

Choices for the Future: The Trans-Pacific Partnership and Canada

by John Weekes
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▶ **Executive Summary**

This paper looks at the significance of the Trans-Pacific Partnership (TPP) for Canada. It situates the Agreement in the changing environment within which global commerce is conducted. It considers the prospects for TPP ratification, generally, in the US and Canada. It looks at the nature of the TPP as an agreement. It discusses the impacts on Canada in particular in the growing Asia Pacific region. Finally, it suggests options should TPP not be ratified in a timely fashion by the United States.

Much more is at issue in the current Canadian debate about the merits of the TPP than the specific provisions of this trade agreement. The Agreement is part of a growing number of agreements designed to provide a framework for the conduct of international business in the 21st century.

To understand the significance of the TPP for Canada it is necessary to look at it in a broader global context. This policy paper attempts to do that. It looks at what joining, or not joining, the TPP would mean for Canada. But first it looks at the changed landscape of economic integration in which the TPP was crafted and the contemporary network of international trade agreements of which the TPP is a part. It considers the prospects for successful ratification of the TPP. The paper recognizes the backlash against trade agreements and economic integration as seen most notably in the current US presidential election campaign and in the recent Brexit vote in the UK.

It is well known that Asia has posted exceptional growth rates for many years and that Asia will continue to be major centre of global economic activity for the foreseeable future. Canada as a Pacific country has a vital interest in taking advantage of this development by making sure that Canadian businesses and producers have competitive access to these growing markets. The TPP is a major effort led by our largest trading partner, the United States, to provide such access to Americans and to craft new disciplines so as to address how commerce and economic integration will be managed in the 21st century. This effort has culminated in an agreement which has now been signed, but not ratified, by the 12 governments that participated in the negotiations¹. For Canada there are clear benefits in being part of this process. There would be even bigger negative consequences for Canada if the Agreement went ahead and Canada decided not to ratify. In this situation Canadian exporters would see their existing exports to such key markets as Japan shrink as Canadian competitors in the US, Australia, Chile and New Zealand enjoyed better terms of access than Canadian suppliers.

The Nature of Global Commerce is Changing

Over the last 25 years the nature of global commerce has changed considerably as has the way trade negotiations are conducted.

The term "trade" is often popularly interpreted as meaning trade in goods. But the reality of global economic integration in the 21st century featuring the explosion of international supply chains is that trade in services and sales by foreign affiliates together are much larger than global trade in goods. In addition, disciplines on intellectual property rights have become a critical component in the conduct of international business in 2016. The following facts help to flesh out the context within which Canada is now considering whether to support the TPP and ratify it.

¹ The 12 countries that have signed the TPP Agreement are Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.

Analysis by the Conference Board of Canada² shows how Canadian exports of services have grown in importance. In 2011 services accounted for 44 percent of Canadian exports when their contribution to global supply chains was properly recognized through value added statistics compared to only 16 percent using conventional trade statistics. This is a dramatic development. Services are still thought of by many as a kind of esoteric add on and yet they are nearly as significant in Canada's export picture as goods.

In a recent speech the Governor of the Bank of Canada³ noted, "We know that sales by Canadian-owned foreign affiliates now exceed total exports from Canada, approaching 30 per cent of GDP. In other words, these foreign affiliates are almost like another Canadian economy out there, supporting jobs in Canada in areas such as research and development, engineering, design and marketing, not to mention lawyers, accountants, and executives who manage the operation from home."

In a similar vein analysis in the United Nations Conference on Trade and Development's (UNCTAD) World Investment Report for 2014⁴ shows the dramatic increase in the role of investment in global commerce over the last quarter century:

- Sales by foreign affiliates as a share of global GDP:
 - In 1990 21 percent
 - In 2013 46 percent
- Exports of goods and services as a share of global GDP:
 - In 1990 18 percent
 - In 2013 31 percent

Of course, the investment provisions of the TPP and other trade agreements are directly relevant to sales by foreign affiliates of Canadian companies.

The protection of intellectual property has become a critical component for the conduct of international business. Provisions on intellectual property became an integral part of trade agreements in the 1990s with their incorporation into the World Trade Organization (WTO) Agreements and the North American Free Trade Agreement (NAFTA). While still controversial in some quarters they are now a given in any significant trade agreement.

