6. Agriculture and the Trans-Pacific Partnership negotiations

Deborah Elms

INTRODUCTION

One of the more innovative aspects of the Trans-Pacific Partnership Agreement (TPP) negotiations has been an emphasis on granting full market access to member countries with ‘no exceptions’. This statement has been made repeatedly from the earliest days of the negotiations in March 2010 and reiterated often throughout the talks. Even if – in the end – there are modest levels of protection remaining in a very limited number of agricultural sectors, the promises to open the market fully remain striking.

A willingness to open markets with no exceptions means putting the most sensitive areas up for discussion. For nearly all countries, this means agricultural products. For a variety of reasons, including history, culture, and politics, agriculture usually holds special significance to states. As this chapter highlights, unlike industrial goods, neither repeated commitments in multilateral fora like those created by the General Agreement on Tariffs and Trade\(^1\) (GATT) or the World Trade Organization (WTO) nor promises made in regional or bilateral preferential trade agreements (PTAs) have resulted in similar low levels of protection for agricultural products. Yet officials have pledged in the TPP to put these highly sensitive areas up for liberalisation to the other partners.

I WHY INCLUDE AGRICULTURE?

Why are officials so prepared to take on this task in the TPP when they have been unwilling to do so in other venues? In part it was because of

\(^{1}\) Opened for signature 30 October 1947, 55 UNTS 187 (entered into force 1 January 1948).
careful calculations about the economic benefits of the TPP. At the time that negotiations got under way in March 2010, the TPP membership included eight countries: Australia, Brunei, Chile, New Zealand, Peru, Singapore, the United States and Vietnam. These eight countries had relatively limited trade with one another and most trade was dominated by the United States, as shown in Chapter 1 of this volume. In addition, the eight countries were already relatively well connected by existing PTAs.

In preparing their calculations about the net benefits of the TPP, many officials realised that if agricultural trade were excluded from the final agreement (or if significant sectors were carved out of the final document), the net economic benefits from the TPP would be lower. Because some agricultural sectors had not been liberalised or had not been fully liberalised in past agreements, there was still scope for improvement in the TPP. This chapter highlights some of the specific areas where this argument applied.

In addition, negotiators were extremely conscious of the precedent that would be set for the entire agreement if agricultural sectors could be excluded from the outset. If any one area could be carved out as too sensitive for inclusion it would establish the possibility that countries could carve out other highly sensitive issues from the text elsewhere. So, for example, parties might opt out of intellectual property provisions or labour or environmental rules. This was seen as undermining the ‘high quality, 21st century’ aspirational goals of the entire agreement, and therefore officials insisted from the beginning that all sectors had to be on the table for discussion and future liberalisation.

II TARIFFS AND HARMONIZED SYSTEM CODES

The first order of business for officials interested in opening up markets to one another was to reduce tariff levels. Tariffs can be thought of as a tax on imported goods. Although the countries in the TPP negotiations have generally low tariff levels, some products are protected by a variety of mechanisms, including high tariffs for specific items or quantitative restrictions.
Goods are arranged into different categories using ‘Harmonized System’ (HS) codes. HS codes can be thought of as a sorting system, with the greatest number of products bundled together at the two-digit level and more finely detailed information on products included as the number of digits increases. As an example, edible fruits and nuts are found at the two-digit level, at HS chapter 08. Citrus fruit, fresh or dried, are given the code 0805, at the four-digit level. Digging down further, at six digits, 080510, is fresh oranges. At this level of detail, goods are divided into over 5000 groups using six-digit HS codes.

Each of these categories is assigned a particular tariff rate. For example, the tariff rate on code HS080510, fresh oranges, in the United States is 1.9¢ per kilogram. Oranges are subject to a most favoured nation (MFN) six per cent ad valorem duty for Peru, but enter duty free (zero tariff) into Australia, Canada, Malaysia and Singapore.

For agricultural products, the specific HS codes are contained in HS chapters 1–24. Calculating the total number of tariff lines for agricultural products is surprisingly challenging. In part this is because every country has differing levels of existing tariff commitments in agriculture. Figure 6.1 shows the MFN applied tariff lines committed by the 11 TPP negotiating parties at the WTO and the wide variation among them – from Australia with only 755 lines to the United States with 1793.

Of course, it should be noted that commitments to bind tariffs at broader levels of specificity (at the six-digit level rather than the eight- or ten-digit level) actually includes more products. Recall the fresh oranges.
example. If Country A were to bind tariffs at 3 per cent at the two-digit chapter heading, all edible nuts and fruits would be included.

III AGRICULTURAL TARIFF LEVELS AT THE WTO

It is one thing to argue in the abstract for no exclusions from trade agreements. It is another thing entirely to sit down with partners and hammer out details for opening markets. Agricultural liberalisation in various fora to date has been limited and piecemeal.

Although the GATT has been successively lowering tariff barriers to trade in goods since 1948, agriculture was specifically excluded from the early rounds. In fact, agriculture was not brought into the multilateral trade system in a sustained way until the Uruguay Round of negotiations from 1986–93. The Uruguay Round’s Agreement on Agriculture\(^8\) (Agreement on Agriculture) was the first attempt to improve market access and remove trade-distorting subsidies in agriculture. These commitments

---

began in 1995 and were phased in over a six- to ten-year period. Even then, however, most members committed to only limited tariff binding. Figure 6.2 shows the WTO bound levels for the current TPP negotiating countries.

