

Canada and the Trans-Pacific Partnership: Considerations for the Ratification Debate

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Submission to the House of Commons Standing Committee on International Trade

25 June 2016

I thank the Committee for the invitation to comment on the topic of the Trans-Pacific Partnership (TPP). These remarks are in a personal capacity and should not be attributed in any way to any institution with which I have an affiliation.

The TPP is one of several “mega-regional” trade agreements that are in the works: in addition to the 12-member TPP, there are the EU-US Transatlantic Trade and Investment Partnership (TTIP); the 16-member Regional Comprehensive Economic Partnership (RCEP); and the 23-member Trade in Services Agreement (TiSA), a sectoral agreement being negotiated under Article V of the General Agreement on Trade in Services (GATS).

These agreements, and others negotiated in their shadow and aligning their rules accordingly, cover a critical mass of global commerce and include the world’s major economic hubs and regulatory pace setters.

With the effective internment of the Doha Development Agenda at the WTO Ministerial meeting in Nairobi in December 2015, the mega-regionals now dominate the trade agenda. Countries that are not parties to the agreements will be impacted in various ways, and will have to consider the implications of aligning their policies and regulatory frameworks to the standards developed by the mega-regionals.

By the same token, the mega-regionals assume a larger role than simply creating trade and investment for the parties. This needs to be taken into account in the ratification process, since the consultative process for the negotiation of the agreements has not evolved in line with their expanded ambition. There are several consequential issues that the TPP raises.

First, since the TPP is a discriminatory trade agreement, it generates spillovers on third parties. This impacts Canada’s international development policy interests.

Second, the TPP conceptually fits into the consensus model of economic governance that has emerged over the past several decades, which might, for convenience, be called the “OECD Consensus”. This framework has left the global economy in a state of stag-deflation, waning

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business dynamism and flagging innovation; with a massive debt overhang that is a tinderbox for potential debt crises if and when interest rates ever rise; and rising inequality that is fueling a backlash against globalization, which is already being voiced strongly around the world, including against the TPP itself, and most recently in the British vote to leave the European Union (“Brexit”). Whether the TPP, at the margin, enhances the scope to make policy course corrections or restricts such scope is an important consideration for the ratification discussion.

Third, trade agreements can exert powerful leverage in the achievement of non-trade policy objectives in other areas, such as the environment. This is demonstrated by the success of the Montreal Protocol on ozone-depleting substances, which was largely – if not entirely – due to the role of potential trade restrictions that were sanctioned under the WTO Agreement. The TPP’s performance in helping achieve non-economic objectives is thus a relevant consideration, both in terms of what it does achieve and the opportunity costs of what it fails to address, given that it effectively uses up a considerable amount of potential trade leverage.

Fourth, as observed in a recent *Globe and Mail* op-ed by Peter Petri and Wendy Dobson, the mega-regionals can play important roles in geopolitics. Commenting on the recent C.D. Howe study of the TPP, of which I was a co-author, they argue as follows: “The study does not discuss geopolitical gains, which may be the TPP’s most important contribution – as eight former U.S. secretaries of defence pointed out recently. The TPP will strengthen links across the Pacific and reinvigorate a rules-based approach to global trade. Some have argued that it will set rules so China doesn’t, but the real risk is a drift toward anarchy without any solid rules.” (Petri and Dobson, 2016). The TPP does indeed raise geopolitical issues that have implications for Canada’s international diplomacy.

In this submission, I comment on the TPP both as regards the quantitative impact it is likely to have on trade and investment within the bloc and from these various additional perspectives.

1 The Economics of the TPP

Estimates of the economic impact of the TPP on Canada and on the TPP parties and third parties more generally vary by a very large magnitude. It is natural that such a divergence in estimates would generate doubt about the methodologies being used to generate the estimates.

