

FPCJ On-line Press Briefing
(October 29, 2021)

The Future of the TPP and Japan's Response, as China and Taiwan Apply

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1. Situation on the Chinese side

- China has deliberately prepared for the participation in CPTPP.
 - Watanabe, Kamo, Kawashima, and Kawase (2021)
 - China regards its CPTPP accession, in addition to RCEP, as an important footstep toward strengthening “institutional discourse power (制度性話語權)” for the construction of FTAAP.
 - In the context of a series of policies for rules on external relations (涉外法治工作).
- China may be thinking that the current reform of state-owned enterprises (SOEs) and others would make China mostly meet the requirement of CPTPP policy discipline and the rest would be on the matter of negotiations.
 - Of course, China may also think of the implication of accession negotiations themselves, rather than placing the accession as a final goal.
- However, so far, we cannot see a sign of substantial reform at the occasion of CPTPP accession. With considering the current political environment, the accession negotiations may face difficulties.
 - In the following, we examine the current situation from the viewpoints of negotiations, contents, and politics.

2. On the negotiations

- Accession process
 - 1) Formal request by the aspirant economy, 2) decision of whether to commence the accession process by TPP Commission, 3) negotiation with the Accession Working Group and individual members, 4) TPP Commission's approval, 5) domestic procedures by members and the aspirant economy, 6) accession
 - UK: 1) Feb. 1, 2021, 2) June 2, 3) Sept. 28-29 the first AWG (chair: Japan, deputy chairs: Australia, Singapore)
 - China: 1) Sept. 16, 2021, Taiwan: 1) Sept. 22, 2021
- High standard to meet
 - Accession process (Annex to CPTP/COM/2019/D002, Jan. 19, 2019 at the first TPP Commission)
 - Benchmark: Aspirant economies must: (a) demonstrate the means by which they will comply with all of the existing rules contained in the CPTPP; and (b) undertake to deliver the highest standard of market access offers on goods, services, investment, financial services, government procurement, state-owned enterprises and temporary entry for business persons. ...
 - For 2) and 4), all existing members must approve the decision.
 - Of course, special and differential treatment (S&D) in the WTO is not applied.
- Weak standpoint of aspirant economies
 - Existing members got a number of concessions with each other in order to conclude the agreement. However, in the case of accession negotiations, existing members do not have to accept any additional obligation after all and thus have a weak incentive for giving exceptions or exemptions for new members.
 - In addition, as we see in the WTO accession negotiations, it is possible to impose extra obligations (CPTPP+) for new entrants and set up a mechanism for monitoring the implementation.
- On the other hand, the accession by big China may provide massive economic benefits for existing members.
 - Kumagai and Hayakawa (2021): Large economic effects on countries that do not currently have FTA with China such as Canada, Mexico, and the UK.
 - Political/economic pressure as well as side payments from China may also affect negotiations.

3. On the contents

- The CPTPP text consists of liberalization commitments and rule-making. The latter includes some obscurity, such as on how far exceptions can be granted.
 - So far, a rigorous surveillance on the implementation by existing members has not been conducted (for example, on whether domestic laws and regulations are revised in order to meet the CPTPP obligations).
 - Urgent to strengthen the enforcement monitoring system (CPTPP Commission, Sub-committees, ...).
 - The UK accession case will be a good reference.
- In case of China, at least the following four points are likely to be the issues.
 - (i) SOEs chapter
 - (ii) Electronic commerce chapter
 - (iii) Labour chapter
 - (iv) Liberalization
- At the end, issues may become those on political system itself.

Structure of TPP 30 chapters

WTO+

(deepening of WTO commitments)

- National Treatment of Market Access for Goods [2]
 - Textiles and Apparel [4]
- Rules of Origin and Origin Procedures [3]
- Customs Administration and Trade Facilitation [5]
- Sanitary and Phytosanitary Measures (SPS) [7]
- Technical Barriers to Trade (TBT) [8]
- Trade Remedies [6]
- Cross-Border Trade in Services [10]
- Temporary Entry for Business Persons [12]
- Financial Services [11]
- Telecommunications [13]
- Dispute Settlement [28]
- Government Procurement [15]
- Intellectual Property [18]

WTO-x

(areas not covered by WTO)

- Electronic Commerce [14]
- Investment [9]
- Competition Policy [16]
- State-Owned Enterprises and Designated Monopolies [17]
- Environment [20]
- Labour [19]
- Administrative and Institutional Provisions [27]
- Cooperation and Capacity Building [21]
- Competitiveness and Business Facilitation [22]
- Development [23]
- Small and Medium-Sized Enterprises [24]
- Regulatory Coherence [25]
- Transparency and Anti-Corruption [26]
- (Initial Provisions and General Definitions [1], Exceptions [29], Final Provisions [30])

Note: Items in red letters indicate those with dispute settlement.

