



# STANDARDS AND REGULATIONS IN THE TRANS-PACIFIC PARTNERSHIP AGREEMENT: Implications for India

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Written by Joshua P. Meltzer

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# Standards and Regulations in the Trans-Pacific Partnership Negotiations:

## Implications for India

Dr. Joshua P. Meltzer\*

### Introduction

The Trans-Pacific Partnership (TPP) negotiations are the most significant trade negotiations underway globally. The TPP is currently being negotiated by 12 countries, namely: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States (U.S.), and Vietnam. The total gross domestic product (GDP) of the TPP parties is approximately \$27.7 trillion, comprising 40 percent of global GDP and one third of world trade. For India, almost 25 percent of its exports go to TPP parties and total trade with TPP parties is worth over \$1.1tn.

The TPP builds on the so-called Pacific-4 (P4), a free trade agreement (FTA) between New Zealand, Chile, Singapore and Brunei that came into effect in 2006. In 2008, the Bush Administration notified Congress of its intention to join what became the TPP negotiations. Australia, Peru and Vietnam joined shortly thereafter, followed by Malaysia in October 2010. Canada and Mexico joined the TPP in June 2012 and Japan joined the TPP negotiations in July 2013.

Part 1 of this paper explains the economic importance of the TPP broadly and for India. Part 2 analyses the prospects for completing the TPP, the importance of the U.S. passing Trade Promotion Authority (TPA) legislation for concluding the TPP negotiations and when Congress might pass TPA. This part also outlines the key outstanding issues in the TPP negotiations. Parts 3-6 of the paper focus on the importance of TPP standards and regulations for India. Here, TPP rules on technical barriers to trade (TBT), sanitary and phytosanitary (SPS) standards, labour and the environment and the impact on India will be analysed in detail. Part 7 considers the trade policy implications of these TPP rules for India. Part 8 concludes with policy recommendations and Part 9 provides a summary in table form of the key impacts on India of the TPP approach to standards and regulations.

### Part 1: The Significance of the Trans-Pacific Partnership Negotiations

#### 1.1 Tariffs and Market Access

The TPP countries are important export destinations for a range of Indian products. For example, the U.S. alone is a destination for 48.5 percent of India's total exports of textiles and 24 percent of India's exports of apparel and clothing. In terms of agricultural products, over 40 percent of India's meat and offal exports and 25 percent of its fish exports are to TPP countries. Chemical exports to TPP countries are also significant, with over 25 percent of India's organic chemicals exports going to TPP Parties. A

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large portion of India’s manufactured and IT exports also go to TPP parties. For example, over 20 percent of electrical machinery and telecoms equipment and over 15 percent of optical and photographic exports are to TPP economies.

Average applied tariff rates amongst most TPP parties are, however, relatively low. For example, for non-agricultural products applied tariffs range from 2.3 percent for Canada to 8.3 percent for Vietnam. Tariff rates are higher for agricultural products, with average applied rates ranging from 1.2 percent for Australia to over 19 percent for Japan, with tariff peaks for certain products. TPP parties bound MFN rates under the WTO are, however, considerably higher. For instance, Mexico’s non-agricultural average applied tariff of 5.9 percent is bound at 34.8 percent and Malaysia’s average applied tariff on agricultural products of 8.9 percent is bound at 66.4 percent. This creates so-called water between the bound and applied tariff rates and gives these TPP countries the flexibility to raise tariffs to their bound rates while remaining consistent with their WTO commitments.

Though average tariffs are low, in certain sectors of particular export interest for India tariffs are relatively higher. This can be seen, for instance from Table 1 which provides the tariff profile for the three largest TPP markets, i.e. the U.S., Japan and Canada.

**Table 1. MFN and Peak Applied Tariffs in Selected Product Categories for U.S., Japan and Canada (%)**

<b>Product Category</b>	<b>U.S. Avg. Tariff</b>	<b>U.S. Peak Tariff</b>	<b>Japan Avg. Tariff</b>	<b>Japan Peak Tariff</b>	<b>Canada Avg. Tariff</b>	<b>Canada Peak Tariff</b>
Wood, Paper, etc.	0.5	16	0.9	10	1.0	18
Textiles	7.9	34	5.4	25	2.9	18
Clothing	11.6	32	9.0	13	16.5	18
Leather, Footwear, etc.	3.7	60	10.1	403	3.8	20
Non-Electrical Machinery	1.2	10	0	0	0.5	9.0
Electrical Machinery	1.4	15	0.1	5	1.1	9.0
Transport equipment	2.3	25	0	0	5.8	25
Manufactures, n.e.s.	2.2	39	1.2	8	2.5	16

Source: WTO

The ambition of the TPP parties is to reduce tariffs to zero. Such an outcome will create new market opportunities for a range of economic sectors in TPP countries. For example, lower U.S. tariffs on textiles should lead to increased exports from Vietnam and reduced tariffs and TRQs on agricultural products

will stimulate trade in these products. Table 1 above shows that in some of the areas of -interest for Indian exports, there will likely be trade diversion away from major markets participating in the TPP.

How successful the TPP parties are in reducing tariffs remains to be seen. Even an ambitious outcome will see tariffs phased out over time. That said, once achieved businesses in TPP countries will face lower tariffs than Indian companies in TPP markets. In addition, Indian business will continue to face the risk that applied tariff rates could be raised to their WTO bound levels.

## **1.2 Standards, Regulations and the TPP**

An important economic and trade benefit from participating in the TPP will derive from the reduction in non-tariff barriers (NTBs). Addressing NTBs in the TPP should not be understood as meaning less regulation.<sup>1</sup> The complex economies of highly developed countries such as the U.S. often demand more, not less, regulation. Businesses working with global supply chains also require standards to ensure the compatibility and quality of inputs, to track progress of multiple products and ensure that they are sourcing inputs that meet their health and safety goals. Businesses and governments are also developing new standards in areas of food safety in response to high profile cases of health risks from food such as BSG, which highlighted how trade can be a conduit for lower standards from countries of production.

To raise standards while improving market access outcomes, the TPP will focus on harmonizing standards and reducing the need for exporters to have their products tested twice - in the country of export and import. This will be achieved by reaching agreement on equivalency of standards, mutual recognition of conformity assessment reports and designation of conformity assessment bodies.

The TPP will also raise labour and environmental standards in the context of production and trade. U.S. ambition here is for the TPP to have “the strongest environmental and labour standards of any trade agreement in U.S. history.”<sup>2</sup> These standards will affect Indian businesses as they are applied along supply chains and used to regulate producer’s labour conditions and environmental practices.

As will be analysed below, the TPP will reduce the cost of NTBs for businesses in TPP countries, thereby increasing their competitiveness. Without further action by India, its exporters will face higher costs when exporting to TPP markets. To address this loss of competitiveness will require the Indian government to understand how the TPP will affect standards and regulations and to have a comprehensive strategy to deal with the impacts.

## **1.3 The Economic Impact of the TPP**

Almost 25 percent of India’s exports go to TPP parties, with total trade with TPP parties worth over \$1.1tn and this will increase as more countries join the TPP. This underscores the economic importance of TPP markets for India’s trade, growth and prosperity.

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<sup>1</sup> Speech by USTR Michael Froman to the Center for American Progress, Washington D.C., February 8, 2014

<sup>2</sup> Michael Froman (November/December 2014) *The Strategic Logic of Trade, New Rules of the Road for the Global Market Foreign Affairs*, 113

There are two ways for India to prepare for TPP. One is to become a party to the Agreement, which India is not currently considering and TPP countries would not likely accept. Another is to prepare for the changes that the TPP will have on international markets. This will enable India's exporters to remain competitive in TPP markets and it will prepare Indian businesses to link to global value chains under the new disciplines and requirements arising from the TPP.

The absence of India from the TPP will be costly. Generally speaking, the TPP will cause trade to divert to TPP countries and away from India. Various studies have sought to estimate the impact of the TPP on trade amongst TPP parties and the impact on non-TPP parties. Peter Petri and Michael Plummer for instance have estimated the benefits of the TPP at \$223bn per year and the costs to India of the TPP at \$2.7bn per year.<sup>3</sup> These costs are likely to be greater than the figures suggest due to the dynamic nature of the TPP as the number of parties to it increases. In addition, over time the TPP will lead to the alignment of standards amongst TPP parties which will reduce the costs for businesses in TPP countries and increase the costs for non-TPP parties such as India. Unless India businesses are able to adopt such TPP standards, this will also negatively affect their ability to participate in supply chains involving TPP countries (one of the main global supply chain hubs) as these TPP standards are applied along these supply chains. It is noteworthy that the U.S. and Japan are two of the four main supply chain hubs (EU and China being the other two) and the TTIP negotiations create opportunities to develop overlapping TPP and TTIP standards.

The economic impact of the TPP on India also needs to take into account India's existing FTAs as well as FTAs under negotiation. While the TPP is a major regional trade negotiation, it is not the only vehicle for trade liberalization. For instance, India is a party to the Regional Comprehensive Economic Partnership (RCEP) negotiations which includes ASEAN, China, Japan, Korea, Australia and New Zealand. India also has FTAs with TPP parties Chile and Singapore and is negotiating FTAs with Japan, Canada and Australia. These FTAs provide India with new market access that could partly offset some of the TPP costs and stimulate economic reform within India. However, it is generally agreed that the standards under TPP and TTIP will be higher than those under RCEP.

Another key benefit of participating in high standard trade agreements like the TPP is the trade liberalization and economic reform that participants implement and which increases their economies efficiency and productivity. From this perspective, another cost to India of not participating in the TPP is the missed economic reforms that India would undertake should it be a party to the TPP.

#### **1.4 Expanding the TPP**

The aim of the TPP is for it to become an Asia Pacific free trade agreement open to all APEC economies and fulfilling the APEC Bogor goal of a free trade area by 2020.<sup>4</sup> Already, South Korea, Thailand, Columbia, Taiwan and Panama have expressed interest in joining the TPP.

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<sup>3</sup> Peter A. Petri, Michael G. Plummer and Fan Zhai (2013) Adding Japan and Korea to the TPP

<sup>4</sup> APEC (1994), 1994 Leaders' Declaration at [http://www.apec.org/Meeting-Papers/Leaders-Declarations/1994/1994\\_aelm.aspx](http://www.apec.org/Meeting-Papers/Leaders-Declarations/1994/1994_aelm.aspx). Taiwan joined APEC in 1991.

The costs of the TPP on India will also grow as the number of parties to it expands. For example, adding Korea to the TPP is estimated to increase the agreement's economic benefits to \$295bn per annum and increase the costs to India to \$3.8bn annually.<sup>5</sup>

As an APEC member, China is also eligible to join the TPP. China's view of the TPP has developed from seeing it as containing China's rise to following it closely. Some within the Chinese government believe that China should consider joining. The U.S. has repeatedly said that China is welcome to join the TPP when it can demonstrate that it can live up to the high standards in the TPP. Should China join the TPP while India remains outside the agreement, this could reduce India's GDP by almost \$6.8bn annually.<sup>6</sup>

Once the TPP is concluded amongst the current 12 countries, joining the TPP will require an accession process. What this process will be remains under discussion in the negotiations. The most likely accession process will draw on the P4 approach and TPP parties experience with the accession process at the WTO and require each new country to agree market access terms with all current TPP parties and have the consent of all TPP parties before it can join.<sup>7</sup>

For countries interested in joining the TPP there are steps that can be taken to prepare. One such step is to negotiate a Bilateral Investment Treaty (BIT) with the U.S. It is noteworthy that China is presently negotiating investment agreements with both the U.S. and the EU and Taiwan's interest in negotiating a BIT with the U.S. is also in part driven by its desire to demonstrate its suitability to join the TPP. Any similar effort by India would require addressing difficult issues that would also arise during a TPP accession process such as on labour, environment and intellectual property (IP) rules. Successfully negotiating a BIT would also build confidence among TPP parties in the Indian government's ability to undertake the economic reforms that becoming a party to TPP would entail.

