SIMON J. EVENETT

The WTO after TPP

How Worried Should Asian Governments Be?

ABSTRACT

This paper critically evaluates the contention that the implementation of the Trans-Pacific Partnership would adversely affect the centrality of the World Trade Organization. Not only are many Asian nations members of the WTO, but some undertook major reforms to join. Contrary to much existing literature, it is argued here that governments in the Asia-Pacific region should not be alarmed by the fate of this mega-regional trade deal.

KEYWORDS: mega-FTAs, Trans-Pacific Partnership, World Trade Organization

INTRODUCTION

The trade agreement that Paul Krugman dismissed as "no big deal" may well come to pass.[1] After the US Congress accorded President Barack Obama trade promotion authority, and following five years of negotiation, 12 nations concluded the negotiations for the Trans-Pacific Partnership (TPP) in October 2015.[2] This deal has signatories on both sides of the Pacific, including the important trading nations of Japan and the US. Proponents of the TPP frequently assert that this accord will be "an ambitious, 21st century trade

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1. Paul Krugman, "No Big Deal," *New York Times*, February 27, 2014, <http://www.nytimes.com/2014/02/28/opinion/krugman-no-big-deal.html>. Still, it is worth noting that, at this writing, the US Congress may not approve TPP. It may be an indication of popular distrust of ambitious binding trade deals that both major-party candidates for president in 2016 now oppose the approval of TPP outright or in its current form. Should Congress refuse approval, then the question of the multilateral consequences of TPP is moot. Indeed, the focus would shift to the multilateral fallout from TPP's failure.

2. "Transcript of the Trans-Pacific Partnership Atlanta Ministerial Closing Press Conference," Office of the US Trade Representative, October 5, 2015, <https://ustr.gov/about-us/policy-offices/press-office/speechestranscripts/2015/october/transcript-trans-pacific>.

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agreement" comprising commitments to reform a wide range of policies of interest to the business community that would go beyond existing multilateral trade obligations.[3] Governments in the Asia-Pacific region that are not party to TPP talks may not be so sanguine, fearing exclusion from associated rule-setting or other commercial disadvantage.

The prospect of negotiating—let alone implementing—the TPP accord, one of the so-called mega-regional trading agreements (mega-RTAs) of recent years,[4] has reawakened long-standing concerns among certain analysts for the prospects of the world trade order in the first half of the twenty-first century. That order is said to have underpinned the export-led growth strategies of many nations in the Asia-Pacific region.

Central to the world trade order are the principle of non-discrimination, the legal commitments on a suite of policies affecting various forms of international commerce going beyond trade in manufactured goods, and a binding mechanism for resolving disputes between countries. The contention frequently made is that conclusion of mega-RTAs, such as the TPP, represents a step back from these principles as well as undermining the centrality of the World Trade Organization (WTO).

To observers of the world trading system the prospect of another debate on the relative merits of regionalism and multilateralism—a debate that might well be characterized as often resembling a dialogue of the deaf—is hardly an enticing prospect. So what new light can be shed on the important matter of the potential consequences of a TPP for the world trading system? The approach here is to note the fact that for decades, leading analysts have been making claims, often exaggerated claims, about the travails of the world trading system and its relationship to regionalism, and yet somehow multilateral arrangements among states have survived and arguably thrived (not least with the creation of the WTO in 1995). The purpose of this paper is to critically evaluate the claims made about the likely consequences of the conclusion of the TPP negotiations for the role and relevance of the WTO.

This evaluation of the claims made about the TPP finds that while many may have some theoretical underpinning, their empirical relevance is questionable. The very fact that the details of the TPP were not known when

3. Quotation taken from the website of the US Trade Representative, <http://www.ustr.gov/tpp>.

4. The others are the RTA negotiations between the EU and Japan, the Regional Comprehensive Economic Partnership, and the Transatlantic Trade and Investment Partnership, the latter being negotiated between the EU and the US.

many of these claims were made must give scholars pause. Moreover, many arguments critical of TPP compared an unknown TPP (upon which all sorts of fears were projected) with a far-too-flattering portrait of the WTO. Unbalanced comparisons abound, and now that the impasse of the Doha Round is clear for all to see and other evidence of the numerous deficiencies of the WTO mounts up, putting it on a pedestal is no longer warranted.[5] Perhaps it would be more accurate to acknowledge that the comparison is between two imperfect alternatives.

There is, however, a more fundamental objection to much of the literature on the relationship between the mega-RTAs and the WTO. If research on international economic institutions is to lead to anything other than speculative claims, then it ought to be grounded as much as possible on what has happened in the past. What facts, then, are germane to this discussion? The concerns at present relate to so-called mega-RTAs, those accords involving enough signatories that an unusually large proportion of global economic activity is covered by them.

It could be argued, though surely the parallels are not exact, that the world trading system has accommodated and reacted to large regional groupings in the past, not the least of which were the creation and expansion of the European Economic Community (EEC) and the negotiation of the North American Free Trade Agreement (NAFTA). What can be learned from examining the manner in which the world trading order evolved after these two large groupings came into effect? Evidently, inter-state negotiating arrangements on commercial policy survived these two developments, and with the conclusion of the Uruguay Round, those arrangements were widened and deepened. That observation should not bias findings toward mega-RTAs. For, as noted, the parallels with current circumstances may not be

5. That the WTO has been put on a pedestal by leading international trade researchers is without doubt. Just three years after the WTO's creation, John Jackson was to write: "It seems increasingly clear that the WTO, although still very young, is becoming one of the most significant multilateral international organisations in existence, and perhaps the *most* significant for economic affairs" (p. 110, emphasis in the original). Not to be outdone, leading economists have lauded the WTO as well. Bagwell and Staiger state in a survey article on the WTO: "the GATT/WTO is widely acknowledged to be one of the most successful international institutions ever created" (p. 224). If this is the mindset, what chance does regionalism have? John H. Jackson, "The World Trade Organization: Constitution and Jurisprudence," Royal Institute of International Affairs, 1998; Kyle Bagwell and Robert Staiger, "The WTO: Theory and Practice," Working Paper 2009–11, World Trade Organization, <https://www.wto.org/english/res_e/reser_e/ersd200911_e.pdf>.

entirely compelling, and more important, the reasons why the multilateral trade system was able to accommodate the mega-RTAs of old may no longer be relevant. Still, one goal of this paper is to highlight the decades-long interrelationship between mega-regionalism and the multilateral trading system.