(i) SOEs chapter

- CPTPP does not deny the existence of SOEs and others. However, once an SOE comes into a market and competes with private companies, necessary measures will be required for not jeopardizing competition by direct or indirect subsidy, lenient financial discipline, or non-commercial considerations.
- Three kinds of discipline
 - Each Party shall ensure that each of SOEs and others acts in accordance with commercial considerations in its purchase or sale of a good or service and non-discrimination treatment must be given to an enterprise, a good, or service of another Party.
 - No Party shall cause adverse effects to the interests of another Party through the use of non-commercial assistance that it provides to its SOEs.
 - Each Party shall provide to the other Parties make a list of its SOEs publicly available. On the request of another Party, a Party shall promptly provide a set of information concerning a SOE.
- Many exemptions
 - A central bank, financial regulatory body, a body for the resolution of a failing or failed enterprises, sovereign wealth funds, independent pension funds and others are exempted.
 - Service supplied in the exercise of governmental authority; purchases and sales of goods or services exclusively to that Party for the purposes of carrying out that Party's governmental functions: excluded.
 - In addition, a long list of exceptions/exemptions is attached for Members.
- China seems to conduct a series of SOE reform with well considering the competitive neutrality.
 - However, at the same time, it introduces policies to provide preferential status for SOEs in order to establish the basis of economic security and industrial promotion.
- There is no guarantee that China could receive a wide range of exemptions such that Singapore, Malaysia, and Vietnam were obtained in the original negotiation.

(ii) Electronic commerce chapter

- Most important are three TPP principles
 - (i) Free flow of data
 - (ii) Prohibition of data localization requirements
 - (iii) Prohibition of forced disclosure of source codes
- However, the text is somewhat abstract and allows each Party's own regulatory requirements for public purposes in (i) and (ii). The borderline is not necessarily clear.
 - RCEP also includes (i) and (ii) in the text. However, it specifically excludes the possibility of using dispute settlement procedure. Thus, it cannot be enforceable.
- China's regulatory system on data is based on its own political stance. However, it may be interpreted as "principles plus exemptions."
 - For example, we must look at what sort of revision in the Cybersecurity Law, which allows a wide scope of discretionary restrictions on data flows based on national security reasons, would be promised by China.

(iii) Labour chapter

- Most controversial would be that "each party shall adopt and maintain in its statutes and regulations, and practices the rights as stated in the ILO Declaration (*Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*)
 - The ILO Declaration includes freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the elimination of discrimination in respect of employment and occupation.
- China must convince existing members for its compliance.

(iv) Liberalization

- Tariffs and trade in goods
 - CPTPP: except Japan (95%), all existing members promised 99%+ tariff elimination.
 - China has only experienced 90-95% tariff elimination in the past FTAs. In case of RCEP, a tariff elimination ratio for Japan is 86%.
- Services, investment
 - CPTPP: high-level liberalization in the negative list approach
 - In case of RCEP, China would start with the positive list approach and begin the switching procedure to the negative list approach within three years after being in effect.
- Government procurement
 - The liberalization level beyond WTO's Government Procurement Agreement (GPA; Plurilateral)
 - China is not a signatory of GPA. Unexperienced commitment.
- China would not be in a position of receiving exceptions easily.
 - No S&D as in the WTO. New entrant to the agreement.

4. Politics

- Existing members would like to avoid the situation that either the US or China would make the issue politicized and the members would be asked to choose one of them, ending up with the weakening of CPTPP ties.
- All members' approval is needed.
 - CPTPP in effect for 8 countries so far (Mexico, Japan, Singapore, New Zealand, Canada, Australia; Vietnam, Peru). The rest is Brunei, Malaysia, and Chile.
 - Canada and Mexico are in new NAFTA (USMCA) that includes so-called poison clause (virtual restriction on concluding a FTA with non-market economy countries).
- There is a possibility that Taiwan would clear the technical requirements earlier.
 - China would not be a member of CPTPP, thus no veto.
- There is a possibility that the US would come back to TPP, CPTPP, or some commitment with East Asia.
- Existing members may want to keep the negotiation “technical” and earn some time.

5. Points to watch from now on

- Progress of the accession negotiation for the UK
 - Seems to be working hard.
- Approach taken by Singapore as a Chair of TPP Commission in 2022
 - It may not want to be regarded as one-sided. Therefore, it would likely try to keep the discussion technical as far as possible.
- Response from the US
 - The US certainly would like to avoid the situation that China would take part in CPTPP before the US. If the possibility would be there, the US must try to block it somehow.
 - Canada, Mexico: poison clause, Australia, Japan: national security
 - The Biden Administration clearly stated that the US would not come back to TPP as it is. Thus, it is difficult for the US to seek accession to CPTPP (with 22 frozen items, invalid side letters) or come back to the original TPP (only Japan and NZ were ratified).
 - Try to set up a new over-arching agreement, on the top of TPP and CPTPP, with labor and environment provisions as in USMCA?
 - What would be the implication of Quad and Indo-Pacific?
- China
 - When the negotiation would become the issue of the political system, what would it do?
- On Taiwan
 - What to do when CPTPP commitment would be fulfilled? China does not have a veto power in CPTPP, but the political pressure would certainly come to members.

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