



**World Economic Forum White Paper
Global Agenda Council on Trade & FDI**

**Will the Trans-Pacific Partnership Agreement Reshape the Global Trade and
Investment System?
Regional and Systemic Implications: Issues and Options**

June 2016

The views expressed in this White Paper are those of the author(s) and do not necessarily represent the views of the World Economic Forum or its Members and Partners. White Papers are submitted to the World Economic Forum as contributions to its insight areas and interactions, and the Forum makes the final decision on the publication of the White Paper. White Papers describe research in progress by the author(s) and are published to elicit comments and further debate.

Contents

Introduction	3
Part 1: The Impact of Mega-Regionals on the Global Trade and Investment System	4
What choices do non-members have?	4
<i>The United States is the central player.....</i>	<i>4</i>
<i>The TPP's systemic implications</i>	<i>4</i>
<i>Accession to the TPP?.....</i>	<i>5</i>
<i>Docking the TPP into the WTO? A complicated affair.....</i>	<i>5</i>
Options for parties to mega-regionals	8
Challenges ahead with using the TPP to globalize rules	8
Utilization of plurilateral agreements and approaches	10
Possible plurilateral negotiations arising from the TPP.....	11
Part 2: Regional Implications	12
Asia-Pacific.....	12
The Americas	14
NAFTA	14
Latin America.....	17
Sub-Saharan Africa.....	19
Part 3: A Return to the High Politics of the TPP	23
Building blocks.....	23
Stumbling blocks.....	23
Crumbling blocks	24
What if the TPP is not implemented?	24
References.....	27
Endnotes	29

Introduction

The Trans-Pacific Partnership (TPP) agreement is the first mega-regional trade and investment agreement this century. It brings together 12 countries from three continents, with per capita GDPs ranging from about US\$ 2,000 to US\$ 62,000 and economic systems pertinent to a range of policy issues emerging in the debate on new trade issues that are a focus of attention for producers and policy-makers in both large and small economies. Assuming that the TPP agreement comes into force, it will have various implications for different parts of the world. Diverse dimensions of those impacts are explored in this paper.

In Part 1, the contours of potential systemic impacts are outlined, with a focus on the multilateral trading system. The question of whether the rules agreed to in the TPP could serve as the basis for plurilateral negotiations in the World Trade Organization (WTO) among like-minded member states is explored, particularly now that the Doha Round is unofficially over after the Ministerial Conference in Nairobi in 2015. Opinions on this are mixed, among parties to the TPP and non-parties alike.

Part 2 explores the broad dimensions of different geographies' reactions to the TPP, encompassing four complex "regions": Asia-Pacific; the countries included in the North American Free Trade Agreement (NAFTA); Latin America; and Sub-Saharan Africa.

Finally, drawing on previous work on the mega-regional implications for the WTO,¹ Part 3 reiterates the scenarios concerning mega-regional outcomes set out in the 2015 report entitled *The High and Low Politics of Trade*.² Since it is currently unclear whether the TPP will come into force, owing to uncertainties generated by the US presidential elections and the potential aftermath, particular attention is paid to the trade debate in that pivotal country. Unfortunately, there is little cause for optimism; the "crumbling blocks" scenario set out in 2015 looks increasingly likely. That would take the world down a potentially dark path, the contours of which are not included in this paper.

Part 1: The Impact of Mega-Regionals on the Global Trade and Investment System

What choices do non-members have?

The TPP builds upon and extends the disciplines in current bilateral and multilateral trade agreements. The agreement has its own dispute settlement procedure, a number of collaborative mechanisms to address its members' various concerns and help establish common frameworks for good regulatory practices and capacity enhancement.

The United States is the central player

The United States was a major participant in the TPP negotiations. Hence, the extent of market opening and levels of disciplines in the agreement are much higher than one would expect for other agreements with a relatively larger presence of emerging developing economies. For instance, it is commonly acknowledged that the levels of disciplines in the Regional Comprehensive Economic Partnership (RCEP) are likely to be lower than in the TPP. Though this would make it potentially difficult for many nations to become parties to the TPP, the agreement has been negotiated with a view to having a much wider reach than at present, in terms of both its membership and the scope of its disciplines.

