

## CHAPTER TWO

### LITERATURE REVIEW

#### A. The Trans-Pacific Partnership

The Trans-Pacific Partnership (TPP) is a proposed Free Trade Agreement (FTA) among the United States and 11 Asia-Pacific countries, with both economic and strategic significance for the United States. The proposed agreement is perhaps the most ambitious FTA undertaken by the United States in terms of its size, the breadth and depth of its commitments, its potential evolution, and its geo-political significance.<sup>1</sup>

Currently, TPP includes twelve parties: Australia, New Zealand, Singapore, Brunei Darussalam, Malaysia, Japan, Peru, Chile, Mexico, the United States, Canada and Viet Nam. The TPP mandate is broad with twenty-nine plus chapters across economic sectors,<sup>2</sup> which together comprise 40% of the world's GDP.<sup>3</sup>

The TPP began as the Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand, and Singapore. It was signed in 2005 and enacted in 2006. The U.S. announced that it would begin negotiations to join this “open agreement” in 2008, and the TPP process was launched.<sup>4</sup>

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<sup>1</sup> Ian F. Fergusson and Brock R. Williams, 2016, *The Trans-Pacific Partnership (TPP) Key Provisions and Issues for Congress*, Congressional Research Service Report, June 14<sup>th</sup>, 2016, p. 1.

<sup>2</sup> World Medical Association, “New Trade Agreements and what They May Mean for Public Health and Health Care”, *World Medical Journal*, Vol. 61, April 2015, ISSN 2256-0580, World Medical Association Inc., p. 35.

<sup>3</sup> Ian F. Fergusson and Brock R. Williams, *op. cit.*, p. 2.

<sup>4</sup> Barbara H. Garavaglia, 2016, “Sources of Information on the Trans-Pacific Partnership”, *Michigan Bar Journal*, University of Michigan Law School, May 2016, p. 44.

The Trans-Pacific Partnership is perhaps the most ambitious trade negotiation underway in the world. It will break new ground on important issues from the challenges of state-owned enterprises.<sup>5</sup> In term of the content, the TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods and continuing through customs and trade facilitation, sanitary and phytosanitary measures, technical barriers to trade, trade remedies, investment, services, electronic commerce, government procurement, intellectual property, labor, environment; its “horizontal” chapters meant to ensure that TPP fulfills its potential for development, competitiveness, and inclusiveness; dispute settlement, exceptions, and institutional provisions.<sup>6</sup>

The current 12 TPP countries form part of a growing network of Asia-Pacific FTAs. All TPP countries have at least one FTA with a TPP partner country, although the extent of trade liberalization varies among them. The United States has FTAs with six TPP countries, including Australia, Canada, Chile, Mexico, Peru, and Singapore. Four TPP countries—Brunei Darussalam, Malaysia, Singapore, and Viet Nam, are part of the Association of Southeast Asian Nations (ASEAN), which has a free trade area among its members as well as several external FTAs.<sup>7</sup>

All 12 TPP partners are also members of the Asia-Pacific Economic Cooperation (APEC) forum, which does not negotiate FTAs but serves as a forum for dialogue on, and establishes nonbinding commitments toward, the

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<sup>5</sup> Ian F. Fergusson, Mark A. McMinimy and Brock R. Williams, *op cit.*, p. 1.

<sup>6</sup> Barbara H. Garavaglia, *loc. cit.*

<sup>7</sup> The 10 ASEAN members are Brunei Darussalam, Burma (Myanmar), Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam.

goals of open trade and investment within the region.<sup>8</sup> It seems that the TPP is extremely serious and consistent in running its sector, which is on economic sector.

## **B. Joining the Trans-Pacific Partnership**

The rapid development of the Asia-Pacific clearly produces great benefits for American consumers and great opportunities for American exporters as the Asian middle class grows, and it comes to a unique opportunity to create the first enforceable standards for its new partners. To reform and modernize several of its existing agreements; and, ultimately, to set the foundations of a region-wide commitment to all practices which meet international standards, ensure a level playing field for competition, and share the benefits of trade fairly.<sup>9</sup>

For the Treaty, it is actually unclear what type of accession clause will be included in the final TPP text. It is likely that participation, which would thus be a semi-closed agreement rather than an open one, will be subject to the approval of all TPP member economies. While the current negotiating parties seem to have the option of not undertaking any part of the agreement (e.g., it seems that Australia will not undertake the investor-state dispute section), it is

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<sup>8</sup> In addition to the 12 TPP countries, APEC includes China, Hong Kong (officially Hong Kong, China), Indonesia, Papua New Guinea, the Philippines, Russia, South Korea, Taiwan (officially, Chinese Taipei), and Thailand.

