

Helble, Matthias

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SALVAGING THE TRANS-PACIFIC PARTNERSHIP: BUILDING BLOCKS FOR REGIONAL AND MULTILATERAL TRADE OPENING?

Matthias Helble

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Matthias Helble is a research economist at the Asian Development Bank Institute.

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Please contact the authors for information about this paper.

Email: mhelble@adbi.org

Asian Development Bank Institute
Kasumigaseki Building, 8th Floor
3-2-5 Kasumigaseki, Chiyoda-ku
Tokyo 100-6008, Japan

Tel: +81-3-3593-5500

Fax: +81-3-3593-5571

URL: www.adbi.org

E-mail: info@adbi.org

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Abstract

The high hopes that the Trans-Pacific Partnership (TPP) would open up trade across the Pacific were dashed by the decision of the new US Government under President Trump to withdraw from the agreement in January 2017. Despite being controversial, the TPP had been recognized as an agreement that substantially updated and extended international trade rules responding to new technological developments and economic realities. It was thus lauded by some as the first true 21st century trade agreement. The United States' withdrawal from TPP gives the agreement an uncertain future. Yet, we argue in this paper that some achievements of the TPP might not be lost. The TPP offers important lessons for other ambitious regional trade deals both in terms of process and content. Furthermore, several chapters of the TPP can become blueprints for ongoing and upcoming negotiations at the multilateral level. A one-to-one transposition of TPP provisions into the multilateral trade agreement is unlikely, yet certain provisions could serve as valuable inspiration for future multilateral trade talks.

JEL Classification: F10

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1. INTRODUCTION

On 23 January 2017, on his first day in office, newly elected United States (US) President Donald Trump officially withdrew the US from the Trans-Pacific Partnership (TPP). President Trump thereby put an end to a process that had started over 10 years ago and had been expected to open up trade between 12 economies around the Pacific rim and update a number of trade rules. The text of the TPP was signed on 6 October 2015 by the trade ministers of the 12 TPP Member countries in the city of Atlanta. In order to take effect, the ratification of the two largest economies—the US and Japan—was required. And until the election of Mr Trump as the 46th President of the US in November 2016, hopes were high that the TPP would come into effect in early 2017. Former President Barack Obama had sought approval by the US Congress during the “lame duck” session in late 2016, but gave up after Mr Trump’s election. In Japan, the TPP had passed the lower house in early November 2016, weeks before the US presidential elections. And several other TPP Members had already successfully ratified the agreement as well.

The decision by the newly elected US government under President Trump to withdraw from the agreement meant that the TPP in its current form could no longer take effect. The disappointment among TPP Members was great. For a long time, the US had pushed hard for the deal. The policy reversal by President Trump put to an end to a rather impressive undertaking.

Table 1: Key Economic Indicators of TPP Members (GDP, Population, GDP/cap, Export/GDP, Exchange Rate Regime)

Country Name	Trade (% of GDP)	GDP (bn.\$)	GDP per Capita, PPP (current intern. \$)	Population, Total	Manufactures Imports (% of merchandise imports)	Manufactures Exports (% of merchandise exports)
Australia	42.3	1,455	43,930	23.5	72.2	15.1
Canada	64.1	1,785	44,057	35.5	76.0	46.4
New Zealand	60.0	166	32,283	4.5	71.3	17.8
Japan	35.1	4,601	36,426	127.1	50.0	88.1
Malaysia	138.5	338	25,639	29.9	67.2	61.8
Mexico	65.9	1,295	17,108	125.4	79.1	78.7
Peru	46.3	203	11,989	31.0	72.8	14.7
US	30.0	17,419	54,629	318.9	73.3	61.8
Viet Nam	169.5	186	5,629	90.7	76.5	74.7
Brunei Dar.	106.6	17	71,185	4.2	72.5	6.8
Chile	66.1	258	22,346	17.8	67.9	14.1
Singapore	350.9	308	82,763	5.5	61.6	71.3

TPP = Trans-Pacific Partnership; GDP = gross domestic product; cap = capita; PPP = purchasing power parity; US = United States.

Notes: Viet Nam manufactures imports and exports are for 2013; US and Japan trade openness are for 2013; New Zealand GDP data are for 2011.

Source: World Development Indicators (2015).

The TPP project had started in 2006 among four small countries—Brunei Darussalam, Chile, Singapore, and New Zealand. In subsequent years, the circle of interested parties expanded, most importantly with the US joining in 2010 and Japan in 2013. The TPP members represent a rather diverse group of countries. As Table 1 shows, the TPP members differ considerably in their economic size and in their economic development. Viet Nam is the TPP member with the lowest per capita income of

\$5,629 (at purchasing power parity, in current international US dollars). The smallest economy is Brunei Darussalam with a gross domestic product (GDP) of less than 0.4% of that of Japan. The US alone represented over 60% of the economic output of all TPP members.

In terms of trade as a percentage of GDP, the smaller TPP members are typically more dependent on international markets (Singapore 350.1%), whereas the largest economies such as Japan or the US have ratios below 40%. The importance of manufacturing imports ranks high among all TPP members. However, in terms of manufacturing exports the TPP members differ markedly, an indication of their different export bundles. The exports of Australia, Brunei, Chile, Peru, and New Zealand are dominated by primary goods. In contrast, for Japan, Mexico, and Viet Nam manufactures constitute more than 74% of their exports. Altogether, the TPP members account for almost 36% of global output.

Including the US, intra-TPP represented 11.2% of world trade in 2014 (Table 2). (In the public debates on TPP, the share of TPP countries in world trade [29.0%] was often mentioned. However, referring to this number to demonstrate the importance of the TPP was misleading, as only 11.2% of world trade would have been subject to TPP rules). The second row of Table 2 shows the shares of another mega-regional trade arrangement that is still under negotiations—the so-called Regional Comprehensive Economic Partnership (RCEP). The countries participating in the RCEP negotiations are the 10 Association of Southeast Asian Nations (ASEAN) members plus Australia, the People's Republic of China (PRC), India, Japan, the Republic of Korea, and New Zealand. Compared with the TPP, the RCEP has a slightly smaller share in world trade, but a higher share in intra-RCEP trade compared with world trade.