A number of countries have already expressed interest in becoming members of the TPP. Furthermore, though the agreement is highly contentious and controversial in the US, to a significant extent its framework and content reflect the issues emphasized by the US. Thus, the US is likely to consider the TPP and the domestic discussion of the agreement as a significant basis for its engagement in other major trade negotiations, such as the Transatlantic Trade and Investment Partnership (TTIP) and Free Trade Area of Asia-Pacific (FTAAP).

The scope of the TPP's provisions is also likely to increase. A number of these provisions, particularly those specifying the work of Committees established under different Chapters, provide bases for the evolution of new disciplines or collaborative and consultative mechanisms. Moreover, senior US officials have stated that some issues where US stakeholders seek additional disciplines could be addressed through the implementation process. This too would effectively increase the reach of the TPP provisions as negotiated.

The TPP's systemic implications

Though the US would use the TPP as an important basis for future negotiations, the content of new mega-regional agreements would deviate from the provisions of the TPP. For instance, given their respective membership, the TTIP may have higher disciplines in certain areas or a different framework of solutions reflecting specific important concerns of the EU, while the FTAAP may settle for lower levels of disciplines in a number of areas. Thus, the future of trade regulation seems to be one with fragmented trade policy regimes, divided markets and complicated patterns of trade and investment diversion. Overcoming these problems would require incremental overlapping or common membership of these different agreements, hopefully moving towards a revised and renewed multilateral trading system.

A crucial point in this context is that even if the future mega-regionals have disciplines similar to the TPP's, the number of countries implementing the similar disciplines is unlikely to be more than about two-fifths of the 162 members of the WTO. Hence, a significant majority of countries would be outside the framework of the TPP. As the scope and reach of TPP-like provisions increase over time, the excluded members may face greater trade and investment diversion and reduced opportunities for growth and development.

An important response considered by several non-members of the TPP has been to negotiate their own large free trade agreements (FTAs), such as the RCEP or the Tripartite Free Trade Area (TFTA), or bilateral agreements with members of the TPP or the EU, leading to a process of competitive liberalization by different groups of countries. The different levels of

disciplines and regulatory regimes embodied in these agreements will further increase the fragmentation of global markets. Moreover, the separate dispute settlement processes within these agreements will lead to possible conflict of procedures and rules, forum shopping and erosion of the significance of the WTO's dispute settlement system. Thus, while these agreements with competitive liberalization may mitigate trade and investment diversion to some extent, they could create additional complications for global trade transactions to the extent that emerging economies are reluctant to embrace the new disciplines they contain.

Such fragmentation may create tensions and potential disputes precisely at a time when the aspirations of most developing countries to participate in international trade and investment are increasing, and global leaders have emphasized trade as an important tool for achieving the Sustainable Development Goals. It is therefore of utmost importance to consider ways to improve the effective participation of countries in major markets through an inclusive trade regime. The best solution would be to have a multilateral agreement with the evolution of the WTO regime, but accommodating the higher disciplines of the TPP within the WTO regime poses major problems. A range of alternative options is required to find solutions to these issues while addressing the considerably divergent positions of various countries. Though some new mega-regionals with somewhat different disciplines may emerge in the future, examined below are relevant issues in the context of the TPP, which will remain an important basis for any new agreement.

Accession to the TPP?

The most comprehensive solution, of course, is accession to the TPP, which would also be a direct way to incrementally meet the stated objective of the agreement to globally implement new social and sustainable development standards and address certain concerns relating to new areas, such as state enterprises and competition policy. In this background, an important focus of the TPP has been to develop a regime that paves the way for others, including emerging economies in particular such as China, to follow regulatory principles emphasized in western markets. In this context, an interesting situation would be if China decides to accede to the TPP. Would China's accession be subject to much higher disciplines compared to the existing structure of the TPP? Would these new disciplines fit into China's planned reform process? What kind of transition process and flexibilities may be agreed for China? Would this have an impact on the ongoing Bilateral Investment Treaty negotiations between the US and China? Would China's growing informal trade links, including through the Silk Road, play a role in this process? If the process of accession gets delayed, would China's focus shift instead to the FTAAP? These and several other issues could become relevant in this accession process, with different solutions that may either complicate or facilitate the process towards developing a globally inclusive trading system.

