

# 亚太区自由贸易协定—— 泛太平洋战略经济伙伴关系协议 与全面性经济伙伴协议

## Free Trade Agreements in the Asia-Pacific – TPP & RCEP

### Trans-Pacific Partnership (TPP)

Trans-Pacific Partnership Free Trade Agreement (TPP) is a multilateral free trade agreement (FTA) formed to create a platform for promoting economic integration across nations in the Asia-Pacific region by reducing tariff barriers and promoting free trade among its member. The TPP negotiation is currently participated by 11 countries - Australia, Brunei, Canada, Chile, Mexico, Malaysia, New Zealand, Peru, Singapore, United States and Vietnam, with Japan being a potential participant to join the pact.

The negotiating process of the Agreement is an initiative developed by 3 countries in 2005, namely - Chile, New Zealand and Singapore. Subsequently, Brunei joined the negotiation and Trans-Pacific Strategic Economic Partnership Agreement (also known as the "P4") was formed with the objective to create major strategic alliance for trade liberalization in the region. In September 2008, U.S joined the negotiation and the P4 was renamed as TPP. By end of 2010, Malaysia officially joined the negotiation.

According to reports, the TPP consists of 29 Chapters covering major industries from, and not limited to, agriculture, automotive, electronics and electrical, government procurement, higher education, hospitality, investment, manufacturing, pharmaceutical, to financial and professional services. On top of that, it also emphasized on issues of investor-state dispute, rules of origin, competition policy, intellectual property rights, labor and environmental standards, temporary entry of business persons etc.

On the other hand, the 11 TPP participating countries are also members within the Asia-Pacific Economic Cooperation (APEC). Established in 1989, APEC is a forum for 21 Pacific Rim countries that seeks to promote

free trade and economic cooperation throughout the Asia-Pacific region. In its annual APEC Leaders meetings, it provides opportunities for stakeholders throughout the region, including political and business leaders, to address regional obstacles to trade and economic integration through non-binding commitments.

However, the constant development of the international trade agenda had also influenced the way APEC members pursue to reduce trade barriers. In the last decade, the negotiation of FTAs as a tool to achieve that goal has increased, partly due to the slowdown of the WTO Doha Round of multilateral negotiations and the convenience to negotiate liberalization concessions in order to obtain common treatment from other partners. In this context, how would the TPP fit into the picture of APEC agenda? In 2010 Leaders' Declaration, in which the APEC Leaders stated the following:

*"We will take concrete steps toward realization of a Free Trade Area of the Asia-Pacific (FTAAP), which is a major instrument to further APEC's regional economic integration agenda. An FTAAP should be pursued as a comprehensive free trade agreement by developing and building on ongoing regional undertakings, such as ASEAN+3, ASEAN+6, and the Trans-Pacific Partnership, among others. To this end, APEC will make an important and meaningful contribution as an incubator of an FTAAP by providing leadership and intellectual input into the process of its development, and by playing a critical role in defining, shaping, and addressing the "next generation" trade and investment issues that FTAAP should contain".*

In other words, as a non-binding forum, the role and contribution of APEC towards a comprehensive FTA in the Asia-Pacific region would be seen as a breeding place of ideas, providing its comparative advantage of being the most relevant consultative forum and medium

to share experiences, exchange information and carry out non-binding discussions in order to develop guidelines, principles and initiatives. The TPP agreement, in which the U.S. expects to be concluded by the end of 2013, will be an outcome of trade negotiations and the provisions covered in the TPP are binding. Signatory parties must then fulfill all the obligations under the agreement unless stated otherwise. Failure to do so would be subject to legal implications.

## Challenges of TPP

TPP is an ambitious agreement and it aims to become a high standard and comprehensive 21st century agreement. Nevertheless, it has also given rise to concerns and criticisms. First, the negotiations are highly confidential. All texts and documents are not disclosed and there is no detailed cost-and-benefit analysis provided. Recently, it has come to ACCIM's attention that the SME Chapter was the first Chapter concluded among the TPP members. However, before the conclusion of the SME Chapter, relevant SME associations were neither invited to such dialog with the government authorities nor informed on the existence of such event.

At now, the details of the TPP SME Chapter remain undisclosed. With SME industry playing a crucial role in the economic development of Malaysia, and for the country to promote a free market access economy without getting the relevant parties involved, this situation raises great concerns among the public particularly the SMEs.

On the issue of rules of origin, in order to enjoy the benefits of free trade, it requires a certain value of the goods to be produced within a TPP country. It was reported that this issue prompted a recent debate between two TPP countries on textiles and apparel. One requires an apparel product could only be considered from within the free trade area if the entire manufacture of the product has occurred within the FTA region. The other country seeks a less restrictive approach, which would allow its products manufactured from materials of non-TPP country, primarily China. If the first approach were adopted, would the same rule apply to all industries, particularly the manufacturing sector? This issue remains a question mark due to the secrecy of the negotiations.

