

Free Trade Agreements, New Trade Rules and Global Trading System Restructuring

Shen Minghui*

Abstract: After World War II, developed countries have mainly formulated international economic and trade rules, with the United States dominating their efforts. As increasingly more developing countries join the world economic system, they will surely participate in formulating international rules. The achievements at the Uruguay Round have somewhat reflected the accomplishments of developing countries' participation. However, the Doha Round, which should have represented changes in the world economic structure and the accomplishments of developing countries' participation, has halted due to objections by developed countries led by the United States. Nowadays, these countries wish to continue dominating the development of new rules and promote new regional rules they dominate to influence the multilateral mechanism so they can dominate new international competition. In the future, competition centered on the formulation of new trade and investment rules will become a focus of international economic relationships.

Keywords: Free Trade Agreement (FTA), Multilateral trading system, East Asia, TTP

I. BACKGROUND OF THE NEW ROUND OF GLOBAL TRADING SYSTEM RESTRUCTURING

The United States has long been a major proponent and beneficiary of the multilateral trading system. However, since the beginning of the 21st century, emerging economies such as China, India and Brazil have experienced rapid economic development, and their trend of economic growth should not be ignored. The United States' status in the multilateral trading system has been continually impacted. In particular, during November 2000, China created the China-ASEAN Free Trade Area Initiative, which ASEAN countries actively supported. The Initiative triggered several chain reactions of regional economic cooperation within East Asia, and the vast majority of economic cooperation initiatives in this region excluded the United States. The exclusive (mainly excluding the United States) East Asian trading bloc's GDP gross in 2004 calculated

* Shen Minghui, Professor, National Institute of International Strategy, Chinese Academy of Social Sciences (CASS). Email: shenmh@cass.org.cn.

based on the “ASEAN+3” Free Trade Agreement amounted to 69% of that of the United States. Moreover, the East Asian trading bloc’s GDP gross in 2006 calculated based on the “ASEAN+6” Free Trade Agreement amounted to 82% of that of the United States. It is particularly noteworthy that the economic aggregate of emerging East Asian economies such as China, ASEAN, and India amounted to merely 28% of the United States’ GDP in 2004, but this percentage rose sharply to 50% in 2008.

Even though most research has shown that East Asian cooperation focused on the “ASEAN+3” and “ASEAN+6” programs has had a very limited trade diversion effect on the United States, the United States has reason to prevent another EU from emerging. Theoretically, in international trade, a country’s influence on international economic and trade rules depends on the size of the export market it can provide to the world. Historical experience shows that when European countries such as those in the EU have overcome the limitation of small markets as single countries, the EU which has equal market status with the United States challenges the latter in dominating international economic and trade rules. In the 21st century, East Asian countries are further strengthening their economic connections based on East Asian cooperation, with the potential to form a new trading bloc to challenge the United States’ dominance of international economic and trade rules.¹ The United States is unwilling to allow this situation to occur.

Responding to the impact of the rise of emerging economies including China, the United States has relied on its usual practice related to international economy and trade, i.e. coping based on concurrently using bilateral and multi-lateral means. Specifically, Free Trade Agreements (FTAs) are concluded at the bilateral level. Relying on its superior economic advantage, the United States is usually able to force other parties, particularly small and medium economies, to fully accept its requirements during bilateral negotiations.² Certainly, considering that these economies are not economically important for the United States, its intention to negotiate and sign bilateral FTAs is usually not intended to obtain market access but to make it an “incubator” of new trade rules to strengthen trading blocs for larger-scope trade negotiations and provide

1 However, final consumer markets of current Asian exports are still European and US markets, specifically, the United States occupying 23.9%, the EU 22.5%, and Asia itself merely 28.9%. See ADB, *Institutions for Regional Integration: Toward an Asian Economic Community*, 2010, p. 33.

2 It also contributes to the disposal of bilateral affairs to engage in bilateral strategic economic dialogues and unilaterally adopt trade sanctions, but comprehensive standardization is unlikely.

a future negotiation template.³ Meanwhile, a multilateral means is added, i.e. multilateral trade negotiations at the WTO level during which international rules are made to regulate new international trade and investment issues and constrain new challengers. However, owing to China's rapidly rising economic advantage, the United States has found it increasingly ineffective to leverage its asymmetrical strength during bilateral negotiations with China.⁴ China and other emerging economies will find it difficult to totally accept US standards at the bilateral negotiation level and hence are unlikely to sign bilateral FTAs. Only in multilateral trade negotiations can the United States use developing trading blocs with other countries to effectively balance emerging economy groups represented by China to force them to accept its economic and trade rules while "averaging" the trade negotiation cost of opening domestic market access among all WTO Members across the world instead of solely assuming it. As such, the main way to regulate China and other large-scale economies is theoretically multilateral rather than bilateral.

Since World War II, although some economies have occasionally challenged the United States' economic status, the multilateral trading system at the core of the General Agreement on Tariffs and Trade (GATT)/the WTO has played a crucial role in maintaining its global interests. First, following World War II, rounds of GATT negotiations effectively lowered global tariff levels, thus opening global markets for US commodities. Second, the Kennedy Round effectively eased European countries' discriminatory treatment of US commodities triggered by the European Economic Community (EEC)'s economic integration. Third, anti-subsidy policies against Japan and international trade rules restraining commodity import and export were formulated at the Tokyo Round, effectively offsetting the impact of Japan's economic rise on the US manufacturing industry's competitiveness. Fourth, at the Uruguay Round, the EU's agricultural subsidy policies on agricultural products were restrained. At the same time, more principal developing countries were included in the multilateral trading system, while Intellectual Property, trade in services, and other

3 Matthew P. Goodman, *US Economic Strategy in the Asia-Pacific Region: Promoting Growth, Rules, and Presence*, Paper Prepared for CNCPEC Seminar "New Development and Future Direction of Asia Pacific Regional Economic Integration", Beijing, China, November 14-15, 2013, p. 4.

4 Based on the prediction of the innovative engineering project "Appraisal of China's Surrounding Environment in the Coming 5 to 10 Years" by the National Institute of International Strategy (CASS), disregarding changes in exchange rates, China's nominal GDP would have reached USD 20.8 trillion by 2022, equivalent to 78% of the United States' economic aggregate in the same period, and is expected to exceed the latter's GDP level around 2035.

new topics were promoted within the WTO based on changes in the United States' international competitiveness, along with the formulation of new international rules. Fifth, negotiations on China's accession to the WTO enabled the successful implementation of large-scale trade and investment liberalization in China's agricultural, manufacturing, and service industry markets. Therefore, faced with the group-based rise of China and other emerging economies, the United States' optimal coping strategy at the international economic and trade level has been to follow their previous practice at the Tokyo Round, i.e. utilize the multilateral trading system to carry out the so-called "Beijing Round" negotiations against China and other emerging economies.⁵

Actually, conducting new "Beijing Round" negotiations within the multilateral trading system is no longer a new topic. As early as 2009, many US scholars had suggested utilizing the WTO framework to comprehensively restrain China, mainly concerning issues such as China's exchange rate policies, market access to agricultural products, rare earth policy, government procurement, technical standards, as well as trade and climate changes. It must be pointed out that China's government procurement market has been one of the United States' main focuses, and it predicts that this market has a potential of around USD one trillion. The United States also claims that China's government procurement market has low transparency and demands China to open this market.