While the focus here is principally on the potential economic consequences of the implementation of TPP for the world trade order and the lessons of the historical record, it cannot be denied that foreign policy considerations have played their part as well, not least since TPP is seen as the economic leg of the "pivot to Asia" announced by President Obama in 2011.[6] Some might rightly argue that the connections between US trade policy (in particular) and foreign policy and national security imperatives predate the negotiation of the TPP.[7] Moreover, to the extent that the TPP is—or is perceived to be—part of a US attempt to limit or contain the growth of Chinese influence in the Asia-Pacific region, there may be geopolitical consequences of the TPP that are distinct from the impact on the WTO. Therefore, TPP's implementation is not only an economic matter, nor is it one that implicates only a single international organization, the WTO.

The remainder of this paper is organized into five sections. To set the scene, as well to remind readers that although the term "mega-RTAs" is relatively new, the phenomenon is not, some prominent claims made in the early 1990s about the future of the General Agreement on Tariffs and Trade (GATT) are recounted in Section Two. Following that, contemporary claims concerning the impact of a TPP on the WTO are summarized. In Section Four, a critical evaluation of those claims is undertaken. Turning away from this unsatisfactory contemporary literature, the argument then proceeds by examining how the multilateral trading system accommodated previous

6. Deborah Elms, "The Origins and Evolution of TPP Trade Negotiations," in *Trade Regionalism in the Asia-Pacific: Developments and Future Challenges*, ed. Sanchita Basu Das and Masahiro Kawai (Singapore: ISEAS, 2016).

7. For example, the national security dimension of the earlier US trade policy of "competitive liberalization" was discussed in Richard Higgott, "American Unilateralism, Foreign Economic Policy, and the 'Securitisation' of Globalisation," Working Paper no. 124/03, Centre for the Study of Globalisation and Regionalisation, University of Warwick, September 2013; Nicola Philipps, "The Limits of 'Securitization': Power, Politics and Process in US Foreign Economic Policy," *Government and Opposition* 42 (2007), pp. 158–189; Simon J. Evenett and Michael Meier, "An Interim Assessment of the US Trade Policy of 'Competitive Liberalization'," *World Economy* 31, no. 1 (January 2008), pp. 31–66.

mega-RTAs, namely the EEC and NAFTA. That examination can be found in Section Five of the paper and is followed by some tentative concluding remarks in Section Six.

"GATT IS DEAD"

Veterans of international trade policy bear the scars of debates over the relative merits of regionalism versus multilateralism.[8] For present purposes it is interesting to note that several of the themes advanced today have been said before to threaten inter-state commercial arrangements. In a speech to the World Economic Forum in January 1989, the economist Lester Thurow created a stir (and a number of newspaper headlines) by claiming that the GATT was dead. Why? Later in an article, Thurow spelled out his reasons. First was a move toward a multipolar world:

> Since 1945 the world has been moving slowly but persistently toward an ever more open, integrated world economy. The very success of this trend, however, has undermined its continuation and led to an important shift in power: A single polar world economy centered around the United States has been replaced with a multipolar economic world in which Europe, Japan and the United States are peers. But many of the current institutions and practices will not work in a multipolar world.[9]

Then, it was claimed, the new players would not be able to come to an agreement on rules that were relevant to business:

> To make an open, integrated multipolar world work, the United States, Germany, and Japan would have to tightly coordinate their monetary and fiscal policies. Each would also have to believe it had an equal chance to win—a level playing field. This would mean harmonizing tax and regulatory policies and broadly similar operations for households and businesses. But no country is prepared to make the necessary changes or yield economic sovereignty.[10]

8. Given the strident nature of a number of the contributions to this debate, evoking military metaphors seems appropriate. However, for a dispassionate recent survey of the theoretical literature on RTAs, see Giovanni Maggi, "International Trade Agreements," Working Paper 1417, Cowles Foundation, Yale University, 2014, section 4.

9. Lester Thurow, "GATT Is Dead; the World Economy as We Know It Is Coming to an End, Taking the General Agreements on Tariffs and Trade with It," *Journal of Accountancy* 170, no. 3 (September 1990), p. 36.

10. Ibid.

The GATT's demise was to be accelerated by the creation of a mega-RTA, namely, the EEC, not only because it represented a deviation from the established GATT principle of non-discrimination, but also because the creation of a single market among EEC members would disadvantage foreign firms. Thurow argues:

> The integration of the European community on December 31, 1992 will be the event that visibly destroys the post-World War II GATT era, but it should be seen as a precipitating, not a causal event. It will make visible and speed up what would have occurred anyway. While common markets are permitted under GATT rules, they fundamentally violate the spirit of the GATT. . . . More fundamentally, the EC is also going to become more restrictive to outsiders.[11]

At the end of his article, having argued that the world economy will fragment into regional trading blocs that each attempt to manage trade, Thurow makes the following statement about the prospects for the world trading system as it then was: "Diplomatically GATT's corpse will be propped up. No one will officially admit that the post-World War II economic era is over. But GATT cannot be resurrected."[12]

As this example shows, themes that are frequently referred to today—such as shifts in economic power among nations, the rise of mega-RTAs, departures from long-established principles of non-discrimination in national trade relations, and the potential for fragmentation of world markets into blocs—have been highlighted before. *Plus ça change, plus c'est la même chose.*

In particular, stark claims about the dismal prospects of the multilateral trading system have been made before, and their accuracy is debatable. In which case, the focus of analysis might shift to the elements of inter-state commercial practices that have endured and accommodated the rise of mega-RTAs and multipolarity. The robustness of these elements is arguably of interest. Furthermore, given that the signing of the Uruguay Round accords took place after Thurow made his comments, evidently all of the major players found enough common ground. The incentives for major trading nations to engage in multilateral trade talks when others have formed RTAs is a matter taken up again in section 5 of this paper.