I address this issue in detail in Ciuriak (2016). Here, I summarize the main conclusions. It is somewhat technical; this is unavoidable as the source of the differences in the various studies is based on methodological differences. I hope to show that, when the sources of discrepancies are laid bare, that the appearance of a large gap in evaluation will in fact evaporate.

Six studies posted in 2016 on the economic impacts of the TPP have figured in the debate about the scale of the TPP’s impacts. However, for the most part, they draw on assumptions that are not based on the TPP agreement as negotiated.

- Capaldo, Izurieta, and Sundaram (2016), published by Tufts University, draws on an unorthodox methodology to estimate the impacts of the TPP, which has attracted widespread criticism; however, the more important point from the perspective of shedding light on the TPP as negotiated is that this study evaluates the TPP based on estimates from a 2012 study of the TPP, well prior to its conclusion.

- Kawasaki (2016), a study published by Japan's National Graduate Institute for Policy Studies (GRIPS), which finds the largest impacts of the TPP, is not based on the TPP agreement as negotiated; it is based on assumptions of 100% liberalization of tariffs and 50% removal of non-tariff barriers. This study remains to be updated.
- Petri and Plummer (2016), published by the Peterson Institute, bases its estimates of the non-tariff measures in the TPP on the Korea-US Free Trade Agreement; these non-tariff measures account for 88% of the impact in this study. It also incorporates trade cost reductions between third parties ("spillovers") on the assumption that they will harmonize their rules with TPP rules; these latter trade cost reductions are sufficient to generate a 0.2% GDP gain for the European Union, a region that is not party to the TPP and stands to experience considerable trade diversion because of the TPP. This gain is close to the scale of some estimates of the EU's gain in a Transatlantic Trade and Investment Partnership (TTIP) agreement. A detailed discussion of this assumption is provided in the Annex.
- World Bank (2016), Chapter 4 in Global Economic Prospects, January 2016, like the Peterson Institute, bases its estimates for the non-tariff measures in the TPP, which account for 85% of the impacts in this study, on the Korea-US Free Trade Agreement. It incorporates a much weaker spillover effect than the Peterson Institute study and shows the EU suffering a GDP loss from the TPP.
- USITC (2016), the official analysis by the US government of the TPP's impacts on the US economy, bases its analysis for the most part on the TPP text itself. Notably, it examines whether the TPP text would affect countries' scores on established indexes of services and FDI restrictiveness. The one exception to this modelling approach is that it draws on an estimate of trade facilitation gains from the WTO's Trade Facilitation Agreement to introduce a 1% across-the-board cut in trade costs between all TPP parties.
- Ciuriak, Dadkhah, and Xiao (2016a), published by the C.D. Howe Institute, bases its analysis of the TPP entirely on the TPP text as negotiated. Like the USITC study, it examines whether the TPP would affect countries' scores on established indexes of services and FDI restrictiveness; unlike the USITC study, it also bases its estimates of trade facilitation cost reductions based on whether the TPP text would change countries' scores on the OECD's Trade Facilitation Indicators (TFI) Index. In the latter regard, it finds that the TPP does not improve upon the WTO Trade Facilitation Agreement (TFA) commitments which were made by all TPP parties in 2013 and accordingly does not credit TPP for the redundant commitments the parties made in 2015.

As can be seen, the C.D. Howe study is the only one of the six to evaluate the TPP strictly on its own merits. I further note that it is the first published study of *any* FTA to follow a strict protocol of evaluating the impact of an agreement's non-tariff effects by scoring the text of the agreement against established indexes of trade costs for goods, services, and FDI. The USITC study, which was published several months later, follows suit in terms of scoring the TPP for services and FDI, but still relies on an across-the-board assumption for horizontal goods NTBs based on another agreement, namely the WTO TFA.

In my view, the scoring technique is the appropriate approach to evaluating FTAs as negotiated and will become the standard.

For Canada, this study finds a modest gain in GDP of about 0.07% by 2035, generating household income gains of about C\$3 billion. The main sources of impact would come from tariff reductions and the binding of existing market access in services. FDI liberalization will have minimal impacts.

