



## Can the Trans-Pacific Partnership multilateralise the 'noodle bowl' of Asia-Pacific trade agreements?

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### Executive Summary

- The Trans-Pacific Partnership offers more than just a set of market access opportunities for Australia. It also promises 'systemic change' in the Asia-Pacific trade architecture.
- The spread of bilateral FTAs in the last decade has caused fractures in the regional trade system, known as the 'noodle bowl problem'.
- The TPP may help resolve this problem by 'multilateralising' existing agreements under one umbrella. Its size, ambitious reform agenda and status as a 'living agreement' make it especially suited to this task.
- Australia stands to gain considerably if the TPP's high-standard and multilateral approach becomes a template for trade liberalisation in the region
- Businesses and policymakers should be aware of these systemic implications when evaluating participation in the TPP

### Introduction

The Trans-Pacific Partnership (TPP) is one of the most significant developments on the trade and foreign policy agendas in the Asia-Pacific today. It is huge agreement, comprising twelve member states that collectively account for one-third of global economic activity. Its scope is extensive, combining a wide array of tariff reductions with commitments in 24 'new' trade policy areas, such as services, intellectual property and e-commerce. In a region that has recently been dominated by proliferation of bilateral free trade agreements (FTAs), its multilateral approach to trade liberalisation is also a novel development. It has also been implicated in geopolitical rivalries in Asia, particularly the emerging rivalry between the US and China for regional leadership.

Since negotiations were completed in October 2015, a series of lively policy debates have attempted to weigh the merits of the TPP. In Australia, these debates have mostly focussed on the benefits and costs for the country itself. Some have looked at the extent of market access gains, questioning to what extent Australian businesses can benefit from lowered tariffs on certain exports. Another has focussed on its Investor-State Dispute Settlement provisions, and whether these impact on the Australian government's ability to engage in certain regulatory behaviours. Others have explored the implications of rules for copyright and pharmaceutical patents for the Australian public and businesses.

While important, these Australian policy debates have tended to overlook another, more systemic, question: What effects will the TPP have on the trade architecture of the Asia-Pacific? This is significant, as the TPP promises to be a game-changer for how regional trade is organised. Since the turn of the 21st century, the Asia-Pacific has been moving towards a fragmented system in which liberalisation was primarily advanced through bilateral agreement-making. This has posed a number of challenges – collectively known as the 'noodle bowl problem' – which threaten the integrity of the regional system as a whole. As the first large, multi-member agreement in several years, the TPP is an important step towards 'multilateralising' trade policy in the Asia-Pacific.

Assessing the TPP's implications for Australia requires more than just weighing its market access benefits against the cost of domestic policy reforms. It also requires asking questions regarding the trade architecture exists in the region, and the type of system that would best suit Australia's interests. This paper helps unpack these systemic questions. It explores the recent shift to trade bilateralism in the Asia-Pacific, the prospects for the TPP to multilateralise the noodle bowl of Asian FTAs, and the implications this will carry for Australian policymakers and businesses.

**Table 1: Key features of the Trans-Pacific Partnership agreement**

First formally mooted	December 2009
Negotiations commence	March 2010
Completion	Negotiations complete October 2015, text signed February 2016
Ratification process	Enters into force 60 days after final member state ratifies; or two years after signing if six members (at least 85% of GDP of the TPP area) have ratified
Scope and coverage	'WTO Plus' approach: Market access (i.e. tariff reduction) commitments, alongside 24 additional trade-related measures
Member states	Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, Vietnam
Total GDP of members	USD 28 trillion (36.3% of global economy)
Total two-way trade of members	USD 9.5 trillion (25.2% of world trade)
Intra-regional trade in TPP area	USD 4.1 trillion (42.7% of members' total trade)
Existing FTAs in TPP area	Nineteen bilateral FTAs; one minilateral FTA (NAFTA)
Significant absent members	Korea, Indonesia, China

**Source:** Author's summary and calculations, from Department of Foreign Affairs and Trade (Australia), Trans-Pacific Partnership Chapter Summaries (<http://dfat.gov.au/trade/agreements/tpp/summaries/Pages/summaries.aspx>) and United Nations Conference on Trade and Development, UNCTADStat Database (<http://unctadstat.unctad.org/EN/>).