![Chart 2: Simple Average Final WTO Bound Tariff (2010)](chart2.png)

Figure 6.2 Simple average final WTO bound tariff (2010)

Applied tariffs – those tariffs actually used by countries on goods crossing their borders – are often substantially lower than the bound rate. Figure 6.3 shows the applied tariff rates for TPP negotiating parties.

---

9 Ten years for developing countries, less for developed country members.
10 Interestingly, Vietnam’s bindings are lower than for many other TPP negotiating parties. This is because Vietnam joined the WTO much later than other WTO member states (in 2007) and was subject to much greater disciplines on tariff levels than older members. However, as Figure 6.3 shows, Vietnam’s applied tariff levels are also higher than the rest on average, with levels nearly equal to the bound rates.
11 The applied rate must be lower than the bound rate (except for in certain, exceptional circumstances). The gap between the two is known in WTO-speak as ‘water’. A big part of the Doha Development Agenda negotiations is to reduce the ‘water’ currently in the system by lowering bound tariff rates.
countries. Note, however, how much higher, overall, the bound and applied rates are for agricultural goods versus industrial goods.\footnote{12 Some items that most individuals would ordinarily consider to be agricultural, including fish and forestry products, are included under the category of industrial goods.}

In fact, one of the ‘built-in’ agenda items for the current WTO negotiations in the Doha Development Agenda (DDA), started in November 2001, is agricultural trade, as WTO members recognised the limited extent of liberalisation in this area.\footnote{13 The other ‘built-in’ item was services trade, as WTO members also agreed that their early steps to open services trade were inadequate by the launch of the DDA in 2001.} Because nearly every country protects agriculture, and because it is such a sensitive topic, more than a decade of tough talks have not led to a breakthrough at the multilateral system. With such limited progress in agriculture, the rest of the WTO’s negotiating agenda has largely been stalled.

*Figure 6.3 Simple average WTO MFN applied tariff (2009)*

In fact, one of the ‘built-in’ agenda items for the current WTO negotiations in the Doha Development Agenda (DDA), started in November 2001, is agricultural trade, as WTO members recognised the limited extent of liberalisation in this area. Because nearly every country protects agriculture, and because it is such a sensitive topic, more than a decade of tough talks have not led to a breakthrough at the multilateral system. With such limited progress in agriculture, the rest of the WTO’s negotiating agenda has largely been stalled.

\footnote{12 Some items that most individuals would ordinarily consider to be agricultural, including fish and forestry products, are included under the category of industrial goods.}

\footnote{13 The other ‘built-in’ item was services trade, as WTO members also agreed that their early steps to open services trade were inadequate by the launch of the DDA in 2001.}
In addition to overall high tariff rates, agricultural producers often face what are called ‘tariff peaks’. This is where tariffs overall are generally low, but in one particular segment of trade, tariffs suddenly shoot up very high. Figures 6.4 and 6.5 offer two views of the same data of TPP members. A close examination of the figures shows clearly the tariff peaks for Canadian dairy and Mexican sugar products, which are discussed in greater detail below. In fact, these figures actually understate the tariff peaks, as both figures show applied tariff rates rather than bound rates, which are even higher.

Tariff peaks are much more significant in agricultural goods than for industrial goods, largely because eight prior rounds of tariff cuts via the GATT/WTO have brought down industrial goods tariffs quite substantially. As bound rates fall, applied rates also must fall to levels below bound rates. These tariff peaks, as we shall see, have been a particular challenge in the TPP negotiations.

Figure 6.4  WTO Applied Tariff Rates (2009)

Tariff peaks have also been vexing at the multilateral level. They are a big part of the stumbling block in the agricultural negotiations at the DDA negotiations. Because many governments were eager to create a system to reduce not just overall tariff levels but also begin to reduce
these tariff peaks, officials in the WTO began to rethink their previous approaches to market access negotiations. In past rounds, countries bargained using what is called a ‘request–offer’ system. Simplified greatly, it meant that Country A would offer to reduce tariffs on, for example, chicken legs in exchange for tariff reductions on, for example, fresh oranges from Country B. If this deal was accepted by both parties, it was locked in and eventually extended to all WTO members using the MFN clause – granting all WTO members the same tariff rate on chicken legs from Country A and fresh oranges from Country B.

But request–offer is a poor mechanism for eliminating or significantly reducing tariff peaks. If a country maintained a tariff of something extremely high, like 500 per cent on an item, in request–offer it might be cut to only 450 per cent. So officials developed a new method for reducing tariffs called ‘formula cuts’. This would have the advantage of mowing down tariff peaks substantially in one single process without the need to painfully negotiate each line separately. In fact, done right, it would actually reduce tariff peaks more substantially than remaining tariffs. So officials in Geneva spent years haggling over the exact formula needed to carry out this initiative. This was complicated by the need to
ensure that developing countries maintained special and differential treatment from developed economies. It also needed to ensure that new members would not find themselves subject to new cuts soon after joining, since their tariffs were already bound at comparatively low levels.