The usual caveats applying to CGE model simulations in general apply to these figures: these are not forecasts, nor can they claim a degree of accuracy beyond the order of magnitude of the impacts.

2 Spillovers on Third Parties

Preferential trade agreements divert trade and, thus, generate negative spillovers on third parties. As has been noted in many studies, the least developed countries are generally excluded from the mega-regional negotiations and, thus, stand to lose from the shift of trade negotiation action from the inclusive WTO to the exclusive mega-regional format.

Some of the studies mentioned above introduce positive spillover effects based on harmonization of rules or mutual recognition agreements (MRAs), which partly or more than fully offset the negative spillovers. However, as is more fully documented in the Annex, the spillovers from harmonization/mutual recognition could be negative or positive, depending on the Rules of Origin that would apply under MRAs; the TPP text does not stipulate that the ROOs must be such as to deliver positive spillovers. Further, the TPP itself does not actually deliver any MRAs and MRAs can be put in place where desired outside the framework of an FTA – the TPP is neither necessary, nor sufficient to generate the assumed spillover effects.

For all these reasons, I concur with the USITC's statement that the spillover effects in the TPP are not in the TPP text and the effect is too difficult to quantify to reasonably be incorporated in such an assessment. I go one step further and point out that evidence from the World Bank study suggests that the effect might actually be negative, intensifying the trade diversion effect of preference erosion, rather than ameliorating it.

Accordingly, the Canadian government should take into account a reasonable likelihood of negative (albeit likely small) spillover effects on developing countries and factor that into its development assistance program as it contemplates ratifying the TPP.

3 The TPP as an Instrument of Overall Economic Policy

As noted in the introductory comments, the OECD consensus model of economic governance has left the global economy in a state of stag-deflation, a potentially explosive debt burden, and soaring inequality that is fueling potentially dangerous reactions, including against globalization, which is the centrepiece of the OECD model.

The OECD consensus model is now being seriously questioned – including most recently by IMF researchers Jonathan Ostry, Prakash Loungani, and Davide Furceri (2016), who question whether neoliberalism has been oversold and provide evidence that footloose capital, austerity programs, and the inequality that has emerged from both economic openness and fiscal austerity lower the level and the durability of growth – precisely the opposite of what the neoliberal agenda aims to achieve.

The TPP can hardly be blamed for hot capital flows, fiscal austerity, or the various factors that have combined to redistribute income to the so-called 1%. But, to the extent it impacts on the system at all, it constrains rather than creates policy space to address the issues (Ciuriak and Singh, 2015). In particular:

- Where there is open speculation within IMF circles on the wisdom of having allowed unfettered portfolio capital flows, the TPP outlaws capital controls of any form.
- While the TPP failed to implement new disciplines on currency management (aside from a side agreement between Japan and the United States), all the signals from the negotiations were in support of the current system of fluctuating exchange rates. As I show in Ciuriak (2015a), the fluctuating exchange rate system fails to live up to the idealized notion of “floating” exchange rates that remove price distortions between countries and worse, introduces price gaps between Canada and the United States (and by extension between other parties).
- Where a new model of industrial policy is needed to break out of a situation where corporations are sitting on trillions of dollars of cash and not investing and where governments are constrained by both policy blinkers and a shortage of resources from making investments in urgently needed public goods, the TPP reinforces the model that restricts public engagement in the economy.
- Where business dynamism is waning at a time of seemingly unlimited innovation possibilities, the TPP reinforces the existing framework rather than introducing correctives to promote innovation in accordance with 21st Century realities (Ciuriak and Curtis, 2015). Its implications for Canada’s innovation system are an open issue – the quantification of the TPP in our C.D. Howe study is unable to come to grips with that issue.
- Where correctives are required to enable small business to enjoy the benefits of trade agreements on a level playing field with big business, the TPP passed over proposals to introduce small and medium-sized enterprise (SME)-friendly *de minimis* ROOs outlined by myself in another C.D. Howe study (Ciuriak, 2015b) and as recommended for consideration in the mega-regionals by Ciuriak and Melin (2014), with specific reference to enabling small business engagement in e-commerce.

