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Trade Issues for Asia Business in 2017: A Look Beyond Headlines at TPP's Demise and Emerging RCEP Trade Agreement

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Press coverage about trade in Asia after the election of Donald Trump predominantly has framed a narrative that China stands to benefit from the demise of the U.S.-led Trans-Pacific Partnership (TPP) at the expense of the U.S., as the Asia region ''pivots'' to adopt the competing China-led Regional Comprehensive Economic Partnership (RCEP). A look beyond the headlines tells a different, more nuanced tale, and businesses in the region should take note of the opportunities and risks in this new environment.

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1. Is the TPP Dead? In short, yes, although key provisions may survive in other trade agreements.

A ''disaster.'' Most of the 12 Asia-Pacific countries that signed the TPP have already made significant progress toward its ratification. However, the current terms of the TPP effectively require that it be ratified by both Japan and the U.S. before it goes into effect. Trump has called the TPP a ''disaster'' and made opposing the agreement a central part of his campaign message. He said one of his first actions following inauguration in January 2017 would be to ''withdraw'' from the TPP and focus instead on bilateral agreements. Thus, in its current form, the TPP is ''dead.''

Is renegotiation possible? Trump is not philosophically anti-trade but rather simply believes he can negotiate better terms than prior administrations, and that the U.S. surrenders leverage in multilateral negotiations. He will come under pressure to find a way to preserve the key achievements of the TPP from big business interests in the U.S., pro-trade Republicans in Congress, and the other 11 signatory countries that invested time and political capital to successfully conclude the U.S.-led agreement.

Those in the new Administration wanting to advance his promise to ''get tough'' on China may advocate TPP as a way to put pressure on China. After a year or two, it is conceivable that the Trump Administration may find it expedient to advance a ''repackaged'' or ''rebranded'' agreement along the lines of the TPP. Nonetheless, it will be difficult for Trump to retreat from his explicit promises to withdraw from the TPP. A move to renegotiate the TPP, even under a different name,

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would be bad politics and highly unpopular with his support base.

There also will be pressure against renegotiation from members of Congress who oppose the TPP and other international trade agreements. The 11 TPP co-signatory countries also would resist substantive renegotiation. The bottom line is that renegotiation among the 12 TPP parties now appears unlikely.

Ratification without the U.S.? The remaining 11 parties to the TPP spent years negotiating the agreement, and officials in Mexico and Japan already have proposed going forward without the U.S. However, a number of the TPP parties made substantive concessions on the condition that they would obtain improved access to the U.S. market in the bargain; the absence of the U.S. from the agreement would remove the main incentive for making those concessions and it would be difficult for them to join an 11-party TPP without opening the agreement up to a new round of negotiation that rebalances costs and benefits.

Many officials believe the TPP makes no sense without the U.S. Nonetheless, Australia, New Zealand, Japan and Singapore, among others, currently are moving forward with ratification and will take stock of the ratification prospects for other signatories later in 2017.

TPP provisions in other trade agreements. Despite the Trump Administration's plans to withdraw from the TPP, some of the achievements in the TPP may carry over into other trade agreements. For example, provisions that are the same or very similar to the services and e-commerce chapters of the TPP may be included in the multilateral Trade in Services Agreement (TiSA) currently under negotiation.

Of course, the TiSA's prospects in the new Administration are also uncertain although Trump has not explicitly renounced it. Provisions similar to the TPP chapters for trade in goods and trade in services also may make it into an upgraded RCEP agreement. Pursuing separate bilateral agreements with each of the 11 TPP members, as Trump has proposed, would likely take a very long time. He may therefore focus on one or more countries with which the U.S. does not currently have a free trade agreement (FTA), like Vietnam, Malaysia, Japan or New Zealand, and TPP provisions would likely carry over into these FTAs.

2. What is the RCEP? The Regional Comprehensive Economic Partnership (RCEP) is often described as a China-led trade agreement that competes with the TPP for influence in Asia. That description is not accurate.

Membership: Is it led by China? The RCEP is a super-regional agreement among the 10 ASEAN member countries (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) and the six countries with which ASEAN has existing free trade agreements (''ASEAN + X'' model), i.e., Australia, New Zealand, Japan, China, India and Korea. China of course promotes the agreement, and has invited several TPP countries to join the RCEP. However, despite characterizations in the press to the contrary, the RCEP was not drafted or led by China. Rather, the RCEP began as an ASEAN-led process through which ASEAN could broaden and deepen its economic engagement with its FTA partners.

Importance: What is RCEP's its economic significance? The 16 countries negotiating the RCEP represent 45 percent of the world's population and 40 percent of global trade. The parties have agreed to eliminate tariffs on 65 percent of trade, covering roughly 8,000-9,000 goods with cuts on additional goods within 10 years. Without a doubt, RCEP will cover a large and growing part of the global economy.

3. How does RCEP compare to the TPP? Similarities. Seven TPP countries also are RCEP parties. Both agreements strive to establish a single, harmonized, predictable set of regional trade rules that incentivize businesses to locate their supply chains within the covered region. Both agreements strive to be pathways to a larger Asia-wide agreement called the Free Trade Area of the Asia-Pacific (FTAAP). Both aim to cover trade in goods, services, e-commerce, intellectual property, and investment, albeit with varying degrees of ambition and substance.