In the past couple of decades, one way in which a limited number of countries have moved forward with new disciplines in the WTO process has been with a plurilateral agreement that provides most favoured nation (MFN) treatment to its non-members within the WTO. This requires the plurilateral agreement to have a "critical mass" of countries (or trade coverage) so that non-members are not seen as posing an effective competitive threat. China's accession to the TPP would bring the agreement closer to a critical mass of countries that could possibly consider such a plurilateral. However, some emerging economies are unlikely to seek TPP membership in the foreseeable future, and thus a TPP-like WTO plurilateral with MFN³ access for non-members is not likely to be feasible in the near future.

Docking the TPP into the WTO? A complicated affair

Nonetheless, with some additional efforts, countries could incrementally pave the way with "docking" mechanisms to move towards globally inclusive systems. Interestingly, some of the methods for doing so may also help move the WTO negotiations process forward towards new solutions and momentum. Various options for docking mechanisms could be developed, taking account of five factors that may be considered together in diverse ways:

- Different useful steps by TPP members and non-members, and the WTO membership as a whole

DRAFT – Confidential, No Citation or Further Circulation Allowed

- Differential treatment of countries in separate categories, for example, developed economies, developing countries that are among the top 30 global economies, other developing economies, least developed countries (LDCs)
- Possibility of flexibility in disciplines for those products of developing countries that have a low share in global trade, for example below an agreed threshold level, such as provided in Articles 27.5 and 27.6 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM); this would be another way of looking at “critical mass”⁴
- Use of all flexibility mechanisms in the TPP and WTO, such as long transition periods combined with safeguards from the TPP, and agreed methods for possible extension of the transition phase, such as in Article 27.4 in the ASCM
- Recognition of the difference in the types of constraints imposed by diverse TPP disciplines relating to:
 - (a) Market access for goods and services
 - (b) Limits on policy space through prohibition, or mandatory obligations with higher disciplines than in the WTO (e.g. no localization, no performance criteria, higher intellectual property rights (IPR) disciplines)
 - (c) Provisions that establish mechanisms to address problems in market access arising due to non-tariff measures
 - (d) Disciplines that promote the facilitation of trade, data transfers or investment, or agreement on common approaches to “good regulatory practices”
 - (e) Provisions that establish processes for cooperation with others, including for capacity augmentation
 - (f) Provisions on enhancing transparency and providing clarification for questions and processes relating to policy regimes and decisions.

For TPP members, items (a) and (b) above are the types of disciplines or standards that are most difficult to extend to non-members without negotiations and adequate *quid pro quo*. Since the overall negotiated TPP package involves some agreed balance, even the provisions from (c) to (e) may require some *quid pro quo* if they have to be extended to others. However, the nature of such *quid pro quo* may be different compared to that for market access or substantive disciplines that restrict policy space, i.e. items (a) and (b) in the above list. For this reason, TPP members may consider the provisions covered by (c) to (f) for possible introduction as items for discussion within the WTO process. This process could consider whether some agreed format or guideline/decision could be agreed for adoption within the WTO Committees or Councils that leads to wider acceptance of any of the covered provisions.

In this process, two different methods may be useful to advance the discussion towards a common understanding. One would be for the TPP members to consider which part of the provisions from (c) to (f) they could unilaterally offer to the WTO membership; perhaps those covered by (f) may be easier than the others in this regard. The other method could be to consider a list of these items within a framework similar to the WTO Reference Paper on Telecoms. On that basis, WTO members could decide which of the items in the Reference Paper are feasible for them to accept. Each WTO member would be free to choose or reject any of the items on the list as part of their potential WTO obligations. Since provisions under (c) to (f) cover more than one subject matter, there may be multiple such Reference Papers, each covering one specific area of focus.

An important exception to the above may be for TPP members to consider unilaterally offering all privileges under their agreement to LDCs, subject to specified rules of origin. To

the extent there may be some domestic concern about losing market opportunities by providing such facilities to LDCs, the unilateral preference offer may be subject to the condition that the global or regional trade share of the LDC's product must be below an agreed threshold level for a certain number of years.

For their part, the non-members of the TPP could also move to create conditions that pave the way for a more inclusive global trade regime. For instance, they could domestically introduce systems that are similar to those envisaged under the TPP. This could be considered for example with respect to the provisions covered under (d) to (f) above. In addition, they could examine the possibility of offering other countries certain options relating to provisions covered under (c) to (f), either through negotiations/discussions or unilaterally without *quid pro quo*. Substantive discussions may be possible especially for those areas in which the non-members have domestically established their processes and relevant operational systems.