Table 2: Share of TPP and RCEP in World Trade (2014)

	Trade with the World		Trade among Members		GDP	
	Trade (Bn.\$)	Trade Share	Trade (Bn.\$)	Trade Share	GDP (Bn.\$)	GDP Share
TPP	5,127.64	29.0%	1,979.40	11.2%	27,865.15	35.8%
RCEP	5,009.39	28.3%	2,249.68	12.7%	22,390.39	28.8%
World	17,671.27	100.0%	17,671.27	100.0%	77,845.11	100.0%

TPP = Trans-Pacific Partnership; RCEP = Regional Comprehensive Economic Partnership; GDP = gross domestic product.

Source: UN Comtrade and World Development Indicators (2015).

A number of studies attempted to estimate the economic impact of the TPP on its member economies. As the number of countries that joined the negotiations increased, the estimates of the possible gains had to be redone repeatedly or risked being obsolete. One of the most cited studies is the research piece by Petri et al. (2012), which was updated in 2013 (Petri et al. 2013) to reflect the fact that Japan had joined the negotiations. In 2016, Petri and Plummer (2016) published their estimation based on the text of the negotiated agreement. Using a computable general equilibrium (CGE) model, the authors estimated that the biggest absolute gains accrue to the two largest economies—Japan and the US. For Japan, GDP would be 2.5% higher than the baseline projection by 2030, for the US 0.5%. The largest relative gains are expected for less developed TPP members, for example Viet Nam, which was estimated to gain 8.1% compared with the baseline. Viet Nam would have benefitted in particular from improved market access to Japan and the US. Petri and Plummer

(2016) also estimated the possible economic losses for countries not joining the TPP. The authors estimate that those ASEAN countries that were not TPP members, the Republic of Korea and the PRC, would have suffered considerable negative consequences.

Some of these losses would have been due to the fact that the TPP cuts through several existing regional trade agreements. Most notably, the TPP included only four of the 10 ASEAN members. On the other side of the Pacific, the TPP included all members of the Pacific Alliance, except Colombia. Furthermore, the TPP cut through various regional and global production networks. Most importantly, TPP excludes the PRC, which plays a key role in Asia's production chains.

Despite these potential downsides of the TPP, it has been lauded at the “gold standard” for 21st century trade agreements. The main reason is that the TPP has introduced new issues beyond the ones that are typically included in regional trade agreements or that are covered by the World Trade Organization (WTO). Such issues include updated intellectual property provisions, labor standards, and rules on electronic commerce. Whereas some of these topics have been covered in bilateral trade deals, they have not yet found their way into regional trade deals.

The main research question of this paper is whether the TPP can be an inspiration for the regional and multilateral trade negotiations, both in terms of process and content of the negotiation. In the first part of this paper, we study the key factors that helped the TPP to be negotiated successfully (although the ratification fell short) and compare these factors to the main hurdles of the Doha Development Talks. In the second part we examine closely some of the traditional as well as “new” issues included in TPP and study whether, and which, elements could be successfully introduced at the multilateral level.

2. TPP TRADE NEGOTIATION PROCESS: LESSONS TO LEARN?

The TPP negotiations were launched in March 2010 among the US, Australia, and the four members of the Trans-Pacific Strategic Economic Partnership (TPSEP)—Brunei, Chile, New Zealand, and Singapore. Viet Nam participated in the negotiations as an observer. In October 2015, the negotiations were concluded after 19 rounds of negotiations. Given the large number of items on the negotiation agenda, the multiple regulatory innovations, and the wide coverage of the agreement going clearly beyond simple tariff liberalization, five and a half years can certainly be considered a success. In this section we aim to identify some of the main reasons for the speedy negotiations and try to draw lessons

2.1 Accommodating Increasing Membership

As in any regional trade agreement, the final text of the TPP agreement was the outcome of extensive negotiations between all parties involved. One challenge of the TPP negotiations was that the number of members subsequently increased from seven initially to 12 at the end. In October 2010, Malaysia and Viet Nam joined the negotiations, Canada and Mexico followed in December 2012, and, finally, Japan joined in July 2013. Adding new members to ongoing negotiations carries the risk of substantially slowing down the negotiation process, as compromises already reached

among the incumbents might be challenged by the newcomers. Especially if new members with a large economic weight join the negotiations, such as Japan in the TPP, negotiations might become delayed. However, the TPP negotiations went rather smoothly, given the breadth and depth of the TPP as well as the increasing number of TPP members.

Many observers believe that the multilateral negotiations have been slowed down considerably by accommodating a constantly increasing membership. By early 2017, the WTO had 164 members and has thus reached almost universal membership. While this is a positive trend in terms of coverage, it has come at the cost that the heterogeneity among members is larger than ever before. In addition, within countries, trade is no longer an area confined to the ministries of economy and trade; other ministries attempt to have their voices heard when preparing negotiation positions.

Furthermore, in previous rounds of multilateral trade talks the dividing lines were clearly demarcated—the developed countries led by the US, Canada, Europe, and Japan were found on one side, against the developing countries on the other side. But today the playing field has become much more complex. For example, some developing countries have a highly competitive agricultural sector, such as Brazil, and would like to push for a market opening in developed countries. However, other developing countries, especially least developed countries, rely on preferences, including for agricultural products, granted to them by developed countries.

In case of the TPP negotiations, the membership also increased. But the joining of additional members seemed to have increased the attractiveness of the agreement rather than blocked the negotiations. One key element was certainly that all new members implicitly or explicitly adhered to similar ideas of trade opening. And all parties around the table knew that they had to offer some market access commitments. The Doha Round was labelled the “Development Round” because at the start of the negotiations it was agreed that the round should be particularly beneficial for developing countries. However, it was unclear from the beginning what the so-called “less than full reciprocity” actually meant.

In contrast, the TPP members could be considered as a “coalition of the willing” to open trade. Despite large differences in terms of economic development and size of the economies, all TPP partners share a common vision that deeper trade integration enhances welfare. Using the analogy of Brandt and Helble (2011), the TPP members formed a perfect rope team and shared the same goal. This coherency of the group became evident in the negotiations. Following the logic of the principle of single undertaking, compromise was achieved across different areas of negotiations. Even on highly sensitive issues such as intellectual property rights, a deal was hammered out after long, but eventually successful, negotiations.

