

How far away is China from TPP?

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Abstract

China's attitude towards TPP has undergone a fundamental change since 2013, but no matter the seven misunderstanding of TPP before 2013 or the "get involved immediately" theory after it, they are both failed to be objective and realistic. There is still a far distance between China and TPP. Actually, except for the big differences on the issues such as rules of trade in goods, service market access and investment rules, the behind-the-border issues, such as standards and certification, environmental protection, intellectual property rights, labor standards and government procurement, also constitute a severe challenge to China's current management systems and mechanisms. In a short term, China is not qualified to enter the TPP negotiation. However, it might be practicable ways for China to integrate TPP pathway with RCEP pathway in the future, which can make China seek reform and adjustment at a right time. It should be emphasized that transparent mechanisms play a significant role in the Asian-Pacific integration strategy which China, the U.S. and other TPP members promote together. It's strongly recommended that TPP negotiation member countries think about a more transparent information exchange mechanism of FTA negotiation.

Key Words: TPP China Distance

On one hand, the U.S. is globally pushing its "one body with two wings" FTA strategy, with NAFTA as the body and TPP, TTIP as the two wings, on the other hand, the Europe-Japan FTA is also on its way to accelerate. The developed economies are trying to constitute new international trade and investment rules systems. From the end of 2011 when the TPP negotiation suddenly accelerated till now, TPP is not only an ordinary FTA, but becoming the early form of new international trade and investment rules of the 21 century. So the TPP has aroused extensive attention and close follow-up studies for the China's top officials and educational circles. Actually, there is still no clear consensus that whether China should join the TPP negotiation and when to join it. However, from 2013, China has changed and deepen its understanding of TPP, and gradually developed a relatively objective and realistic understanding, together with the choices of strategy and policy towards TPP.

I .China's attitude towards TPP has changed fundamentally in 2013

On the 2011 APEC annual meeting held in Honolulu, China began to pay more attention and do more relative studies due to TPP's rapid expansion and the acceleration of its negotiation progress. But with regard to the understanding of TPP, there are different views and perspectives among China's academic circle, government circle and media. In general, before June, 2013, the overall atmosphere of China's academic circle is criticism and oppositions; I have summarized six misunderstandings towards TPP of China's academic circle, including conspiracy theory, pessimism theory, standby theory, spoiler theory, rival theory and U.S.-dominate theory. In 2013, based on these theories, I added another two misunderstandings: exclusive theory and "get involved immediately" theory. The scholars who hold exclusive theory considered that, the U.S.-led developed countries created and took advantage of TPP to exclude China on purpose, which is not tally with the fact that the positive attitudes of the government and academic circles from the U.S., Japan and other states.

With the declaration of Chinese Ministry of Foreign Affairs that "TPP, 10+3 and 10+6 are all possible paths for Asian-Pacific regional integration" in June, 2013, and the public comment of the spokesperson of China's Ministry of Commerce that "China will study TPP's influence on China's economy and the possibility of China's entry into TPP positively", lots of scholars in China turn to consider that China should enter TPP negotiation immediately. This sharp turn of perspective has made many Asian-Pacific economies, especially the U.S. and Japan puzzled, which can be called "get involved immediately" theory. This perspective is totally unacceptable because it has ignored the gap between China and TPP standards and not considered the practical way of China's entry into TPP. What China needs to do now is to strengthen the follow-up studies towards TPP, China needs to carry through a new round of reform and open-up in many fields to bridge the gap and reduce the difference with TPP rules. In a word, China doesn't have the realistic condition to enter TPP negotiation now. Currently, pushing forward the China-South Korea FTA and CJK FTA negotiations, accelerating the process of RCEP and constructing the integration of East-Asian economy should be China's priority.

II. How far away is China from TPP?

19 rounds of TPP negotiations have already been actively carried out until now. According to the consensus reached by member countries in the ministerial level conferences and leaders' conferences during APEC, the countries that negotiate on TPP hope they can conclude the negotiations in 2013. The negotiations involve 21 fields, and the framework agreements have been expanded from 26 chapters to 29 chapters. Till now half of the chapters has reached consensus, however, for the issues such as market access, intellectual property protection, state-owned

enterprises and environmental protection and labor standard have not reached consensus yet. Even preliminary agreements can be reached before the end of 2013, which will just be similar to part of the agreements or the early stage of the agreements, the overall liberalization and high standards would not reach the U.S. expectation.