11. Ibid., p. 38.
12. Ibid., p. 39.

THE IMPLICATIONS OF TPP FOR THE WTO: A SUMMARY OF THE CLAIMS MADE

Perhaps no other prominent economist has critiqued the TPP's *systemic* implications more than Jagdish Bhagwati.[13] Bhagwati's arguments draw upon literally decades of research on his part on the consequences of RTAs, often with his co-author Arvind Panagariya.[14] Bhagwati's critique of TPP is multifaceted, with some arguments relating specifically to TPP and others that could be applied to other RTAs.

The first element is his critique is that TPP will introduce further discrimination into the world trading system, representing a departure, even if a WTO-legal one, from the most favored nation (MFN) principle. Thus, Bhagwati argues, "It is widely understood today that free-trade agreements (FTAs), whether bilateral or plurilateral (among more than two countries but fewer than all) are built on discrimination."[15]

Should the TPP result in trade barriers that are lower between its members than between members and nonmembers, then, to the extent that prices influence consumer purchasing decisions within the TPP, buyers there may switch from suppliers outside the TPP to those inside the TPP. Exports from nonmembers would, therefore, fall. Such logic appears to be supported by simulations conducted by Petri and Plummer as to the effects of the implementation of a 13-nation-strong[16] TPP on the total exports of a large number

13. The emphasis here on the systemic implications is distinct from the possibility that TPP may include elements that are not in certain signatories' direct commercial interest. Bhagwati, for one, is concerned that the intellectual property (IP) rights provisions of a possible TPP would reduce economic welfare. He is quoted as saying in an interview, "You will have these lobbyists come and say that you have to have 'WTO Plus' kinds of copyright protection. Now, every economist and trade lawyer knows there is an optimum: you can have too much in the way of IP controls, or too little, or something in between. But those who lobby for IP want it at a maximum level. So they call it 'WTO Plus' which sounds wonderfully benign." "An Exclusive Interview with the World's Leading Trade Scholar, Jagdish Bhagwati," Council on Foreign Relations, 2012, <http://www.cfr.org/trade/exclusive-interview-worlds-leading-trade-scholar-jagdish-bhagwati/p29600>.

14. Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade* (New York: Oxford University Press, 2008); Jagdish Bhagwati and Arvind Panagariya (eds.), *The Economics of Preferential Trade Agreements* (Washington, DC: American Enterprise Institute, 1996).

15. Jagdish Bhagwati, "America's Threat to Trans-Pacific Trade," *Project Syndicate*, December 30, 2011.

16. Petri and Plummer's simulations include Korea as a member of TPP. At the time of writing, Korea had not joined the TPP negotiations. For a discussion of the pros and cons of Korea's doing so, see Jeffery J. Schott and Cathleen Cimino, "Should Korea Join the Trans-Pacific Partnership?" Policy brief, Peterson Institute for International Economics, Washington, DC, 2014.

TABLE 1. The Impact of TPP's Implementation on Asia-Pacific Nonmembers' Exports and Foreign Direct Investment Inflows in 2030

	Simulated change in exports from baseline estimated for 2030 in absence of TPP		*Simulated change in inflows of foreign direct investment from baseline estimated for 2030 in absence of TPP*	
Nonmember	*Billions of US dollars (2015)*	%	*Billions of US dollars (2015)*	%
China	9	0.2	19	0.2
Hong Kong	4	1.0	8	0.3
Indonesia	–4	1.0	5	0.8
Philippines	–1	–0.4	1	0.5
Thailand	–9	–1.6	1	0.2
South Korea	–1	–1.0	1	0.2
India	1	0.1	1	0.1

SOURCE: Peter A. Petri and Michael G. Plummer, "The Economic Effects of the Trans-Pacific Partnership: New Estimates," Working Paper 16-2, Peterson Institute for International Economics, Washington, DC, 2016, table 3.

of nations, including signatories and non-signatories.[17] Table 1 was assembled from Petri and Plummer's latest results; it reports estimated effects in the year 2030 on the exports and foreign direct investment inflows of selected Asian economies that are not parties to TPP. It would seem that there is little to be concerned about.[18]

The preferences created by TPP would require the parallel introduction of rules of origin, which add to the costs of exporting and further augment the set of rules created by the spread of RTAs. That spread of RTAs, in the opinion of Bhagwati and others, has reached levels such that the associated multiplicity of overlapping rules is itself a cause for concern. This is in contrast to multilateral trade liberalization, unilateral trade reform that adheres strictly to the MFN principle, and the creation of customs unions, which involve tariff reductions and do not require the introduction of rules of

17. Peter A. Petri and Michael G. Plummer, "The Economic Effects of the Trans-Pacific Partnership: New Estimates," Working Paper 16–2, Peterson Institute for International Economics, Washington, DC, 2016.