In July 2008 the DDA negotiations came tantalisingly close to conclusion. Officials got close to agreement on a specific set of formulas that could be used in the agriculture talks of the DDA.\footnote{See The July 2008 Package (2008) World Trade Organization <http://www.wto.org/english/tratop_e/dda_e/meet08_e.htm>. This document was later revised by Crawford Falconer, the chair of the agriculture negotiations, in December 2008: see Chairperson’s Texts 2008 (9 December 2008) World Trade Organization <http://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm>.} However, the round broke down before any country had to try to justify the use of the formula to their domestic audiences in detail, so we may never know whether or not it would have worked as promised.

IV AGRICULTURE IN PTAS

It is against this somewhat bleak background of failure that many countries have turned to regional and bilateral negotiations. The proliferation of PTAs has been explosive, particularly in Asia, as Chapter 1 of this volume notes.

Under WTO rules, PTAs are required to cover ‘substantially all … trade’ between partners.\footnote{Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 April 1994, 1867 UNTS 3 (entered into force 1 January 1995), annex 1A (General Agreement on Tariffs and Trade 1994) 1867 UNTS 187, art XXIV:8(b). An exception is possible for agreements between developing country members under the Enabling Clause of the Tokyo Round: Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries, L/4903, BISD 26S/203 (28 November 1979).} Although members have never specified the thresholds for ‘substantially all’, in practice it means that PTAs that include at least one developed country member cannot simply carve out all of agricultural trade from an agreement; to do so would be to remove too great a percentage of trade between members. Instead, PTAs frequently avoid tariff reductions on some portion of trade in agricultural products. These sensitive sectors are ‘carved out’ of the final agreement that otherwise lowers barriers to trade between the parties.

As an illustration, Masahiro Kawai and Ganeshan Wignaraja have calculated that of the 58 PTAs concluded in Asia in 2010, only half had
what they called ‘comprehensive’ coverage of agricultural products. Yet the definition of comprehensive is, itself, rather weak. Comprehensive coverage means that at least 85 per cent of all product lines are included or covered, or that not more than 150 product lines were excluded from coverage. Given the often low levels of trade between parties in PTAs, it is conceivable that the entire sum of agricultural trade between them might be located within a handful of tariff lines alone. If these are excluded from coverage, even a ‘comprehensive’ agreement will bring no market opening benefits.

Further, of the 58 PTAs examined, 21 per cent had excluded or limited agricultural coverage, where agriculture was either carved out completely or had less than a total of 100 lines included in the agreement.

It is true that many of these 58 agreements under examination were not between TPP members or included only one TPP member. For example, the study included the agreement between the Republic of Korea (that is, South Korea – not party to TPP negotiations) and Chile (a TPP negotiating party). This ‘comprehensive’ agreement nevertheless excluded 21 products from the final agreement, including rice, apples and pears entering Korea and sugar and wheat entering Chile. Given the importance of these markets such exclusions could be significant. In 2010, Korea’s sixteenth largest imported commodity was rice. Of all of Korea’s top exports, refined sugar was third largest and sugar confectionary products were tenth largest. For Chile, in 2010, apples were the third largest export market and pears were the seventeenth largest. On the import side, Chile relied on refined sugar from overseas (Chile’s third largest imported commodity in 2010) and wheat (Chile’s seventh largest imported commodity).

Similar patterns can be found throughout other PTAs – key commodity imports and exports can be limited to just a very few tariff lines of interest. If these lines or sectors are excluded from the final PTA, the value of the market opening for agricultural products overall drops off significantly.


17 This is possible because many of the agreements were between developing country members and thus subject to lower thresholds for overall coverage under WTO rules. See n 15.

In general, Jo-Ann Crawford has found that out of 65 PTAs studied, more than half of the agricultural chapters exclude one or more products from liberalisation. The most frequently excluded products are HS chapters 17 (sugar), 21 (miscellaneous edible preparations), 22 (beverages), 10 (cereals), 4 (dairy products) and 2 (meat). The extent to which countries exclude products from PTA coverage varies from agreement to agreement, so Crawford argues that it does not appear that countries routinely exclude the same sectors or lines.

V AGRICULTURAL NEGOCIATIONS IN THE TPP

Given the configurations of the partners in the TPP, agricultural negotiations have not entirely lived up to past experiences as highlighted by Crawford. In the TPP, two countries, Brunei and Singapore, are largely net agricultural importers. Although several TPP negotiating parties have highly competitive agricultural export sectors, they do not compete fiercely between one another in markets for products such as rice, wheat, soybeans, corn or beverages. Thus, some of the typical areas of agricultural sensitivity were not going to be as challenging to negotiate.

In addition, the 11 TPP negotiating parties were already linked by a welter of existing PTA agreements, as noted in Chapter 1 of this volume. Although not all of these PTAs included complete – or even extensive – agricultural liberalisation, many of them did open markets further than existing WTO commitments. The previous negotiating experience also meant that for many TPP partners, officials already knew where the specific sensitivities were located.

This does not mean, of course, that agricultural negotiations in the TPP have been smooth. In addition to the highly contested issues of sugar and dairy, discussed in greater detail below, talks over agriculture have been structurally complex.


20 Chapter 21 of the HS codes includes extracts of coffee and tea, yeasts, mustards, ketchup, soy sauce, soup, and ice cream.

