



# **TPP, the NAFTA Countries, and the Integration of the Americas**

**By Uri Dadush and Beatriz Leycegui**

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The Trans-Pacific Partnership (TPP) is a landmark agreement. In its geographic coverage, comprehensive scope, and provision for accession of new members, it represents in some ways the prototype for a new multilateralism. If ratified, the agreement will not only eliminate tariffs on nearly all trade among 12 countries at different stages of development which account for 40% of world GDP, but also rewrite large parts of the rule book. However, TPP covers only a very small share of merchandise trade and investment of its partners that is not already covered by preceding bilateral trade agreements. Moreover, all TPP participants are also WTO members, and the preceding bilateral agreements among them entail extensive coverage of rules, so the question of TPP additionality is critical to understanding the impact of TPP. Nowhere is this question more important than among the three North American countries, Canada, Mexico, and the United States, which together account for the lion's share of TPP GDP and intra-TPP trade and whose trade is already governed by the North American Free Trade Agreement (NAFTA). Though NAFTA is a far-reaching and long standing mega-regional agreement, there is a large unfinished agenda in the integration of the North American economy, a gap which TPP could help fill.

This paper compares TPP and NAFTA as they affect the trade of the NAFTA countries. It will argue that TPP is likely to advance trade of the NAFTA block with the other TPP members, and within the NAFTA block, and make the whole TPP block, including NAFTA, more attractive as an investment destination. However, as already identified in previous analyses such as Petri and Plummer (2016), Cheong and Jose (2013), Freund (2016), and World Economic Forum (2014), tariff reductions under TPP will have small effects. For example, according to Petri and Plummer the gains from tariff reduction accruing to the United States, a large and already open economy, are tiny and only after very long implementation periods in sensitive sectors. The United States also engages in very little new liberalization in services (Elliott 2016, Hufbauer 2016). Thus, most of the gains from TPP are believed to accrue from reduction in non-tariff barriers, and these are notoriously difficult to estimate, requiring a number of heroic assumptions. Moreover, while the contemplated changes in rules will help facilitate intra-TPP trade and investment, many of the new generation disciplines not previously

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<sup>1</sup> Uri Dadush is Senior Associate at the Carnegie Endowment for International Peace and Senior Fellow at the OCP Policy Center in Rabat, Morocco. He was Director of the International Trade Department at the World Bank between 2002 and 2008. Beatriz Leycegui is partner at SAI Law & Economics. She served as Undersecretary for Foreign Trade at the Ministry of Economy of Mexico between 2006 and 2011 and was Deputy Director of Legal Analysis at the Office in charge of negotiating NAFTA.

contemplated in prior FTA's are best efforts provisions in TPP. The contemplated changes in rules will require little or no changes in laws in the NAFTA countries, though they will serve to prevent backtracking.

That said, the TPP entails a number of innovative aspects, as in e-commerce, for example, and also has the potential to set a new, somewhat higher benchmark for future trade negotiations in areas such as state-owned enterprises. More concretely, the TPP's provision for countries to accede to it, and the interest expressed by countries such as Colombia, South Korea and Thailand to join, holds out the real possibility of extending more liberal trade regimes to other large economies. And, were, for example, Indonesia, a protectionist country of 200 million people, to join TPP – a distant but not unthinkable prospect - the welfare gains for it and for several of the incumbents would be considerable.

In the remainder of this paper, we examine the motivation of NAFTA countries in joining TPP as well as the additionality of market access commitments, followed by an assessment of how the rules negotiated in TPP modify pre-existing NAFTA commitments. We then briefly consider how TPP might help promote other crucial interests of the NAFTA countries, including integration in North and South America, and the vitality of the WTO.