18. These estimates were prepared on the assumption that 20% of the non-tariff barrier reductions are implemented by TPP members in such a way as to benefit non-members. In earlier analyses Petri and Plummer did not make this assumption, and the estimated export impact on Asian nonmembers was adverse but tiny in percentage terms.

origin. Like many commentators, Bhagwati expresses a preference for the multilateral and unilateral alternatives to tariff reform. From this view, RTAs are bad public policy. Bhagwati had this to say about free traders who support the TPP: "The free traders who are passionate supporters of these FTAs are undermining everything that we have worked for to produce and strengthen a non-discriminatory trading system. There is no better example of folly wrought by good intentions."[19]

The second element of the critique of TPP is that its implementation would lead to the further fragmentation of global markets. Some of the provisions thought to be part of a possible TPP are likely to discourage certain nations from seeking to join this potential mega-RTA. In this regard, Bhagwati argues:

> The US has been establishing a template for its PTAs [preferential trade agreements] that includes several items unrelated to trade. So it is no surprise that the TPP template includes numerous agendas unrelated to trade, such as labor standards and restraints on the use of capital-account controls, many of which preclude China's accession."[20]

Later, Bhagwati predicted, "If accepting these demands remains a precondition for joining the TPP, it is a safe bet that the partnership will fragment Asia into TPP, China, and India. That is hardly desirable."[21]

Given that some proponents of TPP have argued that the provisions of that accord—or variants thereof—could be adopted subsequently at the WTO, the successful negotiation of the TPP may have implications for the future course of the WTO's negotiating function.[22] On the basis of previous deliberations at the WTO, Bhagwati for one deems this unlikely, arguing, "Attempts to incorporate such demands have met with resistance at the WTO by influential and democratic countries, such as Brazil and India."[23]

19. Bhagwati, "Exclusive Interview."

20. Bhagwati, "America's Threat." A preferential trade agreement, sometimes referred to as a regional trade agreement or free trade agreement, is an agreement between jurisdictions that can control the flow of goods across their borders to abolish for the most part the tariffs on imports flowing between them.

21. Jagdish Bhagwati, "Dawn of a New System," *IMF Finance & Development*, December 2013.

22. This is an application of the stepping-stone argument, which contends that RTAs can act as a springboard for future binding multilateral obligations to the TPP.

23. Bhagwati, "Dawn of a New System."

Winters concurs that TPP has the potential to further fragment the global trading system, arguing:

> Once the members of TPP have accepted these norms, they will naturally press, along with the US, for other countries to adopt them. If the TPP is signed—as the proponents hope will occur this year—it will become very hard for countries to sign agreements with the members that do not go so far. If China, India or Brazil felt that these disciplines were too arduous or just did not fit, the world trading system would be effectively be split with arguably the most dynamic areas excluded. And given that the TPP would be attractive to smaller economies and that the latter would probably be offered quite accommodating terms, the split would probably deepen rather than the opposite.[24]

A third line of criticism indirectly implicates the WTO's negotiation function by arguing that there are certain trade policy matters that cannot be effectively tackled in RTAs, including the TPP. In this regard, Bhagwati argues:

> For example, to liberalise agricultural trade, both production subsidies and export subsidies need to be eliminated. The Hong Kong Declaration in 2005 set out an agreement to abolish export subsidies. But to get rid of production subsidies a multilateral agreement (through the Doha Round), and not a bilateral one, is absolutely critical. This is because unlike with export subsidies, it is technically impossible to reduce or relax a production subsidy so that it applies bilaterally to only one country. Under a regional agreement like the TPP, this problem is only slightly reduced, because there are still not enough countries to effectively reduce production subsidies.[25]

Such arguments imply that there would still be a role for the WTO's negotiating function should the TPP be implemented.

The fourth line of criticism of TPP implicates the WTO Dispute Settlement Understanding (DSU), with the implementation of the former said to diminish the centrality of the latter. Here Bhagwati makes the following arguments:

24. L. Alan Winters, "The EC and World Protectionism: Dimensions of the Political Economy," Discussion Paper 897, Centre for Economic Policy Research, London, February 2014.

25. Jagdish Bhagwati, "Why the TPP is Undermining the Doha Round," *East Asia Forum*, January 14, 2013.

> What bothers me is that we have an incredibly successful dispute settlement mechanism at the WTO, which is a multilateral institution. It is the envy of the world. No other institution has that kind of clout—where you can punish, and hold countries' feet to the fire. But once you get these regional agreements like the TPP and bilateral agreements, you automatically see more and more dispute settlements and more so-called arbitration occurring within those groups alone. That means the bigger power will be having more say about what comes out of them. And that will in turn, eventually undermine the WTO dispute settlement process . . .
>
> So, if there is a dispute with New Zealand in future, arbitration or dispute settlement mechanisms will have already started developing where New Zealand doesn't have the same sort of clout vis-à-vis the United States, you see. That will influence the outcome. The rights of not just New Zealand are likely to be undermined. One of the things I'm saying is that as we undermine the WTO multilateral trade system, we are also likely to undermine the WTO dispute settlement system. Those of us who are smaller powers have to ensure that the WTO dispute system remains paramount. But unless we understand these complexities, we are going to miss the bus.[26]

As to how the WTO might respond to the signing of TPP, interestingly, Bhagwati and former WTO head Pascal Lamy offer different approaches. Bhagwati takes a defensive approach, arguing that steps must be taken to protect multilateral rule-making (which implicates the WTO's negotiation function) and the DSU, which, as shown below, implies an advocacy role for the WTO's director-general. Specifically, he observes:

> But economic policymaking has to be an exercise in the theory of second best. Given that bilateral and—especially—big regional agreements are emerging, what should be the role of new WTO Director General Roberto Azevedo? I suggest that it must be to ensure that, with the multinational trade negotiations leg practically broken, damage to the other two legs—rule making and dispute settlement—be avoided. Azevedo must exhort the leadership of the TPP and TTIP [Transatlantic Trade and Investment Partnership] to make rules and manage dispute settlement in these regional arrangements in a way that reflects lessons learned at the multilateral level. Rule making must not be exclusive to these forums. It must not exclude those that are not members of the regional arrangements on the pretext that the U.S. lobbies know what is

26. Bhagwati, "Exclusive Interview."

> best for everyone. Similarly, dispute settlement in bilateral or regional forums must allow the views of nonmembers who belong to the WTO to be heard.[27]

Lamy, in contrast, envisages a more-active role for WTO members acting collectively and individually, including developing international obligations that are not binding ("soft law") on RTA practices, extending RTA preferences to nonmembers, and, to limit divergence between multilateral and regional trade rules, reviving the WTO's work program on behind-the-border policies that implicate international commerce.[28] While different, Bhagwati's and Lamy's approaches are not inconsistent. Still, neither took a position on the likelihood of their proposals' being adopted and the factors that may facilitate or impede adoption.