21 Singapore does have poultry and egg production for domestic consumption. It also exports some processed food products and beer.
Like the negotiations over market access in industrial goods, agricultural discussions have been taking place within the TPP in two parallel tracks. On one side are ‘plurilateral’ discussions between most of the TPP members. On the other side are a set of bilateral discussions between the United States and Peru with those partners who do not already have existing bilateral PTAs. These two separate tracks will cover goods commitments for each of the TPP partners from the date of entry into force of the agreement through the implementation period. Once the agreement has been fully phased in the two tracks should come into alignment.

Under both tracks, officials were negotiating for 90 per cent of all lines for goods to fall to zero tariffs on entry into force. Roughly 8 per cent of the remaining tariff lines would go to zero by the end of implementation (10 years for developing countries). The remaining 1–2 per cent of the lines are still under discussion after three years of negotiations. This formulation, however, applied to all goods trade. Agricultural goods are likely to make up a greater share of the transition lines.

This two-track approach to negotiations adds an extra layer of complexity to an already tricky situation. Why did the United States (in particular) insist on bilateral discussions? The reasoning, in brief, was
that this was deemed to give better benefits to firms already conducting business in TPP negotiating states.\textsuperscript{26} In an environment of overlapping PTAs, many firms already receive preferential tariff rates, lower than WTO bound rates and often much lower than WTO applied rates. However, the TPP plurilateral track for market access started with WTO bound rates as the baseline for tariff reductions and cut down from there. This, argued the United States, would have severely disadvantaged firms in the interim period who could have seen tariff rates go up under the TPP in the early years instead of down. Using the bilateral track negotiations ensured that the United States’ exporters would enjoy tariff advantages from the TPP from the very beginning of the agreement relative to the status quo under either any existing PTA agreements or no agreement at all. It also complicated the bargaining and ensured a more complex environment, overall, for businesses in the TPP in the transition period.

VI REMAINING SENSITIVE ISSUES

The bilateral track negotiations have largely been conducted behind closed doors, even within the TPP rounds. Only officials of countries actively engaged in the market access discussions with the United States have been privy to the content of the offers on the table. This means that there may be a few agricultural items of sensitivity to one or two TPP members that are not discussed here.

In general, however, the most contentious sectors for TPP members in agricultural trade have been sugar and dairy. This is not unusual. Linda Fulponi, Matthew Shearer and Juliana Almeida note that these two industries have almost never been completely liberalised in any of the 50 PTAs they studied.\textsuperscript{27}

Sugar is a problem for the TPP in multiple ways. In general, the sector is highly sensitive. In the United States, protection of the industry began in earnest during the Depression and has never been relaxed. As a result, United States consumers have paid two to three times the world price for


sugar for decades. Yet efforts to roll back the various types of support for the sugar industry over the years have all been defeated.

In the ‘P4 agreement’ between Brunei, Chile, New Zealand and Singapore that formed the basis for the TPP, sugar received the only sector-specific provision in the goods agreement. Chile got a special agricultural safeguard mechanism, ‘the sugar treatment’, to prevent disruptive surges in sugar imports. Under the North American Free Trade Agreement (NAFTA), one of the last items to be liberalised between the parties was sugar after a 14-year wait. Sugar is sensitive not only in the United States, but also in Mexico.

There is also a specific problem for sugar rooted in the complex TPP negotiating environment. This is because sugar was completely carved out of the existing United States–Australia Free Trade Agreement (AUSFTA). It was carved out of the agreement at the time as part of a grand bargain that allowed the United States to continue to protect its domestic sugar producers and Australia to opt out of the investor–state dispute mechanism. The former was an important objective for Australia,

---

28 See, for example, the estimates contained in ‘Employment Changes in U.S. Food Manufacturing: The Impact of Sugar Prices’ (Report, International Trade Administration, United States Department of Commerce, February 2006) <http://www.ita.doc.gov/media/Publications/pdf/sugar06.pdf>. The report goes on to note that 10,000 manufacturing jobs had been lost from sugar manufacturing jobs as well during the period 1997–2002 as a result of the high price of sugar.

29 Trans-Pacific Strategic Economic Partnership, Brunei Darussalam-Chile-New Zealand-Singapore, signed 18 July 2005 (Brunei Darussalam signed 2 August 2005) (entered into force 28 May 2006 (New Zealand and Singapore), 12 July 2006 (Brunei Darussalam), 8 November 2006 (Chile)).

30 New Zealand, however, noted that it only agreed to liberalisation of sugar products (in solid form, under HS code 1701) because it did not export such products to Chile. See New Zealand Ministry of Foreign Affairs and Trade, Trans-Pacific Strategic Economic Partnership Agreement: National Interest Analysis (July 2005) 8 <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/transpacific-sepa-nia.pdf>.

31 See above n 24.

32 The Mexican government, for example, provided over USD1 billion in loans to the domestic sugar industry in the early 2000s through the development bank, Financiera Nacional Azucarera SA. See Gary Clyde Hufbauer and Jeffrey Schott, NAFTA Revisited: Opportunities and Challenges (International Institute for Economics, 2005) 295.

while the latter was a key issue for the Americans. In the end, both sides compromised by excluding these two items from the final agreement.34

Now, however, the sugar exclusion has presented a new challenge to negotiators in the TPP. If sugar is included in the TPP, it will, in practical terms, negate the AUSFTA. In what has been largely perceived as a response to this problem, the United States developed its strategy of refusing to negotiate for new market access with any country with an existing free trade agreement.35

But excluding sugar from the TPP is problematic. It is not just difficult for trade in agriculture. Doing so would allow other countries to argue for excluding their own most sensitive agricultural items. Given the relatively limited economic trade involved between many TPP members, carving out sectors, as previously mentioned, could seriously erode the potential economic gains from the final agreement. It also flies in the face of the ‘no exclusions’ mantra present from the earliest days of the negotiations.