## **Motivation**

Canada, Mexico and the United States have been Party to the North American Free Trade Agreement since 1994, and their economies have become highly interdependent. However, their motivations for joining TPP differed. The United States saw TPP importantly as a vehicle to strengthen its geopolitical, security and economic ties across the Pacific, gaining an advantage vis-a-vis China, and consequently reasserting its leadership in the global trade agenda. Canada and Mexico, on the other hand, saw TPP as a vehicle to strengthen their ties to the United States, or at least to preempt the erosion of these ties, and of the preferences accorded to them in their most important market. Like the United States, Canada and Mexico were interested in improving their competitiveness and access in Asian markets, the world's fastest growing, gaining advantage vis-à-vis China and other countries excluded from TPP. Also like the United States, Canada and Mexico sought a new negotiating space to advance a multilateral rules agenda in response to the stalling of the Doha negotiations.

This partial overlap of interests did not result in the three countries adopting common positions during the negotiations. The interest of Mexico and the United States diverged in several areas, such as government procurement, intellectual property rights, fisheries, and labor and environmental standards. The interests of the United States, Canada and Mexico also differed on several aspects of market access, to which we turn.

## Market Access

In this section, we will cover TPP's provisions on trade in goods, services, investment and government procurement, and examine their additionality with respect to NAFTA and other agreements.

*Trade in goods* among the NAFTA countries is essentially free<sup>2</sup> and they trade predominantly with each other. About three quarters<sup>3</sup> of Mexican and Canadian exports are destined to the United States.<sup>4</sup> About half of U.S. exports go to Mexico and Canada, these countries being its second and first export markets. The United States exports to Canada and Mexico five times what it exports to China. Of every dollar the United States imports of Mexican goods, 40% have American content, in comparison to China 4%, Brazil 3% or India 2%.<sup>5</sup> Canada and Mexico are very large recipients of U.S. FDI, while the United States is their largest export destination. Following the coming into force of NAFTA, there was a significant acceleration of trade among the three Parties, as well as of FDI. Despite the rapid advance of trade and investment within NAFTA, and the proliferation of highly integrated value chains in sectors such as automotive, electronics, aerospace, and textile and garments, the NAFTA block has seen a rapid erosion of its market share of world trade, from 17% in 1994 to 13% in 2014,<sup>6</sup> on account mainly of the much faster progress in developing East Asia. NAFTA trade first advanced impressively following its ratification but slowed sharply after 2001 with China's accession to the WTO. China has already overtaken the United States as an exporter by a wide margin while Germany nips at its heels or overtakes it depending on the euro-dollar exchange rate.

While the TPP agreement may make a dent in these trends, it appears unlikely to be the game changer that is sometimes claimed. If Japan is excluded, the NAFTA countries export less than 1% of their total exports to countries that are part of TPP with which they do not already have an FTA (Figure 1), and, with the exception of Viet Nam, all the TPP countries have low applied MFN tariffs to start with. As for Japan, it attracts about 0.5% of Mexican exports, 1% of Canada's exports, and 2.5% of U.S. exports. Some of these exports, such as cereals, dairy, and clothing and textile confront high Japanese tariffs and quotas. However, most do not, as Japan also has very low MFN tariffs, in the vicinity of 1% MFN applied tariff, trade-weighted (WTO Tariff Profiles, 2015).

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<sup>2</sup> Since 2008, all tariff barriers have been eliminated under NAFTA, except for restrictions maintained by Canada in dairy, poultry and eggs. In reciprocity, Mexico did not liberalize such goods vis a vis Canada. A similar situation prevails under the TPP.

<sup>3</sup> Ministry of Economy, 2014.

<sup>4</sup> Ministry of Economy with data if of the Bank of México, 2014.

<sup>5</sup> Koopman R., W. Powers, Z. Wang and S.J Wei. 2010. Give credit where credit is due: tracing value added in global production chains in Leycegui B, Reflections on Mexico's Trade Policy (2006-2012), Mexico D.F., Secretaría de Economía, ITAM, October 2012.