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<sup>5</sup> Petri, Plummer and Zhai, above note 3

<sup>6</sup> Inkyo Cheong and Jose Tongzon (2013) Comparing the Economic Impacts of the Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership *Asian Economic Papers* 12:2, 154

<sup>7</sup> Richard Bush and Joshua Meltzer (2014) Taiwan and the Trans-Pacific Partnership: preparing the way *Brookings East Asia Policy Paper* 3

## Part 2: Trade Promotion Authority and its Implications for the TPP Negotiations

### 2.1 The Importance of Trade Promotion Authority in the U.S. for Concluding the TPP Negotiations

Under the U.S. Constitution, Article 1 Section 8 gives Congress the ‘power to regulate commerce with foreign nations...’, and Article II gives the President exclusive authority to negotiate treaties. Pursuant to legislation – referred to as Trade Promotion Authority (TPA) – Congress delegates trade negotiating authority to the President (which is exercised by the United States Trade Representative (USTR)) and maintains its authority over trade policy by defining the negotiating objectives. Congress also agrees to vote on trade agreements in an expedited manner and to refrain from seeking amendments to treaties negotiated by the USTR. In return, the President is required to consult with Congress during the negotiations and notify Congress 90 days prior to signing an agreement.<sup>8</sup>

TPA was most recently granted in 2002 by the Trade Act, which expired in 2007.<sup>9</sup> The negotiating objectives in the 2002 Trade Act were updated by the so-called 2007 Bipartisan Trade Deal. USTR continues to follow the terms of the 2002 Trade Act and the Bipartisan Trade Deal in the TPP negotiations and their consultations with Congress.<sup>10</sup>

It is unlikely that TPP parties will be prepared to put their last best offer on the table in the absence of a renewed TPA. This reason is that without TPA, the other countries are not guaranteed that their best offers won’t be rejected by the U.S. Congress, requiring USTR to seek further concessions from TPP governments. A number of Congressional Republicans have also stated that they will not pass a finished TPP agreement before passing TPA.<sup>11</sup>

At the beginning of 2014 there was a serious effort to pass a TPA bill. In January that year, the Senate Finance Committee Chair Max Baucus (D) and the ranking party and Chair of the House Ways & Means Committee (Orin Hatch (R) and Dave Camp (R)) introduced the Bipartisan Congressional Trade Priorities Act of 2014. This bill reinforced the parameters of the 2002 Trade Act and the 2007 Bipartisan Trade Deal, which requires USTR to develop new rules in a number of areas such as IP, data protection, state-owned enterprises (SOEs), labor and the environment.<sup>12</sup> The 2014 Trade Priorities Act will also be the starting point for developing a TPA bill in 2015.

Momentum to pass a TPA bill in 2014 dissipated following appointment of then Senator Max Baucus as Ambassador to China in early 2014 and the decision by Harry Reid (Senate Leader) (and presumably with White House agreement) to avoid requiring Democrats to vote on legislation that could harm their election prospects in the Congressional elections that year. TPA was such a piece of legislation given

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<sup>8</sup> William H. Cooper (2014) Trade Promotion Authority and the Role of Congress in Trade Policy *Congressional Research Service Report for Congress No RL33743* at <http://www.fas.org/sgp/crs/misc/RL33743.pdf>

<sup>9</sup> HR 3009 Trade Act of 2002 (the ‘Trade Act’)

<sup>10</sup> Hornbeck and Cooper, above n 8

<sup>11</sup> Letter to USTR Michael Froman from Congressmen in the House Ways & Means Committee, July 17, 2014 [http://waysandmeans.house.gov/uploadedfiles/tpp\\_tpa\\_letter\\_final.pdf](http://waysandmeans.house.gov/uploadedfiles/tpp_tpa_letter_final.pdf)

<sup>12</sup> Bipartisan Agreement on Trade Policy, May 2007,

[http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset\\_upload\\_file127\\_11319.pdf](http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf)

opposition to trade agreements generally amongst some of the Democrat party's core supporters, such as organized labor.

Congress will seek to pass TPA in 2015, before Congressional attention and energy is absorbed by the 2016 Congressional and Presidential elections. To be successful it will require a decision by the House and Senate leadership that TPA is a priority as well as sustained White House attention and leadership. In parallel, the U.S. business community will need to actively support TPA.

## **2.2 Overview of Controversial TPP Issues**

The TPP is entering the final stages of the negotiations with the aim of concluding this year. The TPP has 29 chapters including on goods and services, investment competition, government procurement, IPR, TBT, SPS, labor, environment and dispute settlement. These chapters will have commitments that liberalize more deeply than occurs at the WTO and that address issues not subject to WTO commitments but are found in FTAs such as on investment, telecommunications and e-commerce. The TPP will also include rules on issues not yet addressed in the WTO or other FTAs, such as on supply-chains, data flows and regulatory coherence.

A number of difficult issues remain across the chapters. Settling these issues will require high level political attention in order to finalize. The following provides an overview of the key outstanding issues.

### *2.2.1 Market Access*

As a general rule when it comes to the market access side of the negotiations, the U.S. position is that it will not re-open market access discussions with countries it has an FTA with and that is still being implemented. This includes Australia, Chile, Peru and Singapore. The U.S., however, is engaging with Canada and Mexico to improve market access in sectors not fully liberalized under NAFTA.

As outlined above, TPP parties are aiming to reduce all their tariffs to zero. The most sensitive items will be phased out over a 10 year period, but tariffs on some sensitive agriculture products will remain. The outcome will however, lower tariffs barriers for TPP exports and thereby reduce the costs of these exports in TPP markets. This will make Indian exports to these markets relatively less competitive, likely leading to a loss in market share in TPP markets.

### *2.2.2 Agriculture*

A key area of negotiation remains the extent that Japan is willing to liberalize its agricultural sector. Japan is currently negotiating agricultural market access issues bilaterally with the US. A meaningful outcome in agriculture from Japan will lead other TPP countries to demand the same access. Progress on agriculture will also provide new opportunities for countries to liberalize other sectors as the overall benefits from a TPP package improves, increasing the scope for trade-offs across the agreement.

Since Japan joined the TPP it has insisted that five sectors be carved out from the TPP – rice, wheat and barley, dairy, sugar, pork and beef. When President Obama was in Tokyo in April 2014, both countries developed a roadmap to liberalize agriculture that included U.S. acceptance that full liberalization of

Japan's agriculture sector would not be achieved. Subsequently, members of Congress have written to Obama, stating that Japan's position on agriculture in the TPP is unacceptable.<sup>13</sup>

For the U.S., its position in agriculture in the negotiations balances between pushing for comprehensive liberalization while protecting its sugar industry in particular. On the offensive side, in addition to reducing Japan's agriculture protection, the U.S. wants Canada to liberalize its dairy sector, which is protected by tariff rate quotes.

Australia and New Zealand are also very focused on liberalizing agriculture tariffs. Amongst TPP countries, Australia and New Zealand have the lowest tariff rates on agriculture - 2.6% and 2.4% respectively. This reflects the competitiveness of agriculture in these countries and is certainly a concern for the U.S., Canada and Japan in terms of what lower tariffs rates are likely to mean for imports of agriculture products from these countries.

### 2.2.3 Intellectual Property

The IP rules remain a key area of interest for the U.S. and Japan in particular a source of continuing disagreement amongst the TPP parties. A leaked TPP IP chapter provides the best basis for assessing the key issues and what they would mean for India. First, a common commitment in previous U.S. FTAs and included in the leaked TPP IP chapter is that countries accede to and ratify a number of international IP agreements. These include agreement such as the International Convention for the Protection of New Varieties of Plants (1991), the WIPO Copyright Treaty (1996) and the Singapore Treaty on the Law of Trademarks (2006), all of which India is not a party to.

The following outlines the most controversial issues in the leaked TPP IP chapter:<sup>14</sup>

- Ever-greening: whether a patent can be issued on a drug that does not result in enhanced efficacy of a known product. India does not currently grant such patents.
- Data exclusivity for biologic drugs: would protect from use by generic drug companies the clinical test data that brand-name companies provide regulators to prove the safety of their drug. The U.S. has been pushing for 12 years of data exclusivity, consistent with its domestic laws. There is no data exclusivity provision in Indian law.
- Patent term extensions: where brand-name drug makers can have their patent terms extended to compensate for regulatory delays in getting a product to market. India does not grant such patent term extensions.
- Patent linkage: whereby regulators would agree not to give marketing approval to a generic until it had first given a patent holder, who believes the generic drug has infringe its IP, an opportunity to challenge the approval. India does not empower regulators to act in such a way.

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<sup>13</sup> Letter from 140 Members of the U.S. House of Representatives to President Obama at [http://waysandmeans.house.gov/uploadedfiles/tpp\\_market\\_access\\_letter.pdf](http://waysandmeans.house.gov/uploadedfiles/tpp_market_access_letter.pdf)

<sup>14</sup> The following analysis draws from Jayant Raghu Ram Crouching Tiger, Hidden Dragon: The TPP's IPR Chapter and Issues and Concerns for India *Working Paper by the Center for WTO Studies* WP/CWS/200/Rev.3, August 2014, 19-33

- Geographical Indications (GIs): the U.S., Australia and NZ position on GIs is to keep it limited to agriculture products, wine and spirits – a position they also hold in the WTO. Other countries that have FTAs with the EU such as Canada and Singapore are seeking stronger GI protections.
- Language on Copyright enforcement that strikes a balance between the rights and obligations of Internet Service Providers and the rights of content providers.
- Application of criminal penalties for trademark counterfeiting and copyright piracy. This is covered in the Anti-Counterfeiting Trade Agreement but the U.S. is proposing language that tracks KORUS and goes further by reducing the flexibility of authorities to decide when to enforce IPRs. India does not have in place laws that would authorize border seizures of the scope being discussed in the TPP.

There has been convergence around a U.S. proposal to allow developing countries to apply a lower level of IP protection before graduating to the common higher TPP standard. There is no agreement, however, on how to determine which countries are developing and the criteria for graduation. There is also no agreement yet on which IP standards would be lowered.

#### *2.2.4 State Owned Enterprises*

This is the first time that an FTA will include a SOE chapter, though previous FTAs have included some SOE disciplines dispersed across different chapters. The TPP will go further and require competitive neutrality of SOEs by ensuring SOEs are not given unfair competitive advantages through government support such as low interest loans, tax rebates and access to subsidies.

All TPP parties have SOEs, including the U.S. Though for some countries such as Vietnam in particular, but also Singapore and Malaysia, SOEs are particularly important economic actors. The rules on SOEs have been largely agreed and the focus has now shifted to negotiating carve-outs from the rules.

#### *2.2.5 Investor-State Dispute Settlement*

Whether to include investor-state dispute settlement (ISDS) as part of the investment chapter commitments remains an issue. Some countries such as Vietnam would prefer no ISDS provisions at all. Other countries such as Australia are prepared to accept ISDS with appropriate language that ensures legitimate government regulation cannot be subject to challenge.

The recent Canada-EU FTA has also shown a more cautious approach to ISDS. For instance, the FTA includes specific language on what constitutes legitimate government action that is not subject to the ISDS provisions.

#### *2.2.6 Exchange Rate*

Congress supports including currency provisions in the TPP.<sup>15</sup> The 2014 draft TPA bill also includes exchange rate provisions as a key negotiating objective for the TPP. The view of Congress is that

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<sup>15</sup> Senator Debbie Stabenow, “Sixty Senators Urge Administration to Crack Down on Currency Manipulation in TPP”, Press Release, June 6, 2013, [www.michaud.house.gov/press-release/majority-house-partys-push-obama-address-currency-manipulation-tpp](http://www.michaud.house.gov/press-release/majority-house-partys-push-obama-address-currency-manipulation-tpp).

undervalued exchange rates are export subsidies that should be subject to countervailing duties. So far, the focus is on Japan's exchange rate and recent concerns about the impact of its monetary easing on the Yen/US exchange rate.

The U.S. Administration is wary of including exchange rate provisions in the TPP. Some of the main concerns are that there is no accepted methodology for determining when an exchange rate is undervalued; exchange rates can devalue as a result of domestic monetary easing not aimed at reducing the costs of that country's exports, which could subject U.S. monetary policy to trade sanctions; and such provisions could be used for protectionist reasons – where the threat of countervailing duties creates risks for exports, reducing the value of trade liberalization.

### *2.2.7 Labor and Environment*

This paper will elaborate on the key issues in these chapters. There is significant agreement across the rules and the discussion is now on application of the TPP's dispute settlement mechanism.

### Part 3: The TPP Approach to Technical Barriers to Trade

Currently, the United States accounts for approximately \$16.8 trillion, or almost 60 per cent of TPP GDP.<sup>16</sup> The United States' economic size and strategic importance for other TPP parties means that its approach to the TPP will be the starting point for the negotiations and will significantly influence the outcome. It is also the case that the U.S. already has FTAs with six of the other 11 TPP countries and that the common rules already established in these FTAs will help convergence towards U.S. preferences amongst these countries on a range of issues.

The Korea-U.S. FTA (KORUS), signed in 2010 and passed by the U.S. Congress in 2011, entered into effect on 15 March 2012 and is the most recent FTA the U.S. has completed. As an FTA with a country in the Asia-Pacific and potential future TPP party,<sup>17</sup> KORUS provides the most relevant insight into how the U.S. has implemented the terms of the 2002 Trade Act and the Bipartisan Trade Deal. In addition, the recent FTA between Australia and Japan – the most ambitious FTA Japan has agreed - will guide these countries positions in the TPP negotiations. The Australia-New Zealand-ASEAN FTA entered into force in 2010 and as ASEAN's most comprehensive and trade liberalizing FTA, it has helped prepare those ASEAN countries participating in the TPP negotiations for the types of commitments expected in the TPP. Work in other forum such as APEC will also inform what the TPP parties seek from the negotiations.

