

Appendix C: For “Better In than Out? Canada and the Trans-Pacific Partnership”

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Addressing Non-Tariff Barriers on Goods in the TPP

General Border Facilitation Measures

We assess the TPP’s impact on general border facilitation measures by applying the OECD’s Trade Facilitation Indicators TFI index, which provides a comprehensive quantitative comparison of specific trade facilitation measures in different countries.

In order to estimate the change in trade costs due to the TPP, we construct a template based on the measures in the text related to trade facilitation, such as advance rulings by customs agencies, and apply this to the parties’ TFI scores.

We further examine whether these TPP measures are additional to the WTO Trade Facilitation Agreement (TFA), since we assume that the TFA, which was finalized in 2013, will already be in place by the time the TPP is implemented.¹ See Appendix 2 in Ciuriak et al., 2016 for the detailed analysis of the TPP’s impact on its parties’ TFI scores as they were prior to the implementation of the WTO TFA. While that study finds that the TPP would improve on some of these scores on a pre-TFA basis, it will have no material impact on a post-TFA basis.²

The point can be made even more strongly. the World Bank (2015: 78) reports:

Current reform programmes in many countries go well beyond the TFA measures, and they should be seen as setting a reform floor that can be built on. In fact, most active reform programmes, supported by international agencies such as the World Bank, in middle-income countries and in most low-income countries, are already pushing the modernisation of the trade facilitation infrastructure much beyond the provisions of the TFA.” In short, there are many well-funded customs cooperation programs and aid-for-trade programs that are modernizing border regimes in these economies, TPP or no TPP, and indeed are going beyond the generally TFA-consistent measures that the TPP insists upon.

1 As of this writing, 67 WTO members have ratified the TFA with Jamaica’s 19 January 2016 announcement (WTO, 19 January 2016).

2 This conclusion is not entirely independent of judgement calls, because the TFA text is not always identical to the TPP’s. Thus, where the former stipulates that “Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities”, the latter requires that “Each Party shall adopt or maintain expedited customs procedures for express shipments”. Standard approaches to treaty interpretation hold that differences in wording are intentional and therefore meaningful (see, e.g., commentaries on the Vienna Convention, particularly those on “textualism”). Since express shipments are likely to be air cargo, but not all air cargo shipments are likely to be express, the TFA’s coverage seems broader. Meanwhile, perhaps not all express shipments will arrive by air; it may be, therefore, that, for some shipments, the TPP will be WTO-plus. Acknowledging that the TPP and TFA are not fully aligned, from a quantification/modelling perspective, the two texts are clearly angling at the same issue and the implementation by any particular jurisdiction is likely to have similar effect.

Mutual Recognition

The TPP agreement has product-specific annexes to promote common regulatory approaches in wine and distilled spirits, information and communications technology (ICT) products, pharmaceuticals, cosmetics, medical devices, proprietary formulas for pre-packaged foods and food additives, and organic agricultural products.

- Wine and distilled spirits: the TPP imposes constraints on labelling requirements and on multiple testing requirements: “A Party shall normally permit a wine or distilled spirits supplier to submit any required certification, test result or sample solely with the initial shipment of a particular brand, producer and lot.” Malaysia and Vietnam have been identified by the US Wine Institute as imposing higher costs by requiring testing of each shipment. Accordingly, there is likely to be a cost reduction for wine imports into these countries. However, we have no basis for evaluating the size of the cost reduction due to either possible changes in labelling requirements in any particular TPP Party or the frequency of cases where individual lots are imported in multiple shipments. We suspect that the latter measure would mainly affect larger markets, such as the United States,.
- ICT products: the TPP requires countries to accept supplier certification of conformance, but also allows importing countries to require “testing (e.g., by an independent accredited laboratory) in support of a supplier’s declaration of conformity, registration of the supplier’s declaration of conformity, or submission of evidence necessary to support the supplier’s declaration of conformity.” The importing country may also insist on verifying the supplier’s declaration. There is no binding requirement here to apply self-certification, although there is norm setting, which may eventually be of value to traders.
- Pharmaceuticals: this annex was obviously subject to intense negotiations reflecting legal reviews by the parties as to what the implications would be for their own internal approval systems. For the most part, this annex addresses what appear to be reasonable procedural matters, such as requiring approvals to be based on factual information, reasons to be provided for denial of approval, and so forth. Certain very specific elements, such as the restriction in 7bis that precludes importing countries from considering “sale or related financial data concerning the marketing of the product” in approvals, appear to be targeted at particular jurisdictions (the numbering indicates it was a late add-on and, thus, an eleventh-hour deal-maker); similarly, this may impact existing regulatory practices in some countries. Whether this translates into cost savings, and if so by how much, cannot be determined on the basis of available information.
- Cosmetics: the TPP intervention in the regulation of cosmetics similarly consists of broad generalities coupled with several highly-specific elements, such as those in 7bis and 7ter that address separate approvals for cosmetics that differ in shading. The complex structure of the text suggests that some companies have experienced difficulties in this regard and that the TPP is intervening on their behalf. It also suggests that some countries may be under pressure to adjust existing approval systems: for example, Chile and Peru are given a five-year window under 9ter to review their requirements for marketing authorizations. Meanwhile, these specific points do not readily translate into systemic cost reductions.