<sup>6</sup> IMF Directions of Trade Statistics, 2015

**Figure 1. FTA's negotiated between NAFTA and TPP Parties**

|               | Australia | Brunei Darussalam | Canada | Chile | United States | Japan | Malaysia | Mexico | New Zealand | Peru | Singapur | Vietnam |
|---------------|-----------|-------------------|--------|-------|---------------|-------|----------|--------|-------------|------|----------|---------|
| Canada        |           |                   |        | ✓     | ✓             |       |          | ✓      |             | ✓    |          |         |
| United States | ✓         |                   | ✓      | ✓     |               |       |          | ✓      |             | ✓    | ✓        |         |
| México        |           |                   | ✓      | ✓     | ✓             | ✓     |          |        |             | ✓    |          |         |

Source: Websites of the Governments of TPP countries (except Vietnam and Brunei Darussalam) (as of November 13, 2014)

The prospects for TPP impacting NAFTA imports are a little more robust, especially in Mexico. As a general indication, NAFTA countries already run a significant (2 or 3 to 1) bilateral deficit with TPP exporters in Asia, including Japan, Malaysia and Vietnam. Mexico has high applied MFN tariffs across all agriculture and clothing, as well as moderate MFN applied tariffs in some other manufactures, such as transport equipment. As Mexico reduces its tariffs under TPP, it is likely to see the largest increase in imports from Asia (less from Latin America since it is already a Party of the Pacific Alliance with Peru and Chile). On the other hand, the United States and Canada already have a very liberal MFN trade regime.

Our conclusion, therefore, is that TPP tariff reductions have a small effect on exports of NAFTA countries, and the gains will accrue mainly in Japan. TPP tariff reductions will have larger but still small effects on NAFTA imports, and the gains, small as they are, will accrue mainly in Mexico. Mexican textile, clothing, footwear and transport equipment will face increased competition from Asia. Moreover, these modest gains will only accrue over long implementation periods in the most sensitive sectors, as well as by compensating subsidies that the Canadian government has promised its dairy farmers and the Japanese government has promised its pork farmers. Some sectors in agriculture will not be completely liberalized.<sup>7</sup> TPP's restrictive and more enforceable<sup>8</sup> rules of origin in areas such as garments and textiles and automobiles and parts, on which Canada and Mexico were especially insistent, will also mitigate its market opening effects. For example, Vietnam's capacity to take advantage of lower tariffs on its garments exports will be impeded unless it finds a TPP-based source for its cloth and becomes less reliant on imports of cloth from China<sup>9</sup> (Elliott, 2016)].<sup>10</sup> At the same time, the

<sup>7</sup> Under the TPP practically all industrial goods will be free of tariffs on conclusion of the phase out period. In agricultural goods not all Parties liberalized all of their tariff lines, establishing certain restrictions that will apply permanently (e.g. Canada (5.9%), Japan (19%), Mexico (3.6%) and Peru (4%).

<sup>8</sup> The TPP includes rules to foster compliance with the Parties' laws or regulations. Specifically, provisions furthering cooperation, verifications, enforcement and monitoring mechanisms are included to prevent acts such as duty evasion, falsification of documents, fraud, smuggling or violation of restrictions to imports.

<sup>9</sup> In general, TPP and NAFTA follow a "yarn-forward" rule of origin for apparel. Mexico was interested in establishing strict rules of origin and had particular concerns regarding the concessions granted by the U.S. to Vietnam. However, TPP also introduces a "short supply

ability to cumulate origin across the TPP is likely to modestly boost investment in those low-cost TPP locations which were seen as attractive to start with.

Mexico and Canada will not see their worst fears realized, as they will face very little new trade diversion in the United States, though there will be some increased competition in the U.S. market from Asian manufactures, mainly from Japan in automobiles and light trucks but only many years down the road. The United States is unlikely to see much trade diversion in Canada on account of its low MFN tariffs, but it may see a little more trade diversion in Mexico, originating from Asian manufacturers and agriculture exporters. Still, bearing in mind that the United States exports only a tiny share of its GDP to Mexico, these losses will be minuscule.