The purpose of this section has been to describe the likely adverse consequences of the TPP for the world trading system, as put forward by critics of that accord, and to summarize suggestions for the future role of the WTO should a TPP come into effect. While an evaluation of these claims will have to wait until the next section, what is worth noting now are the similarities between some of the systemic concerns raised by Thurow about the EEC's single-market program (discrimination, fragmentation of global markets) and those raised by critics of the TPP. When it comes to the implications for the future role of the WTO, none of the positions considered here are as pessimistic as Thurow's was about the GATT. Implied, then, is an evolution of the WTO's role should TPP be implemented.

A CRITICAL EVALUATION OF CLAIMS CONCERNING THE SYSTEMIC IMPLICATIONS OF A TPP

How many of the critical statements made concerning the systemic implications of the TPP stand up to scrutiny? What underlying flaws do any deficiencies in those statements reveal about the approaches to analyzing these matters? The purpose of this section is to answer these questions.

It may be useful to approach this question by first considering what objective criteria could be employed in assessing these claims. Surely it is worth identifying what the preconditions are for TPP to have an adverse

27. Bhagwati, "Dawn of a New System."

28. "Lamy Says Trade Pacts Pose New Challenge to the Multilateral Trading System," World Trade Organization, <https://www.wto.org/english/news_e/sppl_e/sppl202_e.htm>.

systemic effect and then check whether those preconditions are, in fact, in place. Then, even if an adverse effect is likely, how large is that adverse effect, in absolute terms and relative to some intelligent benchmark? Should an adverse effect exist, are there any other factors at work that might worsen or reduce, even possibly eliminate, the effect? These questions could be asked of each major element of the TPP.

With respect to the potential for discrimination, it cannot be denied that even though some potential TPP signatories (such as Japan and the US) have approximately half of their tariff lines bound at zero import duties under their WTO obligations, the implementation of the TPP would likely result in some tariffs being cut to zero, creating preference margins. The number of such margins created would be reduced by exceptions to tariff reform that are negotiated by parties to the TPP. Still, a precondition for creating asymmetric treatment among WTO members is likely to be met.

Turning, then, to the empirical significance of the tariff discrimination created by a TPP, a problem arises. The number of preference margins that TPP generates cannot be known until the tariff schedules are published, rendering the remaining steps in the argument speculative. Proper account would have to be taken of the likely utilization of those tariff preferences. Conjectures would have to be made about the future course of the MFN tariffs of the TPP signatories and of the likelihood that the latter will sign subsequent FTAs. This must call into question any estimates of the likely distortion of trade flows created by a TPP.

Worse, even for the estimates that do exist, such as those reported by Petri and Plummer,[29] the scale of the trade distortion needs to be interpreted carefully. Are these estimates significant? Compared to what? If Petri and Plummer are to be believed, by 2030, as a result of TPP, Thailand's exports are expected to be US$ 9 billion lower than they would otherwise be. However, in relative terms this represents a 1.6% loss in exports. Whether this is a lot or a little may depend on the impact of other factors likely to affect Thai exports. It may be the case that this estimated export loss is a tiny fraction, say, of the changes in Thai exports caused by other factors, such as exchange rate changes or the expected growth of the world economy. Of course, one could try to defend the argument that any loss should be avoided, but the magnitude of expected losses ought to influence national trade policy

29. Petri and Plummer, "Economic Effects," table 3.

priorities. Arguments about the relative magnitude of the likely harm done by a TPP's tariff-related discrimination may have even less force when applied to national income. Petri and Plummer estimate that by 2030 China's GDP will be 0.1% lower than expectations.[30] How does that compare to the total expected increase in GDP over the next 14 years?

Since the concern is with TPP's systemic impact, it would be reasonable to add up all of the potential adverse export effects of a TPP on nonmembers. According to Petri and Plummer's study, by 2030 the export gains of nonmembers are expected to total US$ 81 billion. By that year, however, these nonmembers are expected to export over US$ 27 trillion in total, again raising questions as to the relative importance of the distortion of overall trade patterns created by a TPP. In sum, the preconditions for TPP creating tariff asymmetries across WTO members are almost certainly present. However, what remains to be established is whether the harm done by the tariff preferences of TPP is significant in any meaningful sense.

Matters are worse when it comes to potential discrimination created by TPP provisions on investment and domestic regulations. Leaving aside the serious problems with data availability, here the concerns go to whether the preconditions for discrimination are present in the first place. In principle, TPP could result in the regulatory treatment of signatories' commercial interests being better than for non-signatories. However, in a particular area of regulation a TPP signatory may decide to extend any changes in regulatory treatment to all of its trading partners, whether or not they have signed the TPP, so as to avoid the costs of operating a regulatory regime with two treatment standards. In short, any assumption that a TPP will definitely create asymmetries of regulatory treatment would seem unwarranted. This matter would need to be checked for each regulation covered by TPP and where TPP membership actually induces a change in a regulation's implementation.[31]

In sum, given that improving national business environments through regulatory and other reforms of economic law is said to be a key objective

30. Ibid., table 2.

31. TPP may introduce forms of discrimination that its critics have overlooked. Given that regulators also choose where they can allocate enforcement budgets, it would also be important to check whether implementation of the TPP shifts enforcement away from signatories to non-signatories. Vinod Aggarwal and Simon J. Evenett, "An Open Door? TTIP and Accession by Third Countries," in *The TTIP in a Multipolar World: Global Impact of an Evolving Transatlantic Relationship,* ed. J-F Morin, T. Novotna, F. Ponjaert, and M. Telò (Farnham: Ashgate, 2015).