The success of previous negotiating rounds under the GATT which lowered average tariff rates to 4 percent means that technical standards and regulations – so called behind-the-border measures - are often the most significant barriers to trade.

Standards play important roles in regulating economic activity. Standards can inform consumers of the safety of the products they purchase and reduce transaction costs for business by providing information on the product.

Standards and regulations can be developed by international standard setting bodies. Other standards are developed nationally but often have international trade impacts. This occurs as production is globalized and domestic standards are applied along global supply chains to ensure compliance with the domestic standard. As a result, exporters of goods and services that are integrated into global supply chains can find themselves having to comply with the domestic standards of the country of import. For large markets such as the U.S. and the EU, domestic standards can become de facto global norms as manufacturers and service suppliers from other countries comply with these standards.

Standards become NTBs when they create costs or barriers for exporters. Various studies have confirmed that NTBs increase the costs of exporting.<sup>18</sup> For instance, complying with specifications for parts used to produce manufactured goods, rules on food safety and hygiene and standards on

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<sup>16</sup> Direction of Trade Statistics and World Economic Outlook (2013) *International Monetary Fund*, <http://www.imf.org/external/data.htm>.

<sup>17</sup> Jeffrey Schott, Barbara Kotschwar and Julia Muir (2013) Understanding the Trans-Pacific Partnership *Peterson Institute for International Economics*, 45.

<sup>18</sup> Keith E. Maskus (2005) The Cost of Compliance with Product Standards for Firms in Developing Countries: An Econometric Study *World Bank Policy Research Paper 3590*

chemicals and drugs can require firms to adjust production processes to meet the importing country's standards. These changes are often costly and reduce the scope for exporting firms to take advantage of economies of scale as they are required to adjust production to meet different standards in different countries.<sup>19</sup>

The Indian government has identified manufacturing as a key economic sector for development that will include growing manufacturing exports and further deepening India's participation in global value chains.

Indian industry is increasingly integrated into global value chains, but India remains at the beginning of this process with much room for growth. The overall value add of foreign inputs into India's goods exports has been trending upwards, from only 11 percent foreign value add in 1995 to 22 percent in 2011.<sup>20</sup> That said, the foreign value add in Indian exports lags behind other developing countries including China, Malaysia and Vietnam, but is higher than South Africa, Indonesia and Brazil. Some economic sectors in India are already well integrated into value chains, such as shipbuilding, whereas other sectors such as textiles, drugs and medicines, chemicals, electrical equipment and basic metals are below the global average in terms of their participation in global supply chains.<sup>21</sup>

To develop India's participation in global value chains will require upgrading the capacity of industry to meet the production standards and regulations used by TPP governments as well as the private sector to coordinate and drive supply chains.

For example, India's textiles and clothing sector represents about 4 percent of GDP and 17 percent of exports, a majority of which go to TPP markets such as the U.S. and Japan. Growth in exports from this sector is limited by the costs to Indian businesses of complying with increasingly complex international and other private standards.<sup>22</sup> The TPP will further affect the development of such standards. At the same time, TPP countries such as Vietnam will be upgrading their industry's capacity to meet these standards in key export markets such as the U.S., placing further competitive pressures on Indian exports to TPP countries.

The TPP will include a range of rules on standards and regulations in TBT and SPS chapters. Rules on technical barriers to trade apply to standards and regulations that lay down product characteristics or their related processes and production methods. This includes labels and requirements that apply to products. SPS measures apply to the testing of products at the border for risks to human, animal and plant life or health. With regard to some agricultural products the TBT and SPS chapter could both apply. For instance, the TBT rules would apply to rules on the use of organic labels whereas testing of products at the border for pests or disease would be covered by the TPP's SPS chapter.

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<sup>19</sup> Silja Baller (2007) Trade Effects of Regional Standards Liberalization *World Bank Policy Research Working Paper 4124*

<sup>20</sup> B. N. Goldar et al (2014) Estimating Domestic Value Added and Foreign Content in India's Exports *Indian Council for Research on International Economic Relations*

<sup>21</sup> Ibid., 11

<sup>22</sup> Garry Gereffi & Stacey Frederick (2010) The Global Apparel Value Chain, Trade and the Crisis *World Bank Policy Research Paper No 5281*, 23

The TPP can be expected to reaffirm existing WTO TBT and SPS obligation and to go beyond these WTO commitments in a number of areas that are likely to have important implications for India's exports across a range of industries.

It is also important to keep in mind that another large U.S. FTA negotiation – the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the EU – will also focus on regulatory issues. The TTIP negotiations are an opportunity for the U.S. and EU to coordinate and develop common standards. For the U.S., as the TPP will conclude first it will be a floor to build on with the EU. This means that the impacts of standards on India from the TPP are likely to grow once TTIP concludes.

The following provides an overview of the TBT commitments to be expected in a TPP agreement and analyses what this might mean for Indian exports.

### **3.1 WTO Commitments on Standards and Regulations**

#### *3.1.1 Harmonizing to International Standards*

Harmonization of standards is one way to address the costs to exporters of having to otherwise meet diverse standards in countries of import. A key benefit for exporters of harmonized standards is the ability to produce to a single standard which reduces costs and allows producers to reap efficiencies from scale.<sup>23</sup>

The WTO TBT agreement encourages regulators to harmonize to international standards. For instance, where international standards exist, WTO Members must use them as a basis for their domestic standards and regulations unless the international standard would not be appropriate to achieving that government's legitimate goals.<sup>24</sup> Technical regulations that are in accordance with relevant international standards are presumed to be consistent with the WTO TBT Agreement.<sup>25</sup> WTO Members have also agreed to participate fully in the preparation by international standardizing bodies of international standards.<sup>26</sup>

The WTO TBT Agreement also seeks to avoid unnecessary regulatory diversity. To achieve this, WTO Members do not have to sacrifice the need to achieve legitimate objectives, but are required to pursue these legitimate goals using regulations that do not create unnecessary obstacles to trade.<sup>27</sup>

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<sup>23</sup> Jean-Christophe Maur and Ben Shepherd (2011) Product Standards in *Preferential Trade Agreement Policies for Development: A Handbook* (Jean-Christophe Maur & Ben Shepherd eds) The World Bank, Washington D.C., 205

<sup>24</sup> WTO TBT Article 2.4

<sup>25</sup> WTO TBT Article 2.5

<sup>26</sup> WTO TBT Article 2.6

<sup>27</sup> WTO TBT Article 2.2

### 3.1.2 *Equivalence of Standards*

Generally speaking harmonizing standards is often a lengthy and uncertain process. Each country's standards often reflect important local norms, cultural sensitivities and environmental factors. This can make it difficult to harmonize standards where this requires significant changes to the domestic standard.

Another way of reducing the costs of diverse standards that does not involve harmonization is to agree to recognize another countries standard as equivalent. Under the WTO TBT Agreement, WTO Members have agreed to give positive consideration to accepting other Member's regulations as equivalent, even if these regulations differ from their own.<sup>28</sup> Where a WTO Member recognizes another Member's regulation as equivalent, meeting the domestic standards is considered the same as meeting the importing country's standard. Where a WTO Member confers equivalence, the MFN commitment in TBT Article 2.1 requires it to also determine (upon request) whether other WTO Member regulations are also equivalent.

### 3.1.3 *Conformity Assessment Procedures*

Even if standards amongst WTO Members have been harmonized (or recognized as equivalent), exports still need to be tested to determine whether they conform with the applicable standards. Such testing usually happens in the country of export. To avoid further testing in the importing country requires it to recognize these test results.

The TBT Agreement defines conformity assessment procedures (CAPs) as, "any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled."<sup>29</sup> The WTO TBT Agreement includes commitments on acceptance of CAPs. At the central government level WTO Members have agreed to "ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted."<sup>30</sup> The TBT Agreement recognizes that there may be a need for consultation to determine whether another WTO Member's CAPs can be accepted.<sup>31</sup> WTO Members are also "encouraged" to enter into negotiations to conclude mutual recognition agreements (MRAs) for CAPs.<sup>32</sup> When it comes to local governments and non-government bodies, WTO Members agree to "take such reasonable steps as may be available to them", to ensure compliance with the above TBT commitments on CAPs.<sup>33</sup>

The WTO TBT Agreement requires WTO Members to provide imported goods with access to CAPs on national treatment and MFN terms, namely, no less favorable than the access to CAPs granted to domestic goods and to imported goods from any other country.<sup>34</sup> The TBT Agreement also specifies

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<sup>28</sup> WTO TBT Article 2.7

<sup>29</sup> WTO TBT Agreement Annex I.3

<sup>30</sup> WTO TBT Article 6.1

<sup>31</sup> WTO TBT Article 6.1

<sup>32</sup> WTO TBT Article 6.3

<sup>33</sup> WTO TBT Article 7.1, 8.1

<sup>34</sup> WTO TBT Article 5.1.1

how CAPs should be implemented, including with respect to their timeliness, access to information and fees.<sup>35</sup> Where there are international guides or recommendations on how to conduct CAPs, WTO Members are required to use them.<sup>36</sup>

## **3.2 Going beyond the WTO TBT Agreement**

### *3.2.1 Harmonizing Standards*

The TPP could include commitments to harmonize standards and develop international standards. Such a commitment should not raise significant costs for Indian business given India's existing WTO TBT commitments to do the same. In addition, India, through its participation in international standards bodies is able to shape the content of international standards.

The TPP, however, is unlikely to include more stringent commitments to harmonize domestic standards to international standards that already exist in the WTO TBT Agreement. This would be consistent with the U.S. approach of the U.S, Japan and Australia in its previous FTAs. That said, the TPP will still likely affect the development of international standard, but in other ways.

One way is by building trust and developing habits of cooperation amongst TPP regulators which can make future cooperation in the setting of international standards more likely. In this case, while India would still have an opportunity to influence the international standard setting process, it would need to contend with common positions amongst TPP parties that will represent a large share of world trade, making it more likely that India will increasingly become a taker of international standards.

TPP parties could also seek to harmonize standards amongst themselves. Such an outcome would be costly for India should such TPP standards diverge from international standards or cover areas not yet addressed by international standards. Indian exporters would need to meet these standards to sell into TPP markets. This would reduce the benefits from scale of producing to a single international standard and could require Indian exporters to retool their production processes, creating additional costs and reducing their competitiveness.

The TPP can also affect the development and use of private standards.<sup>37</sup> Private standards are increasingly prevalent across economic sectors such as food and agriculture, pharmaceutical products and ICT – markets of particular importance for India.

Private standards raise various issues for Indian exporters. For one, private standards are often more stringent than public standards or cover areas not yet addressed.<sup>38</sup> Private standards can also be protectionist. For example, the Swiss organic standard BioSuisse does not recognize products flown into

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<sup>35</sup> WTO TBT Agreement Article 5.2

<sup>36</sup> WTO TBT Agreement Article 5.4

<sup>37</sup> Dr Harsha Vardhana Singh, "Background Paper for Discussion" presented at a conference on the Trans-Pacific Partnership Agreement in New Delhi, 12 August 2014

<sup>38</sup> Spencer Henson & John Humphrey (2010) Understanding the Complexities of Private Standards in Global Agri-Food Chains as They Impact Developing Countries *Journal of Development Studies*, Vol. 46, No. 9, 1633

Switzerland, thereby favoring local produce. Private standards also often require significant documentation by firms in supply chains in order to demonstrate compliance, which raises costs.

Private standards are usually voluntary in that their use is not required by law and there are no penalties for non-compliance.<sup>39</sup> However, there are a number of ways that meeting private standards can become necessary in order to export to a TPP market. One way is when a TPP government adopts a private standard as a basis for public regulation.<sup>40</sup> For example, the U.S. Food and Drug Administration sets national public standards but works with the American National Standards Institute - a private non-profit organization - in developing and promulgating standards. In the EU the private standards organization the European Committee for Standardization designs standards that businesses follow in order to meet core European Commission standards.

Private standards can also become mandatory when public standards reference private standards, in effect bring compliance with private standards within their scope. For instance, in the U.S. the Hazards Analysis and Critical Control Point (HACCP) procedures was initially developed as a private food quality standard and is now part of U.S. federal regulatory requirements for meat products.

Private standards can also rely on government enforcement mechanisms. For instance, whether companies self-certify compliance with a private standard or need to be certified as in compliance, officially accredited conformity assessment bodies are often relied upon to provide this oversight.<sup>41</sup>

In addition, consumers may demand that products comply with a private standard. This is increasingly true in the food sector where large supermarket chains in developed countries insist that producers down the supply chain comply with their own standards on food safety, environmental sustainability and labor practices. This can make complying with relevant private standards a necessary condition to reaching consumers.

The TPP can increase the impact of private standards on the development of international standards, which would have direct implications for India given the central role of international standards in the WTO. Following the Appellate Body decision in *Tuna-Dolphin II*, the TPP itself could not become an international standards setting body as it is not open to all WTO Members “at every stage of standards development.”<sup>42</sup> However, the TPP can still affect international standards when governments adopt private standards and promote these standards as international standards.