2.2 Successful Negotiations Across Topics

The TPP negotiations, like the Doha Development Round, faced a number of difficult issues on which consensus was difficult to reach. Table 3 lists the most controversial issues (column 1). The first two issues were agricultural commodities—sugar and dairy. Australia pushed for better US market access for sugar. New Zealand tried to facilitate its entry into the markets of TPP members, in particular in Canada and Japan. In the end the negotiators met each other halfway, and Canada, Japan, and the US committed to some market opening.

Another sensitive topic was the length of time of the data protection for biologics. Australia and Chile were the most vocal TPP members to demand a relatively short time period. But the US delegation, keen to safeguard the competitiveness of its domestic pharmaceutical sector, requested more stringent intellectual property protection. In the end, the parties agreed on 8 years or 5 years with additional measures of intellectual property protection. This outcome was welcomed by most TPP members; however, it raised doubts in the US. Several political leaders expressed their concerns and even argued that the intellectual property chapter needed to be re-negotiated before the TPP was presented to US Congress.

The negotiations on non-agricultural market access (NAMA) were marked by a spat on Rules of Origin (ROO). Canada and Mexico demanded to maintain the same ROO as agreed in the North American Free Trade Agreement (NAFTA), whereas Japan asked for less stringent ROO. The discussions were particularly heated for finished vehicles and automobile parts for which under NAFTA a regional value content threshold of 62.5% applies. The compromise agreed was that a vehicle must contain at least 45% regional content and auto parts either 35%, 40%, or 45% regional content depending on the product.

Table 3: Overview of Sensitive Issues during TPP Negotiations

Sticky Points in TPP Negotiations	Main TPP Members Involved	Solution
Agriculture: Sugar	Australia vs US	US increases quota
Agriculture: Dairy	New Zealand vs. Canada and Japan	Small market opening by Canada and Japan
Intellectual Property (esp. length of data protection for biologics)	US vs. Australia and Chile	Concession by US
NAMA (automotives ROO)	Japan vs. Mexico and Canada	Compromise
State-Owned Enterprises	US vs. Viet Nam and Malaysia	Concessions by Malaysia and Viet Nam
Labor standards	US vs. Brunei, Malaysia, and Viet Nam	Concessions by Brunei, Malaysia, and Viet Nam

TPP = Trans-Pacific Partnership; US = United States; NAMA = non-agricultural market access; ROO = Rules of Origin.
Source: Author.

Finally, the inclusion of the topic of state-owned enterprises and labor standards in the negotiation agenda meant long discussions between the US, Brunei, Malaysia, and Viet Nam. The inclusion of both topics had proven to be impossible at the multilateral level, so the TPP broke new ground as both topics are now included in a regional trade agreement. For the US, both topics were vital to insure the support of US congress. Malaysia and Viet Nam were only willing to accept the agreement because they hoped the improved market access to the US would outweigh the costs. Furthermore, both countries realized that improved labor standards might eventually trigger additional foreign investment and trade outside the TPP, e.g., with countries in the European Union.

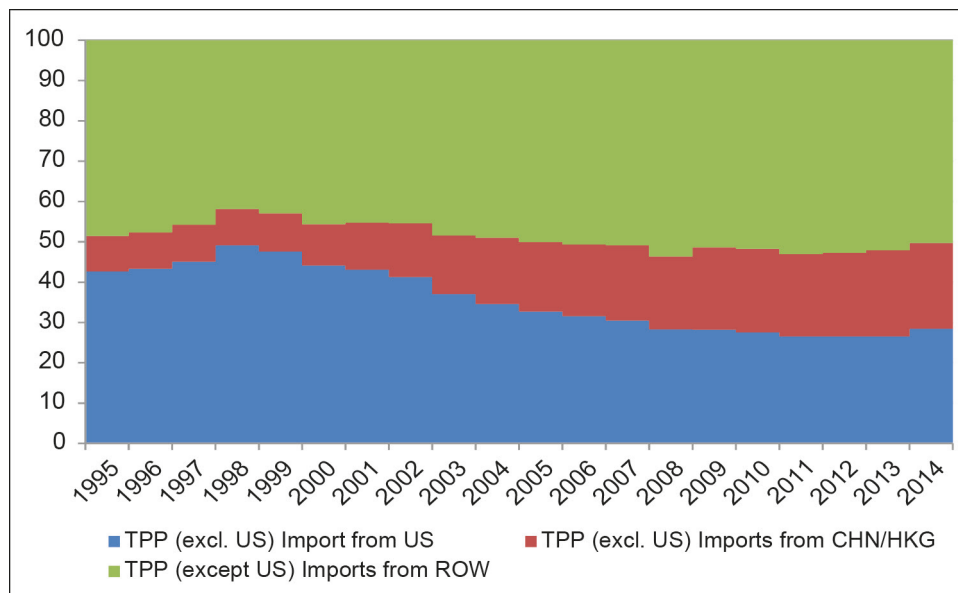
Overall, the TPP negotiations are a good example of a successful application of the principle of single undertaking. (The principle of single undertaking means that no negotiation chapter will be closed until everything is agreed on). The TPP member countries negotiated successfully across different areas and only concluded the negotiations once everything had been agreed upon.

The Doha Development Round is also based on the principle of the single undertaking. However, the principle has been increasingly perceived as a nuisance, rather than a modality that helps achieve consensus (Brandi and Helble 2011). Originally, the principle was thought to offer the advantage of allowing deals to be made across topics. For example, a country can agree to concessions on intellectual property rights, but ask for improved market access for clothing products. However, the single undertaking approach reaches its limits when the number of parties is high and there are widely varying positions. In the worst case, no so-called landing zone can be found.

2.3 United States Leadership

Another key to success for the successful negotiations of the TPP agreement was the strong US leadership and the commitment to bring the negotiations to a successful conclusion. The US acted as a guide with a clear vision: safeguard US trade interests in Asia. Over the past 20 years, Asia has become the new economic center of the world, while at the same time the US has lost ground in Asia. Figure 1 depicts the shares in imports of TPP members (except the US) originating from three sources: the US (blue); the PRC/Hong Kong, China (red); and the rest of the world (ROW) (green). The graph nicely illustrates that while the share of the ROW has remained rather stable, the US has lost significant trade shares to the PRC. The share of US goods in TPP imports dropped from above 40% in late 1990s to less than 30% in recent years. Reversing this trend was certainly one main motivation for the US in the TPP negotiations. Ensuring improved market access to several major Asian economies would allow US companies to gain lost ground.