## The fragmented trade architecture of the Asia-Pacific

In recent years, the structure of the Asia-Pacific trade system has been rapidly transformed. Regional economies have for many years been very open to trade, with the East Asian economic miracle of the post-war period driven by the export powerhouses of Japan, Korea, the Asian tigers and more recently China. For most of this period, governments had been committed multilateralists when it came to trade policy. Liberalisation was primarily advanced as part of global-level trade reforms, negotiated and enforced through the GATT/World Trade Organisation. Regional trade initiatives were also multilateral in style, such as APEC's 'open regionalism' approach to liberalisation, and the landmark Association of Southeast Asian Nations (ASEAN) FTA of 1992.

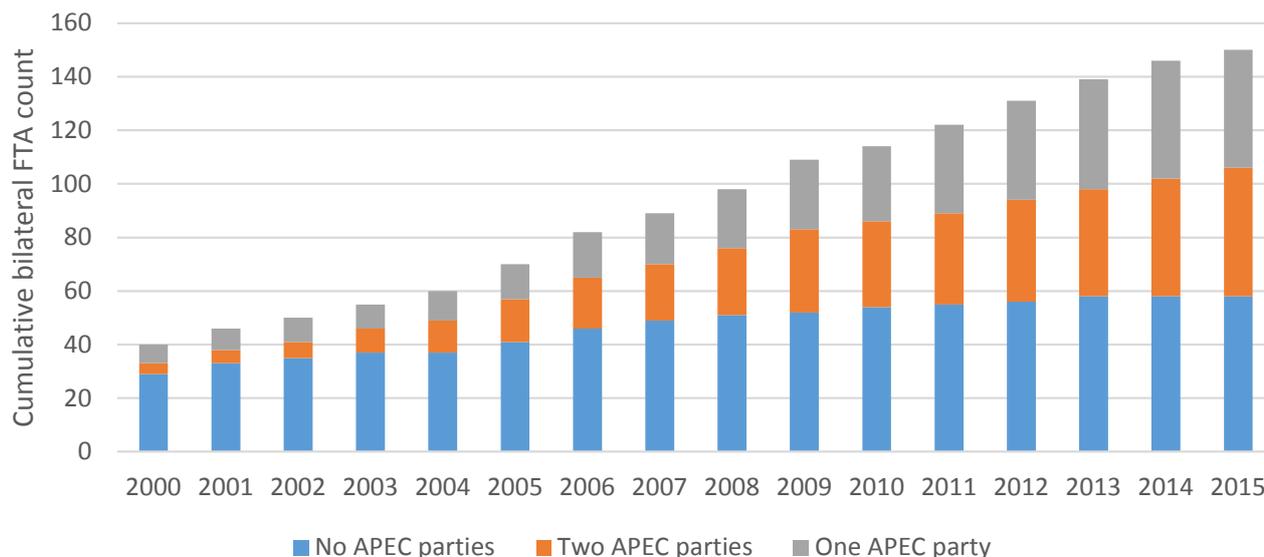
However, around the year 2000 Asia-Pacific governments began to gradually change their trade policy strategies. Bilateral FTAs – agreements which go beyond WTO rules, and preferentially lower trade barriers between two countries – increasingly came into favour. In the year 2000, the Asia-Pacific<sup>1</sup> was home to only four bilateral FTAs. But as exploratory moves soon turned into a rush, the number of bilaterals in the region grew rapidly. By the end of 2015, 48 bilateral FTAs had been negotiated between Asia-Pacific governments, and a further 44 were signed with parties outside the region. As Table 1 demonstrates, the Asia-Pacific has gone from being a laggard to become the global epicentre of FTA negotiation. These agreements dramatically overhauled the architecture of the regional trade system, from one based on multilateralism to one characterised by the dominance of bilateral agreement-making.