- Medical devices: this annex largely consists of what is now boilerplate text from previous annexes. This is a small and highly-specialized trade category where international standards already largely apply, pursuant to long-standing efforts, including under the aegis of the World Health Organization (WHO).³
- Proprietary formulas for pre-packaged foods and food additives: the issues addressed here concern confidentiality of information, not cost-increasing red tape. The market access and/or trade cost implications are not clear.
- Organics: this annex encourages good practices, but does not impose new standards.

Addressing the irritants listed above should, at the margin, induce more trade. Quantification is, however, problematic; clearly, the text does not provide the basis for an assumption of systematic trade cost reductions, as the specific irritants have a narrow incidence. We do not see a basis for an immediate TPP-induced cost reduction for these product groups or even for a significant longer-term effect, especially in the sensitive categories of food and drugs where national idiosyncrasies are likely to prove very hard to change.

Competitiveness and Business Facilitation

TPP Chapter 22 on Competitiveness and Business Facilitation establishes a Committee for the chapter's purposes, with Article 3 setting out its functions:

3. The Committee shall:
 - (a) discuss effective approaches and develop information sharing activities to support efforts to establish a competitive environment that is conducive to the establishment of businesses, facilitates trade and investment between the Parties, and promotes economic integration and development within the free trade area;
 - (b) explore ways to take advantage of the trade and investment opportunities that this Agreement creates;
 - (c) provide advice and recommendations to the Commission on ways to further enhance the competitiveness of the Parties' economies, including recommendations aimed at enhancing the participation of SMEs in regional supply chains;
 - (d) explore ways to promote the development and strengthening of supply chains within the free trade area in accordance with Article 22.3 (Supply Chains); and
 - (e) engage in other activities as the Parties may decide.

The Committee's functions fall into non-operational realms: it is to "discuss," "explore," and "provide advice and make recommendations." It is assigned a few specific tasks: to meet within a year of the TPP's entry into force and to conduct a review of the TPP's effectiveness in promoting regional supply chains starting in the 4th year (2021 under our assumptions), which is to be submitted to the TPP Commission at least by the 6th year (2023), with the decision of whether this report is to be made public left to the parties' discretion.

There is no commitment regarding the rank of government representatives, the mandate of the Committee is extraordinarily broad, and its impact is limited to providing advice and recommendations to a Commission lacking executive powers. Perhaps, needless to say, on this reading, we are unable to assign any specific value to this chapter.

3 See, for example, the discussion of medical device standards in WHO (2003).

Regulatory Coherence

TPP Chapter 25 introduces the controversial commitments regarding domestic regulation. We observe that the TPP text defines “regulatory coherence” to mean “use of good regulatory practices,” but leaves the scope of the chapter to be determined by each party and excludes the chapter from dispute settlement.

The term “good regulatory practices” (GRPs) is well established in international governance and has quite a specific meaning. As defined by the OECD, GRPs are “internationally recognised processes, systems, tools and methods for improving the quality of regulations. GRP systematically implements public consultation and stakeholder engagement as well as impact analysis of government proposals, before they are implemented to make sure they are fit for purpose and will deliver what they are set out to achieve.”

APEC has also been active on GRP through such initiatives as the APEC Principles to Enhance Competition and Regulatory Reform adopted in 1999 and the APEC-OECD Integrated Checklist on Regulatory Reform adopted in 2005. In 2011, APEC Leaders agreed to strengthen the implementation of GRP across APEC economies through a declaration that covers the standard GRP framework. All TPP parties have already signed onto GRP either through the OECD or APEC programs. As suggested by Ciuriak and Singh (2015), there may be longer-term dynamic effects from norm setting, but the actual TPP text, with its non-binding, unenforceable commitment to principles that all TPP parties have previously agreed, adds nothing new (Ciuriak and Ciuriak, 2016).