This section has given a brief overview of the changed nature of commerce that a 21st century trade agreement needs to address if it is to be relevant to how business is conducted in 2016.

² "Spotlight on Services in Canada's Global Commerce", The Conference Board of Canada, 48 pages, August 5, 2015, Report by Jacqueline Palladini (see in particular pages 6 and 7)

³ <http://www.bankofcanada.ca/2016/04/new-balance-point-global-trade-productivity-economic-growth/>

⁴ <http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=937> – See in particular Table I.9, on page 30.

How Trade Negotiations Are Conducted is Also Changing

The way trade agreements are negotiated has evolved as well. Until the 1990s the GATT was the principal global trade agreement and with the exception of the European area there were relatively few bilateral FTAs and no big regional agreements. Most trade was conducted on a Most Favoured Nation (MFN)⁵ basis. This made the playing field fairly even in terms of border barriers among competing suppliers to major markets. That too has changed. We are now in a world of competitive trade liberalization. Countries are vying with each other to complete free trade agreements with their partners that will give their suppliers preferential access to these markets. There is no even playing field and no status quo. You are either ahead or behind. Unless Canada wants to lose ground it must be in the vanguard of trade liberalization.

Looking at this phenomenon the WTO has noted⁶, "Regional Trade Agreements (RTAs) have become increasingly prevalent since the early 1990s. As of 1 February 2016, some 625 notifications of RTAs (counting goods, services and accessions separately) had been received by the GATT/WTO. Of these, 419 were in force. These WTO figures correspond to 454 physical RTAs (counting goods, services and accessions together), of which 267 are currently in force." Many trade agreements have not been notified to the WTO, including at this point the TPP.

General Prospects for the TPP

The prospects for when, or even whether, the TPP will come into force are somewhat uncertain⁷. By its terms the agreement cannot come into force unless it is ratified by both the United States and Japan. In Japan the Diet has begun the process of considering the TPP but the recent elections for the Upper House (which showed growing unease among agricultural supporters of the current government) and uncertainty in the US may reduce Japanese interest in dealing with this quickly.

The US Congress will determine the fate of the TPP. If the US ratifies the deal, then it is almost certain that enough other countries will follow suit to bring the agreement into force. In the current US election both presidential candidates are on record as being opposed to the TPP as currently negotiated although Hillary Clinton's position seems more nuanced than that of Donald Trump. Meanwhile President Obama has repeatedly made clear that he intends to submit the Agreement together with implementing legislation to Congress for approval later this year in the "lame duck" session after the American elections on November 8. It is difficult to gauge whether there is enough support in Congress for TPP to become a reality. Clearly declaring support for the deal is seen by many as an electoral liability. However, the Administration is working with Congressmen including key Republicans to try to address their concerns with the Agreement. Importantly, consideration is being given to how to do this without actually

⁵ The MFN obligation in the WTO means subject to certain exceptions that imports from all WTO members must be treated identically.

⁶ https://www.wto.org/english/tratop_e/region_e/region_e.htm

⁷ For the actual provisions regarding the entry into force of the TPP see Article 30.5 in the Final Provisions at: <https://www.mfat.govt.nz/en/about-us/who-we-are/treaty-making-process/trans-pacific-partnership-tpp/text-of-the-trans-pacific-partnership/>

reopening the TPP itself, by using other techniques such as developing understandings on how the agreement will actually be implemented, how the US implementing legislation will be drafted, and commitments the Administration could make about how the US would approach future negotiations. The key point here is that a process is engaged which appears to be quite serious and is in stark contrast to the bombastic rhetoric of the presidential campaign.

Furthermore, the politics of TPP may look different to members of the current Congress after the election. The individuals elected to Congress on November 8 will not assume their new responsibilities until early 2017. So any decisions made during the lame duck session will be made by the current members of Congress. If Mrs. Clinton wins, Republicans, who generally support the TPP, may be concerned that a President Clinton would try to renegotiate the Agreement in ways they would not like. The fact that both presidential candidates have said they oppose a lame duck vote will be of less consequence than during the campaign. As a practical matter neither will have any formal role in how to manage the lame duck session. Many observers also point out that Mrs. Clinton, should she win, will not want to have the TPP land on her desk on her first day in office. Forging a position on what to do about it would divide Democrats and distract attention from her top priorities during her first year.