Several motives underlay the regional shift to trade bilateralism.<sup>2</sup> Some governments had become frustrated at a lack of progress in the WTO's Doha round of negotiations and used these agreements as a second-best liberalisation strategy. Developed-country governments often used them to advance liberalisation in the so-called WTO-Plus areas (such as investment, services and intellectual property), where existing global trade rules are poorly-developed. Others were forced to defensively begin signing bilaterals in order to avoid becoming 'outsiders' to the ever-expanding web of agreements spreading across the region. And for a handful of governments, particularly the US and China, they were used for geopolitical purposes: signalling diplomatic intentions, or as a side-payment in alliance relationships.

1 Here, the Asia-Pacific is defined as the 21 member economies of the APEC group.

2 For a summary of the motives behind FTA proliferation in Asia, see Jeffrey D. Wilson (2012). 'Resource security: A new motivation for free trade agreements in the Asia-Pacific region'. *The Pacific Review*, 25(4): 429-453.

**Figure 1 Bilateral FTAs in-force by region of members, 2000-2015**



**Source:** Author's calculations, from World Trade Organisation, Regional Trade Agreements Database (<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>)

The proliferation of bilateral FTAs has led to a phenomenon trade economists call the 'noodle bowl problem'<sup>3</sup>. Rather than having a single integrated system, the Asia-Pacific is now fragmented and criss-crossed by dozens of individual bilateral deals. Compounding matters, these FTAs vary widely in their content. Each includes (and excludes) different sectors, and imposes different commitments in terms of tariff reduction. They also vary in terms of how WTO-Plus issues are handled, with each implementing issues such as investment protection, intellectual property, and e-commerce differently. The result is a patchwork of overlapping and incommensurate FTAs, which metaphorically resembles a tangled bowl of noodles. Rather than having a single set of rules applied equally to all, the Asia-Pacific now has 48 different sets of trade rules, with major asymmetries in their obligations and standards.

The noodle bowl is widely considered to be bad for trade liberalisation. From the perspective of governments, it undermines the cohesiveness of trade rules. Governments must negotiate and monitor a complex set of bilateral agreements, straining the capacity of trade bureaucracies. Markets become distorted by trade diversion effects, where economies can gain (and lose) export markets due to the marginal effects of FTAs rather than the underlying competitiveness of industries. Small economies are at a particular disadvantage, as they lack the clout to press for meaningful outcomes when negotiating with large economies on their own. This can also introduce asymmetries, when large countries are able to demand greater concessions from smaller players than they must offer in return.

Businesses are equally affected by the noodle bowl problem. It imposes transaction costs on firms, who must ensure compliance with literally dozens of different rules based on their key export and import markets. These costs are especially prohibitive for SMEs, which often lack the capacity to secure complex commercial advice. It also inhibits the development of regional production networks. For example, the automobile industry in Asia draws on technical services, raw materials and parts suppliers from a wide range of countries to enable the final production of vehicles. With each link in the value chain potentially subject to different trade rules, the costs imposed on can be massive. The inconsistencies between different FTAs thus become a new trade barrier themselves.

Trade economists have long understood that the noodle bowl is a major challenge facing economic integration in the Asia-Pacific. As bilateral agreements proliferated during the mid-2000s, it seemed there was little that could be done about it. However, in more recent years many policymakers have not only become aware of the problem, but have also begun to devise strategies to rectify it by somehow multilateralising the existing agreements. The TPP is the first, and thus far most successful, attempt to do so.