The TPP could facilitate the transformation of private standards into de facto international standards when the U.S. uses private standards as a basis for its domestic standards. As the world’s largest economy and consumer market, standards developed in the U.S. often become global de facto norms. The textile and apparel sector is one example where this is happening. For example, the Worldwide

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<sup>39</sup> Maur and Shepherd, see above note 23, 199

<sup>40</sup> Garry Smith (2009) Interaction of Public and Private Standards in the Food Chain *OECD Food, Agriculture and Fisheries Papers, No. 15*, OECD Publishing 2009, 16

<sup>41</sup> *Ibid.*, 25

<sup>42</sup> WTO Appellate Body Decision, “United States-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products”, WT/DS381/AB/R, 16 May 2012, para 374

Responsible Accredited Production (WRAP) is a private sector driver organization in the U.S. representing over 85 percent of sewn products sold at wholesale in the U.S. WRAP accredits factories in the apparel industry according to their social responsibility that requires ethical working conditions. A more recent Code of Ethical Conduct now extends to industries in home furnishing and furniture. There are currently 173 factories in India with WRAP certification.<sup>43</sup>

Other countries have also joined with the U.S. to develop private standards regulating the textile sector. The Global Organic Textile (GOT) standard is a private standard prepared by member organization from the U.S., Japan and countries in Europe. This standard is becoming globally recognized with over 3000 textile manufacturers having been certified in over 60 countries. The GOT standard covers the entire supply chain from prohibiting use of GMO crops such as cotton, compliance with key ILO standards and the sustainable use of water and energy. This is also a standard where incorporation into the TPP could be extended to the TTIP, further building it into a de facto global norm.

The TPP will also lead to improved coordination amongst TPP parties' public and private standardizing bodies. The WTO TBT Agreement already allows participation in international standards bodies of both public and private entities and this was implicitly confirmed by the Appellate Body decision in Tuna-Dolphin II.<sup>44</sup> Commitments to cooperate to develop standards are something the U.S. and other TPP parties such as Australia and New Zealand have already agreed to in their FTAs.

Private international standard setting bodies such as the ISO have also developed processes to transform private standards developed in regional bodies into international standards. For instance, in the IT sector the Linux operating system was a private standard and is now a formal ISO/IEC standard.<sup>45</sup> The ISO has also built on private standards developed in areas such as environmental labelling to create ISO international standards. For instance, ISO9000 and ISO14000 are process standards dealing with quality and environmental standards. Through mechanisms such as this the TPP could be used to facilitate greater cooperation amongst domestic standard setting bodies that underpins the development of international standards.

In all of these situations, India would not be a participant in the process. Where the TPP leads to de facto global standards, these standards may not reflect the interests or needs of Indian companies and increase costs for India exports, reducing their competitiveness in TPP markets.

In the case of the TPP becoming a catalyst for developing international standards, India can seek to have its interests represented through its participation in the international standard setting process, which as discussed must be open to all WTO Members. The challenge for India here will be to develop the capacity to effectively represent the interests of Indian producers and consumers, particularly when TPP countries in these standards setting bodies are increasingly coordinated and their interests are aligned.

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<sup>43</sup> <http://www.wrapcompliance.org/wrap-facilities-worldwide> (visited on 12 November 2014)

<sup>44</sup> WTO Appellate Body Report, *United States-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, 16 May 2012, para 383

<sup>45</sup> International Standards Organization (200), *International Standards and Private Standards International Standards Organization*

India could make more coordinated and focused efforts to effectively represent itself in standards setting bodies.<sup>46</sup> This would require adequate funding for participation in meetings and enhancing expertise.<sup>47</sup> India needs to develop both the domestic processes to better determine its interests in terms of standard setting and to build the expertise and capacity and to be present at all relevant meetings. This will include working with TPP countries in the development of these standards as well as with non-TPP countries to ensure that India's interests are taken into account.

With the commercial conditions changing in the main markets abroad, the evolution of progressively higher standards reflecting in significant part the evolution of private standards means that Indian policy and production should prepare itself for the conditions emerging in the markets of TPP and TTIP economies.

### *3.2.2 Mutual Recognition of Conformity Assessment Procedures*

As discussed, access to and acceptance of CAPs is another important way of reducing the costs of having to produce to different standards. One way of doing this is through mutual recognition agreements (MRAs) whereby governments and their standard bodies agree to recognize in their own country the conformity assessment results conducted in the exporting country. Such an agreement would avoid the need for exports that were tested in the country of export having to be tested again in the country of import for conformity with the importing country's standards.

Often, MRAs include rules of origin (ROOs) that limit access to goods from countries not party to the MRA. In the case of the TPP, this could mean that MRAs between TPP parties would only be available for products produced in TPP party countries that satisfied applicable ROOs. As a result, Indian firms would not benefit from such agreements, creating an incentive for production to move to TPP countries in order to become eligible for these MRAs.

The TPP agreement can be expected to affirm the relevant WTO TBT Commitments on CAPs and go further. This is likely to include getting TPP party's conformity assessment bodies (CABs) which perform the CAPs to work more closely together. This can build trust which can further facilitate the willingness to accept an exporting country's CAPs. Still another way of recognizing the capacity of other TPP Parties CABs to perform CAPs would be to accredit that CAB. To improve recognition of CAPs and CABs, the TPP is likely to include the following commitments:

- Regular meetings amongst TPP CABs to exchange information and engage in consultations on these issues.
- Cooperation on accreditation of TPP party's CABs. This could be modeled on the KORUS FTA which includes commitments to cooperate on accreditation of CABs.

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<sup>46</sup> Outcome of Standards Conclave: A national strategy of standardization and constructive agenda of reform, Sangri-La Hotel, New Delhi, 16-17 April 2014, p. 35

<sup>47</sup> Id. 35

- Where a TPP party decides not to accept another TPP country's CAP a commitment to provide reasons for the decision. This approach was taken in KORUS<sup>48</sup> and the Australia-Japan FTA.<sup>49</sup> Requiring reason-giving will make it clear what reforms the exporting party needs to undertake in order for its CAP to be accepted. It will also make it difficult for countries to avoid accepting another country's CAPs for protectionist reasons. There is no similar commitment in the WTO TBT Agreement.
- Applying the conditions for recognizing CABs a national treatment and MFN basis. For instance, in KORUS the parties agreed that the terms for accrediting CABs in the other party would not be any less favorable than the terms used to "accredit, approve, license or otherwise recognize a conformity assessment body in its own territory."<sup>50</sup> In addition, the terms for accrediting CABs could be applied amongst TPP parties on an MFN basis

These outcomes would give TPP exports a competitive advantage over Indian exports in TPP markets, because the latter would still need to be tested in the TPP country of import. India could rely on the WTO TBT Agreement to facilitate the acceptance of its CAPs, however, this WTO obligation is only to "ensure wherever possible" acceptance by the importing country of CAPs, which does not create an obligation to do so. Moreover, the WTO TBT Agreements does not include commitments on CABs.

### **3.3 The Impact of the TPP on the WTO**

The WTO TBT Agreement also includes a goal to harmonize CAPs and requires WTO Members to pursue this in international standardizing bodies.<sup>51</sup> Efforts amongst TPP parties to improve the recognition of CAPs that builds understanding and trust amongst their CABs should also make it easier for TPP parties to develop common positions on harmonizing CAPs at the WTO. This is another way that India can be affected by the TPP, when it provides a basis for TPP parties to develop common positions that are then reflected at the WTO.

In addition, increasing commonality of CAPs amongst TPP parties is likely to exert an influence on how non-TPP countries such as India conduct their CAPs. This is because the TPP process for conducting CAPs, in addition to having the requisite technical capacity, will likely increasingly become a de facto standard for acceptance of CAPs in TPP countries. The impact this will have on India will depend on whether the standards for CAPs reflect Indian processes or require significant and costly changes.

The TPP will also seek to make progress reducing NTBs in specific sectors. This will likely involve a variety of approaches, including MRAs and recognition of the adequacy of other TPP parties' standards. The following is an overview of where the TPP could include sector specific commitments.

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<sup>48</sup> KORUS Article 9.5.3

<sup>49</sup> Australia-Japan FTA Article 6.6.3

<sup>50</sup> KORUS Article 9.4.3

<sup>51</sup> WTO TBT Agreement Article 5.5

### *3.3.1 Information and Communications Technology (ICT)*

ICT is an important export for India and sectoral progress here is possible in the TPP. Drawing on the approach of the U.S. and Korea in KORUS, the TPP could incorporate the APEC Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment (1998) (APEC-TEL). This MRA is open to all APEC economies and covers a range of telecommunications and telecommunications-related equipment such as wire and wireless, network terminal attachments, terrestrial and satellite equipment. It provides for the mutual recognition of CABs and mutual acceptance of the results of testing and equipment certification procedures undertaken by those bodies in assessing conformity of equipment to the importing economy's technical regulations.

### *3.3.2 Chemicals*

As outlined above, India's chemical exports to TPP countries are significant. This is another area where the TPP could build on the work in APEC and further develop MRAs. Specifically, the TPP could formalize the APEC Chemicals Dialogue and develop mutual recognition agreements amongst chemical regulators.

### *3.3.3 Autos*

Automobile issues are being negotiated bilaterally between the U.S. and Japan and it is likely that a sectoral commitment on automobiles will be agreed on a bilateral basis only. This could include agreement to more intensive discussion on proposed auto regulations.

Those sectors subject to specific TPP commitments will go further in terms of reducing trade costs arising from different standards and CAPS. As a result, in these sectors the TPP is likely to reduce even further the competitiveness of Indian exports in TPP markets.

## **3.4 Additional Procedural Commitments**

### *3.4.1 Transparency*

The TPP will include a range of TBT plus transparency commitments that will require TPP parties to publish their technical regulations, put them online and provide written comments that explain the goals of new technical regulations and amendments to existing ones. This will likely reflect a push by the U.S. for TPP parties to develop processes for making technical regulations that are similar to how the regulatory making process works in the U.S.

### *3.4.2 Publication*

TPP commitments on publication and notification are aimed at giving business and other stakeholders enough time to know of proposed regulations, and combined with the below commitments on process, an opportunity to try and minimize any negative impacts on trade. Some of the key TPP commitments to publish technical regulations that will be WTO TBT plus are likely to be as follows:

- To publish and notify all technical regulations of the central and local governments. The WTO TBT only requires publication of regulations that are not in accordance with international standards.<sup>52</sup>
- Provide an explanation of the objectives of a proposed regulation. The TBT agreement has no such commitment.
- To electronically transmit to the other TPP parties proposed technical regulations. This is an obligation to actively let other TPP parties know about proposed regulations. In contrast, the WTO TBT Agreement only includes a commitment to respond to reasonable inquiries by WTO parties about proposed regulations.<sup>53</sup> This is ineffective when other countries are unaware of new regulation.

These commitments are also being sought by the U.S. in the TTIP negotiations. Should the U.S. be successful and in combination with the TPP, this will go a long way towards developing de facto global norms in terms of how government regulatory process should engage with stakeholders. India is a democracy but will still need to update its domestic regulatory process to comply with these rules.

### 3.4.3 *The Regulatory Process*

In terms of the regulatory process, the TPP is likely to require the following:

- Agreement to open up the regulation making process to persons of other TPP parties including individuals, business and NGOs and on terms no less favorable than accorded to its domestic stakeholders.
- To publish all comments received on the proposed regulation

The U.S. demands on transparency in the TPP will apply to a range of other TPP chapters. The transparency rules will likely be supported by those TPP parties who have already made similar commitments in their FTAs with the United States. Once a country has agreed to follow particular procedures for making and implementing laws and to provide access to independent and impartial judicial proceedings, these procedures are usually applied to all laws and not just those required by the FTA, as it is often too difficult to apply transparency and due process requirements to some laws only. In this sense, transparency commitments in FTAs are de facto multilateral commitments. This should lead Australia and Chile, which have made similar commitments on transparency and due process in previous FTAs with the U.S., to support similar rules in all future trade agreements.

As a democracy with a rules-based transparent regulatory making process, much of the core aims of the TPP in promoting transparency should be familiar to India. That said, the TPP will include disciplines that will require the Indian government at the central and regional levels to become increasingly coordinated, timely and transparent. For instance, Indian state-level regulations would need to meet

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<sup>52</sup> WTO TBT Article 2.9 and Article 3.2

<sup>53</sup> WTO TBT Article 10.1

TPP commitments on publication and notification and online posting of proposed technical regulations in manner that is also timely. The objectives of proposed regulations would also need to be explained. It will also be a new step for Indian regulators to open up the regulatory process to other TPP parties and to publish comments on proposed regulations.