A significant contribution of TPP is that it will promote the development of value chains by connecting the FTA's previously negotiated between the TPP partners. Specifically, through accumulation of origin, Parties will be able to incorporate inputs supplied from TPP member countries into their final goods and export them with preferential treatment to any of their TPP partners. This is not possible outside the TPP framework, despite the fact that many of the TPP Parties have signed FTA's with the same TPP partners. Another accomplishment of TPP is the agreement on a single set of rules of origin, so that the rules applied to the products coming from any member country are identical. This will benefit producers, since they will not be required to have separate production lines to comply with the rules of origin of different TPP partners.

In light of the preceding evaluation, the estimates of the effects of tariff reductions in TPP on NAFTA partners made by Petri and Plummer (Peterson, 2016, figure 3), appear reasonable to us. They estimate that, when TPP is fully implemented, small annual welfare gains of around \$2-3 billion will accrue to the United States and about \$1 billion each for Canada and Mexico. By contrast, the conclusion drawn by Cheong and Jose (2013) that, based on tariff reductions alone, TPP will not result in significant gains appears overly pessimistic.

On *services*, TPP's main innovation is to shift market access provisions from a positive to a negative list. This represents a big improvement on WTO but not on NAFTA, nor on other FTA's already negotiated among TPP partners. The negative list approach implies that only those services included in the negative list of each country are subject to exceptions from the general commitments of liberalization or treatment provided for in the services chapter. NAFTA and TPP include similar substantive provisions pertaining

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list" that NAFTA does not contemplate. When TPP members are in short supply of the items specified in the list, they may resort to those sourced by countries not Party to the TPP, so that the final goods produced with those inputs may receive preferential treatment.

<sup>10</sup> In order to determine regional value content, in addition to the net cost method (that already exists in NAFTA), the TPP introduces the "focused-value", "build-down" and "build-up" methods. Under the TPP, certificates of origin may be issued by the importer, exporter or producer and, in some cases, also by a government authority.

- In NAFTA, such certificates could not be issued by importers or authorities.

national treatment, most-favored nation and local presence. TPP also includes an Annex on Express-Delivery Services which adds further provisions pertaining to domestic regulation and payments and transfers. The TPP also expands the telecommunications chapter to include provisions wider than NAFTA such as on rates and conditions for international mobile roaming and resale of public telecommunications services.

On balance, the new market-opening provisions in services are modest. According to Hufbauer (2016), the United States missed an opportunity in TPP to liberalize large parts of its service sector in areas such as transportation, for example, and, consequently received little in return. However, it is worth underscoring that a significant merit of what was negotiated is that it binds the existing market openness in each Party to the TPP, restricting their possibility to change the rules of the game if in the future they decide to close or restrict the access or modify the treatment towards those services not reserved in the negative list.

Mode 3, foreign establishment, accounts for the largest share of trade in services and this is treated under the *investment* chapter of TPP. Overall, the substantive disciplines on investment are similar in NAFTA and TPP (e.g., national treatment, expropriation, transfers, etc.). As to both pre-establishment and post-establishment commitments, both TPP and NAFTA establish no restriction to investments except for those activities mentioned in a “negative list.” As in NAFTA, in TPP a claim to arbitration may be submitted if a Party breaches such disciplines. TPP adds that such claim may also arise from investment authorizations and agreements. TPP also includes an Annex clarifying the scope of actions by a Party that may constitute direct or indirect expropriations, and TPP provides for increased transparency, with hearings and documents available to the public. TPP also expressly provides that tribunals may consider *amicus curiae* submissions and that MFN treatment does not allow an investor to import more favorable procedural requirements from another treaty.<sup>11</sup> In addition, a TPP Party may elect to deny the benefits of Investor-State dispute settlement with respect to claims challenging a tobacco control measure of the Party. Henceforth, investors cannot submit a claim to arbitration for such measures unless the TPP Party at issue chooses otherwise.