Figure 1: Share of Imports of TPP Members (excluding the US) from the US, PRC, and Rest of the World (1995–2014) (%)



TPP = Trans-Pacific Partnership; US = United States; PRC/CHN = People's Republic of China; HKG = Hong Kong, China; ROW = rest of the world.

Source: UN COMTRADE.

A related element that facilitated the negotiations was the sound relationship between the US and Japan. Among the TPP members, both countries are responsible for 56% of trade and about 80% of GDP. Both countries were part of the former so-called Quad

at the WTO and have a long experience of negotiating trade agreements. Even though the negotiations between the US and Japan were several times extremely difficult, both countries had a shared interest in opening up markets in Asia. Japan is facing a similar situation to that of the US, with falling trade shares in the Asian region.

In contrast, at the WTO the US leadership is waning. In the past rounds, the US had been the unrivalled leader in pushing for trade liberalization among WTO members. Several of the early General Agreement on Tariffs and Trade (GATT) rounds had been initiated by the US, such as the Dillon Round or Kennedy Round. Also the Doha Round was partly initiated by the US. After the 9/11 terrorist attacks on the World Trade Center in New York President George W. Bush proposed a new round of multilateral trade negotiations in an attempt to reboot the global economy. However, since then, the US' leading role in multilateral trade talks has been waning. The reasons are various. Within the US the support for more open markets has been shrinking. Several trade economists have shown that the PRC's entry into the WTO resulted in a sharp drop of jobs in industries directly competing with the PRC (Autor et al. 2016) and some found even increased mortality in counties with high levels of competition with the PRC (Pierce and Schott 2016). Highlighting the risks of open borders became one of the main themes in the campaign of President Trump. In the current context it is very unlikely that the US will again become a leader of multilateral trade opening any time soon.

One might argue that the US is not the only country that could push for multilateral trade opening. However, in the current context other players are not in sight. The European Union is busy managing the Brexit and containing protectionist movements that question the existence of the European Union. Among the developing countries, the PRC has emerged as one of the largest players in international trade. But it is rather new in the club of WTO members and unlikely to be a leader that could forge compromises across the WTO members.

2.4 Limited Transparency in TPP Talks

Another factor that probably accelerated the TPP negotiations was that they were mostly held behind closed doors. Relatively limited information was published or even leaked from the negotiation rooms. While the practice of closed negotiations is certainly doubtful in terms of ensuring wide stakeholder participation, it might help to advance more quickly in the negotiations. The obvious risk is that once the agreement is tabled for approval in national parliaments, it might be rejected. Even if Donald Trump had not been elected US President, the TPP might have failed to take that hurdle. A US administration under Hillary Clinton would have asked for a reopening of the negotiations on certain chapters, such as labor standards, patent length of biologicals, and ROO.

At the WTO the question of transparency in the negotiations has been frequently posed. The WTO members and the WTO Secretariat agreed that more transparency was needed. Over time, they have increased their efforts to make the trade negotiations more inclusive and transparent. While under former Director-General Pascal Lamy, selected WTO members were often gathered for so-called Green Room meetings, the current Director-General Robert Azevedo favors meetings among all WTO members. Moreover, civil society groups and the wider public aspire to have insights into the negotiations as well. However, conducting the negotiations in an increasingly public space seems to become more and more complex.

In summary, in terms of process, the TPP negotiations offer several interesting insights. First, the principle of single undertaking seems to be an appropriate choice, as long as the countries participating in the negotiations share a common vision and goal. The TPP talks also benefitted from the fact that the number of participating countries remained limited. In contrast, as WTO membership increases, the diversity in terms of interests and goals is also multiplying. The principle of single undertaking is no longer a procedure that will help to reach consensus.

Second, the TPP talks were led by the US, which had a strong determination to bring the negotiations to a successful conclusion. The US wanted to safeguard its interest in the Asia-Pacific region and was ready to broker a compromise. Currently, the WTO is lacking strong leadership by the US. Other WTO members are not ready to take over the baton from the US.

Third, holding closed negotiations helped to close a deal in the case of the TPP. However, the secrecy of the negotiations increased the risk that the TPP would have not passed the ratification stage. For the WTO Secretariat, the possibility of lowering transparency during negotiations is limited and the benefits of such a move would also be unclear.

The inspiration of TPP for the Doha Development Round in terms of process is therefore limited. But can the multilateral arena in Geneva learn something from the TPP in terms of content? Could some elements of the TPP eventually be multilateralized?

3. SALVAGING TPP FOR MULTILATERAL OR REGIONAL TRADE AGREEMENTS

The TPP was the first mega-regional free trade agreement that had been successfully negotiated. If ratified, the TPP would have not only lowered traditional trade barriers, such as tariffs or non-tariff measures, but also broken new ground by introducing regulations on issues that so far have been lacking in the multilateral trade rules, such as trade rules on e-commerce. The market commitments that TPP members made could eventually help to advance the Doha Development Round negotiations.

The TPP is a substantive trade agreement and in this section we would like to focus on six parts of the TPP and their potential for being multilateralized:

- Tariff Commitments
- Rules of Origin
- Services' Trade Liberalization
- Electronic Commerce
- Intellectual Property
- Labor Standards

The first three topics can be called "old" topics that are already enshrined in the multilateral trade framework. The other topics are "new" topics in the sense that they have so far been outside the multilateral trade framework. Our focus in the subsequent discussion will be whether the TPP provisions could be multilateralized, i.e., included in one form or another in a multilateral trade agreement. We are also interested in the

question of whether they might become a blueprint for new post-TPP regional or bilateral trade agreements.

3.1 Tariff Liberalization

The first topic is tariff commitments (Chapter 2 of the TPP agreement). Detailed tariff commitments form the largest part of the TPP agreement in terms of pages. All TPP members agreed to eliminate all tariffs on manufactured goods and reduce the tariffs on agricultural goods. Most of the tariff reductions are immediate (around 75%) and the rest progressive until the year 2046, but the overwhelming majority of the tariffs would be eliminated by 2032.

In order to gauge the trade opening effect of the TPP, one needs to compare the current tariff level with the one committed to in the TPP. As can be seen in Table 4, the simple applied most favored nation (MFN) tariff was about 4% and the weighted tariff below 3%. The level of applied MFN tariffs among TPP members is thus already low with or without TPP. Equally interesting is the fact that more than half of all trade relations among TPP members are already covered by preferential trade agreements. Under these preferential trade agreements the tariff level was even lower—less than 1% for the weighted level. In terms of tariff liberalization, the TPP would not have been a major breakthrough, except for highly protected goods such as rice in Japan or tobacco in the US, which would have become progressively liberalized.