#### 3.4.4 Joint Cooperation

The TPP will also include a mechanism for ongoing cooperation amongst the TPP parties on TBT issues. The aim will be to increase trust amongst TPP government officials and regulators, which over time can help achieve recognition of CAPs and CABs. For instance, the KORUS includes commitments to identify, develop and promote trade facilitation initiatives on standards, technical regulations and conformity assessment procedures appropriate for particular sectors.<sup>54</sup> KORUS also includes a commitment that each Party will give “favorable consideration to a sector specific proposal” for further cooperation under the agreement.<sup>55</sup> Such commitments show how the U.S. uses FTAs as a living agreement to achieve greater cooperation and market opening over time. Such an approach will certainly figure in the TPP, which the parties see as a means to deepen commitments and economic integration over time.

As outlined above, these processes under the TPP that increase levels of trust, cooperation and goodwill will make common TPP positions on the range of regulatory issues increasingly likely. This will lead to similar approaches in international forum such as at the WTO and in international standards bodies. As a result, the impact of the TPP on India, both directly and through other forums such as the WTO, will be dynamic and increasingly significant over time. Failure of India to consider these changes and prepare for them will make the implications of TPP for India increasingly significant and costly to manage.

The TPP is also likely to include commitments that frame what constitutes “good regulatory practices”. This has been a topic of research and discussion in APEC. KORUS also developed the following set of good regulatory practices:<sup>56</sup>

- Serves clearly identified policy goals and is effective in achieving those goals
- Has a sound legal and empirical basis
- Takes into consideration the distribution of a regulations effects across society, taking economic, environmental, and social effects into account
- Minimizes costs and market distortions
- Promotes innovation through market incentives and goal-based approaches
- Is clear, simple and practical for users
- Is consistent with the Party’s other regulations and policies
- Is compatible as far as possible with domestic and international competition, trade and investment principles

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<sup>54</sup> KORUS. Article 9.4.1

<sup>55</sup> KORUS Article 9.4.2

<sup>56</sup> KORUS Article 9.10

Similar principles are likely to be included in the TPP and a number of elements of this definition of good regulatory practice will be of significance for India. For instance, requiring consistency amongst regulations is a goal India could likely support but in practice would require new levels of coordination amongst Indian government ministries and regulatory agencies at the Central level and would also require significantly more coordination between the Central and State governments.

These regulatory principles also include a preference for market incentives and goal-based approaches which if followed closely could limit India's regulatory options. For example, in terms of how India addresses air pollution issues, regulations that employ market incentives would seek to price the negative externality – the cost of the pollution – as a way to incentivize a socially optimal outcome. This could make it more difficult for India to address such an environmental problem with regulation that instead specifies the technology that the polluting industry should employ to minimize air pollution.

#### *3.4.5. The TPP TBT Committee*

In terms of formalizing interaction and cooperation amongst TPP parties, the TPP will also establish a committee that institutionalizes interaction amongst TPP governments on TBT issues. The committee will be responsible for reviewing and implementing the TPP TBT chapter, enhancing cooperation on developing CAPs, facilitating recognition of CABs, and exchanging information on technical standards and regulations. The TPP TBT Committee is also where the TPP parties can develop joint positions on TBT issues with respect to third parties and international organizations. This underscores the point made above that the costs for India of being outside the TPP needs to take into account that closer regulatory cooperation amongst TPP parties will also spill over into international organizations, including the WTO.

The broader point is that TPP disciplines are likely to reach deep into how TPP parties regulate and that these effects will grow over time. For India, this means three things. First, that with a consideration of a longer term goal of joining the TPP, India needs to start preparing its regulatory system now and to follow developments in TPP countries to ensure that the gap between India and the TPP world does not grow and make TPP accession increasingly difficult. Secondly, even without being a TPP party India will need to focus on such developments to maintain present levels of market access in TPP economies because as TPP party regulatory practices change and align over time, their regulatory practices will increasingly become de facto global standards. This will make it important that India's standard making processes are able to respond to these changes to minimize the costs of exporting to TPP markets. Finally, growing coordination amongst TPP parties will affect India as it spills-over into more common approaches at the WTO, in international standard setting bodies and even in global value chains and increasingly accepted market practices in major economies. This makes strategic engagement by the Indian government with international standards bodies particularly important.

#### Part 4: The TPP Approach to SPS Issues

Food standards are increasingly prevalent in developed country markets. This includes public and private standards that are responding to changing consumer expectations about the safety and quality of the food they consume. Moreover, such food standards can extend to sustainable agriculture practices and labor issues. For example EUROPGAP – a private European standard for the production of fresh fruit and vegetables - includes rules on worker health and wildlife conservation.

The SPS standards agreed in the TPP will impact India's agriculture exports. This is an important economic sector for India. With exports of over \$42bn it comprises almost 15 percent of India's total goods exports, larger than exports of chemicals and textiles.<sup>57</sup>

The U.S. is also one of India's key agriculture export markets. For example, it is a top five export destination for India's fruits and vegetable seeds, cucumbers, dried and preserved vegetables, other processed fruits and vegetables, natural honey, guar gum, cocoa products, cereals and milled products. India's export of agricultural products to other TPP parties is also significant. Japan is India's largest export market for eggs, Vietnam the largest market for buffalo meat, Malaysia is India's second largest market for fresh onions and Australia is India's third largest market for processed meat. This underlies the point that the impact of the TPP on the types of SPS standards and processes that TPP parties adopt could have a significant impact on Indian agriculture exports and the opportunities for export led growth in these sectors.

The application of higher SPS standards under the TPP will be strongly felt in the processed food sector as this is where demand is strongest in large developed markets such as the U.S. and where food health and safety standards have become the most stringent. The U.S. is the world's most sophisticated processed food market and is a world leader in terms of setting standards.<sup>58</sup> The trend in the U.S. market is towards increased consumption of processed food, with the majority of these foods having significant value add. This includes in terms of nutrition, safety, the sustainability of the food's production and whether it is organically produced.

Meeting these standards will present costs for India exporters. As the Kerala fish industry found, to meet EUROPGAP and sell into the EU required upgrading handling and processing facilities, estimated to cost up to 15 percent of total production costs.<sup>59</sup> Public food standards in the U.S. such as HACCP require adequate food safety management capacity that is extensive in scope.

The dairy sector is one area where the impact of these standards has already been felt. India is the world largest producer of milk yet has only a 1 percent share of the export market. Currently, most of India's exports of dairy products are to developing countries. According to a report by India's National

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<sup>57</sup> Reserve Bank of India foreign trade statistics, April 2013- March 2014

<sup>58</sup> "Enhancing firm level competitiveness, Indian food and agro processing industry", Report by Deloitte for the Government of India's National Manufacturing Competitiveness Council, August 2009

<sup>59</sup> Spencer Henson and Steven Jaffee (2006) Food Safety Standards and Trade: Enhancing Competitiveness and Avoiding Exclusion of Developing Countries *The European Journal of Development Research*, Vol. 18, No. 4, 2006, 606

Manufacturing Competitiveness Council, a key reason for the limited export success and focus of exports to developing countries is the failure by industry to comply with international food safety standards such as those in Codex but also privately developed international standards produced by ISO and HACCP.<sup>60</sup>

As will be outlined below in more detail, the TPP can be expected to lead to an upgrading of such standards. The capacity for India's food and agriculture sector to meet these standards will be key to their export success. This will require India to closely follow TPP developments and for government and industry to develop the capacity to meet these standards if India's agriculture exports are going to be sustained and to fully grasp their potential for growth.

#### **4.1 SPS Commitments in the WTO**

The WTO SPS Agreement includes disciplines that remain important for India but are limited in terms of helping India's business address the type of regulatory changes outlined above that the TPP can be expected to promote. In addition and as discussed below, the TPP will go beyond existing WTO commitments, reducing costs for TPP exporters and thereby affecting market access for Indian products in TPP markets.

The WTO SPS Agreement applies to any SPS measure that affects trade. An SPS measure is one that protects human, animal or plant life or health from pests, diseases and risks from their entry, establishment and spread.<sup>61</sup>

A key obligation under the WTO SPS Agreement is to base SPS measures on a risk assessment.<sup>62</sup> A measure is based on a risk assessment when there is an "objective relationship" between the risk assessment and the SPS measure.<sup>63</sup> Where there is insufficient science to conduct a risk assessment WTO Members can provisionally adopt an SPS measure based on available evidence.<sup>64</sup> SPS measures also must not arbitrarily or unjustifiably discriminate between WTO Members where identical or similar conditions prevail.

These WTO SPS Commitments limit the scope of WTO Members to adopt SPS measures for protectionist reasons. The requirement that SPS measures are based on a risk assessment seeks to distinguish legitimate SPS reasons from those aimed at protecting domestic industry. WTO SPS disputes such as the U.S. challenge to the EU ban on U.S. beef injected with hormones and the U.S. challenge to Japan's

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<sup>60</sup> Competitiveness Through Quality For Food Processing Industries in India, Adoption of Global Best Practices in Processed Milk & Dairy Products Industries", report by FICCI Quality Forum for the National Manufacturing Competitiveness Council, p. 16

<sup>61</sup> SPS Agreement Annex A

<sup>62</sup> SPS Agreement Article 2.2 and Article 5.1

<sup>63</sup> WTO Appellate Body Report, *Japan-Measures Affecting Agricultural Products II*, WT/DS76/AB/R, 22 February 1999, para 84

<sup>64</sup> SPS Agreement Article 5.7

restrictions on imports of apples gives confidence in the capacity of these rules and WTO dispute settlement to address such protectionism.<sup>65</sup>

The SPS Agreement also includes rules on the harmonization and use of international standards. Similar to the WTO TBT Agreement, the SPS Agreement includes obligations on WTO Members to base their SPS measures on international standards where they exist.<sup>66</sup> SPS measures that conform to international standards are presumed consistent with the SPS Agreement.<sup>67</sup> Where a WTO Member adopts an SPS measure that results in a higher level of SPS protection than the international standard, this SPS measure needs to be based on a risk assessment.<sup>68</sup> The WTO SPS Agreement identifies international standards as those standards produced by the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.<sup>69</sup> Other international standards must be produced by organizations “open for membership to all Members”.<sup>70</sup>

The SPS Agreement also includes commitments to accept the SPS measures of other WTO Members as equivalent if the exporting Member can demonstrate that its measure achieves the importing Member’s level of SPS protection.<sup>71</sup> Upon request, WTO Members are also required to enter into bilateral or multilateral consultations aimed at reaching agreement on the equivalence of SPS measures.<sup>72</sup>

These commitments do go some way to developing common SPS measures across the WTO Membership. However, even here WTO Members remain free to adopt their own SPS measure if no international standard exists or if the WTO Member requires a higher level of SPS protection than embodied in the international standard and is justified. In addition and as mentioned above, private standards are not subject to WTO rules. This is the case even though the development of private standards by large food retailers and processors – often in TPP (and TTIP) countries - can make compliance with them de facto mandatory if exporters want to sell into these markets.<sup>73</sup>

As outlined above, private standards also often influence the development of international standards. In both cases, Indian exporters would need to comply with these standards to access TPP markets with little recourse to the WTO to address the costs incurred.

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<sup>65</sup> WTO Appellate Body Report, “United States-Continued Suspension of Obligations in the EC-Hormones Dispute”, WT/DS320/AB/R, 16 October 2008; WTO Appellate Body Report, “Japan-Measures Affecting the Importation of Apples”, WT/DS245/AB/R, 26 November 2003

<sup>66</sup> SPS Agreement Article 3.1

<sup>67</sup> SPS Agreement Article 3.2

<sup>68</sup> SPS Agreement Article 3.3

<sup>69</sup> SPS Agreement Annex A.3

<sup>70</sup> SPS Agreement Annex A.3(d)

<sup>71</sup> WTO SPS Article 4.12

<sup>72</sup> WTO SPS Article 4.2

<sup>73</sup> Garry Smith, “Interaction of Public and Private Standards in the Food Chain”, OECD Food, Agriculture and Fisheries Papers, No. 15, OECD Publishing 2009, p. 4

## **4.2 Going beyond the WTO SPS Agreement**

The TPP is likely to reaffirm WTO SPS commitments and include WTO plus commitments on SPS measures. The focus of the TPP is likely to be less on the role of science and risk assessments as a basis for SPS measures as this is already adequately covered in the WTO. Instead, the TPP will focus on commitments to increase acceptance by WTO Members of the equivalence of their SPS measures. The rationale for this is similar in the WTO TBT Agreement, where recognizing the equivalence of the exporting countries SPS standards can avoid the need for products that meet these standards having to be tested again in the country of import, reducing costs of duplicate testing and time to market. This is particularly important for exports of perishable products where delays in time to market are particularly costly.

Making progress on the recognition of equivalence will likely be achieved within a TPP SPS Committee. This is the approach that the U.S. and other TPP parties have taken in previous FTAs. A TPP SPS Committee will be the focal point for increasing understanding amongst TPP parties and their regulators about how they manage risks that disease and pest pose to human animal and plant life or health. Commitments to meet and exchange information on these issues will increase mutual understanding amongst TPP regulators of how other TPP parties SPS standards achieve the same levels of SPS protection as well as the capacity of the regulators to assess compliance with these standards.