On *government procurement*, TPP and NAFTA’s substantive principles are similar (e.g., non-discrimination, prohibition of offsets, rules of origin), as are the procedural disciplines. However, there are some variations in coverage and specific provisions. In TPP, as in NAFTA, government procurement commitments apply only to the entities, thresholds, goods and services that each Party includes in its corresponding Annex. Importantly, TPP generally includes entities at the sub-central level of government, whereas in NAFTA the latter was reserved for future consultations. However, neither the United States nor Mexico agreed to include entities below the federal level, whereas

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<sup>11</sup> Mexico included a reservation specifying that it does not consent to submission of arbitration claims regarding investment agreements, if such submissions would be inconsistent with certain provisions of several domestic laws (e.g., Hydrocarbons Law; Law on Public Works and Related Services; Civil Aviation, Airports or Ports Laws).

Canada did. Under this chapter, TPP allows differential treatment for developing countries, and the latter may adopt transitional measures (e.g., price preference programs) as set out in their corresponding schedules. Similarly, in NAFTA, Mexico had been allowed a temporary set aside.<sup>12</sup>

Though progress on new market access in TPP is limited, the intention of the agreement was always to make progress on rules and regulatory cooperation, thus reducing non-tariff barriers, and more generally behind-the-border impediments to trade. As the next section shows, although evaluating progress on this agenda is considerably more difficult than on market access, there are a number of areas where TPP clearly innovates.

## Rules and Regulatory Cooperation

This section examines the additionality of TPP with respect to NAFTA and other preceding trade agreements. First, it examines provisions that are both in TPP and NAFTA. Then, it examines provisions that are only in TPP.

### Provisions that are both in TPP and NAFTA

*Trade Remedies.* Under both NAFTA and TPP, Parties may adopt bilateral (TPP) or global (WTO) safeguard measures. TPP departs from NAFTA with regard to global safeguards, since under NAFTA, Parties may be excluded from the measure if certain conditions are met. In TPP, as in NAFTA, Parties confirm their WTO commitments regarding dumping and countervailing measures. However, unlike NAFTA, TPP does not contemplate the possibility of replacing domestic judicial review of antidumping and countervailing determinations with a binational panel review. This is in line with precedent, since no other FTA signed by the NAFTA Parties has incorporated such binational panel review. Since the panel reviews domestic antidumping and countervailing duty measures, it would be difficult to incorporate it and implement it among 12 Parties with diverse legal systems.

*Technical Barriers to Trade (TBT).* TPP goes beyond NAFTA in reducing the potential for technical standards to impede trade. NAFTA calls for signatories to promote the compatibility of their respective standards-related measures; accept the results of the conformity assessment procedure of other Parties; and negotiate mutual recognition agreements pertaining to such results. Moreover, in NAFTA an importing Party shall treat another Party's technical regulation as equivalent to its own where the exporting Party demonstrates that its technical regulation fulfills the importing Party's legitimate objectives.

In TPP, Parties explicitly enumerate mechanisms to facilitate the acceptance of the aforementioned results, some of which are additional to NAFTA (e.g.,

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<sup>12</sup> TPP does not have a denial of benefits clause specific to this Chapter, whereas NAFTA does (i.e., a NAFTA Party may deny benefits to a service supplier of another Party if the latter is owned or controlled by persons of a non-Party and has no substantial business activities in a NAFTA territory). TPP has a provision addressing corruption and conflicts of interest.

recognize other Party's designation of conformity assessment bodies or unilaterally recognize the results such conformity assessment bodies). TPP also commits members to intensify their exchange and collaboration in this area and to put forth other provisions to further TBT reduction objectives as well as to endeavor to expand on the WTO TBT Agreement. An important contribution of TPP is to include annexes on certain products (i.e., wine and distilled spirits; pharmaceuticals; cosmetics; medical devices; prepackaged foods and food additives; organic products; and information and technology products) containing specific provisions on the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, marketing authorization and notification procedures. More demanding transparency provisions are also included in the TPP.