Table 4: Tariff Levels among TPP Members

	Bound	Applied MFN	Preferential Rates
Links covered	132 (<i>all</i>)	132 (<i>all</i>)	69
Simple	15.17%	4.02%	1.70%
Weighted	13.19%	2.72%	0.96%

MFN = most favored nation.

Source: Author.

Table 5 summarizes the tariff information for the developing countries that are TPP members. We can see that the bound tariff levels are around 20%, but the applied tariffs are below 5%. For 27 trade relations the seven countries already apply preferential rates, which are just above 1% for the weighted tariff. Table 6 lists the tariffs for the developed TPP members. More trade links are covered by preferential rates and the tariffs applied for this trade are very low.

**Table 5: Tariff Levels of TPP Member Developing Countries
(Brunei, Chile, Malaysia, Mexico, Peru, Singapore, Viet Nam)**

	Bound	Applied MFN	Preferential Rates (27)
Simple	20.79%	4.51%	2.47%
Weighted	19.27%	3.59%	1.13%

TPP = Trans-Pacific Partnership; MFN = most favored nation.

Source: Author.

**Table 6: Tariff Levels of TPP Members Developed Countries
(Australia, Canada, Japan, New Zealand, US)**

	Bound	Applied MFN	Preferential Rates (42)
Simple	7.30%	3.41%	1.20%
Weighted	4.68%	2.16%	0.85%

TPP = Trans-Pacific Partnership; US = United States; MFN = most favored nation.

Source: Author.

Important is also to note that tariffs would not have been phased out plurilaterally, i.e., equally among all TPP members. Instead, the tariff reductions are in multiple cases defined in bilateral schedules. In other words, several tariff concessions are not granted to all members, but on a bilateral basis. For example, in the US tariff schedule, the tariffs for various industrial products would have been phased out at different speeds depending on the trading partner. One of the most prominent cases is the US tariff on small trucks (HS 870422) imported from Japan. The current tariff of 25% would have been phased out over 30 years.

Especially in the area of agriculture long phase-out periods can be observed. Another telling example is Japan's liberalization commitments for agricultural goods. Japan agreed to increase the quotas for several agricultural goods, but specified the schedule for each trading partner separately. A telling example is the quota that applies to rice imported from Australia. The quota on Australian rice would have been raised from 6,000 tons to 8,400 tons over a period of 13 years. As the example of the quota on rice illustrates, some quotas would have still been in place after the full implementation of the TPP.

The question is whether the proposed TPP tariff reduction schedules could provide guidance for trade opening at the multilateral level. Since at the WTO the tariff concessions need to be offered to all WTO members and not only a subset, the level of ambition at the WTO negotiation table will certainly be lower. However, in terms of identifying sensitive products and designing progressive tariff reduction schedules, the TPP negotiations might prove useful for negotiations in Geneva.

Table 7: Bound and Applied MFN Tariffs of TPP Members

Country Name	Agricultural Products		Non-Agr. Products		Years of Tariff Reduction in TPP
	Bound MFN Tariff	Applied MFN Tariff	Bound MFN Tariff	Applied MFN Tariff	
Australia	3.5	1.2	11.0	3.0	8
Canada	15.8	15.9	5.3	2.2	12–30
New Zealand	6.1	1.4	10.9	2.2	8
Japan	18.2	14.3	2.5	2.5	12–30
Malaysia	61.8	9.3	14.9	5.5	16
Mexico	44.5	17.6	34.8	5.9	16
Peru	30.9	4.1	29.3	3.3	16
United States	4.8	5.1	3.3	3.2	12–30
Viet Nam	16.3	8.7	10.4	8.4	16
Brunei Dar.	32.0	0.1	24.4	1.3	11
Chile	26.1	6.0	25.0	6.0	8
Singapore	26.5	1.1	6.5	0.0	8

MFN = most-favored nation; TPP = Trans-Pacific Partnership.

Source: WTO (2015b).

Table 7 lists the current bound and applied MFN tariffs for agricultural and non-agricultural products of all TPP members. The last column shows the number of years for the phase-out of tariffs. We observe that Canada, Japan, and the US have the longest phase-out periods. The long periods apply to a few, highly sensitive, mostly agricultural products. Developing countries, such as Malaysia, Mexico, and Viet Nam, have also relatively long phase-out periods combined with high applied MFN tariffs on

manufacturing goods. In contrast, countries with an already open MFN trade regime for both agricultural and non-agricultural products agreed to eliminate all remaining tariffs much faster.

It is possible to envision a similar solution for the multilateral level. Especially in the agricultural sectors where the adjustment to trade opening is typically long, a phase-out of tariffs over 10 years or more might be a possible way to open up trade. As for manufactured goods, the worldwide-applied tariffs are already low and a quick trade opening should thus be possible.

3.2 Rules of Origin

Rules of origins (ROO) are an important tool of trade policy. ROO establish rules in order to decide where the product was made.¹ ROO can take on different forms, such as substantial transformation requirements or a change in tariff classification. It is well documented that ROO can be a major source of unnecessary trade costs. Complying with different ROO can be highly costly, not only for exporters, but also for importers who usually spend considerable financial resources to ensure compliance. Furthermore, if a country has signed multiple bilateral or regional trade agreements, there is a risk that the ROO provided in each agreement overlap or even contradict each other. They can also be the reason why exporters do not apply for preferential tariff rates, but simply pay the MFN rate.

Among the TPP members, various preferential trade agreements are currently in place translating into various ROOs. One of the major achievements of the TPP would have therefore been the agreement on a common set of rules of origin (Chapter 3). Agreeing on common ROO was not a simple undertaking, especially on the topic of local value added in the automotive industry. During the TPP negotiations, Mexico and Canada pushed for local content of similar levels to the North American Free Trade Agreement (NAFTA) (62.5% on the value of cars and 60% on auto parts). In contrast, Japan and the US lobbied for laxer ROO. Mexico and Canada were afraid of strong competition from Asia, especially from Japan, should the ROO be further lowered. In the end, the parties achieved consensus by meeting in the middle: about half of the value needs to be added in the TPP member economies. Harmonized ROO were expected to significantly ease trade between TPP members and contributed to reducing the spaghetti bowl effect.