Finally, carving out a sector like sugar could lead to similar behaviour elsewhere in the agreement. Like the AUSFTA example, the exclusion of sugar might result in the carving out of automobiles or investor protections or intellectual property protections for pharmaceutical products. If each of the 11 TPP members were allowed to exclude their ‘favourite’ sensitive product, sector or issue from the final agreement, the result could be a significant step back from the liberalising goals sought from the beginning.

The other particularly problematic sector for agriculture negotiators is dairy. Again, this is a historically sensitive industry for many countries with a poor track record of liberalisation across the board. In the context of the TPP, three of the original negotiating parties have highly competitive dairy industries, including Australia, New Zealand and the United States (the specific challenges of Canadian dairy are discussed below).

34 For more detail on the history of the AUSFTA, see Ann Capling, All the Way with the USA (University of New South Wales Press, 2005).
35 This policy was modified slightly with the addition of Canada and Mexico at the negotiating table. The United States announced that it would refuse to negotiate with countries with market access commitments that were ‘not yet fully implemented’. See ‘USTR Seeks to Negotiate on Goods Access with NAFTA Partners in TPP’ (21 June 2012) 30(25) Inside US Trade (online). Since the AUSFTA has some tariffs on sugar and out-of-quota dairy commitments that remain until 2022, Australia was deemed to be ineligible for reopening market access commitments. Canadian concessions, however, could be sought, since the final NAFTA commitments were phased in by 2008.
New Zealand and the United States do not have an existing PTA. One of the biggest obstacles to completing a bilateral agreement in the past has been over issues in relation to dairy. The United States has had a variety of measures in place to protect dairy farmers, including subsidies for milk production and price supports for dairy and dairy products. These programs have been backed up historically by high tariffs and by tariff rate quotas to limit imports of dairy products.

The primary issue for American milk producers in the TPP negotiations has been that New Zealand’s dairy industry is viewed as a monopoly, with one firm (Fonterra) in control of 90 per cent of the market and substantial barriers to entry into the market. If the United States’ market were opened to competition through a PTA like the TPP, American dairy farmers have feared that New Zealand dairy producers will receive unfair competitive advantages. In addition to problems of

36 An earlier problem related to issues with New Zealand’s refusal to allow American nuclear vessels into New Zealand waters for refueling.

37 The WTO’s review of New Zealand in 2003 found that dairy was no longer a monopoly, but the company had exclusive licenses to export to some markets from 2010 onwards, Trade Policy Review: New Zealand, WTO Doc WT/TPR/S/115 (14 April 2003) (Report of the WTO Secretariat) section IV, 2. See Fonterra (USA), Inc, Submission No USTR-2009-0002-0045 to the Office of the United States Trade Representative, Request for Comments and Notice of Public Hearing Concerning Proposed Trans-Pacific Partnership Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, 11 March 2009, in which Fonterra (USA), Inc argued that the market in New Zealand was open for competition, with no government subsidies, import tariffs or quota restrictions. It also argued that the entire New Zealand dairy industry was smaller than that of California and that it was no more globally competitive than American dairy in various export markets.

38 The National Milk Producers Federation and US Dairy Export Council estimates that United States dairy producers would lose gross revenues of USD20 billion over the first ten years of a PTA: see National Milk Producers Federation, Oral Submission to the Office of the United States Trade Representative, 4 March 2009. Land O’Lakes was more careful, but urged the USTR to look carefully at New Zealand’s dairy industry for anti-competitive outcomes, see Land O’Lakes, Inc, Submission No USTR-2009-0002-0015 to the Office of the United States Trade Representative, Request for Comments and Notice of Public Hearing Concerning Proposed Trans-Pacific Partnership Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, 9 March 2009. The National Confectioners Association asked for immediate liberalisation of dairy from New Zealand, as it would bring about substantial benefits for their producers, who were forced to manufacture sweets with the highest-priced sugar and dairy in the world: National Confectioners Association, Submission No USTR-2009-0002-0024 to the Office of the United States Trade
direct competition, a TPP agreement that included dairy would undermine some important gains from trade as, for example, New Zealand and Australia would become more competitive in the Peruvian market (with which neither state had a PTA in place).

These concerns were echoed by the US Dairy Export Council. The Council noted its support for nearly all other PTAs, stemming from the experience with NAFTA, where Mexico became the single largest destination for United States’ dairy exports. The United States’ export market used to be driven primarily by the sale of government stockpiles and subsidised products, but export markets have become increasingly important for domestic producers. Given the export-oriented structure of the dairy industry in New Zealand, and the size of the United States’ market, it is likely, the Council argued, that much of the New Zealand production would be directed at the United States.

Representative John McHugh wrote to the United States Trade Representative (USTR) that:

the New Zealand dairy industry has the ability to flood our market with new imports, including such dairy products as cheese, milk proteins, butter fat, and dairy food preparations. These actions would likely result in the closure of thousands of small and medium-sized American dairy farmers, and negatively impact hundreds of rural manufacturers.