<sup>9</sup> USTR, 2016, “Summary of the TPP Chapter on Labor”, pp. 6 – 7, taken from <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Labour-1.pdf>, downloaded on Sunday, November 6<sup>th</sup>, 2016 at 7.53 p.m.

likely that future applicants (after the conclusion of TPP negotiations) will be required to accept everything in the agreement.<sup>10</sup>

The particular importance is that TPP will have little development considerations. While capacity building is included in TPP, all parties, including both developed and developing economies, are expected to offer more or less similar levels of commitment. In other words, it is wrong to consider that the terms of accession for developing economies are differentiated from those for developed economies.<sup>11</sup>

In order for the TPP to come into effect requires ratification by the U.S. Congress. The administration is likely to make a focused effort to have this done in the first half of 2016, having consistently touted the TPP as a 21<sup>st</sup> century trade agreement. South Korea, Indonesia, the Philippines, Thailand, and Taiwan have already expressed interest in joining. While open to participation by other countries, many developing countries such as India and those in Africa are unlikely to be able to accept the high standards the TPP sets in terms of market access commitments and rules.<sup>12</sup>

As the FTA, it absolutely has some challenges faced by members or those who wants to be member, namely organizational challenges, public

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<sup>10</sup> Shintaro Hamanaka, 2014, “Trans-Pacific Partnership versus Comprehensive Economic Partnership: Control of Membership and Agenda Setting”, *ADB Working Paper Series on Regional Economic Integration*, No. 146, December 2014, Asian Development Bank, p. 8.

<sup>11</sup> Unlike the Guiding Principles and Objectives of RCEP (see Section V for details), the Outlines of TPP do not include the term “flexibility” for developing members.

<sup>12</sup> Joshua P. Meltzer, 2016, “The Trans-Pacific Partnership is a Win for All Parties”, taken from <https://www.brookings.edu/blog/future-development/2015/12/09/the-trans-pacific-partnership-is-a-win-for-all-parties/>, accessed on Sunday, November 6<sup>th</sup>, 2016, at 8.58 p.m.

policy, economic development, overlapping agreement, and next generation of the TPP Challenges.<sup>13</sup> Thus, Indonesia must be aware of these challenges.

### **C. Discourse of Indonesia Joining the Trans-Pacific Partnership**

President Joko Widodo, speaking after a meeting with the U.S. President Barack Obama on Monday, October 26<sup>th</sup>, 2015, said through a translator that Indonesia is the largest economy in Southeast Asia, and his Southeast Asian country intends to join the Trans-Pacific Partnership trade deal the United States has forged with 11 other nations.<sup>14</sup>

Strengthening the American-Indonesian strategic partnership is also one of the main issues of the visit. In addition, various other fields of cooperation, including maritime cooperation, climate change, fishery, and investment in technology are also evidences of President Widodo's fruitful trip to the United States.

For observers, the TPP can be seen as an effort by the United States to maintain its power in the Asia-Pacific region, especially when placed with President Obama's rebalancing (pivot) strategy since 2011. It is even more explicit if we see how China is not even in the negotiating level to join the TPP.<sup>15</sup>

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<sup>13</sup> Andrew Stoler, 2016, "Institutional Challenges of the TPP Process", *ECLAC-IIT Workshop on 21<sup>st</sup> Century Trade Agreements*, Institute for International Trade, p. 2.

<sup>14</sup> Jonathan Ernst, 2016, "President says Indonesia Intends to Join TPP Trade Deal", taken from <http://www.reuters.com/article/us-usa-indonesia-idUSKCN0SK2JY20151027>, accessed on Sunday, November 6<sup>th</sup>, 2016, at, 9.46 p.m.

<sup>15</sup> Matthew Hanzel, *loc. cit.*, accessed on Saturday, December 10<sup>th</sup>, 2016, at 2.02 p.m.

Although Indonesia has at times expressed interest, it has never been a part of the negotiations.<sup>16</sup> Basically, Indonesia's intention to join TPP is highly reasonable as TPP will provide opportunities to increase market access of Indonesia's products to other countries, more economically advanced countries. Indonesia can also enhance its participation in global production network, which is also beneficial for domestic industry development. Furthermore, there might be a potential loss for Indonesia of not joining the TPP. This loss may come from trade diversion, as countries switch their trade partners from Indonesia to other TPP countries due to facilities and incentives provided by the arrangement.<sup>17</sup>

Indonesia would have to make some changes before it actually joins the free trade agreement, such as removing certain import and export restrictions, changing packaging requirements and improving intellectual property rights, Michael Froman, the U.S. Trade Minister, explained to the News Outlet. However, if these standards are met, it seems parties in both the U.S. and Indonesia expect the TPP to grow to 13 countries within a couple years.<sup>18</sup>

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<sup>16</sup> Rocky Intan, 2016, "Trans-Pacific Partnership Indonesia's Lost Opportunity?", taken from <https://www.csis.or.id/publications/page/trans-pacific-partnership-indonesia-s-lost-opportunity.html>, accessed on Sunday, November 6<sup>th</sup>, 2016, at 9.25 p.m.

<sup>17</sup> Yose Rizal Damuri, David Christian, and Haryo Aswicahyono, 2016, "Trans-Pacific Partnership (TPP) in Indonesia's Economic Development Strategy", taken from <https://www.csis.or.id/research/page/trans-pacific-partnership-tpp-in-indonesia-s-economic-development-strategy.html>, accessed on Sunday, November 6<sup>th</sup>, 2016, at 9.48 p.m.

<sup>18</sup> Livingston, "Indonesia Could Join TPP", taken from <http://www.livingstonintl.com/international-regulatory-updates/indonesia-could-join-tpp/>, accessed on Sunday, November 6<sup>th</sup>, 2016, at 9.47 p.m.