Differences. The U.S., Canada, Mexico, Peru and Chile are not RCEP parties. China, India and Korea, and most ASEAN countries, including Thailand, Indonesia and the Philippines, are not TPP parties. RCEP is still under negotiation, whereas TPP has been signed and awaits ratification.

The TPP is viewed as a more comprehensive ''high-standard'' agreement that includes ambitious provisions that are not expected to be part of the RCEP (e.g., coverage of state-owned enterprises (SOEs), the digital economy, intellectual property, regulatory coherence, investment, due process, transparency, labor, and the environment). Some TPP provisions are even aimed at China on the assumption it would eventually join the TPP (e.g., disciplines on SOEs and commercial presence requirements, protection of encryption products, prohibitions on indigenous innovation performance mandates and forced disclosure of source code, and penalties for trade secret theft and hacking). Experts estimate that the TPP would cover three times as many laws as the RCEP.

4. What is the status of the RCEP? Current status. RCEP negotiators did not achieve their earlier aim of concluding an agreement by the end of 2016. While some RCEP parties have called for the conclusion of the RCEP by early 2017, the RCEP ministers have not yet set a new deadline. Once the RCEP is signed, ratification is not expected to be a problem, unlike for the TPP.

Sticking points. Despite notable progress in the RCEP negotiations over the last several months, significant points of disagreement between the various parties remain:

- There is fear of a ''race to the bottom'' scenario in which RCEP members competitively seek maximum protection for their own domestic sectors, impeding compromises needed for trade liberalization.
- Developed RCEP parties, such as Australia, Japan and New Zealand, seek broader coverage of new and more innovative areas like e-commerce, competition, investment, and services, which developing countries like India and some ASEAN members are resisting.
- The absence of bilateral FTAs among key RCEP parties—e.g., between China and Japan, China and India, and Japan and Korea—means there is less common ground on a framework for elimination of trade barriers. Even as to the existing FTAs among ASEAN and the other RCEP parties, significant differences from one FTA to another complicate efforts to harmonize rules in one agreement.

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TPP and RCEP: At a Glance

Features	TPP	RCEP
Total GDP	**40% of global GDP**	**Roughly 30% of global GDP**
Objectives of FTA	Add new and traditional trade liberalization through a comprehensive, harmonized FTA	Harmonize "noodle bowl" of regional FTA rules into one FTA
Membership model	All Asia-Pacific countries encouraged to join	ASEAN+X model
Status	**Completed and signed, awaiting ratification**	**Under negotiation**
Relation to regional architecture	Not tied to an existing organization (independent of APEC)	Affirms principle of ASEAN centrality
Scope and coverage	WTO "plus" commitments on tariff and non-tariff barriers, also new areas such as labor, environment and good government	Mainly WTO consistent; mostly focused on tariffs
Current members (overlap in red)	Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam	Australia, Brunei, Cambodia, China, India, Indonesia, Laos, Japan, Korea, Malaysia, Myanmar, New Zealand, Philippines, Singapore, Thailand and Vietnam
Significant absent members	**China, Korea and India**	**United States, Canada and Mexico**
Major sponsor	U.S.-led	ASEAN-led in principle
Commitment level	"High standard" agreement with broad and ambitious level of trade liberalization	Lower level of trade liberalization other than tariffs on goods
Services liberalization	Negative list approach (covered unless listed as exception)	Positive list approach (not covered unless listed)
Investment liberalization	Negative list approach	Negative list approach
Special treatment for developing countries	None (schedules may give specific concessions to developing economies)	Provided consistent with ASEAN FTA model

Source: Christopher Corr and Samuel Scoles

a Bloomberg BNA graphic/itr702g1

■ The RCEP Guiding Principle requiring special and more favorable treatment for the least developed parties such as Cambodia, Laos and Myanmar, has slowed down progress as some countries, while agreeing in theory, have been reluctant in practice to agree to unequal trade concessions.

RCEP's prospects and effect of the demise of the TPP. After the U.S. election, trade officials in Asia and particularly other TPP members have called for a "pivot" from the TPP to the RCEP. The demise of the TPP thus may add momentum to efforts to conclude the RCEP, and may also lead some RCEP negotiators to press for "high-standard" provisions similar to those in the TPP as a way of preserving them.

On the other hand, some RCEP negotiators had been motivated by a concern about being left out of the TPP. With the apparent demise of the TPP, these concerns disappear, which may remove a key incentive for making the concessions necessary to expeditiously conclude the RCEP. The RCEP's prospects should become more evident by mid-2017 as the parties show their hands in negotiations.

5. Is RCEP a threat to U.S. business interests and influence in Asia? Narratives in the press. In pushing for adoption of the TPP prior to the election, U.S. officials claimed that if the RCEP were adopted and TPP failed, China would gain an advantage in the region at the expense of the U.S. President Barack Obama said we "can't leave it to China to write the trade rules," and U.S. Trade Representative Michael Froman said failure to approve the TPP "will hand the keys to the castle to China." Many in the business community and press echoed these sentiments.