After three years, the United States and New Zealand had made only the most limited steps towards resolving the issues over dairy in their bilateral market access talks. Both sides acknowledged that dairy was likely to fall into the final end-game package for the TPP as a whole.

Representative, Request for Comments and Notice of Public Hearing Concerning Proposed Trans-Pacific Partnership Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, 10 March 2009.

39 This is happening in any case, as New Zealand dairy exports rose from $454 million in 2004 to $704 million in 2008. See US Dairy Export Council, Submission No USTR-2009-0002-0012 to the Office of the United States Trade Representative, Request for Comments and Notice of Public Hearing Concerning Proposed Trans-Pacific Partnership Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam, 10 March 2009.

40 Ibid.


43 ‘U.S. Negotiator Sees New Zealand Dairy Talks as Part of TPP End Game’ (13 September 2012) 30(37) Inside US Trade (online).
However, the calculus on dairy has changed somewhat with the addition of Canada and Mexico to the negotiating table with the 15th round of TPP negotiations in late 2012. In particular, United States dairy producers have the potential for greater market access into Canada, which might offset any losses inflicted by New Zealand farmers.

It was largely issues with dairy that derailed Canadian entry into the TPP for more than two years. Canadian officials originally approached TPP negotiating states in 2009–10 to request the bilateral consultations that precede any entry decision. Although officials have been coy about the results of these meetings, Canada was not granted entry at that time.44 The primary reason for rejection centred on the obstacles posed by Canadian unwillingness to discuss its supply management systems for dairy and poultry in the context of the TPP.

Canada has a long-standing set of practices in place to encourage the growth and development of its domestic dairy, poultry and egg farmers.45 This system was deemed necessary to protect Canadian farmers against competitive pressures from countries south of its border. The supply management system includes setting a floor price and tariff peaks on dairy that are as high as 300 per cent.

Under Canada’s existing PTAs the supply management system for dairy (and poultry) has remained intact.46 In fact, even under the fully implemented NAFTA agreement, Canada continued to have less than free trade in dairy for American and Mexican producers. This has given rise to the potential for substantial changes in Canadian policy going forward that may have an impact on trade levels in dairy with other TPP partners.

VII TARIFF RATE QUOTAS

Unlike industrial goods, negotiators in agriculture also have to address another peculiarity in the system: the tariff rate quota (TRQ). Because

44 Interviews with TPP officials.
45 Approximately 13,000 dairy farmers participate in supply management, with the bulk of them located in Quebec and Ontario.
46 Although a somewhat similar system for wheat was dismantled, TPP members were closely following the ongoing talks between Canada and the European Union (EU), under the assumption that supply management was likely on the table in that PTA, which was expected to conclude before the TPP.
agriculture has historically been so sensitive, repeated rounds of negotiations under the GATT largely left agricultural products uncovered. In the Uruguay Round talks, officials decided to include agriculture for the first time.

Up until this point, states had protected agriculture by a combination of high tariffs and non-tariff barriers, especially in the form of quotas. In order to properly address these barriers, officials created a system to translate non-tariff barriers into tariff terms. Over time, officials expected that barriers to trade in agricultural products would fall, just as other tariff barriers to trade have fallen in repeated rounds of negotiations.

Under the TRQ system, products were generally assigned two tariff rates and a specified quantity of imports allowed. The first, lower, tariff rate would apply for all imports of products up the quota. A second rate (frequently much higher) would apply for all imports above the quota.47 The Agreement on Agriculture established over 1425 TRQs, mostly used by developed economies. TRQs can be set up as ‘supplier tariff quotas’, or are country-specific rather than being open for imports from all WTO member states.48

TRQs have been used in PTA negotiations. For example, under the United States–Peru free trade agreement, the United States provided Peru with a 9000 ton sugar TRQ and an additional 2000 ton TRQ for specialty sugar.49 This allows Peruvian exporters to ship up to 9000 tons of sugar per year to the United States, provided that Peru is a net exporter of sugar and that the United States does not choose to invoke its right to provide compensation in lieu of accepting imports.50 The 9001st ton of sugar exported by Peru is subject to significantly higher tariff rates.

TRQs, in general, often cover the same sensitive issues as those sheltered by tariff peaks or subject to limited tariff reductions under

47 If the second, out-of-quota, tariff is set high enough the entire formula effectively reduces to an import quota.
48 This allows discrimination to take place within the WTO. Note that TRQs have been the subject of many disagreements and disputes in the WTO system, particularly about the methods of determining country-specific quotas and the non-transparent administration of some country’s systems.
49 The former quota also expands at 2 per cent simple annual growth per year, while the latter does not expand over time with growth. See United States Department of Agriculture, Fact Sheet: U.S.–Peru Trade Promotion Agreement (September 2009) <http://www.fas.usda.gov/info/factsheets/Peru/PeruTPA-09.pdf>.
50 The exceptions to the TRQ shown in this example highlight both the complexity of the TRQ administration as well as some of the mechanisms that can be used to prevent imports.
PTAs, including dairy and sugar. After three years of negotiations, TPP officials had not yet gotten into the details of how to resolve the problems of existing TRQs; nor have they decided whether TRQs would be allowed in the TPP itself. Both of these issues are extremely difficult to resolve. If, for example, Peru has already been granted a TRQ of 9000 tons on sugar in the United States–Peru bilateral agreement, what will happen to this quota under the TPP? If the quota is altered under the bilateral TPP schedules between the United States and Peru, does it continue to exist into the future or will it get phased out over time? If it gets phased out, does it do so on the same schedule as the rest of the TPP agreement, or on a longer timetable?

