

Canada and the TPP: Short Term Tactics and Long Term Strategy

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There are valid questions about whether it will be possible to bring the TPP to a successful conclusion within a reasonable timeframe, (despite the repeated assertions of TPP leaders that they remain firmly committed to the process with a notional completion date of the end of 2013), but Canada is firmly committed to—and needs—a successful outcome. There are a number of difficult issues still to be dealt with in the negotiations, made more complicated by the addition of new participants such as Japan and the narrow room for manoeuvre of US negotiators given the Administration's lack of "Trade Promotion Authority" (TPA) from Congress. Given all these concerns, one might well ask, "why was Canada so keen to get inside the TPP tent, and why is it so committed to the TPP now"?

When Canada was officially invited to join the negotiations in Los Cabos in June of 2012, it marked (for Canada) an important milestone on what had become a long and tortuous road. Canada's invitation came a day after Mexico's and the hitch in what was supposed to have been a simultaneous invitation demonstrated both

the difficulty that Canada faced in convincing the US Administration--and some other TPP countries--that its presence would be beneficial, and the reality of Canadian ambivalence toward the TPP process.

The fact that Canada was not particularly welcome is somewhat surprising given Canada's economic heft (by most counts the world's 10th or 11th largest economy) and its huge trading relationship with the US. In fact, in his letter to Congress seeking approval for the Administration's invitation to Canada to join the TPP negotiations, then USTR Ron Kirk noted that US exports to Canada totaled \$337 billion in 2011. He went on to say, "We have conducted in depth discussions with Canada about the standards and objectives that the TPP countries are seeking, particularly in those areas where the standards and objectives are higher than those that exist in NAFTA. Canada has assured us of its willingness to negotiate on these issues and its preparedness to achieve these high standards together with other TPP countries".¹

¹ Amb. Ron Kirk to Speaker John Boehner and Senator Daniel Inouye, July 10, 2012.

Why was Canada a latecomer, and why did it have to work overtime to shoe-horn its way into the negotiations? Although Canada has had a long history of engagement with Asia (ASEAN dialogue partner since 1977, founding member of PECC in 1980, founding member of APEC in 1989 etc.), in recent years Canada had neglected to maintain the previous level of its relationships with Asia. Part of the reason can be blamed on a series of minority governments from 2004 through 2011, which resulted in a degree of political instability and the inability to focus on anything beyond purely domestic political issues. Even though Canada had launched FTA negotiations with Singapore in 2001 and with Korea in 2004, these negotiations did not progress and neither has come to fruition. Both the US and EU started negotiations with Korea after Canada, and both now have agreements in effect. Canada and Korea have only recently moved to revive their bilateral talks, which had stalled. When Canada was offered a chance to join the then P4 (the precursor to the TPP) in 2006, it wasn't interested. Even after the US breathed new life into what became the TPP, Canada's attention was elsewhere.

For Canada, the overriding policy issue has always been access to the US market. This was the driving motivation for the Canada-US FTA in 1989 that developed

into NAFTA. Instead of focusing on the TPP negotiations, it was all too easy for Canadians to focus on the huge US market just next door. In addition, there were concerns in Canada that “sensitive” issues, such as supply management in dairy, would have to be addressed if it entered into talks with countries like Australia and New Zealand. The US also had—and still has-- ongoing concerns in Canada regarding a number of trade issues and Canada was concerned that these might be re-opened. As a result, during the early phases of the TPP, Canada was not interested.

However, the slowdown in the US economy in the wake of the 2008 financial crisis, combined with the growing economic clout of Asia, became a wake-up call impossible to ignore. The business community was calling for bold moves to get Canada back in the game in Asia. The Conservative government of Stephen Harper had positioned itself as the party of economic growth and jobs, and after a series of minority governments finally won a majority in 2011. Part of their economic platform was to push for trade liberalization across the board. In May 2009, negotiations were launched with the EU on a Canada-EU Trade Agreement (CETA), a bilateral framework was established with the US to discuss border issues

that impeded trade, and a full court press was mounted to get Canada into the TPP. But despite Canada dropping broad hints that it would be open to an invitation to join the talks, the welcome mat was not rolled out. Apart from New Zealand's well known antipathy to Canada's supply managed dairy policies, the US response was guarded—and distinctly cool.

Several reasons have been advanced for the lack of enthusiasm on the part of the United States for Canadian participation. Despite being a NAFTA partner, the US has had a number of ongoing trade disputes with Canada that it no doubt felt would not be helpful additions to the TPP negotiating agenda. In the eyes of some in Washington, Canada would be more of a hindrance than a help. One of the principal areas was IPR protection, where US copyright industries were unhappy with Canada's weak copyright regime, as well as issues regarding the length of protection for pharmaceutical patents. There was concern that Canadian proclivity to protect so-called "cultural industries" could potentially contaminate negotiations with some of the other TPP countries in ways that would not be helpful to the US. Finally, adding a new and potentially "difficult" partner part way through the negotiations would do nothing to speed up what was already

becoming a protracted process. Canada was reluctant to openly profess interest lest it be publicly rebuffed but finally, at the Honolulu APEC summit, Prime Minister Harper took the plunge and declared that the TPP was something “that Canada was interested in moving forward on”. International Trade Minister Ed Fast was despatched on a trans-Pacific odyssey of epic proportions visiting all TPP capitals in the space of a few months. In each, he secured either supportive or benign statements regarding Canadian participation. This admirable demonstration of determination did not go unnoticed and the effort to “surround” the US by getting other partners on board was partially responsible, along with heavy Canadian lobbying of both government and business groups in Washington, for shifting the position of the Obama Administration. Many US businesses with operations in Canada (and Mexico) were becoming concerned that the exclusion of their Canadian operations from TPP preferences could complicate supply chains. There was also the opportunity to update and complete some of the unfinished business of NAFTA. Canada could even be helpful in some areas, such as investor-state provisions.