Negotiating a common set of ROO among WTO members has been proven to be much more difficult. ROO are part of every national trade policy kit. The WTO Agreement on Rules of Origin calls for a harmonization of ROO, but the negotiations have shown little progress. Until a harmonization is achieved, WTO Members are expected to follow certain rules when applying ROO, such as ensuring transparency or avoiding distorting effects on international trade. Since a full harmonization seems impossible, one first step might be to call for a simplification of existing rules. Following this idea, the WTO Ministerial Meeting in 2013 in Bali called upon developed and developing countries to simplify their ROOs for imports originating from LDCs and improve the notification to the WTO.

¹ The objective of ROO is to avoid that preferences are used purely for the purpose of transshipments. In other words, ROO prescribe that a certain amount of value needs to be added or a transformation made before the good can be exported.

3.3 Services' Trade Liberalization

In most TPP economies the services sector constitutes the lion share of economic output. However, the current market access is still rather limited. It was therefore hoped that the biggest contribution to economic growth from the TPP would be achieved through a broad liberalization of services (The Economist 2015). For example, hospitals in the US could outsource consultations to doctors in Canada or get a second medical opinion from medical doctors in New Zealand. The low cost and ready availability of new information technologies makes cross-border delivery of such services relatively easy. In addition, the physical movement of persons has also been facilitated through lower-priced airline tickets and increased connectivity.

The services chapter of the TPP follows the so-called “negative list” approach, meaning that all services sectors are open except the ones listed in the agreement. The “negative list approach” typically translates into more trade opening than the “positive list approach” where only the sectors explicitly mentioned in the agreement are subject to trade opening. In the “negative list” approach the reservations that still exist are listed as non-conforming measures (WTO 2014). In the TPP services' chapter the list of non-confirming measures, or reservations, is rather long. Furthermore, the TPP does not require members to agree on the mutual recognition of professional certifications, but only encourages them to do so. It has to be seen in practice whether services providers in TPP member economies are interested in exploring new market opportunities.

Interestingly, the TPP explicitly introduces detailed provisions on Express Delivery Services (Annex 10-B). It stipulates that an existing postal monopoly is not allowed to abuse its monopoly position. Furthermore, TPP members are not allowed to “require an express delivery service supplier of another Party, as a condition of authorization or licensing, to supply a basic universal postal service.” (Paragraph 7[a]) The explicit inclusion of express delivery services might be related to the strong international position of two US based express delivery service providers. The stated objective of the US government is to “ensure fair competition in a sector in which private suppliers often compete with government-owned or government-authorized postal monopolies” and support small and medium-sized enterprises, “which are often highly dependent on express delivery services for integration into global supply chains and distribution networks.” (USTR 2015) However, excluding express delivery companies from public service obligations might not be the best way to ensure that all small and medium-sized enterprises indeed have access to international markets.

The TPP services chapters contain rather small market access commitments. Most provisions in Chapter 10 are statements to encourage members to facilitate services trade, but without binding commitments. The requirement for opening financial services is more concrete and provides additional market access compared with the General Agreement on Trade in Services (GATS) commitments. However, overall market access in services in TPP member economies would have improved only little. The flipside is that the risk of spaghetti bowl effects is also small. The TPP services chapter can probably provide only a negligible impetus for the negotiations in Geneva. Currently, 23 WTO members are trying to agree on a Trade in Services Agreement (TiSA). The services chapter of the TPP could give TiSA negotiators some limited ideas of the possible commitments by TPP member countries.

3.4 Electronic Commerce

The introduction of a chapter (Chapter 14) regulating electronic-commerce (e-commerce) was a reaction to thriving e-commerce within and across TPP member countries. E-commerce has exhibited double-digit growth rates over the past 5 years, yet trade rules on e-commerce in bilateral or regional trade agreements are still sparse. In the first part, the e-commerce chapter attempts to adapt some of the core rules of the General Agreement on Tariffs and Trade (GATT) into the world of electronic commercial exchanges. Similar to GATT, it establishes the principle of non-discrimination among TPP members (Article 14.4). It also calls for avoidance of unnecessary regulatory burden on electronic transactions (Article 14.5), which is a transcription of GATT Article XIII. The chapter goes one step beyond the GATT as it requires the TPP members not to levy any customs duties on “electronic transmissions, including content transmitted electronically, between a person of one Party and a person of another Party.” (Article 14.3)

Ensuring consumer protection is one of the key elements of the chapter. The chapter requires TPP members to introduce or maintain consumer protection laws that prevent “fraudulent and deceptive commercial activities” (Article 14.7). The consumers should also be protected from unsolicited commercial messages (Article 14.14).

One important new element of the e-commerce chapter are the provisions on the location of the computing facility. Article 14.13 stipulates that no TPP member shall require to use or to locate the computing facilities within its territory as a condition for doing business. As more and more services are “cloud” based, the argument was that requesting to store the data locally would create unnecessary costs for businesses. However, exemptions to this obligation are granted for legitimate public policy objectives. The inclusion of this exemption is probably due to concerns raised by Canada. Two Canadian Provinces, British Columbia and Nova Scotia, require government data to be stored locally.

Finally, rules on sharing of source codes of software have also entered the agreement. In the WTO Committee on Technical Barriers to Trade, WTO members regularly raised specific trade concerns about the requests by governments to private companies to share their source code (e.g., WTO 2015a). Article 14.17 prohibits any TPP member from requiring the transfer or the access to the source code of software owned by a company. The only exception is for software that is used for critical infrastructure. The agreement does not specify what is meant by critical infrastructure. Furthermore, the agreement does not provide exceptions for other reasons, such as provided in GATT XX.

Overall, the e-commerce chapter stresses the importance of the free flow of data across borders and cybersecurity. It attempts to provide better protection to consumers and private companies, so consumers can enjoy a higher protection from unsolicited mail and other nuisances and private companies benefit from a better protection of their source codes. Importantly, it does not allow for data localization requirements. Furthermore, it ensures that proprietary technology is protected by not allowing for disclosure of source data as a condition of market access, except for software used for critical infrastructure (Article 14.17). Finally, it has to be noted that there are universal service obligations for Internet providers.