In general, seen as an instrument of economic policy, I would characterize the TPP is a late-stage initiative in an era that is at risk of coming to a disruptive end due to the internal tensions which it has generated, not the opening of a door to a new age of prosperity. The issues of the day – stag-deflation, a tinder box of excessive debt, and reactions against globalization and income disparities – are mostly outside the agreement’s frame of reference and, to the extent that they are within its frame of reference, the TPP is more likely to constrain policy corrections rather than to enable them.

4 The TPP as a Public Policy Instrument for Non-economic Issues

Agreements like the TPP are principally about trade and investment and should, in the first instance, be evaluated on the extent to which they generate the additional trade and investment that conventional economics tells us will add to global growth, job creation, and incomes. However, given a shortage of effective instruments to promote important global public goods, such as protecting the environment, major agreements like the TPP should shoulder a

commensurate share of the burden of generating global public goods, especially as they use up precious “negotiating coin” that reduces the leverage of future multilateral trade agreements, which could have used that leverage.

The TPP addresses concerns on marine capture fisheries (Article 20.16) and conservation of endangered species (Article 20.17). Environmental groups have commended the TPP in these areas.¹ The measures on the Montreal Protocol (Article 20.5) and Protection of the Marine Environment from Ship Pollution (Article 20.6) are firm, although the TPP adds nothing here since all TPP parties have already ratified the Montreal Protocol and MARPOL Convention and enacted laws to give them effect.

On biodiversity (Article 20.13), the TPP requires that each Party “shall promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy.” The operational terms “promote” and “encourage” are weak, robbing the otherwise forceful “shall” of any real compelling character. The TPP helpfully acknowledges that parties “may require” sharing the benefits from access to such genetic information (this appears to reference pharmaceutical companies’ use of the tropics’ genetic information to develop patented medications and the resulting issue of profit sharing).

Importantly, however, the TPP’s environment chapter fails to mention climate change, the single largest issue facing the international community. Creative ideas, such as the suggestion to use a Montreal Protocol-type approach to emissions reduction were passed over.² The TPP is also silent on closely-related issues of illegal deforestation in TPP member states and ocean acidification.

Continuing in this vein, it does not address the obvious tension between tightening IP protection, which raises the price of advanced climate mitigation products, and the need for rapid deployment, particularly in the more rapidly-growing developing countries, which could leap-frog dirty technologies and proceed to the cleanest ones. Given the gravity of climate change, the thought arises that consideration might well have been given to a special IP regime for climate change mitigation, analogous to that for HIV drugs under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

As regards investor-state dispute settlement (ISDS), which has raised concerns about constraining legitimate regulation, the TPP ISDS framework is clearly now second best to that developed in the Canada-EU CETA negotiations, which creatively responded to the substantive critiques of the conventional ISDS mechanisms and put forward a reformed framework. The TPP, by contrast, simply resorted to a crude carve-out of tobacco to appease Australia, which was litigating a case on plain packaging laws on tobacco products. Shortly after the TPP was concluded, the Hong Kong tribunal hearing the Philip Morris suit against Australia concluded it did not have jurisdiction, handing Australia a win, but leaving the TPP with the awkward carve-out and no conceptual progress on refining ISDS to address the underlying concerns.

¹ For a summary of the positive commentaries from environmental groups on these points, as well as criticisms, see PCAJ (2015).

² See Ciuriak and Ciuriak (2013: 53), The Economist (2014), and Nordhaus (2015), which all independently arrived at a similar conclusion, reasoning along similar lines.