<sup>3</sup> This problem was initially labelled the 'spaghetti bowl' problem by Jagdish Bhagwati (1995). *The World Trade System At Risk*, Princeton: Princeton University Press. Richard Baldwin subsequently styled it the 'noodle bowl' when applying the concept to the Asia-Pacific. See Richard Baldwin (2007). 'Managing the Noodle Bowl: The Fragility of East Asian Regionalism', ADB Working Paper Series (No. 7), Manila: Asian Development Bank.

## Multilateralising the Asian noodle bowl

The TPP is an extremely complex agreement. The 'core' text of the English language version runs to 864 pages, which expands to several thousand when its 112 country-specific annexes are included. When trying to sell the agreement to domestic audiences, members states have tended to focus on one of two aspects: either the market access opportunities for local exporters, or the benefits offered by its WTO-Plus provisions.

An important, but often overlooked, feature is that the TPP is an explicit attempt to address the noodle bowl problem. By providing a single, overarching set of trade rules with [relatively broad] regional coverage, it is one of the first steps in returning Asia-Pacific trade architecture to a multilateral model. Three features make it particularly suited to this task:

**The first is its size.** The TPP is one of the largest free trade agreements ever signed, and is not only of regional but global importance. The combined economic size of the 12-member bloc is USD 28 trillion, equivalent to just over one-third of world GDP. They conduct USD 9.5 trillion of two-way trade, approximately for a quarter of world trade flows. Intra-regional trade within the bloc is already very dense. TPP members engaged in USD 4 trillion of trade with each other in 2014, accounting for 42% of their two-way trade (Table 1). The presence of global heavyweights such as Japan and the US, alongside important emerging economies like Malaysia and Vietnam, gives the group a significant degree of geo-economic heft.

This size makes the TPP an ideal candidate for multilateralising the regional noodle bowl. There are currently 19 FTAs between its members<sup>4</sup>, which account for just under half of all the bilateral FTAs in the region. While the TPP does not subsume or legally replace these agreements, it does establish a common set of trade rules amongst countries in the group. For example, it provides a single investment chapter – which define investment concepts, clearly specify protections, and outline dispute settlement mechanisms – consistently across the membership. Articulating a single set of trade rules for such a large chunk of the global economy is of broader systemic importance. These rules may provide a template around which negotiations in the WTO can be structured.

**The second is its WTO-Plus approach to liberalisation.** The TPP text reflects ambitions to execute what its members describe as a "21st century trade agreement". Unlike many bilateral FTAs, the agreement goes beyond tariff reduction to include series of trade-related policy issues that have yet to be addressed at the WTO. These provisions are summarised in Table 1 below. Many are new trade issues – including as e-commerce, telecommunications and services – whose importance has increased with the rise of the digital economy and service-sector trade. Others are issues which have recently emerged onto the economic policy agenda, such as environment, labour and anti-corruption measures. The TPP sets a high water mark for forms of trade liberalisation beyond the mutual reduction of tariffs.

The TPP is a first step in ensuring regulatory coherence in these new trade policy areas. One of the main distortions introduced by bilaterals is their inconsistent approach to WTO Plus issues. Many of the region's existing FTAs have ignored these issues, only weakly implemented them, or established clashing and incommensurate regulatory rules<sup>5</sup>. By establishing a common set of rules and definitions for WTO-Plus liberalisation, the TPP can help smooth out these inconsistencies. One example is Investor-State Dispute Settlement (ISDS). Despite featuring in many previous bilaterals, differing ISDS implementations have resulted in a lack of clarity over precisely what rights and obligations they impose.<sup>6</sup> A particular concern has been around the definition of 'expropriation', and to what extent this impacts on governments' ability to engage in public welfare regulation.<sup>7</sup> Providing a single ISDS template can help end this uncertainty for both businesses and governments.