for a TPP, the paucity of data on most regulators' activities and on the implementation of RTA provisions, plus the lack or infrequent use of tools to detect discrimination in enforcement practice, call into question sweeping assessment of the discriminatory harm done by a TPP. This is not to say that TPP's provisions relating to regulation have not generated discrimination, but rather that analysts' conjectures have often gotten ahead of the underlying empirical base.[32]

In assessing the concerns that a TPP will fragment the global economy, the critics have identified a potential source of concern, namely, that nonmembers may decide not to join a TPP or sign up to TPP-like provisions in a subsequently negotiated WTO accord. Such statements make assumptions about the likely future offensive interests and negotiating strategy of the TPP signatories and the negotiating positions of TPP non-members, and the factors responsible for those positions. In some regulatory areas (e.g. labor standards) it may make sense to hold these assumptions with greater confidence than in others (such as automobile safety.) So long as little is known about the evidence supporting these assumptions, the fears expressed here about the TPP are speculative.

In contrast, what is known is that mega-RTAs, such as NAFTA, have included provisions that were adopted in other RTAs; however, to be fair, this does not imply that any of the TPP's provisions must spread in this fashion.[33] Still, such spread would reduce fragmentation. Another option, identified by Aggarwal and Evenett in the context of the TTIP but of potential relevance to TPP too, is that a nonmember may decide to implement a regulatory provision of a mega-RTA unilaterally, without joining that RTA. If the inclusion of a regulatory provision in TPP provides a seal of approval, then other governments may adopt the associated regulatory practices faster than if TPP had not occurred.[34] Much more needs to be known about the relationship, if any, between the diffusion of regulatory changes and mega-RTAs. It is not evident that deals such as TPP must be a force for the fragmentation of regulatory policies in the world economy.

32. Simon J. Evenett and Robert M. Stern, *Systemic Implications of Transatlantic Regulatory Cooperation and Competition* (Hong Kong: World Scientific, 2013).

33. Richard E. Baldwin, Simon J. Evenett, and Patrick Low, "Beyond Tariffs: Multilateralising Deeper RTA Commitments," in *Multilateralising Regionalism: Challenges for the Global Trading System*, ed. Richard Baldwin and Patrick Low (Cambridge, MA: Cambridge University Press, 2009).

34. Aggarwal and Evenett, "An Open Door?"

The concern that a TPP will diminish the WTO's Dispute Settlement Understanding appears to be based on an unflattering comparison between fears about what the dispute settlement provisions of the former could be and the value of maintaining the centrality of the latter. Nothing that follows here champions whatever dispute settlement procedures are adopted in a TPP (and note that those procedures may differ across areas of policy). Rather, the purpose here is to highlight some of the imperfections of the WTO DSU, thereby suggesting that the comparison is not between an imperfect TPP procedure and a flawless WTO alternative.

Curiously, resort to the DSU has been less frequent in the WTO's second 10 years of life than in its first decade.[35] Was that due to pent-up demand at the beginning of the WTO or disillusionment with the commercial results of the DSU? Could collective self-indulgence of WTO violations account for the fall-off in the number of cases brought? As Low argues, such self-indulgence was a feature of the GATT dispute settlement procedures.[36] More recently, Evenett has argued that a "glass house syndrome" could account for the seemingly low number of DSU cases in the years since the onset of the global economic crisis.[37] Perhaps the fact that winning a DSU case does not guarantee withdrawal of the offending measure by the defendant has discouraged use? Even when withdrawal occurs, the fact that DSU cases take time to come to a binding conclusion and that no compensation is paid may not generate enough disincentive to break WTO rules in the first place.

In sum, the WTO's DSU is far from perfect. Indeed, it may be so imperfect that there could be circumstances where the implementation of TPP results in cases being brought to that accord's dispute settlement procedures that would not been brought to Geneva. Of course, one response is to argue that energies should be devoted to improving the WTO's DSU, but the very fact that this option is put forward speaks to another problem with the WTO, namely its broken negotiating function. Imperfection may beget imperfection.

35. James Davis and Simon J. Evenett, "Global Trade and Systemic Crisis: Do Existing Theories Explain Contemporary Trade Policies?" Paper prepared for the 55th Annual Convention of the International Studies Association, Toronto, March 26–29, 2014.

36. Patrick Low, *Trading Free: The GATT and US Trade Policy* (New York: Twentieth Century Fund, 2013).

37. Recall the expression, "People who live in glass houses shouldn't throw stones." Simon J. Evenett, "Did WTO Rules Restrain Protectionism during the Recent Systemic Crisis?" in *The World Economy after the Global Crisis: A New Economic Order for the 21st Century,* ed. Barry Eichengreen and Bokyeong Park (Singapore: World Scientific, 2012).

The tendency to put the WTO on a pedestal in analyses of RTAs ought to be challenged as well. RTAs, such as a possible TPP, are criticized for introducing discrimination into the world trading system, but there are numerous features of existing WTO accords that do the same. For example, WTO rules permit the granting of tariff preferences to selected groups of developing countries under schemes known as the Generalized System of Preferences. Such preference schemes often exclude middle-income developing countries, thereby discriminating against them. Likewise, the plurilateral Agreement on Government Procurement (GPA) contains a form of conditional MFN treatment that departs from full non-discrimination.[38] The example of the GPA is of contemporary relevance now that the Doha Round has reached an impasse, as it is often held up as a desirable alternative to the "single undertaking" approaches to negotiation.[39] Put another way, should the WTO membership start negotiating more GPA-like plurilaterals with conditional MFN, is this any better than the preferences negotiated in mega-RTAs?