In general, TRQs fly in the face of the ‘21st century, high quality’ \(^{51}\) rhetoric of the TPP. The explicit intention of the multilateral system from the outset was to make TRQs a temporary phenomenon, to be eliminated or converted to straight tariffs over time. To continue the practice of writing TRQs into the TPP suggests a path away from a ‘gold standard’ for future agreements, at least in this area.

VIII OTHER FACTORS AFFECTING TRADE IN AGRICULTURE

Tariffs are not the only issue of concern for assessing TPP outcomes in agriculture. For example, in any goods trade there is a tight connection between tariff levels and rules of origin (ROOs). As discussed in Chapter 2 in this volume, TPP officials have grappled with crafting an appropriate ROOs regime. It is possible to have completely open, duty-free access to the market for partner firms, but create such difficult ROOs that few products meet the criteria for origin. Thus, almost no firms will be able to claim the benefits originally promised by the duty-free access provisions. Conversely, it is possible to leave tariff levels relatively higher, but create liberal ROOs. Under this scenario, firms might find it easier to qualify their products as TPP-originating and be able to take advantage of the preferences offered to them in the agreement.

For agricultural products, ROOs often require goods to be ‘wholly originating’ in a member state. This means that the entire product must be ‘from’ a member country. Meeting this criterion is not difficult for commodities trade, as it involves products that are grown, harvested or

---

extracted, or animals that were born and raised completely within one country. For example, wheat or tomatoes can easily be seen to be wholly originating as they are grown entirely in one country. Something like sheep meat can also be wholly originating, assuming that the animal was born, raised and slaughtered within a member country.

However, processed agricultural products face a more difficult challenge, depending on the ROOs selected. Moving from raw agricultural products to finished goods such as biscuits or beer can make it harder to meet originating criteria. In part it depends on whether the rules require a change in the HS chapter heading used, which is often harder to reach for agricultural goods, particularly at the two-digit level. For example, to move from fresh oranges to orange juice is a shift from HS chapter 08 to chapter 02. However, if a firm wanted to peel imported fresh oranges and export the peels, this only shifts the HS code at the six-digit level from 080510 to 081400. It does not change the tariff code at the two-digit level and would not qualify for TPP partner preferential rates under these ROOs.

Another ROOs issue that applies particularly to processed agricultural goods is the level of cumulation allowed, as discussed in greater detail in Chapter 2 of this volume. Lower levels of cumulation make it easier, all else being equal, for firms to export agricultural products to other TPP member countries using the tariff preferences in the agreement.

Another area of deep concern for agricultural exporters is the extent to which the TPP sets new sanitary and phytosanitary (SPS) rules. SPS provisions ensure that countries are not using arbitrary health or safety concerns as disguised means of protecting markets. Generally, PTA members agree to abide by certain organisational standards for setting food safety, and animal and plant health rules. For instance, parties may pledge to use the Food and Agriculture Organization’s International Plant Protection Convention as the basis for plant health provisions. PTAs may also contain agreements on mechanisms for certifying that measures used in one partner are equivalent to measures in another partner.

---


53 Opened for signature 6 December 1951, 150 UNTS 67 (entered into force 3 April 1952).

54 Other typical PTA provisions include risk assessment, risk management, border checks, laboratory testing, the development of enquiry points for transparency in regulations, and often cooperation agreements.
The WTO has rules in place for SPS measures, but TPP members have discussed going further and setting up new provisions beyond WTO commitments. These new provisions could include harmonising regulations between TPP members directly as well as greater scope in recognising equivalence and mutual recognition agreements.

Equally contentious in the TPP negotiations have been debates about whether or not any new SPS provisions ought to be legally binding and subject to enforcement under the TPP dispute settlement mechanism. For some exporters, new SPS provisions are only meaningful if they come with the ‘teeth’ of being legally binding. This is particularly true since new rules cannot be adjudicated in the WTO as they go beyond WTO commitments.

IX WHAT ABOUT JAPAN?

Conspicuously absent from the 11 TPP member list is any mention of Japan. This is in spite of several years of discussion of possible Japanese participation, Japan’s bilateral dialogues with negotiating states, and even optimistic statements of membership from Japan’s prime ministers.55

The payoffs from Japanese membership in the TPP are potentially very large. Although many of the current TPP members already have existing PTAs between themselves, many are not well connected to Japan. Bringing the world’s third-largest economy into the agreement would have substantial economic benefits for participants. Japanese gains from TPP entry are also likely to be significant, as Peter Petri, Michael Plummer and Fan Zhai suggest.56

However, the single biggest obstacle to Japanese participation has been agricultural concerns within Japan. The most obvious impediment to joining has been the historically high levels of protection offered to

55 Including, most notably, a statement of intent issued by Prime Minister Noda in November 2011 in conjunction with the Asia-Pacific Economic Cooperation Leader’s Meeting, see Prime Minister Yoshihiko Noda, ‘Opening Statement by Prime Minister Yoshihiko Noda’ (Speech delivered at the 19th Asia-Pacific Economic Cooperation Economic Leaders’ Meeting, Honolulu, 13 November 2011); Prime Minister Yoshihiko Noda, ‘Policy Speech by Prime Minister Yoshihiko Noda to the 181st Session of the Diet’ (Speech delivered at the 181st Session of the Japanese Diet, Tokyo, 29 October 2012).