**The third is its status as a 'living agreement'.** The member states have made clear that the TPP is not a fixed, one-shot agreement. Rather, it is intended to be an open framework for ongoing trade policy reform. One mechanism has been the active encouragement of new member states. Negotiations initially commenced with only eight members, but Canada, Malaysia, Mexico and Japan all joined during talks. Korea and Indonesia are currently discussing accession arrangements, while other regional governments will be studying the details closely. If additional new members can be courted to join the TPP in coming years, this will help push it towards full regional coverage of the Asia-Pacific.

An additional mechanism is the scope for expanding and adding new provisions to the text. Since negotiations concluded in October 2015, member states have already exchanged 27 'side letters' – bilateral or minilateral agreements which refine (and in some cases extend) liberalisation commitments. The TPP also establishes a series of cooperation frameworks, charged with studying national policies and suggesting avenues for policy reform. For example, it creates an 'TPP Environmental Committee' tasked with improving inter-governmental policy coordination; alongside institutionalised process for consultation on intellectual property and patent issues. These mechanisms mean the TPP is likely to increase in size and scope once initial ratification is complete.

4 Author's compilation, from Asian Development Bank, Asia Regional Integration Centre Free Trade Agreements Database (<https://aric.adb.org/fta-all>).

5 Ann Capling and John Ravenhill (2011). 'Multilateralising regionalism: What role for the Trans-Pacific Partnership Agreement?'. *The Pacific Review*, 10(2): 201-245.

6 Marta Latek (2014). *Investor-State Dispute Settlement (ISDS): State of play and prospects for reform*. EPRS Briefing, 130710REV2, Brussels: European Parliamentary Briefing Service.

7 For a discussion, see Chapter Four of Senate Foreign Affairs, Defence and Trade References Committee (2014). *Report of Inquiry into the Korea-Australia Free Trade Agreement*. Canberra: Department of the Senate.

**Table 2 WTO Plus issues included in the Trans-Pacific Partnership**

Chapter	Example provisions
Investment	Most-favoured-nation and national treatment protections, enforced via standardised Investor-State Dispute Settlement (ISDS) process
Transparency and Anti-Corruption	Requirement for members to criminalise (and sanction) corruption, and to adopt appropriate accounting, auditing and financial disclosure standards
Environment	Requirements for effective enforcement of national environmental law; promotion of collaborative activities in range of areas (fisheries, CITES, biodiversity, renewable energy)
E-commerce	Privacy protections; equal treatment of digital content; protections for source code
Intellectual Property	Protection of trademarks and geographical indicators; harmonisation of patent rules; life-plus-70-years standards for copyright; requirements for enforcement regimes
State-owned enterprises	Requirement for SOEs to act in accordance with 'commercial considerations' in specified circumstances; transparency rules for reporting SOEs and government monopolies
Telecommunications	Requirement for major suppliers to provide service to foreign firms on a non-discriminatory basis; transparency regulations
Financial services	National treatment, most-favoured-nation and cross-border-supply provisions
Services	National treatment, most-favoured-nation and market access provisions
Labour	Prohibition against weakening or failure to enforce labour standards; initiatives to discourage trade in goods made using forced or child labour

Author's summary, from Department of Foreign Affairs and Trade (Aust.), Trans-Pacific Partnership Chapter Summaries (<http://dfat.gov.au/trade/agreements/tpp/summaries/Pages/summaries.aspx>)

These aspects mean the TPP is the first meaningful step towards addressing the noodle bowl of Asia-Pacific FTAs. It has the potential to induce systemic change, which could start the process of switching the regional trade architecture away from bilateralism toward a multilateral structure. In the long term, this feature may prove far more important than the short-term market access gains on offer when the agreement initially takes force.

### Can the TPP be a system changer for trade in the Asia-Pacific?

Of course, the potential systemic consequences of the TPP remain just that. The agreement still has to be ratified by the member states – the process through which domestic laws are amended to comply with treaty commitments. The ratification process itself may prove politically challenging, as opponents of the deal will try to block its implementation in domestic law.<sup>8</sup> Even then, whether the TPP will provide a foundation for a new Asia-Pacific trade architecture remains an open question. A number of obstacles exist that may undermine its ability to multilateralise trade in the region.

