proposal. The KORUS FTA is stricter than the May 10 agreement in three main areas: patent linkage (a government will not approve marketing of generic drugs until it verifies no drug patents are infringed); patent term extension (compensation must be paid if there are delays in approving patents) and data exclusivity (time that the patent holder can refrain from sharing drug test data with generic manufacturers). Since the intent of the May 10 agreement was to allow developing countries to produce cheaper generic drugs, patent linkage and patent term extension is optional (but it is mandatory in KORUS), and it relaxed data exclusivity by starting to count the five year withholding period from when patent is first filed (*Inside U.S. Trade*, April 29, 2011). Not surprisingly, generic drug makers in United States want the USTR to use terms of reference of May 10 agreement (*Inside U.S. Trade*, March 21, 2011), but pharmaceutical

companies in particular have lobbied hard for the stricter KORUS rules on IP.⁹ And USTR officials have hinted that they may pursue the more stringent standards in the TPP talks (*Inside U.S. Trade*, Feb 11, 2011).

Regarding investment, the U.S. proposal retains the state-investor dispute settlement mechanism, and charts new territory in the area of indigenous innovation policies. China in particular has used this approach in its government procurement policy (giving preference to locally developed technology –which means that American companies that seek Chinese government contracts must share their technology with Chinese companies) and India has also incorporated it in its telecommunications policy. The aim of the United States, therefore, is to curb the spread of indigenous innovation requirements. Hence, the United States wants language in the investment chapter that would disallow a government requiring a foreign firm from carrying out research and development as a precondition for investment in that country (*Inside U.S. Trade*, March 11, 2011).

In addition, the United States has pressed for the introduction of horizontal issues to tackle non-tariff barriers in unprecedented ways. One major innovation would be the requirement to establish a regulatory coordinating body similar to the U.S. Office of Information and Regulation Affairs (Fergusson and Vaughn, 2011). How much progress can the United States achieve on these issues is as of yet unclear. For starters, some argue that developing countries cannot immediately establish well functioning regulatory coordinating bodies that took decades in the United States to develop (Flynn, cited in *Inside U.S. Trade*, October 2010). Moreover, other TPP negotiating parties are reportedly not very enthusiastic about the new issues in the agenda, had not yet tabled proposals by mid-2011, and attention has focused on whether these issues will be dealt as binding obligations or not (*Inside U.S. Trade*, March 11, 2011). Finally, there is strong pressure from the American business community to tackle what it perceives as discriminatory state capitalism through the TPP talks. In April 2011, six industry associations sent a letter to USTR Kirk requesting binding obligations on SOEs that would curb unfair advantages vis-à-vis private companies. The benefits of these rules would be important not only for dealing with ASEAN economies that have a large state presence (Singapore, Vietnam,

⁹ The concern with China in drafting these rules is evident in the statement by a high level executive at a pharmaceutical company: “If we were to go into TPP and come out with a pharmaceutical IP level of protection that was below what is in KORUS, that would send the message to China that essentially they can wait another 140 years to get their pharmaceutical IP provisions up to where the United States is.” (*Inside U.S. Trade*,

Malaysia, and Brunei), but also China: “Curbing SOE subsidies and practices in the TPP would provide a regional counterweight to China in Asia and would provide a set of policies that could eventually form the basis for negotiations with China bilaterally, regionally, or even in global trade talks” (private sector source cited in *Inside U.S. Trade*, April 29, 2011.)

The United States, therefore, has upgraded its level of ambition in the TPP both by augmenting existing provisions on intellectual property, investment, and possibly labor and the environment; as well as incorporating a host of new negotiation themes to tackle unwieldy non-tariff barriers. This shift in U.S. objectives has been characterized as the adoption of a “platinum standard” (Bergsten and Schott, 2010).

Open regionalism?

As noted before, the strategic payoff of the TPP hinges on membership expansion. Only if other Pacific Rim countries find irresistible the pressure to join these trade negotiations will the United States be able to achieve the twin goals of shifting integration efforts into a high-standard Asia-Pacific platform and reaping significant economic gains. In principle, TPP members have conceived of expansion as proceeding in successive tranches, and expect prospective members to hold bilateral consultations plus a membership-wide exploratory meeting. In practice, however, the potential admission of new members has opened up two difficult questions:

- 1) At what point in the founding negotiations does the door close to new members?