*Dispute Settlement.* Both NAFTA and TPP contemplate a general dispute settlement mechanism to resolve disputes between the Parties. TPP includes provisions designed to remedy weaknesses identified in NAFTA, such as difficulties in establishing panels. For example, TPP reduces the number of panelists from five to three and provides mechanisms for the naming of panelists when the Parties fail to cooperate.

*Labor Standards.* While NAFTA included labor matters in a side agreement, TPP incorporates labor in the agreement. Both agreements include provisions pertaining enforcement, procedural guarantees, cooperation, transparency and public awareness relating to the Parties' labor laws. NAFTA provides that, per their internal legal framework, the Parties shall ensure that their labor laws and regulations provide for high standards, and shall continue to strive to improve them, and specifies principles that the Parties commit to promote, subject to their domestic laws. TPP provides for several further substantive labor commitments, such as that members shall adopt and maintain labor rights under the ILO convention, including freedom of association, elimination of forced and child labor, and protection against discrimination in employment. The labor provisions in both NAFTA and TPP are subject to dispute settlement mechanisms. However, while noncompliance of the Side Agreement under NAFTA generally envisages monetary sanctions, noncompliance under TPP envisages suspension of the preferences accorded under the agreement, potentially entailing heftier penalties.

*Environmental Standards.* A side agreement to NAFTA was signed pertaining environmental cooperation, while in TPP a specific chapter is incorporated within the body of the Agreement. Both NAFTA and the TPP recognize the sovereign right of each Party to establish its own domestic levels of protection, and to adopt or modify its laws or policies. Both also include minimum standards regarding procedural matters (e.g., that there are proceedings with due process of law). However, TPP advances on NAFTA significantly on specificity. Whereas NAFTA includes a few commitments of a general nature, the obligations under TPP are numerous and deeper, making reference to various international treaties. Mechanisms for public participation in standard setting are specified in TPP. Both TPP and NAFTA envisage dispute settlement in this area; however, as in the case of labor standards,

TPP envisages suspension of benefits rather than monetary sanctions in the event of noncompliance.

*Intellectual Property.* Intellectual Property protection provisions of TPP are broadly consistent with other U.S. trade agreements, including NAFTA and the WTO's TRIPS agreement. However, the chapter does include some new features which generally strengthen the protection of intellectual property. For example, TPP is the first U.S. trade agreement to include an explicit reference to protection for biologic drugs. The TPP also goes beyond previous U.S. FTA's by providing greater specificity on the protection of internet domain names and on how to settle disputes relating to them. The agreement contains provisions to compensate patent holders for "unreasonable delays" in issuing patents. TPP requires that Parties provide a minimum term of protection for copyrighted works of life-plus-70-years, going beyond NAFTA. TPP provides stronger trade secret protection than preceding FTA's, and makes criminal penalties mandatory for infringements that are done willfully and for financial gain, including, for example, unauthorized camcording in theatres. However, TPP steers away from strengthening geographical indications for food products and beverages, consistent with a long-standing defensive interest of agribusiness in the United States.

#### *Subjects which are extensively covered in TPP but not (or much less so) in NAFTA*

*Trade Facilitation.* Unlike NAFTA, TPP includes a specific chapter to address trade facilitation, including provisions on simplified customs procedures for the efficient release of goods (e.g., 48 hours upon arrival, to the extent possible), expedited customs procedures for express shipments, and automation. While the TPP trade facilitation chapter is an important step forward, the WTO Agreement on Trade Facilitation, when ratified, provides for more specific disciplines on certain matters, such as facilitation measures for authorized operators.

*Electronic Commerce.* One of TPP's most innovative features and most important addition beyond NAFTA is the chapter on trade by electronic means. Among other obligations, TPP provides that TPP Parties shall not: impose duties on electronic transmissions; treat less favorably digital products of other Parties; deny the legal validity of a signature only because it is in electronic form; and not require a covered person to use or locate computing facilities in the Party's territory as a condition to conduct business. TPP also calls for Parties to provide for the protection of the personal information of the users of ecommerce, maintain a legal framework governing electronic transactions consistent with the UNCITRAL Model Law on Electronic Commerce 1996 or the U.N. Convention on the Use of Electronic Communications in International Contracts, and adopt laws to proscribe fraudulent and deceptive online commercial activities.