To the extent that both TPP members and non-members may find it relatively easier to consider a discussion or unilateral offer on (e) and (f), the initial focus on moving towards a docking mechanism may be on these categories of provisions under the TPP.

Complementary steps are required also by the WTO membership. Without them, it would not be possible to move from fragmented regimes towards a more multilateral or inclusive trade regime.

It is most unlikely that the WTO would make progress in addressing either market access or more substantive disciplines that restrict policy space, i.e. (a) and (b) in the list above. Two important exceptions exist, however, where some special effort may be made. One would be to discuss the framework for products from developing economies that would get complete exception or flexibility if the share of that country's exports of the specified product were below some agreed threshold. As already mentioned, such a provision already exists in the WTO in the context of subsidies disciplines. The other would be to examine the possibility of developing a general framework for flexibilities, with a combination of long transition periods and safeguards during those periods as envisaged in the TPP, and the possibility of extending the agreed transition period under conditions that may either be specified *a priori* or agreed by the WTO Committee or Council subject to some general criteria. An additional facilitating feature may be an agreement that any higher discipline on market access may first cover only a specified proportion of the total product categories, e.g. 25% or 50% of the total products to begin with. Additional product categories may be covered only after a specified period subject to certain agreed conditions. This could offer comfort to non-members of the TPP to accept higher disciplines, and provide a more predictable basis for moving the present WTO regime towards one closer to the mega-regionals.

Regarding the provisions covered under (c) to (f) above, the WTO membership may agree to consider them for discussion within its Committees. This would be in line with the suggestions above for members and non-members of the TPP. The discussion could aim first at identifying those provisions that are win-win for all and need to be accepted for enhanced efficiency of operation. For others, the discussion may clarify the best way to get incremental acceptance of the relevant disciplines within the WTO system. The WTO already has many different models to move towards such an objective, including soft law and the Reference Paper on Telecoms, and augmenting the existing guidelines/decisions or upgrading the accepted procedures.

Figure 1 summarizes the various options for the docking mechanisms discussed. This may require all parties to come out of their respective comfort zones, but such steps are important to take to move from the present fragmented trade regime towards a more inclusive multilateral trade system. In the alternative, the future holds the likelihood of greater disputes, discord and trade conflicts flowing from trade to other areas on common interest.

Figure 1: Options for Moving Towards an Inclusive Trade Regime

	Developed economies	Developing economies among top 30 global economies	Other developing economies	LDCs
Option for TPP members	N (a) to (e) U (f)	NPF1 (a) NF1/U (b) to (d) U (e) to (f)	NPF2 (a) NF2/U (b) to (d) U (e) to (f)	UP (a) U (b) to (f)
Option for non-members of the TPP	N/U (c) to (f) D (d) to (f)	N/U (c) to (f) D (d) to (f)	N/U (c) to (f) D (d) to (f)	N/U (c) to (f) D (d) to (f)
Option for WTO membership	CP C (c) to (f)	CP C (c) to (f)	CP C (c) to (f)	CP C (c) to (f)

N = Negotiation based offer; U = Unilateral offer without *quid pro quo* from others; D = Domestic initiative to establish relevant processes and mechanisms in the domestic regime; P = Flexibility offered to countries for those products with low share in global trade; F1 = Flexibilities considered for developing economies in the top 30 global economies; F2 = Flexibilities for other developing economies; C = WTO Committee or Council discussion on the provisions/disciplines, for possible ways of adopting some of them within the system; (a) to (f) refer to the list that appears earlier in this section. The reference to more than one activity, such as N/U, means that both the options could be tried, with a possibility of making any combination of the two options.

This discussion demonstrates the complexities of “docking” the TPP rules into the WTO from the standpoint of non-members. But what options do those countries negotiating mega-regional FTAs have?