The e-commerce chapter has been interpreted as a clear reflection of strong US interests in providing enhanced market access to US digital service providers (Branstetter 2016). It is an attempt to strike a balance between commercial freedom and privacy protection for consumer data. However, we suppose that the suggested

balance would be highly contested at the multilateral level. For example, the European Union is a strong advocate of localization requirements. The PRC has a different understanding of the disclosure requirements of source data. Given these different views, there is a risk of overlapping and possibly contradicting provisions in existing or future regional trade agreements. Negotiations at the multilateral level will most likely agree on a small subset of issues, such as consumer protection from fraudulent and deceptive commercial activities online or consumer data privacy provisions.

3.5 Intellectual Property

The protection of intellectual property has become a core element of almost every recent trade agreement, especially those with developed countries among the signatories. Advanced countries typically rely on technological advances when competing in international markets. Furthermore, as knowledge based (e.g., software and pharmaceuticals) and creative industries (e.g., music and movies) are expanding in TPP economies, the protection of intellectual property has increasingly become a key concern for several TPP members.

Chapter 18 on intellectual property takes the 1994 Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as a basis. On several occasions it changed TRIPS agreements and introduced significant extensions. One example of a small, yet potentially important, difference between TRIPS and TPP is with respect to the definition of patents. In the TRIPS Agreement, Article 27 sets forth the principle that patents have to be “new, involve an inventive step and capable of industrial application.” In TPP chapter Article 18.37(1) almost the same language is used. Patents are available for inventions “provided that the invention is new, involves an inventive step and is capable of industrial application.” However, Article 18.37(2) expands the patentability by stating that patents can be filed for “inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product.” The scope of patentability is thus larger than in TRIPS and an indication that the intellectual property chapter attempts to further strengthen intellectual property rights.

When it comes to public health, the intellectual property chapter affirms the commitment of TPP members to the Declaration on TRIPS and Public Health. Furthermore, in Article 18.6 all TPP members agree that the agreement will be “implemented in a manner supportive of each Party’s right to protect public health and, in particular, to promote access to medicines for all.” It also reiterates the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540).

Chapter 18 introduces several major innovations. For example, state-owned enterprises are also subject to full intellectual property enforcement. The chapter also requires the establishment of criminal sanctions and procedures for trademark counterfeiting. The chapter extends the scope of intellectual property protection to cover the digital environment. Finally, the most controversial innovation is the introduction of rules on biological medicines (Article 18.52). Biologics are pharmaceutical drugs that are produced from biological sources, such as vaccines or living cells. The intellectual property chapter provides data protection for biologics of 8 years or 5 years with additional measures that will “deliver a comparable market outcome.” The TPP members are allowed to exceed these minimums, e.g., in the US the data protection for biologics is 12 years (Branstetter 2016).

Since the intellectual property provisions in TPP require changes to the domestic laws of several TPP members, especially in developing countries, a major question was

about the transition periods (Fergusson et al. 2016). In the final agreement, varying transition periods are planned depending on the country and the provision, accumulating up to 10 years with possible additional extensions for Viet Nam.

Overall, the intellectual property chapter requires substantive updates of national law, especially in the TPP members that are developing countries. Given that the new law will apply to all entities irrespective of their origin, the risk of a spaghetti bowl effect is small.

The WTO TRIPS agreement is more than 20 years old and does not cover important new topics in the digital economy or advances in medicine, such as biologicals. Chapter 18 could in theory be a blueprint for an updated TRIPS agreement. However, given the numerous controversies around the TRIPS agreement, it is unlikely that WTO members will be able to agree on even a subset of the provisions agreed in the TPP. For example, the extension of intellectual property enforcement to online or digital products is contested by several WTO members. Similarly, finding a compromise on data protection on biologicals at the multilateral levels seems nearly impossible.

3.6 Labor Standards

The chapter on labor standards (Chapter 19) was praised by many observers, including the International Labor Organization (ILO), as an important contribution to raising labor standards in the TPP member countries. Article 19.3 calls for a full implementation of ILO fundamental labor rights as stated in the ILO Declaration:

- (a) Freedom of association and the effective recognition of the right of collective bargaining;
- (b) The elimination of all forms of forced or compulsory labor;
- (c) The effective abolition of child labor and;
- (d) The elimination of discrimination in respect of employment and occupation.

Furthermore, Article 19.3 obliges members to create acceptable conditions of work in three areas: minimum wages, hours of work, and occupational safety and health regulations. Such a provision has never been included in any trade agreement that the US signed. However, the TPP gives regulatory discretion to each country and has no provisions to monitor the implementation (Cimino–Isaacs 2016). The TPP agreement has two more provisions that are new to a US trade agreement: First, commitments to discourage trade in goods produced by forced labor. And second, commitments to not weaken labor protection in export processing zones.

In addition, the US signed bilateral agreements with Brunei, Malaysia, and Viet Nam to ensure that all three countries safeguard fundamental labor rights and eliminate child labor. The bilateral agreements include a review mechanism and dispute settlement mechanism. The willingness of these three countries to sign these agreements is perceived as a major achievement. For Viet Nam it would have meant a substantial overhaul of the legislation on unions. Currently, union activity is highly regulated. Under the TPP, Viet Nam would need to allow for collective bargaining and independent unions. In the case of Malaysia, existing restrictions on union formation and strikes would have to be removed.

The bilateral agreements in TPP established a concrete time schedule to implement the reforms. For example, Viet Nam had 5 years after the entry into force of the TPP agreement before the US will review the implementation. The US had the right to

withhold or suspend tariff reductions if Viet Nam did not change its laws and ensures implementation. Malaysia and Brunei were given much less time. According to the two bilateral agreements (VII. Implementation), both countries needed to enact all reform prior to the date of entry into force of the TPP agreement.

Among the many free trade agreements that already have detailed provisions on labor rights, the TPP would have offered the most ambitious set of labor provisions (Cimino–Isaacs 2016). In contrast, at the multilateral level labor standards are currently not covered by WTO rules and disciplines. Labor rights were discussed as early as 1948 when countries planned to set up an International Trade Organization. With the creation of the WTO in 1995, developed countries, especially the US and those of the European Union, suggested including labor rights in the negotiating agenda. But this was fiercely resisted by developing countries who feared that it could undo their competitive advantage in labor-intensive industries. The US and the European Union have subsequently included provisions on labor standards in their bilateral FTAs.