The absence of India from these arrangements means that India's exports of agricultural and food products that are subject to SPS standards will need to be tested in the country of import, a cost the other TPP agricultural exports will not face. In addition, absence of recognition of the equivalence of India's SPS standards could mean that Indian exporters need to produce to TPP party standards, which could further increase the costs of production. The TPP parties are also considering an expedited process for settling particular SPS disputes to reduce the impact of delays on perishable exports.

## **4.3 The Impact of the TPP on the WTO**

Similar to the way the TPP TBT commitments can affect WTO outcomes, the TPP SPS commitments will also influence the WTO. For instance, the Korea-U.S. and Columbia-U.S. FTAs include agreement to "consult on issues, positions and agenda for meetings of the WTO Committee on Sanitary and Phytosanitary Measures under the SPS Agreement."<sup>74</sup> This extends to coordinating positions in the range of international bodies recognized under the WTO SPS Agreement, namely the Codex Alimentarius Commission, the World Organization for Animal Health (OIE) and the International Plant Protection Convention.

The significance of this for India is that increasingly aligned positions on SPS measures amongst TPP parties could be translated into negotiating positions in the WTO as well as in international standard organizations dealing with SPS issues. As outlined above, the ability for TPP parties to influence the development of international standards will then require India under its WTO commitments to base its

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<sup>74</sup> Columbia-US FTA Article 6.3.4(e); Korea-US FTA Article 8.6(d)

SPS measures on these standards. In addition, the impact of the TPP on the WTO will grow as the number of TPP parties grows.

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## Part 5: The TPP Approach to Labor Standards

### 5.1 Labor Standards in the TPP

There are numerous ways that international labor standards can affect Indian exporters. For instance, some international process standards include labor rights. The ISO standard on social responsibility applies along global supply chains to how products are produced. For example, ISO 26000 states that in purchasing decisions, “an organization should take into account the environmental, social and ethical performance of the products or services being procured, over their entire life cycles.”<sup>75</sup>

Another example is the Social Accountability International (SAI), a U.S.-based private organization that produced SA8000 – a social accountability standard that specifies how businesses should treat their workers. This standard is based on ILO conventions as well as relevant UN Conventions. SAI certifies business in the supply chain according to whether they comply with standards of worker conditions and rights. The UN Global Compact is another example of a set of principles that business agree to abide by and include the elimination of all forms of forced and compulsory labor and the abolition of child labor. Effective compliance includes application by business of these principles along their supply chains.

As these examples demonstrate, labor standards (often private ones) are already impacting how exporters participate in global value chains. Moreover, the absence of WTO rules on labor has meant that the labor and trade interface has largely been driven by the U.S. in its free trade agreements. The first U.S. trade agreement to include labor commitments was as a side agreement in NAFTA. Since then, U.S. FTAs have included labor chapters in the body of the agreement and these have become steadily more detailed and enforceable. For example, the 1995 Australia-U.S. FTA merely included a commitment to enforce their own labor laws and the chapter was not subject to dispute settlement. The more recent Columbia-U.S. FTA includes commitments to sign and implement a range of core ILO principles and subjects these to the FTAs dispute settlement chapter.

These FTA labor chapters closely reflect the growing importance Congress has placed on this issue. The May 2007 Bipartisan Trade Deal established the current level of U.S. ambition on this issue and the key elements are:

- Agreement to have in place and to enforce labor laws that reflect the rights in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). These are:<sup>76</sup>
  - Freedom of association
  - Right to collective bargaining
  - Eliminate all compulsory and forced labor
  - Abolish child labor and eliminate the worst forms of child labor
  - Eliminate discrimination in respect of employment and occupation

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<sup>75</sup> ISO 26000, cls 6.5.2.2

<sup>76</sup> Columbia-US FTA, Article 17.2.1; Korea-US FTA Article 19.2.1

- Agreement not to waive or derogate from the labor commitments in a manner affecting trade and investment.
- Enforceability of the labor chapter commitment under the FTAs dispute settlement chapter.

These labor commitments were incorporated into the U.S.'s most recent FTAs with Korea, Columbia and Panama. The draft 2014 TPA Bill reinforced the importance of including labor commitments in FTAs.<sup>77</sup> As a result, a strong labor chapter can be expected in the TPP. At the December 2014 APEC meeting in Beijing, TPP trade ministers in their report to leaders confirmed that they are close to agreement on a set of enforceable commitments on labor rights that embody key ILO rights.<sup>78</sup> This is very important for the U.S. in view of its May 2007 Bipartisan Trade Deal, and it reflects one of the key elements that U.S. will press for in the TPP agreement.

The Labor chapter in the TPP will thus focus on two main elements. The first will be a commitment to having in place laws that enforce key ILO principles. The other will be mechanisms for cooperation amongst TPP parties on labor issues and on their enforcement.

There are various ways that TPP labor commitments could affect India's exports. One way is when companies in TPP countries require their suppliers in non-TPP countries to conform to the TPP labor chapter standards. This could present costs for Indian exporters wanting to participate in global supply chains with companies in TPP countries.

One issue for India is its compliance with some of the ILO's fundamental principles, and the possibility of its practices being challenged in the main TPP markets. For example, when it comes to child labor a U.S. government report estimates that approximately 2 percent or around 4.5 million children in India between the ages of 5-14 are estimated to be working, including the worst forms of child labor.<sup>79</sup> Indian businesses that want to participate in global supply chains will therefore need to both upgrade and justify their working conditions in order to meet such TPP labor standards. In addition, even though India is not yet considering being a party to the TPP, it will still need to ensure that its labor standards eventually reflect TPP standards. This will require significant labor market reform.

Another cost for Indian exporters is through the impact of the TPP labor chapter on the development of private standards. Using similar mechanisms discussed above, private standards can become compulsory through their incorporation or reference by public standards. In addition, as private standards that address labor rights issues often reference and build on ILO principles, the TPP labor chapter will lead to an increasing alignment of private and public labor standards within TPP countries.

These labor standards can have implications for industrial structures in India. For example, lead firms in global value chains from the U.S. and other developed countries often seek to monitor compliance with private labor standards by requiring that all production happens within the factory instead of

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<sup>77</sup> H.R. 3830, Bipartisan Congressional Trade Priorities Act 2014, section 2(10)

<sup>78</sup> Trans-Pacific Partnership Trade Ministers' Report to Leaders, November 10, 2014

<sup>79</sup> United States Department of Labor's Bureau of International Labor Affairs, Report on India 2013

outsourcing to SMEs.<sup>80</sup> However, outsourcing to small businesses, including in the so-called informal sector is part of business practice in India. Complying with these standards can thereby require significant and costly industrial reorganization.

While the costs of these TPP labor standards are costs that business in other TPP countries will also face, in these countries the government will have committed under the TPP to achieving these standards, which will likely lead the government to introduce a system of laws, programs and other support mechanisms to rectify labor conditions and to assist businesses comply. Without specific focused or targeted efforts, Indian businesses will have no such support. As a result, the Indian government will have to not only seek to address these areas of labor rights that fall short of the TPP but also consider how to support efforts by Indian exporters to meeting these labor standards.

TPP countries might also seek to implement the TPP labor standards by restricting imports of goods from non-TPP countries that are not produced according to TPP standards. Whether such a law would be WTO consistent has yet to be tested. As a general matter, distinguishing between otherwise like products on the basis of so-called non-product related PPMs is likely in breach of the GATT national treatment of MFN commitments. However, such a regulation could be justified under the GATT Article XX(a) exception provision as being necessary to protect public morals.<sup>81</sup> As the TPP labor chapter explicitly recognizes the scope for trade to put downward pressure on labor rights, it is possible that the TPP labor chapter could provide evidence in a WTO dispute that trade restrictions are necessary to achieve the TPP labor standards.

## 5.2 Enforcing TPP Labor Standards

The TPP labor chapter will require each party to enforce its labor laws. Here, the approach in previous FTAs such as Korea-U.S. and the Columbia-U.S. has been that a failure to enforce labor laws arises when there is a sustained or recurring action or inaction. This draws a distinction between oversight (which is excusable) and a policy decision evidenced by sustained action or inaction. It is also the case that lack of resources is not an excuse for failure to enforce these labor laws.<sup>82</sup> This will, for example, give India the freedom to decide how to allocate resources between labor enforcement activities, but such allocations cannot lead to a lack of enforcement.

The TPP labor chapter is likely to also require a domestic court system that can enforce the labor laws. This will include commitments that such courts are public, accessible and operate according to due

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<sup>80</sup> Peter Lund-Thomsen et al (2012) Labour in Global Value Chains: Work Conditions in Football Manufacturing in China, India and Pakistan *Development and Change* 43(6), 1229

<sup>81</sup> It is worth noting also Article 2.2 of the WTO Agreement on Technical Barriers to Trade, which states *inter alia* that: "Partys shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: ... protection of human health or safety ..."

<sup>82</sup> Columbia-FTA Article 17.3(b) Korea-US FTA Article 19.3.1(b)

process norms such as giving reasons for decisions that are timely and based on the evidence and arguments in the case.<sup>83</sup>

India already has a legal system that would meet such TPP requirements, including with respect to following procedural rules. However, the TPP will likely require India to upgrade its judicial system in terms of reducing delays in getting a matter heard as well as in receiving a final decision and getting legal redress.

The TPP labor commitments are also most likely going to be subject to the TPP dispute settlement mechanism. As outlined above, this was a key requirement of the 2007 bipartisan trade deal and is in the draft 2014 bipartisan trade priorities act. This means that should a TPP country be found to be in breach of a labor chapter commitment, fines and loss of market access benefits under the FTA could follow.

### 5.2.1 *Institutional Issues*

The TPP labor chapter can be expected to establish various institutional mechanisms. For instance, under the Columbia, Korea and Peru FTAs a Labor Affairs Council was established to oversee implementation of the labor chapter commitments.

The Korea-U.S. FTA also established a separate Labor Cooperation Mechanism, involving officials from each party. One of the key aims of the Mechanism is a forum for cooperation on the ILO principles and the ILO Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999). Additional areas of cooperation include reporting on implementation of the labor commitments, developing cooperative and capacity building initiatives, exchanging information on labor laws and practices in each party. The activities of the labor cooperation mechanism can extend to “any labor matter they consider appropriate”, and includes issues that extend beyond the ILO principles to working conditions such as hours of work, minimum wages and occupational health and safety.

A TPP labor chapter will also require governments to allow their citizens and persons from other parties to make submissions under the labor chapter to the Labor Affairs Council and will require that officials make these submissions public and review them.<sup>84</sup>

In the case of Columbia, the U.S. and Columbia in parallel to the FTA negotiations agreed a Labor Action Plan which built on the FTA labor chapter and includes nine areas where Columbia has agreed to strengthen labor rights, including establishing a separate labor ministry and hiring additional labor inspectors. Fulfillment of this Action Plan was conditional on passage of the Columbia-U.S. FTA through Congress. This has already played out with Vietnam’s participation in the TPP negotiations. Here, U.S. labor unions and NGOs have expressed concern about a number of labor practices in Vietnam. The U.S. is now proposing that the TPP include a special monitoring and enforcements mechanism of Vietnam’s labor chapter commitments. This underscores the point that upgrading India’s labor standards to the

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<sup>83</sup> See Columbia-US FTA Article 17.4

<sup>84</sup> See Koreas-US FTA Article 19.5.3

TPP will be key to creating the conditions for participation in the TPP at a later date. Even otherwise, this would be required for India's exports to be considered as eligible for meeting the relevant labor standards under the TPP.

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## Part 6: The TPP Approach to Environmental Standards

The WTO does not include commitments on the environment, though the WTO Doha Round includes trade-related environmental issues such as reducing tariffs on environmental goods and subsidies that lead to overfishing.

The TPP will include an environmental chapter, which has been confirmed by a leaked draft of such a chapter.<sup>85</sup> Including an environment chapter in the TPP is also a key U.S. demand. The May 2007 bipartisan trade deal directs USTR to include environmental commitments in U.S. FTAs and the draft 2014 Trade Priorities Act confirms this.