Options for parties to mega-regionals

Rules and disciplines in the TPP are formulated based on the legal systems and institutions of the member countries. The influence *inter alia* of the US is conspicuous. Furthermore, while mega FTAs, such as the TTIP, RCEP and EU-Japan FTA, will develop, furious competition to lead *de facto* international standards and harmonization based on own regimes will continue. In this light, clearly the TPP will affect the development of mega-regional FTAs and the formation of global rules, but there is no guarantee that rules in the TPP will become global rules and that the harmonization of rules among mega FTAs will be successfully carried out.⁵ Rather, the danger that a spaghetti bowl of rules develops is an imminent threat to the global system by the conclusion of the TPP.⁶

Challenges ahead with using the TPP to globalize rules

More concretely, problems are emerging vis-à-vis non-member countries in such areas as IPRs, technical barriers to trade, digital trade (e-commerce), state-owned enterprises (SOEs), investment (e.g. investor state dispute settlement), services and rules of origin. While the agreement includes many “deep” disciplines in these and other areas that reflect the needs of global value chains (GVCs) and businesses, and are the results of harmonization efforts by the member countries, the problem is that they do not necessarily reflect the institutions and practices of non-members.

One typical example is the case of intellectual property. In the area of copyright and trademark infringement, the Anti-Counterfeiting Trade Agreement (ACTA) was concluded in 2012 among mainly developed countries, including the US, the EU and Japan, with a view to harmonizing IPR rules and strengthening enforcement. Though it is still not in force, reflecting

strong opposition within the EU, it was a *de facto* international standard based on the harmonization of the IPR institutions and systems of the US, the EU, Japan and other participating members. In analysing the results of the TPP in the IPR area, it is apparent that the results are more skewed to US disciplines, compared with the results of the ACTA, in such areas as disciplines on *ex officio* investigation, criminal investigation and pre-established damages. For the EU, it is extremely difficult or almost impossible to accept the results of the TPP in IPR in their entirety. The landing zone for the eventual harmonization work among mega-regional FTAs has actually become narrower compared with the pre-TPP situation.

The US-EU talks on the TTIP must be followed closely to see whether they will find common ground on IPR. It may be time-consuming and delicate work. The US is bound by the IPR rules in the TPP and, consequently, is likely to have less flexibility in TTIP negotiations. Furthermore, the sequence of mega-regional FTAs will definitely affect the shape of future global rules, especially in the case of IPR because of the prohibition of MFN exemption.⁷ Nonetheless, it is possible that some solutions may emerge that provide the possibility of mutual consistency. After all, even within the TPP, the IPR provisions for Biologics medications and Data Protection have shown the possibility of finding solutions that give comfort to different TPP members.

In the WTO, all efforts go to the creation of common, global rules, but in mega-regional FTAs there is no automatic mechanism that ensures the formulation of common, global rules. To deal with different rules in mega-regional FTAs and their harmonization, various approaches are possible. The following is an illustration of possible methods.

- 1) To carve out provisions/areas related to differences. For example, the e-commerce chapter in the TPP may lend itself to this approach in relation to the services chapter (on the treatment of cross-border data flows, the non-localization requirement of servers, etc.).
- 2) To make provisions ambiguous or introduce flexibilities in interpretation/implementation. For example, geographical indication in ACTA and in the TPP could be recast, allowing room for interpretation in view of coming TTIP negotiations.
- 3) To stipulate exemptions, for example the Investor-State Dispute Settlement (ISDS) in the TPP, allowing for various political and institutional exemptions. For example, these include exceptions to the investment chapter's rules to limit the scope of ISDS in such areas as health and other public services.
- 4) To stipulate multiple solutions, for example, international standards in the International Standards Organization.⁸ This is possible only when solutions are not inconsistent.⁹ Various provisions on IPRs appear in the TPP.¹⁰
- 5) To differentiate the application of dispute settlement mechanisms, for example, allowing for their non-application in certain circumstances to certain parties, such as of ISDS to tobacco in the TPP.
- 6) To provide conditional flexibilities and benefits in other unrelated areas, and sometimes to even "coerce" others to agree. This is a real threat especially for small countries.

These methods will be utilized independently or in combination in coming mega-regional FTA negotiations in order to find mutually satisfactory solutions,¹¹ but the harmonization of rules even in one mega-regional FTA is very difficult as demonstrated in the TPP negotiations. Harmonizing or maintaining the consistency of rules among multiple mega-regional FTAs (e.g. the TPP, TTIP, RCEP, Japan-China-South Korea FTA and EU-Japan FTA) is expected to be very complicated and time-consuming work in view of differences in member countries, institutions and negotiation schedules. Moreover, the conclusion of the TPP itself as the precedent can be a serious hurdle for the flexible harmonization or consolidation of rules owing to the path commitment of its members. In this light, it is unrealistic to expect common solutions automatically resulting from mega-regional FTA negotiations. It will be a lengthy, and perhaps endless, process.