In fact, as China's economic volume has increased, particularly starting in 2001, it has continually entered FTAs and strengthened its collective voice in multilateral trade negotiations, the United States has found it difficult to solely promote, within the current WTO framework, new multilateral trading rules directed directly against China and other emerging economies. Hence, the United States has had to adopt the practice of "competitive liberalization" it previously used to cope with European integration. The United States has also forced China to ultimately compromise with it and then accept its new multilateral trading rules within the multilateral trade negotiation framework by combining bilateral, regional, and multilateral means. In order to cope with China's economic rise and the continually strengthening East Asian trading bloc, in the context of suspending negotiations for its "Enterprise for ASEAN Initiative", the United States carried out bilateral FTA negotiations with South Korea while

5 Arvind Subramanian, *A Muscular Multilateralism to Engage China on Trade*, Testimony before the Joint Economic Committee of the United States Congress, hearing on "Manufacturing in the USA: How Trade Policy Offshores Jobs", September 21, 2011.

declaring to enter negotiations on the investment clause in the Trans-Pacific Partnership Agreement (TPP) in February 2008 and subsequently officially entering TPP negotiations in 2009.

In 2011, concerned that the TPP would exclude them and fragment ASEAN integration, the ASEAN launched the Regional Comprehensive Economic Partnership (RCEP) Initiative, thus once again reinforcing the East Asian cooperation process. In this context, to enhance its negotiation strength within the multilateral trading system, the United States expanded the TPP that had consisted of 9 countries to 12 by including Canada, Mexico, and Japan in it, and planned to gradually expand its members to South Korea, Thailand, the Philippines, Taiwan, and other Asian economies, even those in Latin America and other Asia-Pacific Economic Cooperation (APEC) members. More importantly, at the US-EU Summit jointly held with the EU in November 2011, the United States and the EU proposed to establish the EU-US High Level Working Group on Jobs and Growth to research how to maintain and strengthen the current multilateral trading system. Afterwards, when negotiations started for the RCEP in 2013, the Final Report of the EU-US High-level Working Group on Jobs and Growth was released, suggesting that the United States and the EU should negotiate the Transatlantic Trade and Investment Partnership (TTIP). Negotiations on the TTIP were subsequently officially launched. The TPP and the TTIP have helped the United States to develop more powerful trading blocs of developed countries within the multilateral trading system to maintain its asymmetrical economic advantage. Accordingly, stronger negotiation stress will be imposed on emerging economies. It will not only force emerging economies including China and India to compromise during multilateral trade negotiations but also set a rule template for the next round of multilateral trade negotiations.⁶

The Trump Administration ultimately declared its intention to quit the TPP, and the United States wished to cope with challenges from China and other emerging economies mainly by using tariffs, sanctions, and other unilateral or bilateral negotiations that had limited effectiveness. This is sufficient proof that China's rising economic advantage has notably reduced the United States' asymmetrical strength, while its effectiveness in bilateral negotiations with China has significantly decreased. As such, the American government is also adjusting its negotiation strategies. On one hand, the Trump Administration

⁶ *Supra* n. 3.

turned to Japan for a “Quick Deal” on agriculture and other content to continually impose pressure and reinforce negotiation stress on China. On the other hand, the United States renegotiated the North American Free Trade Agreement (NAFTA), and based on the text of the TPP, entered into the United States-Mexico-Canada Agreement (USMCA) with Mexico and Canada, which was declared as a benchmark for future trade negotiations. Therefore, the Trump Administration’s “America First” principle has resulted in adjustments to the United States’ foreign economic policies and behavior. It has placed more value on using bilateral means during trade negotiations to maintain its own economic interests, while its multilateral means have become somewhat less significant. However, due to the United States’ declining relative economic advantage, particularly because the “America First” principle has harmed Japan, Europe, and other traditional allies, these trade partners have not supported the United States’ foreign trade policies. The United States is unlikely to achieve its vision of using bilateral means to shape international trade rules. Even though the USMCA came into effect on July 1, 2020, the United States will still consciously or unconsciously return to using FTA negotiations to shape rules based on “international lawmaking” and then achieve multilateralization.

II. USING FTAS TO DEVELOP “21ST CENTURY” NEW TRADE AND INVESTMENT RULES

Since the beginning of the 21st century, the economic rise of emerging economies and an extensive amount of developing countries has impacted the status of traditional developed countries. Unprecedented changes are profoundly influencing world economics and politics. In particular, after Obama took office, the United States attempted to restrain and standardize China and other emerging economies’ international economic and trade behavior based on the perspective of international regulations. As the United States declared its intention to join the TPP negotiations in 2009, many American government officials and even scholars continually mentioned the so-called “21st century” trade standards or “platinum standards” advocated and promoted under the TPP. These new non-traditional trade issues or new standards vary greatly from issues such as tariff concessions, customs cooperation, and trade remedies that are included in traditional FTAs. They have not only expanded from a country’s border measures (tariffs, etc.) to domestic regulations (investment and financial regulations and

policies, etc.), but have also expanded from economic issues to political, security, and other non-economic sectors. The existing global trading system is currently undergoing its largest-scale post-WWII restructuring, and has attracted significant attention from governments regarding how new trade issues or standards will influence the new round of restructuring. In fact, international economic and trade rules including the so-called new trade issues influence countries in different ways (“system non-neutrality”). Therefore, these new economic and trade rules will certainly affect countries’ international competitiveness and trade interests in global trade during the 21st century.

A. The Essence of the “21st Century Clause”

Strategically speaking, the TPP is no longer a common FTA as only a small part of its negotiations focus on market access to trade in goods. In contrast, the TPP’s real competitiveness is based on its high-standard trade rule template, i.e. the so-called “21st Century Clause”.⁷ The TPP is the most important United States-dominated Asia-Pacific regional FTA in the 21st century. More importantly, the new economic and trade rule framework developed under the TPP has directly influenced and even decided the framework content of the subsequently negotiated and signed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the USMCA. It is reasonable to say that even though the United States withdrew from the TPP, at the rulemaking level, the TPP is a classic model of the United States promoting new trade rules.

Objectively speaking, these high standards at least include the following elements: 1) FTA negotiation fields are comprehensively covered, including trade in services, investment and technology along with trade in goods; 2) not only tariffs are deducted but behind-the-border measures such as non-tariff barriers and domestic regulations are also involved; 3) certain non-traditional FTA clauses are involved, e.g. labor clause, environment clause, and horizontal clauses such as those involving development, as well as small and medium-sized enterprises and state-owned enterprises.⁸ Specifically, out of the TPP’s 30 clauses covering 26 trade issues, 50% of the issues seldom appeared (a less than 50% appearance rate) in the 38 previously signed FTAs in the Asia-Pacific

7 Peter A. Petri and Michael G. Plummer, *The Trans-Pacific Partnership and Asia-Pacific Integration: Policy Implications*, *PIIE Policy Brief*, No. 12-16, June 2012, pp. 2-3.

8 Peter A. Petri, et al., *The Trans-Pacific Partnership and Asia-Pacific Integration*, Paper Presented at CNCPEC Seminar “TPP and Its Implications for Regional Economic Cooperation”, Beijing, China, December 8-9, 2011.

Region,⁹ while clauses on agriculture, labor, environment, security standards as well as small and medium-sized enterprises appeared at an even lower rate of 10%. In particular, commerce, culture, and technology are brand-new trade issues. It is worth mentioning that the vast majority of trade issues under the TPP are behind-the-border issues, e.g. competition policies, labor, environment, and Intellectual Property, which occupy as high as 70% of all issues and involve without exception the adjustment of domestic regulations or policies. From this perspective, trade issues under the TPP have far exceeded traditional FTA issues, and its regulation scope has also gone far beyond traditional at-the-border issues such as tariffs, customs measures, trade relief, and dispute settlement. It can be said that for emerging economies such as China, Asia-Pacific economies, and most other countries, the TPP is a set of brand-new economic and trade rules.