Additionally, the American business community is poised to make a real effort to persuade Congress to act. They know that their future potential markets lie principally outside the US and notably in Asia. They see the TPP as beneficial and important for their future business plans. They are concerned that if the job is not completed in the lame duck session it may be years before the chance to nail down a TPP type agreement would reappear.

Finally, Administration officials are pointing out that implementing legislation would be quite simple because outside the tariff area the TPP would not require many changes to US law. This also helps make the case that the Agreement is clearly in the interest of the United States.

Thus, despite the immediate outlook there is a real possibility that the TPP will be approved by the US Congress while President Obama is still in the White House.

The Trade Priorities Act of 2015 required the United States International Trade Commission (USITC) to prepare a report "assessing the likely impact of the agreement on the US economy as a whole and on specific industry sectors, including its impact on gross domestic product; exports and imports; aggregate employment and employment opportunities; the production, employment, and competitive position of industries likely to be significantly affected by the agreement; and the interests of United States consumers." The USITC's 792-page report⁸ was submitted on May 18.

Using a Computable General Equilibrium (CGE) model the report predicts very modest effects on the US economy. For instance, over the entire period of implementation of the

⁸ <https://www.usitc.gov/publications/332/pub4607.pdf> While the report is 792 pages in length, there is a 22-page Executive Summary which provides a useful synopsis.

TPP (2017 to 2032) it predicts that as a result of the TPP US GDP would increase by 0.15 percent and employment would increase by 0.07 percent. However, the report also notes that the impact of important parts of the agreement are not captured by the CGE model. In this regard the USITC notes, "TPP also includes a wide range of regulatory provisions that would define rules for trade between the parties. These involve investment, intellectual property, government procurement, rules of origin for trade in certain goods, customs facilitation, sanitary and phytosanitary measures, technical barriers to trade, competition policy, and labor and environmental standards, among other issues. The likely impacts of some of these provisions are difficult to quantify, but they have the potential to positively affect the US economy by strengthening and harmonizing regulations, increasing certainty, and decreasing trade costs for firms that trade and invest in the TPP region."

The report is a useful analytical tool for understanding the TPP but will not provide closure to the debate about its merits. It will serve as a modestly useful reference point in the debate as Congress considers whether to approve the Agreement and bring it into force. The modest estimates about its impact on the US economy suggest that the hype being put out by opponents has been dramatically exaggerated. The broad impact of the TPP on the American economy will be exceedingly modest.

The report is also useful to a Canadian audience because of its general analysis of the meaning of the Agreement but also because it looks at benefits the US might be getting from Canada. In general, because the US already has a free trade relationship with Canada under NAFTA the report does not identify many benefits for Americans in the Canadian market. It does note TPP would achieve "only limited additional access" to Canada for agricultural products in the area of supply managed commodities, particularly dairy. In the intellectual property area, it reports that industry representatives found particular value in Canada (and other TPP countries) from the extension of copyright terms to 70 years from the life of the author or date of publication.

Content of the TPP⁹

A detailed analysis of the content of the TPP is beyond the scope of this paper but the following observations should help readers to understand what the Agreement is about.

For most matters covered by NAFTA the TPP would become the normal operational trade agreement among the three North American countries. However, NAFTA will

⁹ For a brief chapter by chapter description of the TPP provisions look at the Summary of the Agreement on the website of Global Affairs Canada: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/understanding-comprendre/index.aspx?lang=eng>. A more detailed description with useful chapter summaries can be found on the website of the Office of the United States Trade Representative: <https://ustr.gov/tpp/#text>. Obviously the USTR version touts the benefits of the TPP for the U.S. although the description of the provisions is also relevant to a Canadian audience. The lack of detail on the GAC website is no doubt due to the fact that the Canadian government is seeking the views of Canadians before determining its position on the TPP.

remain in effect even after the TPP comes into force¹⁰. That is important because there are a number of NAFTA provisions that do not appear in the TPP. The most notable from a Canadian interest perspective is NAFTA Chapter 19 with its special binational panels for the resolution of disputes over the domestic application of antidumping and countervailing duties. This innovative dispute settlement process was one of the major achievements of the Canada-US FTA and was carried over into NAFTA. In many areas the TPP has improved the provisions of NAFTA. A careful assessment of exactly what has happened is essential to any final assessment of the effects of the TPP on Canada. The TPP is, of course, an agreement among 12 countries.