The draft TPP environment chapter reveals that the TPP will reflect the type of environmental rules in previous U.S. FTAs and go further in some areas. This leaked chapter is, however, dated January 15, 2013 and the negotiations have progressed since then. The draft chapter is a good guide to what to expect in the TPP, but departures from it in the final TPP agreement should be expected. A more recent leaked consolidated summary from the Chairs negotiating the TPP environment chapter provides additional context.<sup>86</sup>

### 6.1 The TPP and Multilateral Environmental Agreements

Similar to the proposed TPP labour chapter, one of the main rationales for including an environmental chapter in the TPP is to address concerns that trade liberalization will lead governments to lower their environmental standards to remain competitive and to attract trade and investment. The TPP environmental chapter gets at this by establishing a baseline in terms of the types of environmental laws that the parties should have. This is done by agreeing to adopt and implement various Multilateral Environmental Agreements (MEAs) such as the Montreal Protocol, the MARPOL Convention and CITES.<sup>87</sup> The U.S. in particular is seeking to have these MEAs subject to TPP dispute settlement. Of the MEAs in the leaked TPP chapter, India is not a party to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

Building on this commitment, the TPP will include agreement that ‘it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in its environmental laws’<sup>88</sup>. This language reflects the 2007 Trade Act and the draft 2014 Trade Priorities Act. A similar approach can be expected in the TPP.

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<sup>85</sup> Wikileaks, “Secret TPP treaty: Environment chapter for all 12 nations”, January 15, 2014 (leaked draft dated November 24, 2013)

<sup>86</sup> Report of Chairs of the Environment Chapter for all 12 Nations, dated January 15, 2014, at <http://wikileaks.org/tpp2/static/pdf/tpp-chairs-report.pdf>

<sup>87</sup> *United States–Korea Trade Agreement*, signed 30 June 2007 (entered into force 15 March 2012) (KORUS) ch 20, Annex 20-A.

<sup>88</sup> *Ibid*, Article 20.3.2.

## **6.2 Private Environmental Standards**

As outlined above, public and private standards applied to the production of goods along domestic and global supply chains increasingly include a range of environmental criteria. This includes for example private standards such as the Marine Stewardship Council (MSC) which certifies fisheries management practices and the Forest Stewardship Council (FSC), which certifies logging practices and forest management practices. In addition, governments are using these private standards as a basis for legislation or to certify compliance with their regulations. For example, Israel has adopted the Marine Aquarium Council standard to determine whether imports of live marine ornamentals are sustainable.<sup>89</sup> Bolivia relies on the Forest Stewardship Council to verify the operations of forest concession holders.<sup>90</sup>

Previous U.S. FTA environment chapters have recognized the importance of private voluntary standards for environmental protection, and the leaked TPP environment chapter includes such a provision as well. Under the proposed chapter, the TPP parties agree to encourage the use of voluntary private standards to protect natural resources and the environment.

Such a TPP commitment is likely to give added incentive and a legal basis for further development and use of private environmental standards. As outlined above, these standards will affect Indian companies when businesses in TPP countries apply such standards to their supply chains. For example, businesses can require that Indian wood and seafood exports demonstrate compliance and certification by the MSC and FSC respectively. The TPP would give additional justification and government support for developing and using such standards.

The leaked TPP environmental chapter also reveals that there are a range of environmental issues that have yet to be included in previous FTAs but which are likely to end up in the TPP. The main ones are commitments to prevent trade in illegal logs, to reduce subsidies that lead to overfishing and to reduce tariffs on climate change goods and services.

## **6.3 Trade in Illegal Logs**

Under the leaked TPP environment chapter, the parties will seek to address trade in illegal logs. The approach is to require TPP Parties to have in place domestic laws that outlaw such activity, implementation of CITES commitments and the capacity to enforce these laws. The TPP will also include a commitment to exchange information on illegal trade in these products and to undertake joint activities on conservation issues.

These commitments reflect the U.S. approach to addressing trade in illegal logging, which is based on the 2008 Lacey Act Amendments and under which the importer is required to declare the value and quantity of the timber, the plant's name, and its country of origin. Alongside criminal penalties for

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<sup>89</sup> Governmental Use of Voluntary Standards: Innovation in Sustainability Governance, ISEAL Alliance, September 2008, p. 15

<sup>90</sup> Governmental Use of Voluntary Standards: Innovation in Sustainability Governance, ISEAL Alliance, September 2008, p.15

knowingly making a false declaration, this creates a strong incentive for the importer to source from legally harvested timber products.

The Lacey Act Amendments rely on the laws in the country of origin to determine whether an illegal harvest has occurred. The Lacey Act also implicitly recognises that the challenge to addressing illegal logging is less about the need for better conservation laws and more about the effective enforcement by wood-exporting countries of their current laws. The U.S. has therefore emphasised with other countries the importance of exchanging information about trade in illegal logs and enhancing the capacity of law enforcement agencies in these countries. The leaked TPP environment chapter builds on this approach and extends it to all TPP parties.

India exports a range of wood products, including furniture and handicrafts. The leaked TPP chapter commitment on trade in illegal wood product also requires the TPP parties to prevent the transshipment of trade in such products. As outlined above, the U.S. Lacey Act Amendments already require U.S. importers to certify that the wood is legally harvested so its impact on Indian wood exports is already being felt. The TPP will give this approach a regional scope which will affect Indian exports of wood to other TPP markets. India should therefore consider whether its domestic laws adequately address the issue of illegal logging and effectively implement CITES. In particular, the focus on building cooperation amongst customs officials and exchanging information on exports will require India to develop the capacity at the border to identify whether its wood exports comply with these laws.

#### **6.4 Fish Subsidies**

The impact of subsidies on the unsustainable exploitation of fish stocks is part of the WTO Doha Round.<sup>91</sup> At the 2005 Hong Kong Ministerial Conference, WTO Members agreed to “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing”.<sup>92</sup>

The leaked TPP environmental chapter includes significant new rules on fish subsidies. These rules are based on some of the draft text on fish subsidies in the WTO but go beyond it in a number of ways.

The main TPP commitments on fish subsidies are as follows:

- To operate fisheries management systems that prevent overfishing, based on internationally recognized best practices as reflected in the “relevant provision of international instruments”, which include UNCLOS, the UN Fish Stocks Agreement and the FAO Code of Conduct for Responsible Fisheries.
- To control, reduce and eventually eliminate all specific subsidies contributing to overfishing and overcapacity

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<sup>91</sup> *Ministerial Declaration*, WTO Doc WT/MIN(01)/DEC/1 (20 November 2001) (adopted 14 November 2001).

<sup>92</sup> *Doha Work Programme: Ministerial Declaration*, WTO Doc WT/MIN(05)/DEC (22 December 2005) (adopted 18 December 2005), annex D [9]–[11].

- Not to grant or maintain specific subsidies that target fishing stocks that are overfished, including subsidies provided to fishing vessels
- To phase out existing subsidies that are inconsistent with the chapter
- To notify all other TPP parties of any specific subsidies granted to persons engaged in fishing, fishing related activities as well as fuel subsidies.

Getting to agreement on fish subsidies in the WTO has been difficult due to the different equities depending on the economic importance of fishing. Attempting to capture the economic importance of fishing for some countries, the Hong Kong Declaration recognizes the need for WTO Members to take into account the importance of the fishing sector to development priorities, poverty reduction, and livelihood and food security concerns.<sup>93</sup>

The leaked TPP text partly captures this dynamic where it recognizes the need to take into account social, developmental and food security concerns when it comes to reducing overfishing. However, this is only for subsidies not already prohibited under the chapter. As a result, developmental claims do not reduce the need to comply with the subsidies commitments.

India's fish exports were approximately \$5bn in 2014. The main issue here for India is the impact of TPP disciplines on subsidies on the livelihood of its fishermen. During discussions in the WTO on fish subsidies India made clear its need to maintain subsidies for its small and often subsistence fisherman and its opposition to the direction the text had taken.<sup>94</sup> Moreover, India's most recent notification of its subsidies to the WTO include a long list of what could constitute specific subsidies to the fishing sector that contribute to overfishing and would thereby be inconsistent with commitments being discussed in the TPP.<sup>95</sup>

The TPP is therefore likely to include rules on fish subsidies that are at variance with India's current regime for subsidizing its fishing industry and its position on these issues in the WTO Doha Round negotiations. While fish subsidy rules in the TPP will only apply to TPP parties, these are rules that India would need to accept were it to join the TPP and to ensure that its exports are seen as consistent with TPP fisheries disciplines. Moreover, getting agreement in the TPP on such rules will be the first time this has been achieved in a trade agreement. As a result, it is also likely that TPP rules on fish subsidies will shape how TPP countries approach the WTO Doha negotiations on this issue and become a baseline against which fish subsidies will increasingly be assessed. In this way, TPP rules are likely to affect the multilateral process and have an impact on India, independently of whether India joins the TPP.

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<sup>93</sup> Ibid., Annex D [9].

<sup>94</sup> WTO Communication from India, China and Indonesia, *Draft Text for TNC/GC Decision on S&D in Fisheries Subsidies*, WT/GC/W/592, 18 July 2008.

<sup>95</sup> WTO Committee on Subsidies and Countervailing Measures, *India's New and Full Notification Pursuant to Article XV1:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures*, G/SCM/N/253/IND, 2 May 2014

The draft TPP environment chapter will also affect international standards for fisheries management. The chapter requires the TPP parties to have fisheries management systems that “shall be based” on international instruments such as the FAO Code of Conduct for Responsible Fisheries. This Code is a voluntary agreement and the TPP chapter would effectively turn it into an international standard – much in the same way the WTO TBT and SPS Agreements turns otherwise voluntary standards into binding WTO commitments. As India articulated in a submission to the WTO, “the FAO agreements are voluntary in nature, which gives developing countries the necessary comfort and flexibility.”<sup>96</sup> Turning these voluntary agreements into binding commitments is another cost from the TPP that India will need to respond to. This could require a closer and systemic look at India’s fish management practices to determine whether they comply with voluntary agreements such as the FAO one, and if not, how to rectify this.

## 6.5 Environmental Goods and Services

Reduced tariffs on environmental goods can potentially support domestic efforts towards environmental conservation and reducing GHG emissions. In particular, for TPP developing economies whose average bound tariffs are higher than developed economies, the environmental gains from reducing tariffs on environmental goods are likely to be potentially significant.<sup>97</sup> As developed country tariffs on environmental goods are already low, reducing these tariffs further is unlikely to reduce the costs of environmental goods enough to provide much additional incentive for more environmental and climate change action.<sup>98</sup>

Reducing tariffs on environmental goods has been an ongoing element of the WTO Doha negotiations, though progress has been frustrated by the challenge of agreeing a list of environmental goods. At the APEC Summit in Vladivostok in 2012, the APEC economies agreed on a list of 54 environmental goods on which they would cut tariffs to 5 per cent or less by the end of 2015.<sup>99</sup> At the World Economic Forum in January 2014, a group of WTO Members including the U.S., China, the EU, Japan and Korea agreed to launch negotiations on environmental goods with the aim of bringing these negotiations inside the WTO. Since then the so-called Environmental Goods Agreement (EGA) negotiations have made significant progress identifying the list of environmental goods on which tariffs will be reduced, including extending the list of environmental goods beyond what was agreed at APEC. India is not a party to the EGA negotiations.

The draft TPP environment chapter underscores the ambition of the TPP parties to reduce tariffs on a wide range of environmental goods and to limit restrictions on trade in environmental services. The text

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<sup>96</sup> WTO Communication from India, China and Indonesia at note 94, 3

<sup>97</sup> Veena Jha (2009) Trade Flows, Barriers and Market Drivers in Renewable Energy Supply Goods *Issue Paper No 10, International Centre for Trade and Sustainable Development*, 13

<sup>98</sup> Robert Howse and Petrus van Bork (2006) Options for Liberalising Trade in Environmental Goods in the Doha Round *Issue Paper No 2, International Centre for Trade and Sustainable Development*, 5

<sup>99</sup> 2012 Leaders’ Declaration, *Vladivostok Declaration – Integrate to Grow, Innovate to Prosper* (8–9 September 2012) <[http://apec.org/Meeting-Papers/Leaders-Declarations/2012/2012\\_aelm.aspx](http://apec.org/Meeting-Papers/Leaders-Declarations/2012/2012_aelm.aspx)> annex C.

also includes as a next step looking at ways to address NTBs on trade in environmental goods and services.

The list of environmental goods initially agreed to at the APEC Summit includes a range of products relevant for India in terms of export potential. For instance, the Indian government supports the development of renewable energy and the list of environmental goods on which tariffs will be reduced such as photovoltaic cells, wind turbines and wind turbine parts would support this renewable energy goal.

The absence of India from the EGA negotiations and from the TPP means that India is unable to shape the outcomes and to ensure that it covers tariffs lines of export interest for India. In addition, not participating in these negotiations means that India lacks the incentive of a trade negotiation to reduce tariffs on imports of environmental goods. The effect of this will be higher costs to India of achieving its renewable energy and other environmental goals. This is a cost to consumers as well as business who need access to these goods in order to deliver competitive environmental solutions to domestic and overseas markets.

India could consider joining the EGA negotiations. This is an example of where reducing trade barriers could support other policy goals of India's. Such a move would also mitigate some of the impact of the TPP on the clean energy sector for India. Reducing such tariffs will also bring India in line with the TPP. Further, since China and all of ASEAN nations are among the countries negotiating the EGA, its impact is likely to be even wider than the TPP. It is noteworthy that these developments through the EGA will cover all the four main hubs of global value chains.