*State-Owned Enterprises (SOEs).* NAFTA has very few provisions pertaining to state enterprises and monopolies. These provisions state in general terms

that SOEs may not provide non-discriminatory treatment and that they shall act per commercial considerations. TPP develops these obligations. For example, TPP stipulates that no Party to the agreement shall cause adverse effects to the interests of another Party through the use of non-commercial assistance<sup>13</sup> that it provides to any of its SOEs with respect to the production and sale of goods or supply of a service of the SOE. Also, there shall be no injury to a domestic industry of another TPP Party through the use of non-commercial assistance that it provides to any of its SOEs investing in the territory of another TPP Party. Although several exceptions apply to these provisions, the TPP clearly raises the bar on the commercial operation of SOEs.

Several other chapters in TPP include coverage of new issues, or more extended coverage than in NAFTA and other preceding agreements. These issues include cooperation and capacity building, development and small and medium enterprises, regulatory coherence, transparency and anti-corruption. TPP also creates a number of standing committees to monitor and promote reforms relating to these and several other issues. However, for the most part, the provisions in TPP relating to these issues constitute exhortation rather than firm rules subject to dispute settlement.

Finally, it should be noted that under its “coexistence clause” TPP does not allow for its prevalence over pre-existing international trade agreements. TPP members, pressed in many instances by their private sector, wanted to make sure that the status quo could be preserved in cases where it is seen as more favorable to their interests. The downside is that in situations where TPP is found to be at odds with NAFTA or with other preceding agreements, a new zone of ambiguity has been created. But this is far from the only uncertainty that TPP entails, as we discuss in the next section.

## A Glimpse at the Future

Difficult as it is to imagine that all the hard work that has gone into TPP will be in vain, it is far from certain that the U.S. Congress will, sooner or later, ratify TPP. Passage in the run-up to the elections in November is extremely unlikely, and both the current Democrat and Republican front-runners in the race to become the next President of the United States have rejected the deal as it stands. One of the candidates has also promised to renegotiate NAFTA, to prevent American firms from relocating production to Mexico, and to impose a punitive tariff on China, which would be in direct violation of the United States’ WTO commitments. The most common objection raised against TPP, that it will destroy millions of jobs in the United States, is difficult for us to understand since the United States commits to very little new trade liberalization while its TPP partners commit to a bit more, and some, notably Vietnam, to a lot more.

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<sup>13</sup> Non-commercial assistance” means assistance to a SOE by virtue of that SOE’s government ownership or control, where assistance entails direct or potential transfers of funds or of goods or services (other than general infrastructure) on terms more favorable than those commercially available to that enterprise (TPP article 17.1).

Even if the TPP is ratified, it will have taken only modest steps in furthering the unfinished North American integration agenda under NAFTA, a subject to which one of us has dedicated many years of effort. NAFTA Parties could have negotiated bilateral or trilateral commitments under the TPP to advance their competitiveness. In our view, the most important elements of a North American competitiveness agenda are: expediting the work to create a 21<sup>st</sup> century border (infrastructure, risk management, pre-clearance, customs cooperation); strengthen regulatory cooperation (mutual recognition of regulations); and liberalization of strategic services (e.g. telecommunications, air, land and sea transportation). A recent study by the Council on Foreign Relations also cites: agreeing to a common energy policy (including oil and gas exports, the Keystone Pipeline, clean energy, among others); establishing more robust frameworks for temporary movement of people, permanent migration and border security; and eventually establishing a customs union.

Given that value chains are in fact not so much global as regional, there is a valid argument that more can be achieved by deepening NAFTA than by engaging in other negotiations. Though in theory the United States can negotiate simultaneously trade agreements on many fronts, the reality is that trade negotiating resources are limited, and the political capital to advance trade issues is extremely scarce. Nevertheless, it should also be recognized that given the difficulty of advancing NAFTA trilaterally, doing it under a larger and even more ambitious framework potentially opens a new avenue. The institutional framework created under TPP could be used to further the NAFTA agenda if the political will exists.