Under investor-state dispute settlement, the TPP provides foreign investors extended rights to sue the

governments if a law or policy harms their investment. It is reported that the Australian government has rejected this provision. Critics argued that this provision would limit government sovereignty in public policy-making, power to amend or pass any new laws so as to ensure a constant regulatory environment, and foreign corporations will be able to challenge the government even if the measures are for domestic health and environmental reasons. Citing a recent study by Public Citizen of US FTAs and BITs, 81% of the time the investors have won, which indicates that the provision is very powerful to strike down government actions.

On the area of Intellectual Property Rights (IPR), critics commented that there will be serious consequences if similar or even stronger rules of South Korea-United States FTA are reproduced in the TPP. Patent holders would be allowed to commence criminal proceedings on the slightest suspicion of piracy. Customs authorities would be given powers to stop the entry of pirated goods. As a result, emerging-market products using small variations on patented products might suffer the most.

The U.S. is keen on including strong IPR rules in the TPP because the country issues the most patents and copyrights, and wants the highest protection for its patent holders. While these rules will allow easy entry of U.S. goods into other countries, similar goods from other countries may be denied access to the U.S. market on grounds of piracy. Rigid IPR rules are likely to discourage innovation and increase global disputes over violation of patents, as evident by the patent war between Apple and Samsung.

Another concern is its impact on Asian integration. Critics argued that the East Asian economic integration has been market-driven and not institution-driven. The production networks have prospered despite FTAs in which the rule of origin issue complicates the sourcing of imported intermediate inputs. The Asia Pacific region, and especially East Asia, has enjoyed rapid growth of trade and development based on the idea of open regionalism. The priority in East Asian economic integration is to promote the participation of least-developed economies in the production networks, as well as deepening the integration and specialization of middle-income economies in those supply chains. The TPP is not currently pointed in that direction and risks overshadowing East Asian and ASEAN-style economic cooperation within the APEC - an approach that is still quietly delivering real progress in economic integration, as it has in years past.

In addition, currently there are several models of economic integration being pursued in the region. For example, the East Asia Summit is developing a Comprehensive Economic Partnership for East Asia, and ASEAN. China, Japan and the Korea are pursuing the East Asia Free Trade Area (EAFTA). All these efforts will be hampered by the advent of the TPP, which will add a strong 'non-Asian' flavor to economic integration efforts in Asia and force Asian economies to develop different strategies for regional integration.

## Regional Comprehensive Economic Partnership (RCEP)

Apart from the TPP, another big thing that is happening in the economy of Asia Pacific now is the Regional Comprehensive Economic Partnership (RCEP). The plan for RCEP was first discussed at the 19th ASEAN Summit in November 2011. At the recent 21st Association of Southeast Asian Nations (ASEAN) Summit in Phnom Penh, Cambodia, it was agreed that talks should begin on a new regional trade treaty, the RCEP. This is negotiated between ASEAN's 10 member countries - Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam - and its current 6 FTA partners - Australia, New Zealand, China, India, South Korea and Japan, linking an integrated market comprising US\$ 20 trillion and half of world's population (3 billion). This means it will be the largest free trade area in the world to-date.

The objective of launching the RCEP negotiation is to achieve a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement among the ASEAN Member States and ASEAN's FTA Partners. RCEP will cover trade in goods and services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues. Negotiations for the RCEP will recognize ASEAN significance in the emerging regional economy and the interests of ASEAN's FTA Partners in contributing to economic integration, equitable economic development and strengthening economic cooperation among the participating countries.

The RCEP negotiation is expected to commence in early 2013 and complete by end 2015. The RCEP strategy is aimed at removing trade barriers and maintaining regional growth by ensuring that markets of the participating countries remain open and competitive. All leaders had also endorsed the RCEP 'Guiding Principles

and Objectives for Negotiating' that would allow the region's other economic partners to eventually draw into the agreement.

According to Xu Ningning, Executive Secretary General of the Chinese Secretariat of the China- ASEAN Business Council, besides establishing a higher quality FTA in the region, the RCEP is also expected to help further establish ASEAN centrality, which is challenged by the economic cooperation arrangements rapidly evolving in the region including the U.S led TPP and the prospective trilateral FTA among China, Japan and the South Korea.

*"ASEAN would play a leading role in promoting the RCEP, which also aims to help the organization exert a bigger influence and acquire a greater say in the international arena. It will optimize ASEAN to be a more coherent economic bloc and resolve the 'noodle bowl' effect caused by the many current Asian trade agreements,"* Xu said.

*"Compared with the TPP, the RCEP is more easily accepted,"* Xu said. The TPP requires a deeper extent of opening up while the RCEP is likely to adopt a gradual path in opening up member nations' markets given that development gaps remain. According to Xu, the RCEP is based on open accession, which would enable any of the ASEAN FTA partners to participate either from the outset or when they are ready to join at a later date. The arrangement is also open to other external economic partners. The RCEP is expected to include economic and technical cooperation elements that would allow all parties, regardless of their level of development, to maximize the opportunities made available by deeper and broader economic engagements.

Surin Pitsuwan, Secretary General of ASEAN, added that *"With the region accounting for more than half of the global market and about a third of the global economic output, there is no doubt that a successful RCEP would significantly contribute to and boost global trade and investment".*



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