The TPP agreement promotes minimum labor standards across all TPP members. Similar to the intellectual property chapter, the TPP agreement requires a change in domestic law. Developing countries, such as Viet Nam, would have been obliged to substantially update their national legislation. The updated law would then apply across all companies and the risk of a spaghetti bowl effect can therefore be ruled out. At the same time, it appears highly unlikely that the developing countries in the WTO would be willing to take similar measures. Labor rights, similar to intellectual property rights, remain a highly sensitive topic and its mere inclusion in the negotiating agenda of the WTO is not possible at the moment. Chapter 19 can therefore only be understood as inspiration for the distant future, when WTO members agree to restart discussions on the topic.

Table 8 summarizes the main finding of the discussion in section 3. The first two rows list the different areas covered. The remaining rows show whether the TPP provisions can be multilateralized, maintained in the TPP without the US or in bilateral trade agreements with the US. In this paper we argue that multilateralization might only be possible for two topics—tariff commitments and trade in services liberalization. In both areas the TPP market access commitments will not be maintained at the multilateral level, but the TPP gives a good indication of the products and services for which countries might make concessions.

If the TPP would be pursued without the US, it is highly unlikely that the existing text can be maintained. As explained above, the current text is an outcome of lengthy negotiations and constitutes a delicate balance. It could be that the remaining countries might be willing to keep the harmonized ROO or the intellectual property chapter with smaller modifications. However, in all other areas many rounds of new negotiations are necessary.

The current text of the TPP has the highest probability to survive in forthcoming bilateral trade agreements with the US. In these bilateral trade negotiations the US will use its economic prowess to ask for substantive concessions from its trading partners. Especially on the new topics, we expect that the US will be able to impose provisions very similar to the TPP. In contrast, the tariff commitments offered by the US will probably look rather different taking into account the new US administration's protectionist stance.

Table 8: Salvaging TPP Commitments

	“Old” Topics			“New” Topics		
	Tariff Commitments	Rules of Origin	Services Liberalization	Electronic Commerce	Intellectual Property	Labor Standards
Potential to multilateralize	Medium	Impossible	Medium	Impossible	Impossible	Impossible
Potential to keep in a TPP	Low	Medium	Low	Low	Medium	Low
Potential to keep in US Bilateral	Low	Medium	High	High	Medium	High

TPP = Trans-Pacific Partnership; TPP 11 = All Trans-Pacific Partnership Members, except the US.

Source: Author.

4. CONCLUSIONS

The TPP was supposed to become one of the most comprehensive and ambitious mega-regional trade agreements. It would have certainly stimulated trade among its members, not so much by a reduction in tariffs, but by promoting regulatory coherence, e.g. by harmonizing ROO. The TPP also introduced a number of regulatory innovations, including in areas where the need for new trade rules has become increasingly urgent. For example, e-commerce is flourishing across countries and yet the WTO trade rule book is lagging decades behind. Another example are biologicals, which are gaining ground for medical treatment but are not yet covered, even by bilateral trade agreements. The TPP thus showcases what kind of new trade rules have to be written, at the bilateral and at the multilateral level.

However, as we discussed in this paper, the chances to multilateralize the TPP agreement are limited. The TPP members were able to negotiate a deal because they were a small group of countries with a similar vision of a more open and rules-based trade regime. At the WTO, the negotiation room is filled with countries holding different visions and ambitions. The WTO has become a truly universal organization. As is the case for the United Nations, the decisions at the WTO are based on consensus, which has become increasingly difficult to reach. And if consensus is achieved, the agreement is typically less ambitious and less binding than a regional or bilateral trade agreement.

Much has been written about the reasons for the failure of the Doha Development Round. One of the biggest setbacks for the Doha Round had occurred in 2008 when the WTO members were close to a deal, but finally had to suspend the negotiations. Differences between the US and India in the area of agriculture prevented a compromise. In 2008, many authors had already labeled this event the “failure” of the Doha Development Round, e.g., Krishnan (2008) or Francois (2008). The negative tone of the observers became stronger over time as concluding the Doha Round became more and more elusive. In 2011, Kleimann and Guinan (2011) published an obituary for the round and Brandi and Helble (2011) asked whether WTO history had come to an end, arguing that the negotiating model of the previous rounds was outdated and that the WTO members needed to rethink the design of the multilateral trade negotiations to achieve future success. As the negotiations of the Doha Round continued without any perceivable progress, the prospects of a successful conclusion further diminished. At the latest WTO Ministerial Conference in Nairobi in December 2015, several WTO members, among them several developed countries, pushed for officially ending the Doha Round, but several developing country members opposed

this. The next WTO Ministerial Conference in Buenos Aires in December 2017 a similar attempt might be made. Even though the future of the TPP is uncertain, it might still help for a new trade negotiating agenda, post Doha Development Round. The TPP clearly delineates the contours of a revamped multilateral trade framework that responds to the needs of the 21st century.

The withdrawal of the US from TPP has further weakened the regulatory impulse that TPP might have been able to provide. As described above, several of the regulatory innovations provided in TPP were pushed by the US in exchange for access to the US market. For example, Viet Nam was ready to overhaul its domestic laws on labor laws given the prospect of a better market access in the US. If the TPP members would like to push ahead without the US, it is unlikely that the current agreement could be maintained. The current agreement constitutes a delicate balance of offers and demands by all parties in both traditional and new areas. The US withdrawal means that new negotiations are needed to find a new balance. It remains to be seen how much of the current TPP provisions will survive such an undertaking.

The most likely place where the TPP provisions will appear again are the recently envisioned bilateral trade agreements between the US and countries in the Asia-Pacific. US President Trump announced to replace the TPP with bilateral deals on his first day in office. In these bilateral deal, the US as the world's largest economy will have substantial leverage on its relatively small trade partners. It is therefore likely that some chapters of the TPP, for example of e-commerce or labor rights, which were promoted by the US will find their way into these bilateral trade agreements. Another outlet where the TPP provisions might become important is in the possible renegotiations of NAFTA. The NAFTA agreement dates back to the mid-1990s. Similar to the WTO agreement, NAFTA has been updated to take account of new technological developments. Furthermore, US President Trump has announced his determination to renegotiate NAFTA to recreate a more level playing field between US workers and their Mexican counterparts. The TPP chapter on labor rights might serve as a blueprint for the labor rights' provisions in an updated NAFTA.

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