More specifically, Horn, Mavroidis, and Sapir (2010) researched and analyzed 14 FTAs signed by the EU as well as 14 signed by the United States.¹⁰ Horn et al. (2010) identified 52 policy fields and divided these clauses into two categories: 1) WTO+ clauses, i.e. so-called traditional trade issues, including 14 issues or clauses bound by existing relevant WTO provisions; and 2) WTO-X clauses, i.e. so-called new trade issues or rules, involving 38 new issues that had not appeared within WTO rules but had already emerged in relevant provisions of other FTAs.

Despite Horn et al. (2010)'s groundbreaking research, it was somewhat limited. Specifically, Horn et al. (2010)'s research had limited sampling that merely involved 28 FTAs signed by the United States and EU, and left out provisions not covered in US or EU FTAs. As such, Horn et al. (2010)'s research may have major deviations and lack representativeness. In 2011, the WTO (2011) expanded the research objects into 96 global FTAs, including 33 signed by the EU, 11 by the United States, 10 by Japan, 7 by China, 5 by Australia, 5 by South Korea, and 4 by India. These FTAs involve 18 global trading blocs, e.g. the United States, the EU, China, ASEAN, the European Free Trade Association (EFTA), India, the Southern Common Market (MERCOSUR) and the Gulf Cooperation Council (GCC). In this sense, WTO (2011) is more representative than Horn et al. (2010). Although the WTO (2011) followed Horn et al.

⁹ For specific FTA situations, see *supra* n. 7, Peter A. Petri and Michael G. Plummer (2012), p. 4.

¹⁰ Horn, H., Mavroidis P. C. and Sapir, A., *Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements*, *The World Economy*, Vol. 33, No. 11, 2010, pp. 1565-1588.

(2010)'s analytical thinking, it refined Horn et al. (2010)'s classification. For example, WTO (2011) included some trade issues with substantial content but not included in FTA chapter captions, and it adjusted the categorization of certain trade issues (See Table 1).

Table 1. Classification of FTA Clauses

Classification	Issues or Clauses Involved
WTO+ Clauses	Industrial Products, Agricultural Products, Customs Procedures, Export Tax, Sanitary and Phytosanitary Measures, State-owned Trade Enterprises, Technical Barriers to Trade, Anti-subsidy, Anti-dumping, Public Subsidy, Government Procurement, Agreement on Trade-related Investment Measures (TRIMs), General Agreement on Trade in Services (GATS), Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)
WTO-X Clauses	Anti-corruption, Competition Policy, Environmental Legislation, Intellectual Property, Investment, Labor Market Control, Capital Flow, Consumer Protection, Data Security, Agriculture, Connections between Domestic Legislation and International Law, Audio-Video Industry, Cultural Protection, Innovation Policy, Cultural Cooperation, Dialogue on Economic Policies, Education and Training, Energy, Financial Support, Health, Human Rights, Illegal Immigration, Anti-drugs, Industrial Cooperation, Information Dissemination, Mining Industry, Anti-Money Laundering, Nuclear Security, Political Dialogue, Public Administration, Regional Cooperation, Research and Technology, Small and Medium-sized Enterprises, Social Affairs, Statistics, Tax Revenue, Terrorism, Visa and Political Asylum.

Source. WTO, *World Trade Report 2011 — The WTO and Preferential Trade Agreements: From Co-existence to Coherence*, 2011.

In fact, the text of the TPP consists of 30 Chapters, specifically, Initial Provisions and General Definitions, Trade in Goods, Textiles and Apparel Goods, Rules of Origin, Customs Administration and Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Trade Remedies, Investment, Cross-border Trade in Services, Financial Services, Temporary Entry for Business Persons, Telecommunications, Electronic Commerce, Government Procurement, Competition Policy, State-owned Enterprises and Designated Monopolies, Intellectual Property, Labor, Environment, Cooperation and Capacity Building, Competitiveness and Business Facilitation, Development, Small and Medium-sized Enterprises, Regulatory Coherence, Transparency and Anti-corruption, Administrative and Institutional Provisions, Dispute Settlement, Exceptions and Final Provisions. Based on Horn et al. (2010)'s classification,

TPP Clauses such as Investment, Cross-border Trade in Services, Financial Services, Temporary Entry for Business Persons, Telecommunications, Electronic Commerce, Competition Policy, State-owned Enterprises and Designated Monopolies, Intellectual Property, Labor, Environment, Cooperation and Capacity Building, Competitiveness and Business Facilitation, Development, Small and Medium-sized Enterprises, Regulatory Coherence, Transparency and Anti-corruption are all new trade rules. Specifically, Investment, Trade in Services, Competition Policy, Electronic Commerce, Intellectual Property, Labor, Environment, Cooperation and Capacity Building, Small and Medium-sized Enterprises, Transparency and Anti-corruption apparently and undoubtedly are WTO-X Clauses. Moreover, based on specific clause content, State-owned Enterprises and Designated Monopolies involves the extension of Competition Policy, Competitiveness and Business Facilitation involves Dialogue on Economic Policies, Development involves Education and Training as well as Research and Technology, and Regulatory Coherence involves Connections between Domestic Legislation and International Law.

B. Restraining Emerging Challengers with New International Rules

Overall, the United States used the TPP to emphasize new trade issues rather than traditional trade issues while attempting to standardize trade rules involving new trends in international trade changes such as trade in services, investment, Intellectual Property, competition policy, and government procurement. While exploring new market access opportunities for domestic enterprises, the United States has attempted to use stricter trade standards or rules to increase other countries' corporate costs and weaken emerging economies' international competitiveness. The United States has also sought to weaken negotiations on traditional at-the-border issues such as trade in goods and trade remedies, e.g. using composite negotiations to maximally protect its trade in goods market access, and using strict rules of origin such as "yarn-forward" to weaken other TPP countries' international competitiveness in the textile industry and other labor-intensive industries to minimize impacts on its domestic industries.

Specifically, compared with the manufacturing industry, the trade service industry can increase employment by 4% for the United States while providing high-salary job opportunities amounting to an average of approximately USD 56,000 (higher than the manufacturing industry). In particular, the United

States' service industry has significant comparative strength,¹¹ so it has emphasized the standardization of trade in services rules. First, negotiations on trade in services under the TPP require comprehensively pursuing national treatment, particularly pre-access national treatment, and cancellation of other countries' approval of foreign direct investment that will help prevent emerging economies from factually not opening trade in services markets at the excuse of approval despite their commitment to opening. Second, the adoption of "negative lists" is promoted, i.e. opening all other departments except for sensitive ones. Compared with "positive lists", "negative lists" entitle the United States to increased trade in services market access while obtaining any new market access in services appearing in the future. Finally, negotiations on trade in services under the TPP underline cancellation of equity limit and performance requirement to reduce protection of various countries' domestic enterprises.

As a matter of fact, the TPP has also significantly affected multilateral trade negotiations. Initiated by the United States and Australia, the General Agreement on Trade in Services Agreement (TiSA) whose negotiations officially started in 2013 has basically adopted TPP content related to negotiations on trade in services, i.e. comprehensively providing foreign investment with national treatment, departments opening based on "negative lists", canceling in principle requirements for establishing joint ventures, and no prohibitions on foreign investment's holding percentage and business scope in fields including finance, securities, and legal services. Despite current suspension of TiSA, it will probably become a multilateral WTO's agreement on trade in services in the future. The TPP and TiSA have taken an important step towards utilizing service trade rules to standardize emerging economies.

According to statistics from *Fortune* magazine, the 2005 Fortune Global 500 list had only 67 state-owned enterprises (SOEs), which increased to 106 in 2011. In particular, of the 100 largest multinational companies, as many as 19 enterprises were SOEs, with those from China and other emerging economies occupying a significant part. Confronted by the powerful competitiveness of state-owned enterprises from emerging economies,¹² the United States has responded by strengthening its international lawmaking efforts regarding competition policy. On one hand, SOE issues under the TPP demand cancellation of

11 J. Bradford Jensen, *Global Trade in Services: Fear, Facts, and Offshoring*, September 2011, <http://bookstore.piie.com/book-store/6017.html> (Last Visited on March 12, 2021).