Admitting new members when negotiations are well underway could disrupt talks if essential issues must be negotiated over. On the other hand, however, countries that did not partake in the construction of the TPP architecture may feel less compelled to join as they do not “own” the agreement, and it may not reflect their main interests.

- 2) Can countries impose bilateral preconditions on nations seeking membership? This issue arose for instance when Japan signaled its interest in TPP and American officials expressed concerns about a possible rollback of postal privatization, and a group of 27 senators sent a letter to President Obama urging him to demand from Japan a loosening of sanitary rules on U.S. beef imports as a precondition for endorsing Japan’s participation in TPP (*Inside U.S. Trade*, March 11, 2011). On the other hand, American officials have emphasized that there is no “entrance fee” and that a country’s admission

to the TPP process hinges on its ability to put everything on the table and move quickly on the negotiations (*Inside U.S. Trade*, October 29, 2010). To avoid a politicized admission process, some have advocated the adoption of automatic sign-on provisions for third parties even beyond the APEC membership (Armstrong, 2011), but nothing of this sort has yet been decided. As these early debates underscore, the question of how to “grow” the TPP could likely be a contested one.

As this brief review has highlighted, the United States is shaping in significant ways the substance of these trade negotiations. But will the U.S. finally succeed with TPP in disseminating its model for economic integration? The jury is still out as the agreement is under negotiation and its future expansion is yet unknown. However, it is important to note that some of the most serious handicaps for the U.S. are self-imposed. The next section explores these constraints.

III. Challenges to the U.S. vision for Asia-Pacific Integration

Out of sync with Asia?

Few areas of foreign economic policy are as closely tied to domestic politics as international trade. Tugs of war among competing interest groups, shifts in public opinion, and institutional channels for trade policymaking (including delegation of negotiation authority and ratification mechanisms) all affect a country’s trade negotiation objectives. The past two decades have witnessed increased contestation of trade policy which has resulted in growing domestic constraints on American trade negotiators.

The trend towards greater contestation in trade politics began with the negotiation of NAFTA. As Quiliconi and Wise (2009) point out, the NAFTA agreement triggered a blue-green coalition of labor unions and environmentalists that objected to imports of goods manufactured with cheap labor and a potential “race to the bottom” on environmental protection. The debate on whether these are legitimate trade topics aside, the blue-green coalition has advocated –and obtained- ever stricter standards. In NAFTA, their concerns were met through side agreements, but in subsequent FTA negotiations they demanded the incorporation of labor and environmental standards within the text of the trade agreement. As noted before, in May 2007 the bar was

increased with FTA partners having to agree to observe labor rights endorsed by ILO conventions and sign on to multilateral treaties on the environment. The quest for more demanding labor standards in particular has pitted Democrats against Republicans. The former, attending to the demands of unions, have advocated stricter rules (including the latest round on the TPP); whereas the latter have resisted out of concern that this may weaken right to work legislation in several states (Barfield, 2007).

Likewise, the depth of the WTO rules that the United States is pushing for in its FTAs has grown over time. American trade officials seem to be driven by two main considerations: a) the desire to disseminate from the bottom up cutting-edge rules on trade and investment that can be leveraged into the WTO later on; and b) the need to cultivate a pro-trade constituency among American multinationals and exporters by highlighting the value added of FTAs. Domestic politics, therefore, has resulted in an increasingly loaded U.S. trade agenda, but this raises the question of whether the gold or platinum standards endorsed by the United States can be appealing to potential trade partners. In the case of the TPP, even developed countries such as New Zealand and Australia do not agree with the state-investor dispute settlement process or very strict IP protection, and many developing Asian countries did not find appealing the gold standard, so it is not clear they will like the platinum version any better.