If China declare to enter TPP now, there are issues from varied fields need to be taken into consideration, including lower the tariff barrier and non-tariff barrier, and solve both on-the-border issues and behind-the-border issues. Given that China has signed RTA with many countries, China has accumulated abundant related experience and it is not unfamiliar for China to solve on-the-border issues. While for behind-the-border issues, China is faced with tough challenges.

1. On-the-border issues

(1) Trade in goods: China is mainly faced with the challenge of rules

TPP will promote 100% zero-tariff for trade in goods and 10-15 years of transitional period for those sensitive products without exception. For Japan, it has won over the immunity of a few agriculture products, the tariff on rice, corn, beef, cane sugar and dairy products can be retained at a certain degree. Given the signed FTA for China, there is still a significant gap between China and the developed countries on the liberalization level of trade in goods. For the middle and high end manufacturing industry, China might be impacted by the U.S., Canada, Australia, Japan and South Korea, while for the rules of trade in goods, the challenge is more severe. For example, for the textile and clothing industry, TPP set a strict rule of origin, which means that the Vietnam textile can enjoy the tariff-free only if the fabric is originated from Vietnam. So it might not enjoy the tariff-free in the future due to the fact that 50% of its fabric is from China currently. Now there is some China textile enterprises are moving to Vietnam, which leads to the investment diversion effect.

(2) Trade in service: market access is the challenge

In trade in service field, TPP has set higher standard rules than WTO. For the commitment way, TPP requires an overall-opening of service field, and carries out the “negative list”. With regard to the service provision models, the model 3 (commercial presence) and rules of trade in service are established separately, which is with the constraint of investment rules. In the financial and telecommunications fields, the U.S. strongly requires that the two departments be set up in each independent chapter, and fully eliminate the constriction for the proportion of shares and the operator can choose service providers independently. The U.S. also asked Japan to reform the postal and social insurance system and not to slow things down in TPP negotiations. For China, its

commitments on the opening-up level of trade in services when entering WTO is the bottom line for the opening-up of trade in service, while it is still not open up and there is still restriction on proportion of shares in a number of service sub-sectors. Moreover, China has just joined the negotiations of TISA, so it lacks experience about the opening-up of trade in service. Given that the high entry threshold and powerful groups of vested interests in China's service industry like financial, telecommunications, expanding the opening-up level of trade in service is very difficult.

(3)Investment: the issue of national treatment before the access and the “negative list” barrier

Since 2000, China has signed 34 bilateral investment treaties (BIT), but for the establishment, acquisition and expansion of foreign direct invested enterprises, national treatment before the access and the negative list management are not committed. However, Whether TPP, or ASEAN's four 10+1 respectively with Japan, South Korea, Australia Singapore and India, will carry out the national treatment before access and the negative list management, which directly challenged China's current foreign direct investment management system and mode. China is currently negotiating BIT with the U.S. Previously China and the U.S. has exchanged of notes on investment agreements, among them, there are eight terms that established U.S. investment interests in China. U.S. BIT is based on U.S. national security bill, whose template is very complex, on the minimum standard of treatment issue, it requires justice, equity and comprehensive protection of safety, in nuclear energy, mining, air transport , securities , insurance and other industries are given exception. It is precisely because China and the U.S. have no BIT, in terms of investment, the U.S. conducted a large number of security censorship towards Chinese investors, and many Chinese enterprises felt the obvious discrimination, such as the China Investment Corporation and Huawei. National treatment before access and negative list management have brought challenges for China's domestic investment management system reform and opening up, together with the Chinese government's economic management. Because the management model of the foreign enterprises should be applied to the domestic investors, which forced to reform the Chinese domestic investment system in turn. This reform is also highly relevant to China's industrial restructuring, foreign exchange management reform and financial reform. Shanghai FTA is doing the attempts in this regard, but from the current released Shanghai FTA negative list, compared with previous positive list, there is just limited breakthrough. The negative list cross the country is currently under study. How to promote the reform in this field is a daunting task for China that requires time.