Disadvantages for the U.S. The narrative of the U.S. and China locked in a zero sum game of competing regional trade agreements is inaccurate and oversimplified. Nonetheless, if RCEP is successfully concluded and ratified, businesses from the U.S. and other non-RCEP countries will likely be at a disadvantage in competing for business and supply chain investment within the region. This is not a reflection of China writing self-serving, anti-U.S. trade rules via the RCEP. Rather, it is simply a result of the U.S. not being a party to the RCEP, combined with the expected failure of the TPP leaving U.S. businesses on the outside looking in. Indeed, if the TPP were to go into effect, businesses from non-TPP countries would be at a disadvantage in the TPP region. That's just the way FTAs work.

The RCEP is not anti-U.S., and the harm to U.S. businesses will arise from the fact that the U.S. has chosen not to be part of these regional trade preferential arrangements at present. The solution is simple: Without the TPP, U.S. businesses seeking the benefits of regional trade liberalization will have to look to other preferential agreements, including the RCEP or regional bilateral agreements, in considering where to invest or locate supply chain.

U.S. credibility in Asia also may suffer with the demise of the TPP, as the U.S. actively promoted the TPP for eight years. The lack of political will to implement the agreement will cause resentment among trade partners and doubts about U.S. resolve. This is not the first time that this has happened: The failure of the International Trade Organization after World War II and the failure to complete the Free Trade Agreement of the Americas in the 1990s can also be explained, in part, by the inability of U.S. political leadership to convince a skeptical public.

That said, the context for the imminent failure of TPP is unique, as it comes over two decades after the entry into force of the WTO and after all major world economies, including China and Russia, have been incorporated into the WTO regime. This may prove to be a symbolic flexion point, portending a plateau in progress toward large multinational trade agreements, temporary or otherwise, as the tides of economic nationalism rise in the developed world.

6. Will failure of TPP give advantages to China and other Asian countries? While populist anti-trade winds blow in the West, the climate for trade is more hospitable in the East, where negotiations on numerous FTAs are moving forward. With no TPP, U.S. businesses will be at a growing disadvantage if the U.S. stands on the sidelines while other countries offer global companies the benefits of reduced trade barriers and more efficient supply chains.

China's stated long-term trade goal is for a larger Free Trade Agreement of the Asia Pacific (FTAAP). China knows the U.S. must be a part of FTAAP. It views the RCEP and TPP as ''pathways'' to this goal. Although hawkish interests in China will welcome a loss of U.S. prestige in the region from the failure of the TPP, it is likely that the demise of TPP will not be a welcomed development for those in China who view the TPP as part of the pathway to the larger FTAAP.

Indeed, China invited the U.S. to join the RCEP, and recently urged Trump not to pull out of regional trade agreements and negotiations. China also was expected to join the TPP in a later round of negotiations, notwithstanding initial concerns about some of the TPP provisions aimed at China. In short, demise of the TPP is unlikely to be a win for China. Those who claim that Trump will be compelled to embrace TPP as a leverage point against China seem to devalue this point.

Other Asian countries that were not parties to the TPP, such as Thailand, the Philippines and Indonesia, will see some benefit from the demise of the TPP in the way of a dodged bullet, as local economists were predicting that these countries would suffer significant declines in exports, investment and GDP relative to competing regional TPP countries such as Vietnam and Malaysia.

The declines would likely have been temporary, as these countries were expected to join a second tranche of TPP negotiations. On the other hand, TPP countries such as Japan, Singapore, Malaysia and Vietnam will suffer lost opportunities for expanded trade and investment. Japan in particular has been a strong advocate of the high-standard TPP provisions, and was hoping they would serve as a stimulus to the sluggish domestic economy and impetus to necessary reform and deregulation at home.

One might also say more generally that the business environment in the region will suffer a setback with the demise of the hard-won TPP consensus on improvements in regulatory coherence and due process, transparency, anti-corruption, and environmental and labor disciplines.

These good governance measures are unlikely to find their way into other regional or multinational trade agreements, or into regional domestic legislation without the external mandate of the TPP, at least in the near term, and would have benefited the business environment in the region at large. They will likely be part of any new bilateral agreements involving the U.S., however.

Conclusion. The demise of the TPP may be especially bitter for the U.S. business community, as it would have opened important markets in services, e-commerce and agriculture where the U.S. is most competitive, and would have encouraged investments in the U.S. as part of the TPP supply chain. Moreover, whereas the TPP good governance provisions would not have required notable changes to U.S. law, they would have created a friendlier environment for U.S. businesses in the Asia region.

The demise of the TPP also is not a welcome development for China trade policy, and the conclusion of the RCEP will not give China an undue advantage. RCEP, which aims to improve market access and remove trade barriers in the region, should not be viewed as a threat to U.S. businesses. Rather, to ensure U.S. businesses are not left behind as Asia moves forward on trade liberalization, the U.S. must stay engaged in trade negotiations in the region, build bridges to the RCEP, support the FTAAP, and seek ways to preserve and extend hard-won, high-standard achievements of the TPP.

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