Certain features of the WTO system currently generate different sets of rules for different countries. Indeed, the fragmentation that mega-RTAs are said to generate is not very different from the many "special and differential treatment" provisions in the Uruguay Round accords. Different regimes exist for different types of countries, such as the treatment of least developed countries in the WTO rules on subsidies, and those regimes vary across policy domains. Furthermore, the WTO accession process, which is so skewed *against* applicants, has generated a subset of the WTO membership that is subject to stricter rules than members admitted earlier.[40] This form of fragmentation increases with every new member admitted to the WTO, a group that now includes two members of the BRICs. The mental image of a pure WTO where all members are subject to the same rules, as contrasted with the crockery-breaking fragmentation created by mega-RTAs, is misleading.

38. Bernard M. Hoekman and Michel M. Kostecki, *The Political Economy of the World Trading System*, 2nd ed. (Oxford: Oxford University Press, 2001).

39. Patrick Low, "Depth and Breadth in the WTO: Can We Square the Circle?" in Simon J. Evenett and Alejandro Jara, *Building on Bali: A Work Programme for the WTO* (London: CEPR Press, 2013).

40. Simon J. Evenett and Carlos Primo Braga, "WTO Accessions," in *The Princeton Encyclopaedia of World Economy,* ed. Kenneth A. Reinert, Ramkishen S. Rajan, Amy Jocelyn Glass, and Lewis S. Davis (Princeton, NJ: Princeton University Press, 2009).

It is also worth recalling that the Tokyo Round accords extended the differential treatment of GATT members to a number of new policy domains.[41] Some, not all, of that fragmentation was eliminated with the strong form of single-undertaking adopted in the Uruguay Round.[42] Interestingly, the reintroduction of differentiation between a large number of different groups of WTO members was a feature of the Doha Round negotiations. Over time, then, the multilateral trade pendulum appears to swing to and from fragmentation.[43] In sum, the GATT/WTO system has been a source of fragmentation of trade rule making, just like mega-RTAs. This is not to imply any other form of equivalence as far as fragmentation is concerned. Still, these observations ought to encourage analysts to rethink how fragmentation arguments are used to compare different trading arrangements.

In this section a number of weaknesses in the assessments of the systemic implications of a TPP were identified. Ultimately, the degree to which many of these assessments are detached from evidence, whether contemporary or historical, is a source of disquiet. A better approach is needed to assess the impact of mega-RTAs on the multilateral trading system.

MULTILATERALISM AND MEGA-REGIONAL RTAS: HISTORICAL INTERPLAY

While the term "mega-regional RTA" is of recent vintage, the notion of the multilateral trading system having to accommodate an RTA involving a large fraction of world trade is hardly new. That experience ought to inform how governments in the Asia-Pacific might view the likely effect of TPP on the WTO. To examine this matter, I draw from leading histories and analyses of the multilateral trading system, thereby highlighting that the developments described below are not a particular reading of GATT history. What is striking is the difference between the elevated claims made in the contemporary debate and the more restrained historical accounts.

41. Low, *Trading Free*.

42. That included the aspiration that each GATT member would sign up to the same rules and that, as far as the Uruguay Round negotiations were concerned, "nothing was agreed until everything was agreed." In contrast, the single undertaking in the Doha Round was taken to include only the latter of the two conditions, and therefore is a weaker animal.

43. This is a factual observation and not an endorsement of differentiation. Rather, whether discussing RTAs or the WTO, differentiation appears to be a fact of life.

The starting point of this summary of the historical literature is the creation of the GATT itself. In a blow-by-blow account of the negotiations between the US and the UK in the early 1940s over the postwar trading regime, Irwin et al. demonstrate how each protagonist's attitude toward multilateral trade reform was influenced by existing trade preferences;[44] specifically, the UK's system of "imperial preferences," the benefits of which it wanted to preserve, and a secretly negotiated FTA between the US and Canada, which Chase has documented.[45] That neither this FTA nor the Havana Conference provisions on RTAs were ratified does not detract from the fact that trade preferences influenced the creation of the GATT.

The creation of the first postwar mega-regional, the EEC, is given prominent billing in GATT histories for providing a major impetus for the launch of the Dillon, Kennedy, and Tokyo Rounds.[46] Hoekman and Kostecki summarize these histories as follows: "In practice, regional integration (in particular by the EU) has been a recurrent reason for multilateral trade negotiations under GATT auspices."[47] The subsequent lowering of tariffs during these rounds had the deliberate effect of reducing the magnitude of intra-EEC trade preferences.

Another means by which mega-regional trade deals are said to influence the multilateral trading system in practice is through altering the "outside options" of key players in multilateral trade negotiations, not only shifting the distribution of benefits toward players that can credibly "walk away" from a such a negotiation but also inducing closure of the negotiation in the first

44. Douglas A. Irwin, Petros Mavroidis, and Alan O. Sykes, *The Genesis of the GATT* (Cambridge: Cambridge University Press, 2008).

45. Kerry A. Chase, "Multilateralism Compromised: The Mysterious Origins of GATT Article XXIV," *World Trade Review* 5 (2006), pp. 1–30.

46. Odell and Eichengreen provide another historical example that is a variant on the same theme. Namely, they argue (and cite others too) that the US used the conclusion of negotiations for a free trade agreement with Canada in 1986 to signal to other GATT members that it was prepared to disengage from the GATT system unless a new round of multilateral trade negotiations was launched. At the time, the US was facing much opposition to the launch of what was to become the Uruguay Round. John Odell and Barry Eichengreen, "The United States, the ITO, and the WTO: Exit Options, Agent Slack, and Presidential Leadership," in *The WTO as an International Organization,* ed. Anne O. Krueger, chapter 6 (Chicago: University of Chicago Press, 1998); see also G. Patterson, *Discrimination in International Trade: The Policy Issues, 1945–1965* (Princeton, NJ: Princeton University Press, 1966); Ernest H. Preeg, *Traders and Diplomats* (Washington, DC: Brookings Institution, 1970); Ernest H. Preeg, *Traders in a Brave New World: The Uruguay Round and the Future of the International Trading System* (Chicago: University of Chicago Press, 1995).