12 Robert D. Hormats, *Ensuring a Sound Basis for Global Competition: Competitive Neutrality*, 2011, <https://2009-2017.state.gov/e/rls/rmk/20092013/2011/163472.htm> (Last Visited on March 13, 2021).

SOE subsidies and providing SOEs with preferential financing measures during overseas investment, protection of foreign private companies' economic activities, and prohibition of government procurement discriminatory requirements, etc. The rules require that foreign SOEs and state-supported enterprises do not constitute unfair competition against American companies when investing or seeking trade opportunities in the American market. Regarding foreign markets, it is required that rules must be developed for SOEs to follow when operating in foreign markets to enable American companies to compete with them.¹³

In 2011, US Deputy Secretary of State Robert Hormats proposed the concept of “competitive neutrality” and claimed to expand it to other fields beyond competition law. This concept is designed to adjust relevant rules in the current international trade sector to address the defect that existing international economic and trade rules cannot ensure fair competition between SOEs and private enterprises. “Competitive neutrality” has become part of research on multilateral mechanisms such as the Organization for Economic Cooperation and Development (OECD). According to an OECD report, this organization has recognized SOEs' competitive strengths and explained the policy goals of “competitive neutrality”, i.e. to guarantee taxation neutrality, credit loan neutrality and rule neutrality, to ensure comparable profitability between SOEs and private enterprises, to guarantee that SOEs' price formation methods reflect actual costs, and to ensure non-discriminatory government procurement.¹⁴ In April 2012, the United States and EU jointly issued the Statement of the European Union and the United States on Shared Principles for International Investment, expressing their support of the OECD in “competitive neutrality” while holding that this undertaking emphasizes the importance of SOEs and private enterprises competing fairly in given markets.¹⁵ Accordingly, the effect of this Statement was represented in the Final Report of the EU-US High-level Working Group on Jobs and Growth, and negotiations under the TTIP have

13 Shen Minghui, Cost and Benefit Analysis of the Trans-Pacific Partnership Agreement (TPP): From China's Perspective, *Journal of Contemporary Asia-Pacific Studies*, No. 1, 2012, p. 9.

14 Antonio Capobianco and Hans Christiansen, Competitive Neutrality and State-owned Enterprises — Challenges and Policy Options, *OECD Corporate Governance Working Papers*, No.1, 2011, http://www.oecd-ilibrary.org/governance/competitive-neutrality-and-state-owned-enterprises_5kg9xfjdhg6-en (Last Visited on March 12, 2021); OECD, Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business, 2012, <http://www.oecd.org/daf/ca/corporategovernanceofstate-ownedenterprises/50302961.pdf> (Last Visited on March 12, 2021).

15 Requested from: Wang Ting, Competitive Neutrality: New Focus of International Trade and Investment Rules, *International Economic Cooperation*, No. 9, 2012, p. 75.

explicitly incorporated the issue of “competitive neutrality”.

The United States clearly used regional economic cooperation to develop the “competitive neutrality” rule under the TPP and TTIP, while further promoting it within the OECD, and urged it to develop a “competitive neutrality” framework to make this rule multilateral, and even asserted that OECD members should make a “political commitment” on this issue.¹⁶ As the WTO’s regulation on China’s special safeguard provision and market economy status is expiring, the United States has strongly advocated the “competitive neutrality” principle, which undoubtedly constitutes another major restraining rule following its “national security review” targeting foreign investment from China and other emerging economies. This rule focuses on the investment subject and is designed to promote multi-sided supplementation. It is also an amendment to existing international and domestic competition as well as anti-monopoly rules, which upon successfully incorporated in multilateral trade rules will thoroughly weaken the international competitiveness of state-owned enterprises or government-related enterprises in China and other countries while making it substantially more difficult for these enterprises to participate in foreign direct investment.

Moreover, by promoting strict rules on Intellectual Property, labor, and environment under the TPP, the United States will also profoundly impact emerging economies by weakening their corporate competitiveness. Research has found that the United States’ Intellectual Property protection standards and rules far exceed the level under the Agreement on Trade-related Aspects of Intellectual Property Rights,¹⁷ and it has formulated many concrete provisions under FTAs it has signed for restraining purposes. If the US Intellectual Property template is adopted under the TPP, not only relevant industries of TPP countries will be affected, but in the future, some specific industries of extensive emerging economies, i.e. the pharmaceutical industry (the generic drug industry of many emerging economies)¹⁸, and the Internet industry (piracy, etc.), may be greatly negatively impacted. The United States insists that TPP negotiating parties commit to adopting and maintaining the five labor standards under the International Labour Organization’s Declaration on Fundamental Principles

16 Huang Zhijin, Competitive Neutrality Rule during International Lawmaking — on China’s Countermeasures, *International Business Research*, No. 5, 2013, p. 56.

17 Flynn Sean, Margot Kaminski, Brook Baker and Jimmy Koo, Public Interest Analysis of the US TPP Proposal for an IP Chapter, Draft Version 1.3, December 6, 2011, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1980173 (Last Visited on March 13, 2021).

18 Flynn Sean, Aidan Hollis and Mike Palmedo, An Economic Justification for Open Access to Essential Medicine Patents in Developing Countries, *Journal of Law, Medicine and Ethics*, Vol. 37, 2009, pp. 184-208.

and Rights at Work and its subsequent documents.¹⁹ This rule not only entitles the United States to launch trade protection measures against emerging economies based on the excuse of human rights and labor environment but more importantly allows the application of dispute settlement mechanisms to labor issues. This means that local enterprises in emerging economies may be subject to arbitration lawsuits initiated by their competitors due to labor issues, which may materially limit emerging economies' corporate competitiveness. The TPP provision on environment requires member parties to pledge to fulfill their obligations under treaties to which they are a party such as the Multilateral Environmental Agreements (MEAs) regarding endangered wild animals and plants, ozone layer-depleting substances, ship pollution, wetlands, Antarctic marine life, whaling, and tuna. Based on this provision, the United States requires all contracting parties to establish relevant environmental arbitration institutions,²⁰ while allowing enterprises to lodge trade arbitrations against other enterprises or countries, which results in massive arbitration lawsuits confronting peer enterprises in emerging economies and reduces their competitiveness owing to substantially increased cost inputs. Furthermore, considering the environmental provision, contracting countries have been accordingly graded. If a contracting country lags behind in the grading, it has to revise its relevant environmental regulation by itself or with other countries' assistance. For example, Peru, Chile, and other countries have revised and reformed their domestic environmental legislation under pressure from the United States.

All in all, the direct reason for the United States to promote the TPP is to cope with the increasingly exclusive regional arrangements in East Asia. Strategically, the United States utilizes sequential negotiation and competitive liberalization, and builds enhanced trading blocs based on the TPP to create asymmetrical economic advantage against China, India, Brazil, and other emerging economies, and then promote its trade standards across the world as represented by the multilateral trading system. The aim is not only to economically standardize China, India, Brazil, and other emerging economies, but also to strategically use new international rules to comprehensively restrict emerging economies'

19 International Labour Organization (ILO), *Declaration on Fundamental Principles and Rights at Work*, <http://www.ilo.org/public/english/standards/index.htm> (Last Visited on March 12, 2021).