The TPP is a free trade agreement within the multilateral trading system. This type of agreement is specifically envisaged in the WTO by GATT XXIV and Article V of the Agreement on Trade in Services. Both articles permit, subject to certain conditions, WTO members to enter free trade agreements in which the benefits accorded in those agreements are limited to the parties to those agreements despite the WTO requirement for MFN treatment.

Like NAFTA before it the TPP borrows heavily from the WTO/GATT. For instance, the provisions dealing with national treatment are essentially those rooted in GATT Article III. The rules for the use of anti-dumping and countervailing duties are those in the WTO. Disciplines on subsidies are essentially those found in the WTO Agreements on Agriculture, and on Subsidies and Countervailing Measures. The government procurement disciplines are borrowed from the recently improved WTO Government Procurement Agreement.

The TPP will eliminate all tariffs on about 95 percent of all products, nearly 100 percent for industrial products. The majority of the tariff elimination will be on entry into force, although some tariffs will be phased out over agreed time periods. It should be noted that some 96 percent of Canadian goods exports to the TPP region are already duty free under NAFTA. Importantly the TPP rules of origin will allow cumulation so that content produced in any TPP country will count in determining whether a particular product qualifies to be eligible for the preferential tariff treatment of the Agreement. There has been a movement from NAFTA to more liberal rules of origin in the TPP reflecting the growth of global supply chains and the role of North American companies (particularly American ones) in this process.

In the investment Chapter the TPP maintains the strong discipline present in NAFTA but also improves those disciplines. For instance, it addresses issues regarding the treatment of state owned enterprises. Importantly it clarifies the right of governments to regulate in the public interest. It also makes important reforms to the process of investor state dispute settlement including a provision empowering TPP Parties, at any time, to agree on interpretations of the agreement that are binding on tribunals. At the moment there is ambiguity about whether the NAFTA or the TPP investor state rules

¹⁰ Article 1.2 (1) of the TPP (Relation to Other Agreements) recognizes "the Parties' intention for this Agreement to coexist with their existing international agreements" and each Party affirms "in relation to existing international agreements to which that Party and at least one other Party are party, its existing rights and obligations with respect to that other Party or Parties, as the case may be."

would apply as between the NAFTA partners. This situation will require potential business complainants to consider which forum to use and it may cause others some concern about whether such forum shopping should be allowed. Of course, much of this Chapter establishes the investment framework for services companies. Investment is the most significant "mode" through which services companies deliver their products to consumers, basically through sales of foreign affiliates.

The cross border trade in services Chapter is similar to NAFTA in structure. The commitments in the services area generally involve new commitments to maintain current levels of liberalization from TPP partners with which Canada does not yet have an FTA. However, there does not appear to be much in the way of new liberalization commitments. The services commitments are reinforced by the significant data provisions in the Electronic Commerce Chapter.

The provisions on intellectual property build on but do not significantly differ from those in the WTO TRIPS Agreement or NAFTA. They are also for the most part broadly consistent with current Canadian law although there would be a need to extend copyright protection to the life of the author plus 70 years.

In the field of technical barriers to trade and sanitary and phytosanitary measures the TPP builds on the WTO provisions on these matters and provides some potentially useful procedural suggestions that could help address current and future situations where such measures are barriers to legitimate trade. However, they fall short of bringing significant new disciplines to ensure a more harmonized regulatory environment.

Improvements to NAFTA system for settling intergovernmental disputes about the interpretation of the Agreement mean the TPP system should function more effectively than NAFTA has. However, the lack of institutional support through a secretariat means that the TPP system will not be as effective as the WTO mechanism for resolving disputes.

There are many chapters in the TPP which take useful steps towards making trade agreement rules more relevant to the nature of 21st century global commerce. Such areas include electronic commerce, treatment of small and medium-sized enterprises, regulatory coherence and transparency and anticorruption.

The TPP strengthens the provisions on labour and environment that were incorporated in NAFTA side agreements on these matters, inter alia, by incorporating the provisions in the actual TPP Agreement. The Chapter on labour includes requirements that TPP members maintain laws that govern health and safety at the workplace, regulate work hours, and provide for a minimum wage. The environment Chapter includes obligations regarding marine fisheries subsidies.