Ratification battles, renegotiations, and U.S. credibility

The United States has a very serious credibility problem due to its cumbersome ratification process for trade deals. Trade promotion authority (TPA)¹⁰ (whereby the Congress gives the executive trade negotiation authority and makes the commitment to bring the agreement to a yes or no vote without amendments) is considered of great importance in speeding up the ratification process, as well as in reassuring prospective trade partners that the U.S. can deliver on a negotiated deal. Nevertheless, even in agreements negotiated under trade promotion authority the U.S. record is not very good. The United States has repeatedly renegotiated trade agreements due to domestic opposition, starting with the incorporation of side agreements on labor and the environment in NAFTA, and most recently changes to the KORUS FTA in December 2010. In order to deflect the opposition from some American car companies

¹⁰ Previously known as fast track authority, and I will use the term TPA to make reference to its earlier versions as well.

and labor unions, the Obama administration secured a slowdown in auto tariff liberalization, easier compliance for American cars with Korean regulations on emissions, and the institution of a special safeguard in cases of import surges in the car market (Schott, 2010).

Equally problematic is the fact that the United States has left agreements on ratification limbo for years (Panama, Korea, and Colombia), and in the case of the latter the American Congress in 2008 revoked the application of the fast track procedure due to concern with the lack of protection for Colombian union leaders. The inability to carry through a prompt ratification process imposes a significant political cost on American FTA counterparts: critics can mobilize against the provisions in the agreement they find harmful, while the potential beneficiaries of the liberalization effort do not see any concrete gains. Moreover, as noted before, trade has become such a fractious issue in the American political system that the ratification of TPA is an elusive goal. Contrast the continuous reauthorization of TPA from 1975 to 1994, with the fact that since then TPA was only authorized between 2002-2007 (with a 215-214 House vote –see Cooper 2011), and in the current climate no one anticipates its renewal any time soon. Hence, in the TPP negotiations, the USTR is complying with the Congressional notification requirements as *if* TPA was in effect, but whether an agreement that touches on important defensive areas (dairy, sugar, textiles) and incorporates regulatory issues in an unprecedented way can survive Congressional-Executive politics absent TPA is an open question.

Conclusions

A flourishing East Asian regionalism has presented the United States with the steep challenge of going beyond “vetoing” integration schemes perceived as inward looking, to proactively engaging the countries in the region to build an Asia-Pacific integration project. The task is complex as the American government must navigate amongst different constraints: the need to reassure East Asian nations that it is willing to accommodate some regional preferences on integration parameters (e.g. signing on to a meeting-heavy process of regional summitry) while at the same time advancing a trade agreement that contains multiple WTO plus commitments to solidify domestic support. And the U.S. does seem poised to advocate in the TPP stiffer regulations on hallmark issues such as IP, as well as a host of new “horizontal” areas that will bring negotiating parties into uncharted territory.

In its dual approach of joining the EAS and the TPP negotiations the United States has finally gained traction in its regional trade diplomacy. But for the United States to realize its political goal of redirecting regionalism towards an Asia-Pacific track and reaping substantial economic gains, the TPP must grow from its current nine members. Member expansion may require watering down the platinum standard,¹¹ but domestically any such loosening could undermine the support coalition for this agreement. This is the crux of the U.S. dilemma, and as this paper has shown growing internal political constraints have worked against the ability of the United States to draft a flexible and credible trade policy.

And so, we seem to have come full circle. The United States has consistently frowned upon integration initiatives that could draw a line in the middle of the Pacific. But we should ask ourselves if the U.S. with its “coalition of the willing approach” might not be drawing a different line, this time between can and cannot do countries. The risks of polarizing a region with such an approach have been flashed by Quiliconi and Wise (2009) in the Latin American case. To be fair, the United States is not the only one setting up preferential trade coalitions. China and Japan have each championed different projects for region-wide integration, and ASEAN has moved quickly to negotiate a string of ASEAN+1 FTAs. The most fundamental point is that competing visions or models can lead to fragmented regionalism,¹² and so the long-term question for the region is whether it will be possible to construct a cohesive architecture for deeper economic integration given that a basic consensus is lacking.

¹¹ I thank Shujiro Urata for this important observation.

¹² For a full-fledged discussion of the consequences of competitive regionalism see Solís, Stallings, and Katada (2009).

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