47. Hoekman and Kostecki, *Political Economy*, p. 363.

place. The leading example relates to the closure of the Uruguay Round and the argument made by many US analysts that this was facilitated by the US signing of NAFTA and raising the possibility of future trade reform in the context of APEC, the Asia-Pacific Economic Cooperation, whose stature Washington deliberately raised.[48] Here it is argued that the prospect of US disengagement induced European governments to make concessions on agricultural trade policy, a sticking point in the Uruguay Round negotiations.[49] More generally, the practice of playing off regional trade options against progress in the multilateral track is one central feature of the logic of competitive liberalization, an approach that has been openly advocated by some for almost 20 years.

In drawing out the implications of this historical record for governments in the Asia-Pacific region, it is worth noting that, as ever, history can be contested. Still, an attempt was made here to consult the leading analyses of earlier eras, although admittedly attention was confined to those histories written in English. Another point of context is that although the focus here has been on the interplay between mega-RTAs and the multilateral trading system, this is not to suggest that other factors did not influence the evolution of the GATT and WTO. For example, the rise of an Asian economic power (Japan) played a significant role in the 1970s and 1980s. Furthermore, disagreements between developing and industrialized countries featured prominently in the GATT through the 1970s and arguably up to the launch of the Uruguay Round in 1986.

Notwithstanding these points, an important implication of the historical record is that there is nothing new about mega-RTAs and their interrelation to the multilateral trading system. In fact, that system has both drawn impetus from, and often made progress because of, the presence of mega-regionals. This is not to suggest that the progress was linear, smooth, and without delays. Rather, it does suggest that domestic forces were at work in leading jurisdictions that allowed the multilateral trading system to adjust to mega-

48. Fred C. Bergsten, "Competitive Liberalization and Global Free Trade: A Vision for the Early 21st Century," Working Paper 96–15, Peterson Institute for International Economics, Washington, DC, 1996; I. M. Destler, *American Trade Politics*, 2nd ed. (Washington, DC: Institute for International Economics, 1996).

49. Interestingly, these claims have been contested by leading contemporary European trade observers. Evenett and Meier ("Interim Assessment") provide details on the positions taken here as well as an assessment of the logic of and evidence on competitive liberalization.

RTAs in the past. Unless one is convinced that these forces have lost their capacity to influence policymaking, then it is difficult to sympathize with dire warnings of the systemic consequences of the conclusion of a TPP.[50]

CONCLUDING REMARKS

Should the evident qualms of many US elected officials be overcome, the ratification of the TPP would represent the most significant international commercial accord of this century. Such a development would trigger much more comment in the Asia-Pacific region and elsewhere. Attention will turn inevitably to the writings of scholars. This paper has critically evaluated three distinct strands in the literature.

The first strand, involving simulated estimates of the impact of a TPP, suggests that the potential losses in exports for nonmembers—Asian or otherwise—are at most tiny.[51] The latest estimates of TPP assume that nonmembers may gain from some of the reforms of signatories' non-tariff barriers. Even without this assumption, the estimated export losses are economically insignificant.

A second strand makes a number of assertions about the system-wide harm that is likely to follow the TPP. Those assertions were critically reviewed here, and many suffer from putting the WTO inappropriately on a pedestal in comparison to the TPP. The many flaws of the WTO—specifically, departures from the non-discrimination principles—are overlooked in many critiques of the mega-RTAs. Such criticisms do not provide a sensible basis

50. There is the perfectly legitimate (academic) question as to whether large or mega-regional trade agreements facilitate protectionism and therefore go against the principles of the multilateral trading system. A mini-literature in economics had sought to address this question, without coming to any clear conclusion. Indeed, the well-known Krugman-versus-Krugman debate in the early 1990s demonstrated that theoretical models alone are unlikely to settle this matter—see Paul Krugman, "Is Bilateralism Bad?" in *International Trade and Trade Policy*, ed. E. Helpman and A. Razin (Cambridge, MA: MIT Press, 1991); and Paul Krugman, "The Move towards Free Trade Areas," in *Policy Implications of Trade and Currency Zones*, symposium organized by the Federal Reserve Bank of Kansas City, Jackson Hole, WY, August 1991, pp. 7–41. Another contribution, which sought to assess whether the EEC added or detracted from protectionism on net, is Winters, "EC and World Protectionism."

51. Should Asian nonmembers of TPP conclude to the contrary, they are not without policy options, which include implementing unilateral reforms to bolster competitiveness, seeking to join the TPP, seeking to sign RTAs with individual TPP members and nonmembers, and promoting the "multilateralization" of variants of the TPP's provisions.

upon which to formulate expectations about the future course of the multilateral trading system.

The third strand of the literature considered here is drawn from the histories of the GATT era and (to a lesser extent) the WTO era. That scholarship highlights three ways in which widespread trade preferences have shaped and reacted to the multilateral trading system without the latter breaking down. This is not to say that the latter has not had its highs and lows over the years. Although the standing of the WTO has weakened in recent years, its rules, which have been supportive of the export-led development strategies of many Asian nations, will likely survive the implementation of the TPP. This way of climbing the development ladder is not at substantial risk.

Overall, these findings imply that policymakers in the Asia-Pacific region should view the TPP, and for that matter other mega-RTAs that may arise in the years ahead, as neither catastrophes nor panaceas for what is left of the rules-based multilateral trading system.[52]

52. This is not to imply that Asian governments will face no other challenges should TPP come into force. Some TPP signatories, such as Vietnam, have also signed or are seeking to sign RTAs with other major trading blocs, including the EU. In some areas of public policy, reconciling different trade obligations in such accords could pose challenges. Having said that, Mexico, a medium-sized developing country, has signed RTAs with both the US and the EU, and no first-order problems have arisen. I thank a referee for raising this matter.