Readers who wish more specificity in the actual provisions are encouraged to refer to the sources footnoted in the heading of this section or to look at the agreement itself¹¹.

Impact of the TPP on Canada

We begin with a look at Canada's merchandise trade with its TPP partners. Of course, as noted above goods trade is only one component of what is covered by the TPP but a lot of the criticism of the Agreement has been about goods trade. In terms of Canada's merchandise trade the TPP is mostly NAFTA. Within the region made up by the signatories to the TPP, 94 percent of Canada's goods trade (exports plus imports) is with our NAFTA partners. If we include Japan with which Canada is engaged in separate negotiations for an Economic Partnership Agreement (EPA) then 97 percent of Canada's TPP goods trade is accounted for by these four countries.¹² Extending the free trade area to include the other 8 TPP partners accounting for 3 percent of Canada's TPP trade is not likely to have any significant near term effect in aggregate terms on Canada's economy either positive or negative. This suggests that a qualitative approach is critical to determining what the TPP means for Canada.¹³

Of course, there is a lot of potential for Canadian exporters in Asia and this will be examined more carefully in the next section. For agricultural exports where import duties are generally higher the TPP will bring significant new benefits to Canadian suppliers in the Asian TPP countries. The prospects of reaping such benefits can be enhanced if Canadian producers make further effort to position their products to increasingly wealthy and sophisticated Asian consumers as being premium products that are pure, nutritious, tasty and sustainably produced.

For industrial products the main effects of the TPP on Canada will be in North America, particularly in the United States. These effects will be felt through changes in supply chains under the influence of the new more liberal rules of origin, and through the erosion of Canadian NAFTA preferences in the US market. Some of the effects on Canadian production will be positive while others will be negative. To understand the potential effects on individual industries or companies a detailed analysis on a product basis is required. Of course, these effects are not something that could be avoided by staying out of TPP. In fact, if the US is in TPP the only way to mitigate, or benefit, from these developments is to be part of the Agreement.

¹¹ The legally verified text of the TPP can be found on the website of the NEW Zealand Ministry of Foreign Affairs and Trade: <https://www.mfat.govt.nz/en/about-us/who-we-are/treaty-making-process/trans-pacific-partnership-tpp/text-of-the-trans-pacific-partnership/>. The TPP signatories designated New Zealand as the Depository of the Agreement.

¹² For key statistics on International Commerce - By Country (including TPP countries) refer to the Global Affairs Canada website at: http://wo3.international.gc.ca/Commerce_International/Commerce_Country-Pays.aspx?lang=eng

¹³ For a useful quantitative analysis of the potential effects of the TPP on Canada see the C. D. Howe Institute's April 21 publication "Better In than Out? Canada and the Trans-Pacific Partnership" which can be found at: <https://www.cdhowe.org/public-policy-research/better-out-canada-and-trans-pacific-partnership>.

Canada, the Asia Pacific Region and the TPP

The IMF projects that Asia, led by economic development in China and India, will account for close to 45 percent of the world's GDP by 2020. In addition, by 2020 of 1.7 billion middle class consumers in Asia will account for 42 percent of the world's total consumption. These and other relevant facts are in a report entitled "Building Blocks for Canada-Asia Strategy" from The Asia Pacific Foundation of Canada issued on January 28, 2016¹⁴. It should be noted that there is no guarantee that the rapid growth of past years will continue at the same pace¹⁵, but it is clear that Asia will continue to account for a significant part of the global economy and one in which Canada is underrepresented.

The quickest and most efficient way for Canada to open doors to the new competitive opportunities in the Asia Pacific region is to join the TPP. Significantly the Foundation report highlights for immediate action the recommendation that the Government of Canada should work with Parliament to ratify the Trans-Pacific Partnership, and accelerate negotiations on a Canada-China free trade agreement and the Canada-Japan Economic Partnership Agreement.

To date Canada has only one FTA with an Asian country, Korea. And indeed the history of negotiating with Korea holds important lessons for Canada going forward. Canada could have completed free trade negotiations with Korea as early as 2008 but instead pulled back from the negotiating table because of pressure from the automobile industry and confused signals from the beef sector. As a result, the US, the EU and Australia all wound up reaching free trade agreements with Korea ahead of Canada. This put Canadian exporters in a losing position in the Korean market. Particularly hard hit were beef producers facing a 40 percent tariff which began to drop significantly for American suppliers. Pork producers began to lose a major market as subsidized EU product went into Korea at reduced rates. History will repeat itself if Canada is not part of the TPP. The biggest immediate casualty would be trade with Japan.