Japanese farmers. The political structure is tilted to provide heavier representation of rural areas. Although farming does not contribute much to Japan’s overall gross domestic product, the 2.5 million Japanese who farm full- or part-time are a formidable force, operating through the Japan Agriculture Group (JA Group). The most potent symbol of Japan’s protectionist farm policies is rice, which is sheltered behind rice tariffs that are higher than 700 per cent.

The JA Group has estimated that removal of tariff barriers to farm products would decimate Japan’s agricultural sector. Given that most farmers manage very small plots that are economically uncompetitive with the large agribusinesses in Australia, New Zealand and the United States (in particular), the JA Group predicts that up to 90 per cent of Japanese rice production would be wiped out, as well as 99 per cent of wheat production, nearly all sugar production, and most beef.

Many have argued that these figures are overblown. In addition, structural changes within Japanese agriculture are taking place regardless of whether Japan joins the TPP. The average age of Japan’s farmers is 65, with few young people opting for farming as a career. Many of the current farmers lose money and work only part-time on their plots. Japan’s consumers pay heavily for food protection and domestic farm support, including four times the average global price for rice; three times the global average for sugar, butter and beef; and twice the global average for wheat, according to government estimates.

Japan levies a 252 per cent tariff on imported wheat, 360 per cent on butter, 328 per cent on sugar and 38.5 per cent for beef. These tariffs, as well as the politically charged rice tariff, would likely have to go in the TPP. If not completely removed (over a probable long transition period), they are going to be subject to significant modifications for the first time under a PTA.

The debate within Japan about TPP membership has been heated. In the days leading up to the November 2011 Asia-Pacific Economic Cooperation (APEC) leaders’ meeting, hundreds of farmers gathered in

58 Ibid.
60 However, Japan is also moving forward with PTA negotiations with the EU, where some of the same product tariffs are likely to be up for discussion. The rice tariff might be less problematic in the EU agreement, as the EU does not also produce rice, unlike the TPP negotiating parties.
Tokyo for noisy demonstrations. Several even drove their tractors down the Ginza district in Tokyo to protest the government’s expected announcement of plans to join the TPP.\(^\text{61}\) Over 11 million people signed a petition urging the government not to join the agreement.\(^\text{62}\)

Japan is not alone in fearing the implications of far-reaching liberalisation in agriculture, however. The TPP is intended to expand to new members in the future. It is, officially, one of the paths to the future ‘Free Trade Area of the Asia Pacific’ that could encompass the 21 member economies of APEC. Whether the TPP ever succeeds in reaching this goal, or indeed expands any further at all, depends in part on the final deal reached in agriculture. Since every country has historically protected this sector, few political leaders are eager to throw open the gates to the farm completely.

Convincing sceptical officials and members of the public of the benefits of joining the TPP in the future will involve a large measure of overcoming fears of agricultural liberalisation and market opening. It requires showing the benefits of trade, particularly in the form of lower prices and greater choices for consumers.\(^\text{63}\) It may require help with building new export platforms. In the case of Japan, for example, it is likely that other TPP consumers would pay a premium price for the perfect apple or melon imported from Japan.

Opening up markets may also mean designing or modifying existing domestic level adjustment programs for the agriculture sector to move farmers into more competitive areas. The implementation periods granted under the TPP must be used wisely to help with the transition to more open markets.


\(^{62}\) The petition was signed by 365 members of the Japanese Diet and presented to the government on 10 November 2011, with the collected signatures of 11,668,809. See a copy of the petition posted online at: The Diet Petition for Opposing Japan’s Joining the TPP Negotiations (10 November 2011) Public Citizen <www.citizen.org/documents/japan-diet-petition-against-tpp.pdf>.

\(^{63}\) Although Japanese consumers are frequently described as being unwilling to eat non-Japanese food, nearly 60 per cent of Japan’s food needs are already imported: see Agriculture and Agri-Food Canada, Agri-food Consumer Profile: Japan (May 2011) <http://www.ats-sea.agr.gc.ca/asi/pdf/4150-eng.pdf>.
CONCLUSION

Opening markets via the TPP depends on two factors. First, officials must demonstrate that the TPP opens agricultural markets in a way that is comprehensive, deep and fair. Second, they must do so in a way that manages the profound sensitivities that many countries have in their farm industries and ensure that consumers, producers, and farmers believe that the way forward will be broadly better.

Opening markets under the TPP is not the same, of course, as opening markets to the globe. It merely guarantees improved access to the markets in partner countries. It does not promise that each country will benefit, or will benefit equally, from this new access. In agriculture, like all areas of the TPP, there will be some sectors in some countries that are poised for significant economic growth. Other producers will not fare so well. Consumers, overall, ought to benefit from a greater range of available products at lower prices, once the entire agreement is fully implemented.

Reaching this end state will require courage of conviction on the part of political leaders. It is not only farmers in Tokyo who are threatening to drive tractors through the streets to maintain their historical levels of farm protections. Facing down these demands, nevertheless, is important. An inability to do so would represent the clearest example of failure to reach the ‘21st century, high quality’ standard that leaders have promised to deliver in the Trans-Pacific Partnership Agreement.