Should TPP be ratified, its accession clause, a particularly important feature, potentially opens new territory. The only parallel among FTA's is the EU, and at the multilateral level, the WTO. In both instances, enlargement of the membership became a vital part of the arrangement, and one that can be credited with substantial gains, both for incumbents and new members. There is a well-established pattern in such accession processes, where the acceding country accepts the "acquis communautaire" pretty much unchanged, and – not unusually – takes on obligations which are more demanding than those of incumbents. This is possible for two reasons: first, because the acceding Party has much to gain from joining a large trade and investment block where the hard work of establishing it has already been done, and, second, because the acceding Party has typically already decided that the reforms it must undertake are in its own interest and are consistent with its development agenda.<sup>14</sup>

Among regions that could benefit from TPP enlargement, Latin America stands out. This is a region where, in contrast to East Asia and Central and Eastern Europe, intra-regional trade integration has been minimal. Although it is difficult to see the likes of Brazil and Venezuela today being eager to undertake the demanding market access and rules of TPP, there are others

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<sup>14</sup> See U. Dadush and C. Osakwe Chapter 1 in Dadush and Osakwe, editors, "WTO Accessions and Trade Multilateralism", Cambridge University Press, 2015

who may be keen to join if conditions are right, such as Colombia (the only Pacific Alliance country that is not a member), Costa Rica, and other CAFTA members. In theory at least, over time, the TPP could help move parts of the region beyond the current hub-and-spoke system centered on the United States (and, increasingly on China as well), to a truly integrated economic space.

The TPP, if ratified, also raises new questions about the relevance and vitality of the WTO. Multilateral trade disciplines remain a vital interest of all three NAFTA members. Yet, the TPP aims explicitly to rewrite trade rules for the 21<sup>st</sup> century, has elaborate provisions for dispute settlement, includes standing committees, and provides for accession procedures. Covering 40% of world GDP and countries stretched across three continents, the TPP, like the proverbial duck, looks, sounds, and acts like a mini-version of the WTO. Although TPP could create new incentives for excluded countries to reengage in the WTO, and could provide a roadmap for more advanced multilateral disciplines in a number of areas, it could also have opposite effects. TPP countries, beginning with the United States, may be even less inclined to engage in Geneva, while, as the WTO fractures, China and other large excluded countries may also be tempted to push for their own mega-regional deals.

## Conclusion

The TPP is, without question, a precedent-shattering trade agreement which is innovative in a number of important respects. Even if it is not ratified, the agreed text will create de facto standards for new trade agreements in areas such as e-commerce, state-owned enterprises and technical barriers to trade. The TPP could provide an important new vehicle, through its accession process, to promote trade in countries that have stubbornly resisted liberalization and also to promote regional integration in Latin America.

However, it is important not to overstate the benefits of TPP from a North American perspective. The TPP does little to improve on NAFTA and to further the agenda of North American integration. The agreement also raises serious questions about the continued vitality of the WTO and the potential for fragmentation of the multilateral trading system. The challenge, as Richard Baldwin has written is that countries “multilateralize 21st Century Regionalism,” consciously crafting the way in which WTO-plus and WTO-beyond provisions negotiated under the aforementioned agreements can complement or eventually become part of the multilateral order, avoiding fragmentation of international trade.<sup>15</sup>

On balance, we believe that, provided steps taken to mitigate the risks posed to the multilateral system are managed, and provided the momentum towards deeper integration among the NAFTA countries and within the TPP members is maintained, TPP is an important agreement worth having. NAFTA

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<sup>15</sup> *Mega-regional Trade Agreements: Game-Changers or Costly Distractions for the World Trading System?* <http://www.weforum.org/reports>, p. 13-14.

countries, beginning with the United States, should ratify it, while bearing these caveats in mind.

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