Furthermore, being part of the TPP would signal to Canadians that the Asia Pacific region is open for business. It would give a similar psychological boost to the one NAFTA gave our relations with Mexico, which helped make Mexico Canada's third largest partner for merchandise trade. It would ensure that Canadians conducting business in the TPP area would have the same opportunities as their competitors from other TPP countries like the United States and Australia.

Just as important it would send a signal in the region going well beyond the TPP countries that Canada has arrived and wants to be a serious regional player for the long haul. This move will not go unnoticed in Beijing and New Delhi. Once the government makes clear its unequivocal support for the TPP it will send the message that Canada

¹⁴ The text of the report can be found at: <https://www.asiapacific.ca/research-report/building-blocks-canada-asia-strategy>.

¹⁵ The paper "Asiaphoria Meets Regression to the Mean" Lant Pritchett and Lawrence H. Summers provides a useful commentary on the risks of assuming that current growth rates will continue into the future. - <http://www.nber.org/papers/w20573>.

has broader interests in the Asia Pacific region other than defensive ones stemming from our bilateral relationship with the United States. There is a serious problem of perception in Canadian efforts to be taken seriously on the other side of the Pacific and it is one that is actually rooted in significant elements of Canadian thinking. The time has come to clarify where we stand. Action will speak louder than words.

The TPP would also provide Canadians with an agreement that deals with the reality of doing business in the 21st century covering the various matters described in the context section above. For instance, Canadian insurance companies would be protected by the investment provisions in their growing sales of insurance products in TPP markets. In this regard it is important to note that Canada currently has no investment agreement with seven TPP countries: Australia, Brunei, Japan, Malaysia, New Zealand, Singapore and Vietnam. The TPP would fill that gap.

Several other countries have already signaled interest in joining the TPP under its accession clause, including Colombia, Philippines, Thailand, Taiwan, South Korea and Indonesia. Importantly as a party to the TPP, Canada would be at the table to participate in determining the terms on which these countries would join the TPP.

The most important TPP Asian partner for Canada is Japan, the world's third largest economy and the fourth largest purchaser of Canadian merchandise exports. Japan is a particularly important market for Canadian agri-food products worth more than \$4 billion a year which exceeds Canada's exports of these products to the entire EU by a considerable margin. Furthermore, tariffs on many agri-food imports remain high in Japan (and in other TPP countries) such as the 38.5 percent duty on beef imports. In addition, Australia (and Chile) has already negotiated and implemented an FTA with Japan. These developments have already put Canadian suppliers at a serious disadvantage in the Japanese market. The TPP would restore the balance and give Canada new opportunities as well by reducing or eliminating Japanese domestic protection.

Canada has been trying to negotiate an economic partnership agreement with Japan for several years. Japan is the main immediate prize for Canada in the TPP agreement.

Moving Ahead

Despite the protectionist statements emanating from the US election campaign the world is going to continue to engage in business across borders. Technological change will continue to drive globalization. And governments will continue to negotiate agreements to manage the effects of global trends and to ensure their citizens are given equivalent, or better, opportunities to those in other countries.

Being a party to the TPP will give Canada credentials to participate more effectively in other efforts to negotiate agreements in the region including the FTAAP – the Free Trade Area of Asia Pacific – to which APEC leaders have repeatedly given their support. And, of course, any efforts to improve on the TPP will be reserved to the parties to it. Canada will lose out if it sits on the sidelines.

Canadian Ratification

The timing of possible Canadian ratification of the TPP raises questions related to both domestic political management and Canada's commercial policy interests.

It is important to consider these questions in the context of the TPP provisions regarding its entry into force. These provisions are contained in Article 30.5 in the Chapter dealing with final provisions. There are two possibilities for how the TPP might enter into force.

