

The United States Reasserts Trade Rule-Making through USMCA and Challenges CPTPP

By Takemasa Sekine

The announcement on October 1, 2018, that an agreement had been reached on a new United States–Mexico-Canada Agreement (USMCA) came as a shock to all members of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) except Mexico and Canada. It was particularly shocking for Japan which had led efforts to bring the CPTPP to fruition. New provisions included in the USMCA trilateral accord, such as those related to currency manipulation, imply that the USMCA has dethroned the CPTPP as the most modern trade agreement. The conclusion of the USMCA signifies that the United States is reasserting itself as a trade rule-maker, although the process to achieve that agreement has been publically contentious.

Takemasa Sekine,
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The story of USMCA and CPTPP in some sense derives from the shortcomings of global trade efforts. The World Trade Organization (WTO) established in the mid-1990s was an important step forward for the international economy. While it faced harsh criticism in the late 1990s for certain deficiencies, a new round of trade negotiations (the Doha Round) was launched in 2001 to improve existing WTO rules and to construct new rules on issues that had been left unresolved. However, due to the increased number of WTO members and other factors, the negotiations failed to reach a consensus on many issues, and have not made notable progress since. As a result, most countries have shifted their interest and resources to negotiating free trade agreements (FTAs) directly with trade partners, trying to introduce new trade rules that have not materialized under the WTO. In other words, at this juncture, in order to develop new trade rules that reflect the rapidly changing trade environment, it has proven to be more effective to embed such rules within FTAs and normalize those rules through an accumulation of such agreements.

Against this backdrop, the CPTPP was considered an innovative trade agreement. It contained new rules in areas such as electronic commerce, state-owned enterprises (SOEs), and environmental issues that were not found in previous trade agreements either in the global trade regime (the WTO) or individually negotiated FTAs. While the basic framework of the CPTPP was drawn up under the initiative of the United States, the subsequent success of the remaining members in maintaining the agreement despite the US withdrawal enabled those members to take the driver’s seat in developing a new style of trade agreement. The CPTPP members are now able to use that agreement as a model when they conclude new FTAs with other countries, meaning that the CPTPP has the potential to develop as a basic standard for future trade agreements. The lack of US involvement in this important regime initially raised concerns that the United States was ceding its status as a rule-maker in the international trade order. However, that impression changed drastically after the expeditious revision of the North American Free Trade Agreement (NAFTA) — into the USMCA — by the Trump administration.

The USMCA is composed of 34 chapters. The number of chapters itself is already larger than the CPTPP, implying that the USMCA includes more topics. Among the new chapters, Chapter 33, which deals with macroeconomic policies and exchange rate matters, deserves particular attention. The chapter contains four substantive obligations: (1) to comply with the Articles of Agreement of the IMF, which were established to avoid manipulation of exchange rates and the international monetary system; (2) to ensure transparency and reporting, for example by disclosing information such as monthly foreign-exchange reserves data; (3) to establish a Macroeconomic Committee to monitor the implementation of the chapter; and (4) to engage in expedited bilateral consultations when the other party so requests. However, it is interesting to note that the dispute settlement procedures and retaliatory measures established under the USMCA only apply to the infringement of obligations relating to transparency and reporting.

Another set of new rules in the USMCA that are not found in the CPTPP are those pertaining to agricultural biotechnology. Although the CPTPP includes provisions dealing with rDNA technology, the USMCA expands those provisions by introducing newer technologies such as gene editing within its scope.

In the same vein, the USMCA updates certain rules that are thought by some to be insufficient under the CPTPP. One example is the definition of a state owned enterprise (SOE). Under the CPTPP, for an enterprise to be defined as an SOE, the government must directly own more than 50 percent of the share capital, but the USMCA expanded the definition to include indirect shareholding, which includes situations where a government holds an ownership interest in an enterprise indirectly through one or more of its state enterprises. Furthermore, certain types of subsidies provided to the SOEs (non-commercial assistance) are prohibited under the new agreement. This is stricter than the CPTPP, which does not forbid any type of governmental assistance directed to SOEs.

Given these upgraded rules, the USMCA, as a whole, can be assessed as one of the most advanced trade agreements to date. The flip side of this is that the CPTPP has lost its position as the “landmark 21st-century agreement,” to borrow an expression the USTR used to describe the original TPP.

This fact may have a significant impact on US trade partners. For example, even after the CPTPP’s signing, Japan has repeatedly asked the United States to return to the agreement. However, with the conclusion of the USMCA, there seems to be little hope that Japan’s plea will be persuasive. There is little incentive for the United States to join an agreement with only a limited number of new rules. Indeed, the United States is demanding that Japan conclude a bilateral FTA (also called a Trade Agreement on Goods, or TAG) with it, which may include provisions regarding currency manipulation and other new elements in a form somewhat akin to those in the USMCA. From Japan’s perspective, if it wants to defend its position by relying on the CPTPP, it should devote greater energy to making the CPTPP a more widely-accepted standard for global trade rules, for instance through the expansion of the agreement’s members or introducing a flexible system that may embrace both high and low (combined with some graduation mechanism) standards.

The CPTPP, which was just signed this year and will come into force at the end of 2018, is already at a crossroads — will it remain a simple FTA or will it play a broader role in the global trade regime? The CPTPP members should not be satisfied with having concluded the agreement, but rather should seek constant improvement and ensure that this trade regime is flexible and responsive to the fast-moving international trade environment so that it can serve as a leading model for future trade agreements. In that regard, it must be borne in mind that open agreements such as the CPTPP have an advantage over closed, USMCA-type agreements with fewer members in that they can be expanded to involve many countries and can thereby alleviate the complexity of rules created by multiple diverse agreements.

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