The long-term success of the TPP will ultimately hang on whether it can attract new members. Recruitment will prove challenging as many of the WTO Plus clauses in the agreement are not entirely appealing to developing countries in the region. Service sector and intellectual property provisions will require deeper liberalisation than developing countries have hitherto undertaken. Rules for state-owned enterprises will require difficult corporate governance reforms in politically-sensitive firms. Even though the benefits of accession might be high, the reform costs facing developing countries are high as well. Much will depend on governments' appetite for, and political capacity to push through, challenging policy reforms.

China's relationship with the TPP is especially fraught. The US government has indicated that the TPP is the 'economic wing' of its Pivot to Asia strategy<sup>9</sup>, leading some to suggest it is an attempt to economically balance China's influence in the region.<sup>10</sup> In 2015, the US President directly linked the TPP to issues of regional leadership, declaring "If we don't write the rules [through the TPP], China will write the rules out in that region". While the comment was primarily designed to build support amongst domestic constituencies<sup>11</sup>, it left little doubt the TPP is also implicated in the emerging geopolitical rivalry between the US and China. Any Chinese accession will thus face the added complication of managing Sino-US relations, presently at historic lows due to maritime disputes in the East and South China Seas.

8 For a discussion of domestic impediments to ratification, see The Conversation (2015), 'Five things you need to know about the Trans-Pacific Partnership', 6 October.

9 Thomas Donilon (2013). 'The United States and the Asia-Pacific in 2013' - Remarks to the Asia Society, 11 March, <http://www.whitehouse.gov/the-press-office/2013/03/11/remarks-tom-donilon-national-security-advisory-president-united-states-a>

10 Simon Reich (2015). 'Is TPP about jobs – or China?'. The Conversation, 23 May; Sean Mirski (2015). 'The Trans-Pacific Partnership: China, America and the Balance of Power', The National Interest, 6 July.

11 Wall Street Journal (2015). 'Obama Presses Case for Asia Trade Deal, Warns Failure Would Benefit China', 27 April 2015.

The TPP also faces competition from another multilateral trade proposal currently under negotiation, the Regional Comprehensive Economic Partnership (RCEP) agreement.<sup>12</sup> RCEP is also an attempt to multilateralise the Asia-Pacific noodle bowl, by combining the six existing ASEAN-Plus-X<sup>13</sup> FTAs under a single umbrella. However, and unlike the TPP, RCEP has far lower reform ambitions. Its principal goal is to merge existing FTAs together (rather than push trade liberalisation further), and negotiations have paid far less attention to WTO Plus issues. It also has an 'Asian' rather than Asia-Pacific membership: counting China, India and all the ASEAN states as members, but lacking the US and Canada.

The two agreements offer competing visions for how to fix the noodle bowl problem in the region. The TPP embodies an ambitious and US-led template which advances beyond the WTO; while RCEP is a lower standard, WTO-consistent and ASEAN/China-driven alternative. For this reason, RCEP is an easier option for many developing economies in the region as it will not impose the high reform costs required by the TPP. RCEP negotiations are ongoing at time of writing, with member states recently committing to complete talks by the end of 2016.<sup>14</sup> If this goal is achieved, some countries – particularly Indonesia and China – may instead prefer to multilateralise on the lower-standard basis offered by RCEP. That could lead to two different regional trade systems emerging, with different standards and different (but overlapping) memberships. The task for TPP members would become more complicated in such an environment.

Finally, TPP will not do away any of the FTAs that make up the regional noodle bowl. While the high-standard TPP provisions usually exceed those in bilateral FTAs, this is not always the case. One example is Australia's FTAs with the US and Japan, whose investment chapters contain special monetary thresholds for screening by the Foreign Investment Review Board. For this reason, all of the nineteen bilaterals between TPP members will need to remain in place. The TPP's main impact is not in eliminating the noodle bowl, but rather moving past it by establishing a new and higher set of standards.