2. Behind-the-border issues

However, a series of behind-the-border issues constitute the real huge challenge for China, including the unification of standards, the governance of state-owned enterprises, environmental

protection, labor standard, government procurement and intellectual property protection. All these issues are independent chapters in the TPP negotiation agreement, which means intensive consideration and arrangement.

(1) The unification of standards

There is a huge gap between China and the U.S. on the understanding of standards, together with the formulating and implementing mechanism of standard. For the U.S. part, the standard should be formulated by the enterprises or the organizations within the industry, the government can't be involved. While for China, the national standard is formulated by the Standardization Administration based on "Standardization Law", and certificated by the Certification and Accreditation Administration. However, the fact is that "Energy Star" of the U.S. has impacted China's products greatly. The establishment of U.S. new rules on food safety also leads to a more strict regulation on food; it emphasizes the producers' responsibility and obligation, and requires an overall process of certification from agriculture product to dining-table and a whole chain regulation. The certification should be carried out by the third-party checking and certification authority, but in China, the third-party certification is rather weak. Given the above, China enterprises need to adjust the Quality Management System, which lead to a 20% up of cost.

(2) Environmental Protection

From NAFTA, the U.S. has spared no effort to promote the environmental standards and labor standards, and required the signed FTA cover all these fields. Until now, the U.S. has successfully promoted these standards to Chile, Peru these countries, and indirectly, to exert influence on developing countries like China. For example, when Chile and Peru negotiated FTA with China, they also require negotiating on environmental and labor issues. TPP now has a special environment chapter and requires not to encourage foreign investment with the expense of reducing the environmental protection efforts, environmental protection should be the priority, and not to affect the attention on environmental sensitivity. In addition, the biodiversity conservation and the marine fishing areas require high transparency and administrative and judicial procedures, which is also very important. In China's FTA with Switzerland, the environmental protection chapter comes out for the first time, but in the formulate and implementation of environmental protection standards, environmental data' monitoring and transparency and the participation of non-governmental organizations, there is a still a huge gap with the requirements of TPP and the U.S., this kind of gap belongs to the problem of institutional mechanisms, which cannot be solved in a short term.

(3) Labor Standard Protection

TPP is trying to fulfill ILO's fundamental commitment on labors' basic rights, including freedom of association, prohibition of forced labor, elimination of child labor and sex discrimination and so on. However, in the ILO's 8 core conventions, four of them are not approved by China, including freedom of association, prohibition of forced labor and collective bargaining of wages. These rules are very sensitive to China's existing system, which cannot reach systematic transformation and external promise in a short term,

(4) State-owned Enterprises Governance

TPP is promoting new rules for governance of relevant state-owned enterprises. Such as, the share of government capital in state-owned enterprise should below 20%.; State-owned enterprises should not give preferential treatment and favorable financing to each other; affiliated enterprises should not carry out affiliate transaction; State-owned enterprises should not pursue unfair competition; the subsidy and financing should be no different from non-state enterprises. China's state-owned enterprises has carried out joint-stock system reform, however, most of their state-owned shares are rather high, the state-owned share has surpassed 50% , even 80% is very common, which is far away from TPP's requirement, and cannot be changed soon in a short term.

(5) Government Procurement

TPP's standard for government procurement is supposed to be higher than WTO's GPA and BOT, China is currently carrying out bilateral procurement agreement with EU, but there is no marked improvement with 4-5 rounds of negotiation in a few years. China has domestically formulated the government procurement law and carried out government procurement, including make the environmental detailed list of government procurement. But there is still a huge gap between the opening up level to foreign enterprises, transparency, and third party monitoring of China's government procurement with the normative and transparent international conventions. There are existing issues such as high cost, tedious procedures and inadequate supervision.

