

Will the TPP survive Congress?

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By Peter Clark

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ATLANTA — The Trans-Pacific Partnership negotiations have led to an agreement. The talks were declared finished and a success by the 12 participating countries after a marathon five-day ministerial meeting in Atlanta.

The final package delivered by the TPP Ministers is very extensive. Amb. Michael Froman, the US Trade Representative, said it is more than just an agreement in principle, and what comes next — the translation and scrubbing — are not negotiations. It is technical work.

The final differences which dogged the ministers in recent weeks and through the final blitz this weekend were addressed with a mix of ingenuity, pragmatism and co-operation.

The TPP is the farthest-reaching, largest trade deal in history. It is broader and deeper than the WTO Uruguay Round – more trade and issues coverage than NAFTA. While we have not seen the detailed text, there will be some aspects that will fall short of expectations. These do not diminish the importance or the impact of the achievement.

TPP must be seen as a glass half full, not a glass half empty. The agreement is transformational. It is cutting edge. It is the most important and impressive trade agreement since the Uruguay Round.

But now the tough work for many of the trade minister begins back home.

Concluding the agreement is just the first step, albeit a big one. It must now be implemented. It is not a perfect agreement. It is not as ambitious as its advance billing. No trade agreement ever is. Many are asking whether the deal is good enough to make it through Congress, which must approve or refuse passage with no amendments.

While many believe it is, an ornery Congress heading into an election year might not agree.

The difficult problems were left to the end, as they must in trade talks. And, with more than five years invested in the process, all 12 ministers ultimately accepted a definitive agreement. Another ‘Agreement in Principle’, which had been rumoured for much of the last 48 hours, would have been a colossal failure. Congress wanted an ambitious package. And President Barack Obama must table an agreement, a binding set of rights and obligations, to Congress. A set of concepts, objectives and landing zones is not enough.

The achievements are impressive – we will see the details and there will be gains and losses – but objectives are always set unrealistically high. As we predicted in November 2012, at the end of the day, this would be a negotiation about exclusions – and it was.

In the end, reality overtook ambition, as we expected it would, with some problems falling easily and others which could not be resolved being set aside. On some of the important sticking points — most notably data protection on biological medicines — it was not possible to reach consensus. So, in effect, the parties agreed to disagree and to allow those who couldn't move to keep their respective systems.

If ratified, the TPP gives Canada preferential access to TPP members on the other side of the Pacific. At first glance, there appear to be considerably more benefits for Canada than costs.

Canadians can expect anti-trade lobbies and labour groups to raise concerns, and reduced sovereignty is always an issue. But so too are jobs an important consideration, and increased trade and being in at the start of the trade pact, should create opportunities.

The world is getting smaller. There is no way Canada can survive employing isolationist policies. The WTO is not an option. The TPP can grow — to some of the bigger remaining markets in Asia.

The TPP Agreement deserves a full examination and debate in Canada. Its provisions and its implications for Canadians need to be understood. Governments, federal and provincial governments, must work together to ensure that Canada can maximize benefits — and to ensure that those who are disadvantaged or sideswiped in the process can be made whole.

The U.S. has driven the process. But Japan, the big prize for Canada and the US, has also shown leadership.

Every country made concessions to forge the deal, but the pressure will be on Froman to sell the deal in Washington.

The USTR made difficult decisions on biologics and tobacco. This will not sit well with some in Congress. There will be a tough selling job to Congress — if the agreement is to be passed in 2016.

The negotiations about dairy market access were resolved only at 5 a.m. Monday — just four hours before the final Press Conference. The National Milk Producers Federation (NMPF) is not sure whether they like the agreement until they see the details.

Many on the Democratic side of the House oppose the TPP. So does Presidential hopeful Senator Bernie Sanders. Influential Republicans are concerned too. Senator Orrin Hatch called the TPP woefully inadequate.

The knowledge-based pharmaceutical industry is not happy. They have strong Republican support.

Can this TPP Agreement be sold to Congress? This is not an easy question, particularly absent the details which define what it really means. Concerned lobbies with access to Senators or congressmen will lobby vocally for changes. Tobacco carve-outs will also be controversial and unpopular with Senate Republicans. Senator Mitch McConnell has already criticized the carve-out, but the absence of detail makes it more difficult to assess.

That said, Congress will certainly give the TPP serious consideration. It will begin its examination 60 days before President signs it. President Obama will notify Congress soon that he intends to sign the agreement starting the clock ticking towards the approval process.

It is conceivable that Congress will ask Froman to re-visit some of the provisions. But Froman and his team have given the entire agreement their best shot. On some issues, the US was isolated but Froman persisted.

Securing additional access to Japan's sensitive products would be difficult. It was quite clear during the weekend – indeed, it has been clear for years, that Chile and Peru were not prepared to move further on intellectual property issues related to pharmaceuticals.

Business interests in the US need to think carefully about the effects of outright opposition or only grudging, half-hearted support. The TPP is building bridges across the Pacific. It will support creation of infrastructure and business modernization. It can be a catalyst for growth and integration of supply lines.

Detractors should not take comfort in the possibility that Congress will reject this agreement. It is too important to the US economy and the economies of its neighbours on both sides of the Pacific.

The TPP economies must look outward for specialization and growth. If Congress recognizes its potential, the agreement will be implemented.

Rejecting the TPP in the current global trading environment would clearly be throwing out the baby with the bath water.

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