## The TPP and trade multilateralism: Implications for Australia?

Australia stands to gain considerably if the TPP is able to induce a multilateralisation of the Asia-Pacific trade architecture. In the regional context, Australia is not only a very open economy, but also a very small one. Countries like Australia – which lack the size or political heft to negotiate strong bilateral agreements on their own – generally benefit from multilateral liberalisation the most. But with the mandate behind the WTO's Doha Round recently collapsing<sup>15</sup>, a new global-level trade agreement looks unlikely for the foreseeable future. In this context, multilateralism at the regional level is a second-best option. The fact that the TPP has delivered much greater outcomes than Australia's previous bilaterals<sup>16</sup> attests to the benefits that a regional approach can offer.

The WTO Plus approach embodied in the TPP is also a natural fit with Australia's trade policy interests. Many of its provisions, especially those to do with agriculture and services, are directly relevant to areas in which the Australian economy has a comparative advantage. But these have hitherto been ignored at the WTO, and Australia's record of achieving meaningful outcomes in its bilaterals has been patchy at best. The much-vaunted China–Australia FTA provides an instructive example, where a series of compromises necessary to finish negotiations saw many of Australia's core requests 'carved-out' of the final text.<sup>17</sup> The TPP provides an opportunity to advance the type of liberalisation that Australia wants, with some of its most important trade partners.

Geopolitical considerations are an inevitable complicator. Due to issues of US–China rivalry, membership of the TPP – unfortunately, but unavoidably – involves Australia signalling its diplomatic allegiances in Asia. With geopolitical alignments in the Asia-Pacific becoming increasingly complex and contested, this needs to be managed. The fact that Australia is an active participant in RCEP negotiations is important here, as it avoids perceptions of taking sides. The China–Australia FTA similarly provides a hedge against allegations has politicised its trade policy, and/or is participating in a US-led attempt to exclude China from regional agreements. Taking a leadership role in the newly-formed (and China-sponsored) Asian Infrastructure Investment Bank would also send the message that Australia is 'open for business' with all partners in the region.

Perhaps most importantly, Australian actors must recognise that the TPP is more than 'just another FTA' to add to the Asia-Pacific noodle bowl. Its ultimate promise lies in its ability to induce a systemic change in the regional trade architecture itself, away from bilateralism and towards a multilateral model that better suits Australia's trade interests. In the long-run, this systemic effect will be of far greater significance than the market access opportunities on offer when the agreement initially takes force. Australian policymakers need to think creatively about what kind of trade system the country wants, and not simply what concessions can be easily achieved, when engaging with TPP members to grow the living agreement.

12 For a comparison of the TPP and RCEP, see Jeffrey D. Wilson (2015). 'Mega-Regional Trade Deals in the Asia-Pacific: Choosing Between the TPP and RCEP?'. *Journal of Contemporary Asia*, 45(2): 345-353.

13 The ASEAN bloc presently has bilateral FTAs with Australia, China, India, Japan, Korea and New Zealand.

14 RCEP Countries (2015). RCEP Leaders' Joint Statement on the RCEP Negotiations, 22 November. <http://dfat.gov.au/trade/agreements/rcep/news/Pages/rcep-leaders-joint-statement-on-the-rcep-negotiations-22-november-2015-kuala-lumpur-malaysia.aspx>

15 Financial Times (2015). 'Trade talks lead to 'death of Doha and birth of new WTO'', 20 December.

16 Ann Capling and John Ravenhill (2015). 'Australia's flawed approach to trade negotiations: and where do we sign?'. *Australian Journal of International Affairs*, 69(5): 496-512.

17 Jeffrey D. Wilson (2015). 'China-Australia trade agreement a compromised victory'. *The Conversation*, 18 June.



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