20 Meltzer, Joshua P., *The Trans-Pacific Partnership Agreement, the Environment and Climate Change*, In Tania Voon (ed.), *Trade Liberalisation and International Co-operation: A Legal Analysis of the Trans-Pacific Partnership Agreement*, Edward Elgar, 2014, Available at SSRN: <https://ssrn.com/abstract=2326723> (Last Visited on March 13, 2021).

corporate competitiveness, weaken emerging economies' economic advantage and maintain the United States' relative economic advantage and status. Even though the United States has withdrawn from the TPP, it has entered into the USMCA, while Japan has driven successful negotiations for the CPTPP. Actually, from a rulemaking perspective, the above two FTAs have nearly overlapping trade rules. Therefore, traditional developed countries such as the United States have not ceased to use international rules to restrain emerging economies. However, this process has appeared more fragmented because of the Trump Administration's "America First" principle.

III. ANALYSIS OF THE MECHANISM OF “INSTITUTIONALLY OUTPUTTING” REGIONAL RULES

Since the GATT was signed in 1947, the multilateral trading system has significantly promoted international trade and economic development. The GATT/WTO mechanism has not only propelled most members to substantially reduce most-favored-nation tariff rates but provided a solid foundation for global free trade. Meanwhile, its trade dispute settlement mechanism and policy deliberation mechanism have had a considerable binding effect on participants and have effectively maintained a global free trade environment. However, beginning from the Uruguay Round, since most-favored-nation tariffs have been reduced to a low level and developed countries have focused on advancing non-traditional trade issues such as Intellectual Property, trade in services and investment, it has become increasingly difficult to participate in multilateral trade negotiations. In this context, major global economies such as the United States and EU have begun seeking regional economic cooperation in forms such as FTAs.

Since the beginning of the 21st century, the WTO has launched a new round of Doha “Development Round” negotiations. Initially, 21 issues were planned for discussions during the Doha Round, including agriculture, trade in services, non-agricultural products, Intellectual Property, government procurement transparency, investment, competition policy, trade facilitation, environment, electronic commerce, and capacity building. As estimated by the WTO, the Doha Round will annually benefit the global economy by USD 50 to 100 billion. Unfortunately, due to the WTO decision-making mechanism of the “one-vote veto” and complicated competition of interests between trading

blocs (e.g. between the United States and EU regarding agricultural issues, and between developing countries and the US and EU regarding agricultural issues and issues beyond WTO provisions), the Doha Round has yet to end with a definite outcome even after ten-plus years of negotiations.

In this context, regional economic cooperation as represented by FTAs has increasingly become an important strategy in which global economies have actively participated in and promoted. In particular, the United States, EU and other developed economies have been developing FTAs amongst each other and the ones dominated by them as a significant policy for coping with new economic challenges and a way to formulate new rules on trade in goods, trade in services and investment, while trying to turn these rules into templates for future multilateral rules. In November 2014, the Trade Facilitation Agreement was adopted under the WTO framework, which was momentum for the WTO to further advance the Doha Round's overall negotiation process. However, in the context of the group-based rise of emerging economies, the United States, EU, and other developed economies will only enhance rather than weaken their effort to promote new international rules and continue using regional economic cooperation to impact the process and content of future multilateral trade negotiations.

A. "Sequential Negotiation" Is the United States' Means of Promoting the Formulation of International Economic and Trade Rules

In order to maintain its competitive strength in global trade, the United States has committed itself to preserving its advantageous status within the multilateral trading system by dominating the GATT/WTO negotiation process, promoting its version of trade schemes and affecting the formulation of international economic and trade rules. Before the 1980s, as the strongest power in the Western world, the United States had basically dominated the GATT negotiation process. However, since the 1980s, European countries have largely increased their overall economic advantage by relying on economic integration, thus becoming the first postwar economy with overall economic advantage equivalent to the United States. In international markets, the United States has increasingly felt competitive pressure from the European Economic Community (EEC). A reflection of this is that the United States attempted in the early 1980s to initiate a new round of multilateral trade negotiations, but failed due to the EEC's obstruction. Although the Uruguay Round negotiations were subsequently launched, this round has been suspended for a long time because the EU refused

to compromise on agricultural product issues. In an attempt to break this deadlock, the United States decided to participate in regional economic cooperation with Canada, Mexico, and other North American countries.

Specifically, in 1986, the EEC declared their intention to create a European single market. As a strategic response, the United States announced the launch of the Canada-United States Free Trade Agreement (CUSFTA) negotiations with Canada. When the EU signed the Maastricht Treaty in 1992, CUSFTA was expanded into NAFTA. Later, in reaction to the EU's eastward expansion, the United States decided to launch negotiations for the Free Trade Area of the Americas.²¹ We cannot help asking why the United States chose North American countries rather than European ones as regional cooperation partners in its effort to evade possible trade diversion effects arising from EU integration.

If the ability to influence international economic rules is included as part of new regionalism, it will greatly contribute to the settlement of this difficult issue. According to the theory of new regionalism, a country that pursues regional economic cooperation can obtain non-traditional and traditional economic benefits, while the ability to influence international economic and trade rules may be a regional economic cooperation objective that great powers prioritize.²² The United States could have negotiated with EU countries for bilateral FTAs to evade the negative effect, e.g. trade diversion effect, of the expansion of EU on itself. However, there had always been unbridgeable barriers between the United States and EU countries regarding trade in agricultural products, which had become the main barriers affecting the GATT/WTO negotiation process. As such, during regional economic cooperation with European countries, the United States could not guarantee entirely successful negotiations. Faced with the existing EU, it is much less impossible to develop a new trading bloc to gain influence over international economic rules. In contrast, the situation would be totally different if regional economic cooperation would be conducted with North American countries such as Canada and Mexico, which not only volunteered to negotiate with the United States for FTAs, but also, with inferior economic advantage, were likely to basically accept the United States' requirements.²³

21 Li Xiangyang, Trans-Pacific Partnership Agreement: Major Challenges Confronting China during Its Rise, *International Economic Review*, No. 2, 2012, p. 25.

22 Li Xiangyang, New Regionalism and Big Power Strategy, *International Economic Review*, No. 4, 2003, p. 7.

23 For economic advantage comparison and asymmetry between the United States and its free trade area negotiation counterparts, see He Yongjiang, Competitive Liberalization Strategy and the United States' Regional Trade Arrangements, *The Chinese Journal of American Studies*, No. 1, 2009, pp. 104-106.

Specifically, the benefits of entering into a bilateral FTA with Canada are two-fold. For one thing, negotiating with Canada can create negotiating pressure on Japan and the EEC at the Uruguay Round to force them to compromise during the negotiations. For another, the CUSFTA includes new provisions on Intellectual Property, investment, government procurement, etc. that the United States had attempted to impel under the GATT.²⁴ Afterwards, when the Maastricht Treaty was signed in 1992, the EU's economic aggregate had been comparable with the United States, which made it even more difficult for the United States to propel negotiations at the Uruguay Round. Therefore, continuing to negotiate with Mexico to reach a North American Free Trade Agreement would create negotiation pressure on the EU. Moreover, Mexico had accepted the United States' cooperation document on labor and environment as well as Intellectual Property and trade in services provisions. It follows that by conducting regional economic cooperation with these North American countries, the United States can not only obtain traditional benefits, effectively make up for and balance the trade diversion effect triggered by EEC economic integration but also utilize asymmetrical economic advantage to force these economically small countries to accept the United States' trade rule template, contribute to the formation of a unanimous trading bloc during the Uruguay Round negotiations, create negotiation pressure on the EU, and gain the ability to influence international economic and trade rules.