(6) Intellectual Property Protection

In the TPP negotiation, the U.S. strongly promoted TRIPS+, which is highly correlated with its national interest, because the U.S. covers 2/3share of the whole world's core patents, although Australia and New Zealand considered that TRIPS is enough. It means that the U.S. domestic law is multilateralized and rises to international conventions. In addition, the U.S. proposed to expand the range of intellectual protection and extend the protection period. For example, extend the terms of copyright protection to 70 years. For China, the term is 50 years. The U.S. pharmaceutical enterprises is promoting that if the contracting party gets the generic drug, the IPR should be extended a long time. For China, the pharmaceutical industry is heavily relying on the

generic drug, if TRIPS+ is accepted; China's pharmaceutical industry and social medical security system will be impacted seriously.

(7)Electric Commerce and Internet Freedom

The TPP agreement will promote to realize free flow of the cross-border data and the internet freedom without any restrictive measures, and there should be no restriction of the outside message. Digital products should enjoy non-discriminatory treatment; online music cannot be imposed tariffs, legitimate free downloads is promoted and so on. China is currently in the economic and social transition, various social contradictions are increasingly apparent, social instability increased, in order to maintain a stable environment for development, and China needs to take necessary restrictive measures on new Medias like the Internet. "U.S. Snowden event" and "U.S. wiretap case" make it more difficult for China to accept Internet freedom in a short term.

III. The consideration of right time and cooperation demand of China's entry of TPP

Given the above, even if China decides to participate in TPP negotiation, during the bilateral pre-negotiation process with the 13 member countries, it has to be confronted with the preconditions and commitment that developed economies such as the U.S. and Japan put forward. Except for the intense issues such as national treatment before investment access, negative list and expand the market access of service industry, for the behind-the-border issues, government procurement, state-owned enterprises, environmental protection, labor standard, intellectual property protection and the product standard, all these above constitute new challenges for China's existing management system.

Considering the U.S. and Japan's congressional procedures, even if China begins to pursue pre-negotiations now, it might be a part of the negotiation after 2 or 3 years. Moreover, in China, every reform of the behind-the-border issues needs to be solved in a medium and long term instead of a short term. So based on these, China is not qualified to be a part of TPP negotiation. In the future, China can positively participate and promote RCEP negotiations, and seek the integration of RCEP pathway and TPP pathway, which is a possible and practicable way for China. In this way, China can seek to reform and adjustment at a right time.

However, China is extremely worried that it will lost the formulation right for the trade and investment rules in 21 century if it is excluded by the TPP negotiation. For Japan and South Korea, the economic benefit of entering TPP negotiation is rather limited, their goal of entering TPP is to participate formulation of new rules and at the same time to promote the domestic reform, so we can see that the rules effect is larger than the market effect. China is on its way to push forward a

new round of reform and opening-up and seek reform bonus. Although China cannot be a part of TPP negotiation in a short term, but as a key pusher for global and Asian trade and investment liberalization and facilitation, China should do close follow-up study on TPP's development tendency and direction, and see the realistic gap between China and TPP's new rules, finally to seek a possible way to integrate the member countries of TPP in the future.

Currently, TPP's transparency is very limited, which is also one of the important reasons that why China misunderstands TPP seriously. Actually, transparent mechanisms for dialogues are very significant for China, the U.S. and other TPP member countries to promote Asian-Pacific integration strategy. Therefore, I strongly recommend that TPP negotiation member countries can consider a more transparent FTA negotiation communication mechanism, and further to promote Asian-Pacific countries to be an Asian-Pacific economic community.

Finally, TPP's applicability of the developing countries is remain to be seen even it represent the direction of international economy and society's development and progress. Now take the situation of Malaysia for example, because TPP will impact the health care system and rights of indigenous people, and the protection of indigenous peoples' rights have been enshrined in the Constitution of Malaysia, so is it necessary for Malaysia to revise the constitution for TPP? For Vietnam, there are issues such as the government procurement, state-owned enterprise reform and labor, environmental protection, and how to build systems and mechanisms that meet the requirements of TPP in the near future, all of which are still a big question for Vietnam. In this regard, China will pay close attention to how to solve these issues. China's current preference is undoubtedly to build the East-Asian mechanism, with an integration of China-South Korea FTA, CJK FTA and RCEP.