- First, it will enter into force 60 days after the date on which all original signatories have ratified. (That could be any time);
- Second, if that does not happen within two years of the date of signature, which was February 4, 2016, it will enter into force 60 days after at least six of the original signatories have ratified, provided they account for at least 85 per cent of the combined gross domestic product of the original signatories in 2013. (As a practical matter this means that both the US and Japan need to have ratified); and
- Third, there is an incentive to ratify by February 4, 2018 because otherwise the Commission of the parties to the Agreement will determine with respect to late comers among the original signatories whether the agreement will enter into force with respect to that signatory. Clearly Canada should avoid being put in this position.

Minister Freeland has taken the approach that Canada has two years to deal with ratification. However, if the US and Japan ratify the agreement this year other TPP signatories may move more quickly to bring the agreement into force in the course of next year. There would be practical benefits for Canada in terms of early implementation. For instance, as noted above it would put Canada back on an equal footing in the Japanese market with other TPP signatories which already have FTAs with Japan i.e. Australia and Chile.

Canadian officials should also be getting ready for the inevitable pressure from the US to help out with "minor" accommodations if there is a major push to get TPP through the lame duck session of Congress. Mexico and Canada still have bruises from the Congressional implementation process for NAFTA in 1993. Canada should beware of accommodations of a unilateral nature included in the US implementing legislation.

Given the benefits that Canada would derive from implementation of the TPP, the government should keep an open mind on the possibility of parliamentary implementation and ratification before the end of the two-year period.

What if the United States Shows no Interest in Ratifying?

It is certainly possible that the TPP will not be voted on by the US Congress this year and that the new president may show no inclination to put it to Congress for approval. Canada should develop a game plan now for how to proceed should TPP become stalled in the US

The first priority should be to complete the EPA negotiations with Japan as soon as possible for the reasons outlined above about the importance of the Japanese market for Canada.

A second priority should be to move to enhance our trade relationship with China in a way that will put Canada back on an even footing with competitors like Australia and New Zealand in that market. Both these countries already have FTAs with China.

In addition, Canada should propose to the ASEAN community¹⁶ that Canada and ASEAN should commence negotiations on an FTA that would try to capture the same level of ambition as the TPP. According to McKinsey¹⁷ if ASEAN were a single country, it would already be the seventh-largest economy in the world, with a combined GDP of \$2.4 trillion in 2013. It is projected to rank as the fourth-largest economy by 2050. On August 8 International Trade Minister Freeland announced¹⁸ initiatives to deepen Canada's commercial relationship with ASEAN's fast-growing economies. The press release notes that as a group, the members of ASEAN rank as Canada's sixth-largest merchandise trading partner.

It would also make sense for Canada to devote more attention to the APEC leaders' call for the negotiation of a free trade area of the Asia-Pacific. Even if the US does not seem interested under the next Administration it will only be a matter of time before the Americans return to the trade negotiations arena. The pressures of globalization will prove even harder to manage without using trade agreements. Solid homework and creative engagement by Canada with others would put Canada, and Canadian interests, in a good position when the action resumes.

Conclusion

The TPP is a complex agreement that is rooted in the WTO and NAFTA. It makes a good start at developing disciplines for the challenges of 21st century international commerce. It is the first agreement to bring together major economies on both sides of the Pacific. It is a serious effort at establishing an inter-governmental framework that will help shape the forces of globalization in a way that will ensure benefits for the participating

¹⁶ ASEAN (The Association of South East Asian Nations) is made up of 10 nations Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.

¹⁷<http://www.mckinsey.com/industries/public-sector/our-insights/understanding-asean-seven-things-you-need-to-know>

¹⁸ <http://www.international.gc.ca/media/comm/news-communiques/2016/08/08a.aspx?lang=eng>

countries and their people. Of course, no trade agreement is perfect. However, this bold initiative is worthy of Canadian support.

It is important to note that although Canada was not an original participant, it did join the negotiations in the fall of 2012 three years before they were concluded. This gave Canadian negotiators ample opportunity to help shape the agreement and ensure it would reflect Canadian interest.

Finally, in the world of competitive trade liberalization Canada would suffer significant damage to its trade interests if the TPP were to come into force and the government were to opt out.

▶ **About the Author**

This paper has been prepared by John M. Weekes, a senior business adviser at Bennett Jones LLP. Mr. Weekes previously served as a senior assistant deputy minister in the then Department of Foreign Affairs and International Trade, as chief negotiator for NAFTA and as ambassador to the WTO. This paper has been prepared on a personal basis and may or may not reflect the views of Bennett Jones.