The TPP measures on labour that have any strength are in side agreements between the United States and Brunei, Malaysia, and Vietnam respectively. The language of the text goes out of its way to emphasize that the commitments are narrowly targeted on these three economies and have no wider significance. Accordingly, there are no positive spillovers from the TPP for labour market conditions in general.

Doctors Without Borders/Médecins Sans Frontières (MSF) have not, to my knowledge, retracted their condemnation of the TPP as “the worst trade agreement [in history] for access to medicines in developing countries” (MSF, 2015). Considered as a trade agreement, the efforts made by TPP negotiators to reduce the cost for producers of cosmetics of multiple regulatory approvals for different shades of lipstick are laudable. However, considered as a public policy instrument, the failure to address prominently-voiced concerns about the cost of life-saving drugs in developing countries is simply made all the more glaring by such comparatively trivial accomplishments. Canada, if it ratifies the TPP, should make amends by allocating funds to support access to medicines in developing countries so that Canada is not open to criticism of making gains at the cost of individuals with no say in the rules that determine their fates.

Overall, the TPP makes some useful contributions to non-economic policy objectives in some areas, but is silent on the most important issues. Its failure to use its potential leverage to advance climate change policy is particularly damaging in my view. In the rules areas, it unhelpfully incorporates an ISDS mechanism that is decidedly second best to the CETA mechanism. Overall, given the building tide of public opposition, I find the TPP surprisingly empty of meaningful concessions to address concerns.

5 The TPP as an Instrument of Geopolitics

The TPP is bluntly stated to be an instrument of geopolitics, an integral part of the US “pivot” to Asia. The tone of US rhetoric is confrontational, portraying the issue as one of which country – the US or China – “writes the rules” for Asia-Pacific commerce. For its part, China is working towards an RCEP that does not include the TPP parties in the Americas and has championed the Asian Infrastructure Investment Bank and a Silk Road/Silk Belt initiative, against both of which the United States has vigorously lobbied. The US and China are currently co-chairing an APEC initiative towards a Free Trade Area of the Asia Pacific (FTAAP); we await news of concrete progress.

The signals point to an emerging great power confrontation in the West Pacific, something that is neither in Canada’s nor the world’s interest. As regards the specific role of the TPP, it seems unlikely at this stage that China will join a US-led trade bloc, just as it seems unlikely that the United States will join a China-led bloc. Accordingly, the TPP is more likely to be part of the problem, not part of the solution.

In the context of trade and investment policy, as Canada considers the TPP, Canada should also seek to strengthen its relationship with China to enhance Canada’s capacity to broker constructive solutions in the Asia-Pacific. Committing to a Canada-China FTA, following the Australian and New Zealand examples, should be a key strategic objective for Canada at this time.

More generally, Canada should vigorously promote Asia-Pacific trade and investment frameworks under the APEC banner that will welcome both China and the United States and not

raise issues of face for either. An APEC-led Free Trade Area of the Asia Pacific (FTAAP) is a really good idea at the moment. A return to Geneva and re-invigorated WTO-led negotiations would, of course, be even better.

And, it should go without saying, Canada should use its participation in the ASEAN Regional Forum to promote constructive and peaceful solutions to the regional irritants, including China's concrete islands in the South China Sea, consistent with the Forum's objectives of confidence building and preventative diplomacy.

6 Conclusions and Recommendations

To summarize, the TPP is seen at its best when seen at its narrowest – as an instrument of trade and investment promotion for the parties to the agreement. In those terms, it generates positive impacts for the parties, mainly by clearing away the vast majority of residual tariffs, which have somehow survived the eight rounds of multilateral liberalization; and rationalizing the proliferating network of bilateral/regional FTAs, which should improve the utilization of existing preferences. Its impact on rules is likely to be modest, as the assessments of the TPP's impact on the parties' domestic rules and regulations in the USITC and C.D. Howe study show.