After the announcement that Canada would be joining the negotiations (once consultation with Congress had been completed), a vocal and active anti-TPP chorus emerged in Canada, fuelled by those with a mistrust of trade liberalization generally (anti WTO, anti ACTA) but also because of the terms on which Canada was admitted, the so-called “take it or leave it” provisions. These same voices are now busy denouncing the Canada-EU Trade Agreement on which agreement in principle was announced on October 18 of this year. That agreement maintained Canada’s supply management system but allowed for a doubling of European quotas for cheese, opened subnational government procurement to European companies, and extended the period of patent protection for pharmaceutical drugs to partially cover the period of time elapsed during the patent approval process. The offset of course is improved market access for 35 million Canadians to a market of 500 million, including better access in the areas of automotive products, beef and pork, and financial services. The outcome of CETA offers some indications of where Canada may be prepared to make concessions in the TPP negotiating process, but these will be part of larger trade-offs.

It seems clear that despite the high blown rhetoric about TPP negotiating partners having to put everything “on the table”, and talk of a “gold standard, 21st Century” agreement, the reality will be somewhat different. Everything may in theory be on the table but some things will fall off as part of the negotiating process. Don’t expect US sugar quotas to go away, or Canada’s supply management system to be dismantled, or Australia to sign up to investor-state provisions or Vietnam to put its SOEs under full market discipline. Don’t expect all TPP countries to meet the sort of IP standards the US would like nor US trade remedy laws to be made subordinate to a TPP dispute settlement mechanism. On the other hand, if the TPP can achieve progress in a substantial number of areas, if it can rationalize the confusion of conflicting rules of origin that exist across the region and simplify supply chains, strengthen investor protection generally and improve respect for intellectual property laws, address e-commerce issues and open services markets, it will have made a significant contribution to trade liberalization in the region. Canada recognizes that it needs to be part of this process, and the TPP at the moment is the only negotiating forum where it has a seat at the table.

For Canada, the TPP is both an end in itself (that is, a vehicle for trade liberalization and job growth) but also a means to an end, which is to re-establish Canada's economic credentials in the Asia-Pacific region generally. TPP is seen as one of the vehicles that could become the foundation for a Free Trade Area of the Asia Pacific. The other, at the moment, is the RCEP process, from which Canada (and the US) is excluded. PECC has estimated (based on economic modeling work done by Profs. Peter Petri and Michael Plummer) that a 12 country TPP (including Japan) will lead to economic gains of \$223 billion by 2025, whereas the RCEP will lead to gains of \$644 billion (owing in part to higher existing barriers that will be brought down). The real payoff, however, comes with a combined TPP and RCEP in the form of an FTAAP, which will bring gains of \$1.9 trillion in 2025².

In addition to being a potential pathway to the Holy Grail of the FTAAP, the TPP has a very real significance for Canada beyond protecting its access to the US market. A key player for Canada is Japan. Japan's (and potentially Korea's) entry into the TPP was a key factor in Canada's decision to push to join. Japan is Canada's 5th largest trade partner, but much of Canada's exports to Japan

² Petri, Peter A. and Plummer, Michael G, The Trans-Pacific Partnership and Policy Implications, Peterson Institute for International Economics, July 2012, accessed at <https://www.pecc.org/blog/2012/07/10/the-trans-pacific-partnership-and-asia-pacific-integration-policy-implications/>

compete with the US. While Canada and Japan have launched bilateral negotiations, there is no guarantee that this process will be successful, and it is important therefore for Canada to be at the TPP table with Japan on the same basis as the US.

The success of the TPP is still an open question. The TPP may not be concluded, and if it is, the results may be less than originally hoped for. For Canada, however, which is not part of RCEP or any ASEAN Plus agreement, or the EAS, the TPP is the best available forum. It cannot afford to squander this opportunity. The TPP is an important part of the Harper government's agenda of promoting economic growth, an agenda both tactical and strategic.

Now that it has proven the skeptics wrong and found enough common ground with the EU to initial an agreement, Canada will be pushing hard to conclude the TPP as early as possible. Through its EU agreement, Canada has already signaled where it may have some negotiating flexibility, and Canadian trade negotiators will work hard to ensure that Canada stays in the game and comes home with something that it can sell as positive gains to the provinces and business

community, particularly with reference to Japan. Beyond any specific improvements in market access to TPP countries, Canada will use its re-asserted Asia-Pacific presence through the TPP to push for a broader role generally and to reach beyond the TPP to China, Korea, Indonesia, India and others. That is the ultimate end game for Canada, and is why the TPP has strategic significance well beyond its immediate economic impact.