As a matter of fact, in the international trade sector, a country's influence on international economic and trade rules depends on the size of the export market it can provide to the world. European countries have used the EU to overcome the limitation of smaller single-country markets. The EU's equivalent market status with the United States enables it to challenge the United States in obtaining dominance of international economic and trade rules. If the United States does not develop a larger trading bloc by participating in regional economic cooperation, it may lose its influence on the GATT/WTO (however, its influence is indeed declining). In fact, the United States' efforts towards regional economic cooperation, i.e. developing a trading bloc based on regional economic cooperation, expanding its weight in multilateral trade negotiations, and obtaining dominance in the international economic and trade rulemaking process is a process of expanding FTA rules into multilateral trade rules, which

24 Richard E. Feinberg, The Political Economy of United States' Free Trade Arrangements, *The World Economy*, Vol. 26, No. 7, July 2003, p. 1024.

is also called sequential negotiation.²⁵ Just as the American economist Jeffrey J. Schott indicated in his book *Free Trade Areas and US Trade Policy*, “The United States has always promoted the trade liberalization process using bilateralism as a carrot and stick. Before GATT negotiations achieved any results, bilateralism had been used to make up for deficiencies of multilateralism and to develop a template for a new round of more extensive multilateral GATT negotiations”.²⁶

B. The Relation between US Regional Cooperation Issues and Multilateral Trade Rules since the 1980s

Just as Samuelson indicated in 2004, despite the United States’ somewhat worsened terms of trade and reduced welfare due to technical changes in other countries, the situation was still better than when there was no trade at all.²⁷ It follows that the United States has participated in regional economic cooperation mostly to make up for deficiencies of multilateralism rather than to replace it. The main reason for its shift from multilateralism to regionalism starting during the 1980s is that compared with the EU, East Asia, or emerging economies such as China, its relative economic advantage has somewhat declined and often feels powerless when advancing GATT/WTO multilateral trade negotiations. In particular, starting from the Uruguay Round, the United States can leverage the EU, Japan, and other trading blocs’ negotiation stances to complete this round’s negotiations only by developing trading blocs such as the North America Free Trade Area and Asia-Pacific Economic Cooperation.

The United States can use small-scope regional economic cooperation to take advantage of its asymmetrical economic advantage and its market access as exchange conditions. This can formulate and force its FTA negotiation counterparts to accept trade rules that strengthen its international competitiveness, enabling it to enhance the support rate of US trade issues during global trade negotiations. At the same time, US-centered trading blocs can be used as negotiation strategy tools to threaten other trading blocs by informing them that if they do not accept its propositions during multilateral trade negotiations, it will replace multilateral trade negotiations with regional cooperation. As such, its

²⁵ *Supra* n. 22, pp. 6-8.

²⁶ Quoted from: Zhou Maorong, The Influence of “America-Canada Free Trade Agreement” on American Economy, *The Chinese Journal of American Studies*, No. 2, 1992, pp. 93-106.

²⁷ Quoted from: Wang Dong, Motive Analysis of the United States’ Multi-track Trade Policies and Enlightenment on China, *Contemporary Economics*, No. 1, September 2011, p. 63.

sequential negotiation tends to succeed due to the huge markets that the United States and its trading blocs represent. For example, by expanding the CUSFTA into NAFTA, the United States promoted the then new trade issues such as Intellectual Property, trade in services and investment to the scope of the North America Free Trade Area. Meanwhile, the US government has proposed the “Initiative on creating America undertaking”, hoping to expand the North America Free Trade Area into the Free Trade Area of the Americas and maintain cooperation with South American countries regarding Uruguay Round negotiations.²⁸ On the other hand, in the Asia-Pacific region, the United States also actively participated in the First APEC Economic Leaders’ Informal Meeting held in 1993, strongly promoting free trade and investment while driving the summit to support the Uruguay Round.²⁹ The United States used the said bilateral FTAs and other regional economic cooperation to eventually launch Uruguay Round negotiations based on enhanced trading bloc pressure, and successfully included Intellectual Property, trade in services, investment and other new trade rules in the multilateral trading system. At this point, despite the suspension or failure of some regional economic cooperation negotiations that the United States has promoted, on a global level, its trade rules have been spread to some extent. From this perspective, unlike the EU, regional economic cooperation is not the United States’ final target but is merely a policy tool for it to globally promote its trade standards and gain influence on international economic and trade rules in the context of its declining relative strength.

In the Asia-Pacific region, the United States has faced a new challenge due to China’s economic rise as well as the continuous impact of East Asian cooperation. Having failed in its effort to promote the “Enterprise for ASEAN Initiative”, it has chosen the TPP as a policy tool to cope with the said challenges. Despite research findings that the TPP currently creates limited benefits for the United States, the “21st Century Clause” thereunder not only reflects the United States’ advantageous industry’s interests but helps enhance its international competitiveness. More importantly, the TPP represents trade rules

28 Xu Shicheng, On Bush’s “Initiative on Creating America Undertaking”, *Journal of Latin American Studies*, No. 6, 1990, p. 12.

29 The support given to the Uruguay Round by the First APEC Economic Leaders’ Informal Meeting in 1993 is deemed a tool of the United States for impacting pressure on the EU regarding the Uruguay Round. See John Ravenhill, *APEC and the Construction of Pacific Rim Regionalism*, Cambridge: Cambridge University Press, 2002, pp. 93-94.

that the United States dominates,³⁰ whose long-term goal is to use the TPP to expand the rules to the Asia-Pacific region to promote new rules to the multilateral trading system as represented by the WTO.

From a strategic perspective, in order to cope with the rise of the East Asian trading bloc, particularly emerging economies such as China and India, and to maintain its dominant position in international trade, the United States will definitely strengthen its regional economic cooperation input in the Asia-Pacific region (even the Indo-Pacific region) to develop an enhanced self-focused trading bloc in this region and shape its economic advantage against China and other emerging powers. In theory, provided that the said emerging powers' economic advantage continue to increase, the United States will not change its policy orientation of enhancing regional economic cooperation. It will continually develop regional trading blocs to further enhance its global economic superiority and negotiation pressure on emerging powers while forcing them to accept its trade rules and maintaining its global trade status and interests.

C. USMCA Reflects New Characteristics

Despite the Trump Administration's withdrawal from the TPP, on September 30, 2018, the United States, Mexico, and Canada successfully negotiated the USMCA based on NAFTA. Judging from the released final version, the USMCA covers most content of the TPP while retaining basic provisions of NAFTA. Dominated by the United States, the USMCA not only further deepens trade and investment but also raises standards on Intellectual Property, government procurement, state-owned enterprises, environmental protection and labor policies. These changes will not only affect the economic and trade relationships between the United States, Mexico, and Canada but more importantly, will greatly influence existing international economics and trade pattern.

The USMCA has extensive coverage. Besides traditional trade and investment issues, it has also assimilated electronic commerce, financial services, state-owned enterprises, Intellectual Property, competition, environmental protection, and labor standard issues under the TPP, while involving new issues arising from in-depth globalized development. The USMCA contains 34 chapters, 3 schedules, and 18 annexes, notably outnumbering those of NAFTA (22

30 Peter A. Petri, Michael G. Plummer and Fan Zhai, *The Trans-Pacific Partnership and Asia-Pacific Integration: A Quantitative Assessment*, *East-West Center Working Papers*, Economics Series, No. 119, October 24, 2011, pp. 1-10.

chapters) and the TPP (30 chapters). The USMCA has basically followed the format of the TPP text with a highly aligned framework structure therewith. As many as 27 chapters are identical (including Chapters 4 and 5 under the USMCA, which are divided from TPP Chapter 3 “Rules of Origin and Origin Procedures”). The overlapping chapters take up almost three quarters of the new agreement. Meanwhile, the USMCA has retained massive provisions that were included under NAFTA. The USMCA can be regarded as a combination of NAFTA and the TPP. Judging from their main framework structures, the USMCA, NAFTA, and the TPP all include a preamble and several chapters. The USMCA divides the original Chapter “Rules of Origin and Origin Procedures” into two chapters and adds Recognition of Mexico’s Right to Hydrocarbons (Chapter 8), Sectoral Annexes (Chapter 12) and Macroeconomic Policies and Exchange Rate Matters (Chapter 33). The names of some chapters are slightly adjusted compared with the TPP. For instance, “Electronic Commerce” under the TPP is renamed “Digital Trade” under the USMCA, while the “Transparency and Anti-corruption” Chapter is changed into “Anti-corruption”. The Chapters “Cooperation and Capacity Building” and “Development” under the original TPP have been canceled under the USMCA, indicating that the United States is not interested in the issue of development.³¹ In addition, USMCA rules that differ from the TPP mostly originate from NAFTA. For example, the Agriculture Chapter (Chapter 3) of the USMCA originates from the Agriculture and Animal and Plant Quarantine Chapter (Chapter 7) of NAFTA, while the Publication and Administration Chapter (Chapter 29) comes from Chapter 18 of NAFTA.