For Canada, the economic benefits, based on what can be quantified, would be small, but hardly unwelcome; for some sectors, the gains could be significant. The opportunity costs of Canada staying out of the TPP, should it go ahead, are greater, but still small. On the basis of this evidence, Canada should ratify. However, since the most controversial elements of the TPP cannot be quantified using currently available trade modelling tools, Canada should proceed with caution in the ratification process and “kick the tires” of the agreement to obtain a better understanding of Canada's national interest in this agreement. These elements include:

- copyright extension, which will have negative economic welfare effects when considered as domestic policy (Akerlof et al., 2002), put a damper on derivative innovation for a generation's worth of creative output (Ciuriak and Curtis, 2015), and potentially increase Canada's net international payments;
- the locking in of an ISDS mechanism that is now decidedly inferior to the improved mechanism advanced in the CETA negotiations and that could be disadvantageous to Canada in dealing with potential litigation; and
- the revised rules of origin for the automotive sector, which were decided bilaterally between the United States and Japan, raising legitimate questions about their impact on Canada's national interest.

For third parties, the TPP is likely to be negative. This puts added pressure on Canada's international assistance program.

As an instrument of economic policy more generally, the TPP doubles down on an economic paradigm that has created conditions that threaten to disrupt the achievement of its very own aims. For the most part, the TPP is largely irrelevant to the main economic issues of the day – stag-deflation, a potentially explosive debt burden, and soaring inequality that is fueling potentially dangerous reactions, including against globalization; to the extent that it is relevant in these areas (in particular the reaction against globalization), the manner in which the TPP has been handled by the parties' governments has not been helpful.

As an instrument of public policy more generally, it is conspicuously missing in action on the key environmental issues of the day – climate change, deforestation, and ocean acidification. Given the climate of public opinion in which the TPP was negotiated, the failure of the TPP negotiations to directly address concerns raised on behalf of excluded parties is surprising.

As a geopolitical instrument, it is more likely to be contributing factor to escalation of great power confrontation rather than to de-escalation.

Given the above considerations, my conclusions as to how Canada should proceed on the TPP are as follows:

- Canada's interests in the TPP are relatively small and potentially compromised on both economic and non-economic grounds. Accordingly, there should be no rush to ratification; the emphasis in the first instance should be on deepening the understanding of the impacts.
- If the TPP does succeed in achieving ratification in a critical mass of its membership, Canada should also ratify; this will generate positive economic gains from traditional sources of trade liberalization. At the same time, Canada needs to urgently respond to the concerns about the risks to its innovation system.
- Canada should assess the implications for least developed countries, particularly as regards concerns about access to medicines, and promote responses from the TPP parties to address the negative spillover effects of the agreement as part of the ratification process.
- Whether the TPP is implemented or not – but especially if it is implemented – Canada should put all of its intellectual and policy resources behind working out the least disruptive exit from the current negative economic equilibrium of stag-deflation and a dangerous accumulation of debt in the context of negative interest rates. It is important, in this regard, to take into account that the TPP seeks to entrench and reinforce a system that is being openly questioned by IMF staff as counter-productive.
- Canada should take a leadership role in promoting an inclusive FTAAP.

The TPP's negotiation/consultation process failed to address (and indeed helped galvanize) the emergence of a constituency that is against it – this is not for the most part the usual anti-trade movement seeking to preserve protectionist rents, but a disparate set of voices concerned about various issues ranging from access to medicines in developing countries to impacts on innovation to climate change. This negative reaction to the TPP is part of a broader reaction against globalization (witness the mobilization against the TTIP, the sources of discontent behind the Brexit support, and the isolationist sentiments given voice in the US election campaign), not based on a reaction to trade but on a reaction to rules-making in the non-transparent, non-inclusive mode of the mega-regional trade agreements. Canada has a vital interest in preserving an open, rules-based international order. This interest overrides by orders of magnitude any interest that Canada may have in the additional preferences it obtains through the TPP. This concern should be front and centre in the democratic process in Canada in considering the ratification of the TPP.

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