## **6.6 Transparency and Due Process Commitments**

Though the leaked TPP chapter does not include transparency commitments, the TPP is also likely to include transparency and due process provisions either in the environment chapter itself, or the TPP will have a transparency chapter that will apply horizontally to the environmental chapter.

Key TPP transparency commitments are likely to include commitments to publish in advance any laws, regulations, and so on, affecting the agreement in order to provide opportunities for interested persons to comment on the proposed measures,<sup>100</sup> and a commitment to address substantive comments received and to explain any substantive revisions made to the proposed regulation.<sup>101</sup> Public participation in the implementation of the KORUS environmental chapter is also encouraged by persons from the other party.<sup>102</sup> KORUS also requires the parties to promote public awareness of their environmental laws, including ways that interested persons can enforce compliance with these laws.<sup>103</sup>

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<sup>100</sup> See leaked TPP Environment Chapter at note 84, Article 21.1.

<sup>101</sup> *Ibid.*, Art 21.1(4)(c).

<sup>102</sup> *Ibid.*, Article 20.7.2.

<sup>103</sup> *Ibid.*, Article 20.7.

The TPP environment chapter will also likely include commitments to have in place judicial systems to enforce their environmental laws. For instance, in KORUS each party agreed that judicial or administrative proceedings will be available to sanction and provide remedies for violations of its environmental laws and these proceedings will be impartial and independent.<sup>104</sup> Moreover, persons with a legal interest in a matter relating to human health or the environment can sue for damages and have access to a range of remedies including injunctive relief, monetary penalties and the ability to request a party to take appropriate action to enforce its environmental laws.<sup>105</sup>

Similar to the other due process and transparency provisions in applied to the other TPP chapters outlined above, India should not have significant difficulties with them given the nature of its legal system and transparency of its regulation making process and political system. Publishing all regulations in advance and providing opportunities for comment will however require greater timely coordination amongst Indian government agencies and with the state and local levels.

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<sup>104</sup> KORUS Article 20.4

<sup>105</sup> *Ibid.*

## Part 7: Implications of the TPP for India's International Trade

### 7.1 The Impact on Standards and Regulations

- The TPP will affect the development of international standards in various ways. The size of the TPP market –already 40 percent of global GDP and the likelihood of enlargement – means that TPP standards will incrementally become de facto global standards. This is especially going to be true where TPP standards are also reflected in the TTIP.
- Access to TPP markets will increasingly require compliance with these standards and this will affect production processes globally. For India it will require exporters to conform to standards that may not be optimal for them.
- The TPP will formalize coordination among TPP parties on developing standards amongst themselves and in international standard setting bodies. This will increase the likelihood of international standards that reflect TPP interests.
- TPP parties may also develop common TPP standards. Such standards will most often closely reflect U.S. standards due to its economic size. The formal TPP process of consultation and coordination in the development of standards should reinforce this outcome.
- The TPP will affect the impact of private standards on international trade and formalize their role in the global economy. Private standards are already an important feature of global supply chains, regulating product quality and safety as well as requiring production to be done according to international labor standards and consistent with sustainable development. These private standards are also influencing the development of public and international standards. The TPP will facilitate this process as TPP governments incorporate or reference these standards in their domestic standards and promote them in international standard setting bodies.
- The impact of the TPP will also be felt by Indian industry participating in global supply chains that includes TPP parties. TPP parties will increasingly manufacture to common TPP standards which will increase the competitiveness of manufacturing and services in TPP countries. The ability of Indian industry to be part of global supply chains in the TPP region will require compliance with TPP standards and regulations.
- TPP rules on labor and the environment will also affect the capacity of Indian firms to become part of supply chains with other TPP countries. For instance, Japanese business sourcing inputs from regional suppliers will likely require these suppliers to be consistent with TPP rules on labor and the environment. This will particularly be the case where the final consumer market is the U.S., which will also require that imports meet TPP's labor and environment standards. This will require Indian businesses that participate in these supply chains to operate consistently with these standards.

- The TPP will include commitments on the recognition of CAPs and CABs which will avoid the need for additional testing of exports from TPP countries in TPP markets. In contrast, Indian exports to TPP markets will require additional testing which will create further costs and increase time to market, thereby undermining the competitiveness of Indian products in TPP markets.
- TPP commitments on CAPs and CABs will create incentives for Indian manufacturers to build facilities in TPP parties to take advantage of the recognition by large consumer markets such as the U.S., of the CAPs and CABs in TPP countries
- The TPP could include sectoral commitments in areas such as IT and automobiles. Such sectoral approaches will be more detailed and ambitious in terms of reducing the costs of NTBs on trade amongst TPP parties. In these sectors, the effect of the TPP on India's exports will be magnified.

## 7.2 Impact on the WTO

- Great coordination amongst TPP parties will lead to greater alignment amongst them on these issues in the WTO. This dynamic will grow as more countries join the TPP. The effect will be to reduce the capacity for India to affect WTO outcomes.
- Under the WTO TBT Agreement, WTO Members are working to harmonize their CAPs. The TPP will facilitate the harmonization of CAPs amongst TPP parties which will make it easier for TPP parties to develop common positions on harmonizing CAPs at the WTO.
- The TPP will develop new rules not yet included in the WTO in areas such as supply chains, regulatory coherence and state-owned enterprises. These TPP rules are likely to be the basis upon which TPP parties seek to extend these rules globally, including through the WTO.

## 7.3 Procedural Issues

- The TPP will include rules that will affect the parties' domestic regulatory processes. This will include commitments on the transparency of each party's domestic regulation and the standard making process, including timely publication, notification of proposed regulations and opening up the regulation making process to persons from TPP parties. India does not have a federal law that would allow for such general notification of standards. India would also need to improve coordination amongst central and local levels of government and changes to the regulation making process more broadly to give access to all TPP parties.
- The TPP will require domestic judicial processes that can enforce labor laws, including timely access. This will require India to upgrade its domestic judicial system to reduce delays.

TPP rules on what constitutes good regulatory practice could limit some regulatory choices for India should it become a TPP party. **Part 8: Policy Recommendations**

- India is already negotiating FTAs with a number of TPP parties, such as Japan, Canada and Australia. India should complete these negotiations as a matter of priority and where possible, ensure that these FTAs include MFN clauses that give India the benefits of any more favorable treatment that these countries accord other TPP parties. Agreeing to high standard FTAs with these countries would also be a vehicle for economic reform in India, increasing the productivity of the Indian economy and the competitiveness of its businesses. Concluding the negotiations would also demonstrate the Indian government's commitment to economic reform which would increase confidence amongst TPP parties that India could accept the other high standards being discussed in the TPP.
- The U.S. and India are negotiating a BIT but these negotiations have stalled, in part due to the issue of ISDS. India could revisit this position and seek to conclude the BIT negotiations as a matter of priority, taking some cue from recent FTAs such as between the EU and Canada. This would improve India's overall investment climate and help attract foreign investment, a goal of the Indian government. Concluding a U.S.-India BIT would also help prepare India for the TPP. An India-U.S. BIT negotiation would require India to address issues such as intellectual property, labor and environment that are similar to those rules being discussed in the TPP. The same would also arise in terms of completing EU-India FTA negotiations, which have moved considerably towards the last part of the talks.
- Ascertain the differences between India's domestic standards and TPP standards. This will allow the government to develop a strategy to bridge these gaps. This should include labor and environmental standards and how the government can assist India's exporters meet the standards in the TPP.
- Inform and advise Indian industry about the nature and range of TPP standards and the importance of meeting these standards in order to export to these markets and to participate in global value chains.
- Allocate resources to develop the capacity of India's regulators and allow them to participate fully in international standard setting bodies. This could include working within the Pacific Areas Standard Congress (PASC) – of which India is a member. PASC mediates between the development of national and international standards at the ISO and India can use this body to help ensure that its standards and conformity assessment procedures are better understood amongst other members of PASC and to ensure that its interests are reflected in international standards organizations.
- Develop a national approach to conformity assessment processes and bodies. This would impose consistent rules on Indian bodies undertaking conformity assessment to standards with the aim of developing an approach consistent with what is agreed in the TPP. This should include a common Indian approach to accreditation of conformity assessment bodies with the aim of getting accreditation of Indian CABs by TPP parties.

- Expand recognition and acceptance amongst TPP parties of CAPS from accredited Indian CABs. This could be done through schemes such as the International Accreditation Forum (IAF) where signatories (including India) have agreed to a Multilateral Recognition Arrangement where the members recognize the accreditation of each other's CABs in areas such as product certification. Once a CAB has been accredited under this Arrangement, its CAPs are accepted in other countries also party to this arrangement. India should lead efforts to extend this Arrangement to other areas such as agricultural products and food management. Another option is for the Indian government to work directly with other TPP governments to seek designation of its CABs for assessing conformity of its products with standards used by TPP Parties. Japan has some experience with designating CABs in exporting markets and might be a useful starting point.
- Pursue voluntary recognition amongst TPP parties of Indian test reports, which an OECD paper found can be important in reducing the cost of exports.<sup>106</sup> This could be led by Indian industry bodies working with counterparts in TPP countries. This should include identifying sectors in TPP countries where industry would prefer to work directly with other countries CABs rather than being regulated under a government-to-government MRA. For example, electrical producer trade associations in the U.S. have opposed a government led MRA to avoid having to seek testing with government designated conformity assessment bodies.<sup>107</sup>
- Often lead firms in sectors such as textiles and apparel and processed food are responsible for application of standards along supply chains.<sup>108</sup> The India government should encourage these firms to use Indian suppliers. This could be done by concluding a BIT with the U.S. and other measures that improve India's investment climate such as liberalizing foreign investment caps and tax incentives. Such a policy should be adopted in parallel with Indian government efforts to help Indian suppliers in these sectors upgrade to meet the necessary standards, including access to recognized conformity assessment bodies.
- India should consider joining the EGA negotiations to reduce tariffs on environmental goods. This will help mitigate some of the impact of the TPP on this sector for India. Reducing such tariffs will also bring India in line with the TPP.
- India could also join the MEAs that TPP Parties are also a party to and assess what would be needed to join the Convention for the Establishment of an Inter-American Tropical Tuna Commission and consider joining.

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<sup>106</sup> Fliess, B. and R. Schonfeld (2006) Trends in conformity assessment practices and barriers to trade: Final report on survey of CABs and exporters *OECD Trade Policy Working Paper No. 78*

<sup>107</sup> Johnson, C. (2008) Technical barriers to trade: Reducing the impact of conformity assessment measures *U.S. International Trade Commission, Office of Industries Working Paper No. ID-19*

<sup>108</sup> Garry Gereffi & Stacey Frederick (2010) The Global Apparel Value Chain, Trade and the Crisis *World Bank Policy Research Paper No 5281*, 14-15

- Assess where Indian labour laws fall short of relevant ILO fundamental principles and conventions and develop a process for closing this gap. Such a gap may exist in terms of regulation or actual monitoring and implementation.

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## Part 9: Summary of TPP Impacts

TPP TBT Rules	TPP SPS Rules	TPP Labor Rules	TPP Environment Rules
<i>TPP Impact on Standards</i>			
Cooperate to develop international standards and greater alignment on their development	Recognition of equivalence of TPP SPS measures	Accede and ratify various ILO principles and conventions	Accede and ratify a range of multilateral environmental agreements
Develop TPP standards		Incorporate private labor standards into public and international standards	Cooperation amongst TPP parties to prevent trade in illegal logs
Incorporate private standards in TPP countries into public and international standards		Increased scope for TPP parties to win a WTO dispute for restrictions to imports based on non-compliance with TPP labor standards	TPP rules to eliminate subsidies that lead to overfishing
Achieve mutual recognition of conformity assessment reports			Eliminate tariffs on environmental goods and aim to address NTBs
Increase cooperation amongst TPP conformity assessment bodies			
Reason-giving where conformity assessment is not achieved			
Sectoral commitments (i.e. autos, ICT) on standards and mutual recognition			
<i>TPP Impact on the WTO</i>			
Better coordination and alignment amongst TPP Parties on WTO TBT issues	Better coordination and alignment of TPP countries on WTO SPS issues		TPP rules on fish subsidies will influence TPP parties position on this issue in the WTO Doha Round
<i>TPP Procedural Outcomes</i>			
Increased transparency of regulations	Expedited dispute settlement for some SPS disputes	Domestic judicial system to enforce TPP labor standards	Greater transparency of TPP environmental laws
Publication of proposed regulations		Subject TPP labor standards to TPP dispute settlement	Opportunities for stakeholders in TPP countries to input the

			law making process
Transmit notice to TPP parties of proposed regulation		Greater cooperation and alignment amongst TPP parties on labor issues	Domestic judicial system to enforce environmental laws
Opportunity for stakeholders in TPP countries to input regulatory process			Subject the TPP environmental chapter to TPP dispute settlement
TPP approach to good regulatory practice			

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