In fact, the Trump Administration has used the USMCA to partly adjust the United States’ foreign economic policies, somewhat restricting its liberalization proposition in certain fields and distorting the normal development direction of global value chains, and effectively maintain American enterprises’ interests and thoroughly embody the “America First” principle. Moreover, the USMCA still concentrates on three aspects: first, negotiations on market access, including tariffs, trade in services, government procurement and investment; second, negotiations on regulatory measures for special industries, including trade barrier regulation issues, regulatory divergence between countries, and coordination issues arising from domestic regulation; third, negotiations on rules

31 Cui Fan, Interpreting the USMCA: Promoting Gradual Return of Crucial Manufacturing Industry Sectors to the United States, <https://finance.sina.com.cn/stock/usstock/c/2018-10-06/doc-ixeuwws1450167.shtml> (Last Visited on March 13, 2021).

for coping with common global trade challenges and opportunities, including Intellectual Property, competition policy, digital economy, state-owned enterprises, environment, and labor issues. Apparently, the USMCA has trade rules that overlap highly with the TPP, undoubtedly showing that the United States expects to use USMCA negotiations to expand the scope and boundary of the US version of international economic and trade rules. Reaching a common understanding with North American economies and then forming a stronger trading bloc helps the United States to dominate the formulation of “new-generation” trade standards as well as set benchmarks and templates for global rulemaking. As a result, during multilateral trade negotiations, it can use its asymmetrical negotiation strength to more effectively force emerging economies including China and India to accept these rules.

Although the United States has withdrawn from the TPP, the USMCA and the TPP are highly overlapping, and a few Asia-Pacific countries have joined the CPTPP. It follows that since the 21st century, the economic and trade rule restructuring process that the United States has promoted has taken effect. Specifically speaking, first, many small economies are willing to join the CPTPP, and numerous participants including Japan still expect the United States to return to the TPP. Second, large economies such as China and India have deeply felt the enormous pressure of being excluded, just like the European countries in the Uruguay Round period. Hence, some important negotiation fields, e.g. opening of the financial sector, pre-access national treatment, negative lists, and other rules or provisions have become more flexible during negotiations for regional economic cooperation. Last, considering that large developing economies find it difficult to reach bilateral FTAs with the United States or join regional trading blocs dominated by developed countries in the short time, out of concerns of being excluded, these economies have become more enthusiastic about participating in other FTAs or multilateral trade negotiations and more willing to make more commitments to opening during this process.

Besides FTAs such as the CPTPP and USMCA, those in the OECD, and other multilateral mechanisms have begun discussing new situations and issues arising in current international trade, i.e. how to cope with challenges triggered by emerging economies, particularly the issue of powerful Chinese state-owned enterprises. These issues commonly confronting developed countries have appeared within the WTO and other multilateral mechanisms. Future multilateral trade negotiations may involve provisions on state-owned enterprises.

The United States has not given up on the multilateral trading system. Instead, it hopes to use FTAs to promote a new form of development for multilateral trade negotiations. The prevailing trade protectionism triggered by the Trump Administration and even the US government's threat of withdrawing from the WTO, rather than indicating the United States' total abandonment of the multilateral trading system, are merely adjustments in its specific negotiation modes and strategies, i.e. turning from mega-FTAs to bilateral negotiations that rely more on asymmetry. The United States' regional economic cooperation complements rather than replaces multilateralism. Regional economic cooperation enables the United States to quickly obtain new market access while using sequential negotiation to gradually expand these fields to the multilateral trading system. It is noteworthy that regional economic cooperation can also meet the United States' political diplomacy goals that are hardly accessible via the multilateral trading system. Therefore, judging from results, as long as the world's other main economies' economic advantage do not threaten the United States or they are not active in regional economic cooperation, the United States will enthusiastically maintain its current status under the multilateral trading system. However, once these main economies damage the US interests due to regional economic cooperation, the United States will react based on regional economic cooperation to form America-centered trading blocs and continue to maintain its asymmetrical economic advantage against other trading blocs within the multilateral trading system. Based on this logic, it can be predicted that along with the group-based rise of emerging economies, the United States' regional economic cooperation tendency will be further reinforced. In this sense, despite the final development of the USMCA and CPTPP, some content that the United States has vigorously promoted, e.g. digital trade, investment provisions, trade in services, and Intellectual Property will probably be upgraded to international rules in the future.

IV. OUTLOOK ON THE FUTURE INTERNATIONAL TRADEING SYSTEM

The Trump Administration insisted on "America First" in the international trade sector, which has resulted in protectionism prevailing in the international trading system. The WTO has faced severe challenges, and must deal with a high level of uncertainty in terms of the multilateral trading system's development

direction.

It should be noted that so far, each country has a different understanding of new trade and investment issues and rules. Affected by “institutional non-neutrality”, new trade and investment rules influence each country in different ways. Hence, different economies vary greatly regarding the issue of new international trade and investment rules, which is specifically reflected in the vastly different coverage of new trade rules (WTO-X Clauses) in FTAs signed by different economies. Specifically, research has examined these FTA provisions by focusing on 45 Asia-Pacific FTAs as samples. It found that regarding traditional trade issues, many developing countries including China and ASEAN members have implemented a considerable amount of trade opening measures with high commitment rates including legally binding and enforceable provisions. However, Asia-Pacific economies vary greatly in terms of WTO-X Clauses. Developing economies such as China and ASEAN have a very low coverage of new trade issues, merely 21% and 23% respectively. In other words, China includes an average of 8 new trade issues or rules in its FTAs, while ASEAN has an average of 9. Comparatively, developed countries represented by South Korea, Japan, and the United States have higher coverage of new trade issues, at 47%, 37%, and 37% respectively. In other words, when negotiating and signing FTAs, South Korea, Japan, and the United States tend to include an average of 18, 14, and 14 new trade issues or rules. Particularly under the United States’ FTAs, not only is the number of new trade issues twice that of China’s or ASEAN’s, but its commitment rate on new issues reaches as high as 64%, showing that the United States values promoting new trade issues and rules while also making these new rules enforceable and binding.³² This clearly proves that developing and developed country groups have different recognition and preferences for new trade issues.