The risk of serious spaghetti bowls of rules is thus a real threat to the global trade system. The conclusion of the TPP may exacerbate the situation, triggering a hegemonic fight among leading countries (see US President Obama's 2016 State of the Union address). Looking for ways to manage differences and evolve towards higher disciplines over time is an important systemic issue for the development of common, global rules. The best scenario is that the WTO will lead multilateral negotiations to find global solutions in important issues/areas based on the consensus of members, but the reality of the WTO and Doha Round is far from the dream. The Doha Round is adrift after 15 years of negotiation with just minor results.

The WTO, with its stringent consensus requirements, cumbersome negotiation procedures, lack of "issues linkage", and ineffective engagement in terms of variable geometry, is not functioning as far as its rule-making function is concerned. Indeed, mega-regional FTAs are proliferating because of the lack of progress in the WTO and the Doha Round. Serious efforts to reform the WTO should take place to bring it back to its place as the central pillar of the global trade system.

The TPP is a precursor in the mega FTA era. Various harmonization efforts should and will take place to find global solutions but it is still too early to predict how serious and effective they will be. It is rather optimistic to believe that mega FTAs will automatically lead to the harmonization of different rules and the creation of global trade rules applicable to all the countries. Asymmetrical strategic positions of insiders versus outsiders, early birds versus latecomers, the different interests of major trading countries, and hegemonic fights among major countries are already evident in discussions relating to mega-regional FTAs.

As a short-term solution, simply pursuing mega-regional FTAs, as many countries do, may be attractive and rewarding to governments. But to achieve sustainable results, both WTO reform and FTA multilateralization are needed. The two cannot be separated and should be seen by governments as two sides of the same, systemic efforts to create a new global trade regime. Rushing towards competing mega-regional FTAs is short-sighted, leading possibly to mutually inconsistent, fragmented and multiple trade regimes that will be a nightmare for businesses and the functioning of GVCs.

Utilization of plurilateral agreements and approaches¹²

Liberalization in the TPP may trigger plurilateral initiatives in certain selected areas since TPP members are already committed to high levels of liberalization in market access for goods. The key in certain areas will be whether there is the possibility to realize critical mass involving non-member countries. In services liberalization, since it is also related to rule-making, the situation is somewhat different from market access in goods, as seen below. However, it should be noted that the telecommunications and financial services agreements, adopted in 1997, were based on the critical mass and MFN extension methods.¹³

The success of the Information Technology Agreement II is giving a push to plurilateral liberalization initiatives. Furthermore, plurilateral negotiations on environmental goods are proceeding, with MFN as part of the framework. In this process, however, new issues may have to be dealt with, such as what happens if the members of such an agreement do not comprise a "critical mass" at a later date. This point has recently been raised in the context of one such negotiation. Nonetheless, in a situation where the Doha Round is stalled and the expected linkage of the negotiation issues in the Round does not function, it is possible that plurilateral liberalization will be the main tool for liberalization in the near future.

The issue-based plurilateral approach with MFN can be utilized as an avenue to multilateral trade rules. Hesitation towards MFN extension is based on the fear of free riding. To reduce the fear, the formation of appropriate critical mass will be key. At the same time, free riding in rules is in many circumstances exaggerated since rules and regulations will in practice be applied to members and non-members in a similar or non-discriminatory manner.

This would complement situations where critical mass plus the MFN extension approach is possible, as seen in the cases of the telecommunications and financial services agreements. In these cases, even with a consensus requirement,¹⁴ a plurilateral with the MFN extension is

a method that can be effectively utilized for plurilateral approaches in rules in the areas covered by the WTO. By extending the benefits on a MFN basis to non-members, multilateralizing the results of plurilateral agreements will be far easier since consensus-making will be easy.¹⁵

However, there are other possibilities in rule-making where MFN may not be easy for the members of plurilateral agreements. In such cases, a serious hurdle in the WTO is the requirement of consensus for making an Annex 4 agreement (a plurilateral agreement in the WTO, e.g. the Agreement on Government Procurement, whereby the benefits are not extended on an MFN basis to non-members) as well as an Annex 1 agreement (an agreement binding all WTO members). As a legislative proposal, softening the consensus requirement for Annex 4 should be seriously discussed.¹⁶