Moreover, new trade rules embodied in FTAs that developed countries have promoted, such as the USMCA and CPTPP, have indeed reflected developed countries’ strategic intention to use external FTAs to proceed with “international lawmaking”. In other words, new trade issues reflect the political nature of developed countries negotiating for and signing FTAs. That is to say, developed countries, particularly developed powers, usually do not care about market access to specific developing countries, but aim to gain the right to

32 Sheng Bin and Guo Ting, Comparison of Asia-Pacific FTA Provisions and Enlightenment on China, *Asia-Pacific Economic Review*, No. 2, 2014, p. 98.

formulate international trade rules. As an example, developed countries are more inclined to institutional outputting. Taking the United States as an example, along with the rise of EU, Japan, and even emerging economies, the United States suffers from declining relative strength and control of the global trading system. In order to maintain its global interests, the United States has to take advantage of its asymmetrical economic advantage and use its market access as exchange conditions during small-scale regional economic cooperation. This helps it to formulate and force its FTA negotiation counterparts to accept trade rules that strengthen its international competitiveness so it can enhance the support rate of its trade issues during global trade negotiations. At the same time, utilizing US-centered trading blocs as negotiation strategy tools, it threatens other trading blocs by informing them that if they do not accept its propositions during multilateral trade negotiations, it will replace multilateral trade negotiations with regional cooperation. As such, its sequential negotiation tends to succeed due to the huge markets that the United States and its trading blocs represent. The United States has always promoted the trade liberalization process by using bilateralism as a carrot and stick. Before the new round of multilateral trade negotiations achieves any results, bilateralism will be used to make up for the loopholes in the multilateral system rules and to develop a template for a new round of more extensive multilateral negotiations.

The WTO's research has verified that besides the multilateral trading system, developed countries output new economic and trade rules and systems by signing FTAs with developing countries. Using 96 global FTAs as research samples, the WTO found that FTAs signed between developed countries and between developing countries involve limited WTO-X Clauses, basically around 6. The only difference is that new trade issues under FTAs signed between developed countries are more enforceable and binding than those between developing countries. However, FTAs signed between developed and developing countries have as many as 10 WTO-X Clauses on average, proving that developed countries utilize their own markets to make developing countries accept higher-level trade issues, which is a typical "institutional outputting" or "international lawmaking" behavior.³³ According to research conducted in 2018, from 1990 to 2015, among all global trade agreements signed between developing

33 Certainly, FTAs negotiated and signed between developed and developing countries have lower binding effect and enforceability, showing that the gulf between developed and developing countries still exists regarding new trade issues and may have arisen due to the lengthy transition period of new trade rules.

and developed economies, the coverage of provisions on new international economic and trade rules increased from 9.5 in 1990 to 24.5 in 2015. At the same time, on a global scale, the coverage of provisions on new international economic and trade rules increased from 8.6 in 1990 to 20.4 in 2015.³⁴ This shows that except for developed countries' institutional outputting, these countries are also likely to actively join FTAs, thus seeking market reform possibilities by accepting new economic and trade rules. In particular, along with the transition from traditional international trade in the 20th century to international value chain trade in the 21st century, as well as the arrival of new technology reforms, global trade governance has shifted from the first-generation "at-the-border rules" to the second-generation "behind-the-border rules" that include fusion of FTA regulations.

Although global economies have varied opinions and understanding of new trade and investment rules at the regional level, it should be mentioned that new economic and trade rules are developing at a rapid speed. In particular, trade agreements signed between developed and developing economies have increasing coverage and acceptance of new economic and trade rules. It can be predicted that restructuring of trade rules at the regional level is unstoppable, which will further drive and expedite the restructuring of the global trading system.

In the short term, since the average most-favored-nation tariffs that WTO Members currently offer are already at a relatively low level, it is comparatively difficult for them to continue to reduce tariffs for both developing and developed countries. At the same time, developed countries will have to pay a high price to open their sensitive industrial sectors, and developing countries will face difficulties when having to accept reforms of behind-the-border measures to obtain market access to developed countries. Moreover, given the WTO's current decision-making mechanism emphasizing consensus, it is unlikely that the WTO can continually advance the Doha Round or reach package agreements. Nonetheless, although it urgently needs reform, its large number of Members and irreplaceable market access status will enable it to continue existing. The numerous issues regarding WTO reform will become its short to medium-term focus of competition.

In the medium term, along with a standstill in multilateral trade negotiations, countries will continue to seek regional economic cooperation (FTAs) to

34 Gao Jiang and Sheng Bin, Will Trade Agreements' Quality Influence Global Production Networks? *World Economy Studies*, No. 8, 2018, pp. 3-9.

promote economic and trade development, and future global trade and investment pattern will become even more diversified. If the US government returns to the CPTPP after experiencing further frustrations in its efforts towards unilateralism, a relaunch of the TTIP can be expected soon. Based on the above analysis results, the USMCA and CPTPP are not very different from each other. In this case, developed country groups' overall strength and negotiation status within the multilateral trading system will be greatly enhanced. Meanwhile, developing economy groups are experiencing interest differentiation, while Brazil and other countries may further side with the United States during multilateral trade negotiations. The United States is likely to promote new economic and trade rule provisions (occupying two thirds of all provisions, much higher than the world average) involved in mega-FTAs such as the relaunched TPP, USMCA, and CPTPP by involving them in a template for a new round of multilateral trade negotiations. From the perspective of rules, issues that the Doha Round negotiations have failed to promote, e.g. new issues on government procurement, competition policy (including content on state-owned enterprises) and partial investment rules, may be incorporated into the new round of multilateral trade negotiations, while issues beyond the WTO such as trade in services, environment, and Intellectual Property may also be deepened.

Based on conservative projections, it is even more likely that the US government will continue to insist on the "America First" principle and stick to trade protectionism regarding "re-globalization", hence finding it difficult to develop concerted trading blocs with its traditional developed country allies. Meanwhile, if the WTO also fails to achieve substantial reform, developed countries such as the United States will, based on sector opening, initiate independent negotiations on some important "behind-the-border rules" such as investment and trade in services to reach plurilateral agreements and achieve multilateralism. For example, the WTO Electronic Commerce negotiations that have been launched prove that the US government prefers plurilateral negotiations. Similarly, once Electronic Commerce negotiations are completed, high-standard service provisions regarding trade in services may be directly incorporated into the TiSA to relaunch negotiations, the Multilateral Agreement on Investment (MAI) may also be launched, and some content of the rules on competition policy, labor, etc. may be separately included in the TiSA or MAI. As such, the WTO will ultimately maintain its multilateral mechanism for handling trade in goods issues, while the TiSA and MAI may be upgraded to plurilateral

agreements under the WTO framework, similar to the Agreement on Government Procurement and the Information Technology Agreement.

In the long term, along with the relative decline in the United States' economic advantage, its control of the multilateral trading system will continually decrease. Hence, it will find it increasingly difficult to promote "package" multilateral trade negotiations that include all WTO Members. Even if the United States successfully enters into trading blocs with the EU and Japan, if it fails to compromise with China, India, and other emerging economies, it will still be difficult for new regional trade rules to really become new global trade rules. It can be predicted that only after China's economy has become fully industrialized and achieves economic structural transformation, and after India and other emerging economies have begun scale industrialization, emerging economy trading blocs needing to explore global new markets can really carry out a new round of "package" multilateral trade negotiations (the so-called Beijing Round or New Delhi Round) with developed countries. This will become the most important content of global trading system restructuring.

In short, along with the group-based rise of emerging economies, there will inevitably be an increasingly stronger tendency for developed countries to "huddle" and strengthen cooperation. Owing to the US government's principle of "America First", developed country groups have slowed down the "huddling" process. However, if China, India, and other emerging economies' economic advantage continually increase, the United States will unavoidably return to "huddling" with its developed country allies. It follows that international economic and trade rules will inevitably change regardless of whether the United States and other developed country groups further cooperate and fuse in the medium term in the regional economic cooperation field (return to the TPP or relaunch negotiations under the TTIP etc.). The only difference is that these changes may appear either as plurilateral agreements under the multilateral trading system framework, in which case existing international economic and trade rules will partially change, or as a brand-new round of multilateral trade negotiations that will end up thoroughly changing existing international economic and trade rules.