Otherwise, rule-making in the WTO will continue to face serious difficulty while FTAs, including mega-regional FTAs, will further dominate and become the mainstay of rule-making in trade, undermining the multilateral trade regime.¹⁷ In this situation, the plurilateral approach, as at present, would be to give up multilateralization by consensus and constitute an FTA under Article 24 of the General Agreement on Tariffs and Trade (GATT) or Article 5 of the General Agreement on Trade in Services (GATS). Even if it can satisfy the legal requirements necessary for MFN exemptions under these provisions, this approach will definitely lead to the serious undermining of existing disciplines in the WTO and the WTO system itself.¹⁸

On the contrary, critical mass plus the MFN extension approach will be conducive to multilateralizing the rules of mega-regional FTAs in a much more efficient manner than the difficult harmonization of mega-regional FTAs.

Possible plurilateral negotiations arising from the TPP

Possible areas for consideration could include IPR, investment, SOEs, digital/e-commerce,¹⁹ rules of origin (such as full cumulation and self-certification, for example) and regulatory coherence.

In identifying and clustering the issues, multi-issue plurilateral negotiations can be considered.²⁰ (See, for example, Nakatomi (2013a) for the proposal of an International Supply Chain Agreement.) To tackle 21st-century issues facing GVCs and business activities, it is time-consuming and ineffective to negotiate issues one by one.²¹ Negotiation resources are also quite limited. Therefore, it may be better to negotiate multiple issues of importance selected by the governments and business together with certain time limits. The key for success is the selection of topics/agenda and the formation of critical mass.²² The TPP provides many clues and indications for the areas to concentrate on in the near future.

It is important to ensure the disciplines that are created are amenable towards forming a larger membership and are not in conflict with each other. For this purpose, a large membership (critical mass) is necessary and the focus should be on building consistency among the rules that emerge.

Part 2: Regional Implications

In addition to its various potential impacts on the multilateral trading system, as explored in Part 1, the TPP will also affect regions and countries around the world in various ways. Should the TPP be ratified, its accession clause, a particularly important feature, potentially opens new territory. The only parallel among FTAs is the EU and, at the multilateral level, the WTO. In both instances, enlargement of the membership became a vital part of the arrangement, one that can be credited with substantial gains, both for incumbents and new members. The TPP, if ratified, also raises new questions about the relevance and vitality of the WTO. The TPP aims explicitly to rewrite the trade rules for the 21st century, has elaborate provisions for dispute settlement, includes standing committees, and provides for accession procedures. Covering 40% of world GDP and countries stretched across three continents, the TPP, like the proverbial duck, looks, sounds and acts like a mini-version of the WTO. Although the TPP could create new incentives for excluded countries to re-engage in the WTO and could provide a roadmap for more advanced multilateral disciplines in a number of areas, it could also have the opposite effects.

Next, the contours of the potential impact on selected regions are briefly explored, starting with Asia-Pacific.

Asia-Pacific

In the Asia-Pacific region, five countries (Japan, Malaysia, Singapore, Vietnam and Brunei) are already members of the TPP. From Oceania, two countries (Australia and New Zealand) joined the mega-regional FTA. The reasons for joining the TPP are diverse and different, depending on the countries, and include both economic and political factors. Regardless of the reason, the TPP's deep liberalization and common rules will have substantial impacts throughout the region, notably:

- Tariff liberalization combined with full cumulation in rules of origin, together with rules concerning behind-the-border measures in the TPP, will affect GVCs and production sharing in Asia, with the possibility of trade and investment diversion in favour of member states.²³
- Possible participation of the remaining Asia-Pacific countries in the TPP has become a big political and economic issue in Asia.
- The geopolitical implications of the TPP will also seriously affect how the participation issue plays out.
- The TPP also affects ongoing FTA and mega-regional FTA initiatives in, and involving, the Asia-Pacific region.

Non-members face four possible choices regarding participation in the TPP.²⁴

- 1) *Participate*. Some countries may wish to join the TPP based on economic and political calculations.
- 2) *Stay outside but align policies*. Others, balancing the pros and cons of participation, may wish to stay out, deeming the economic and political costs, such as deep liberalization and the difficulty of rationalizing domestic regulations, too high. Nonetheless, some may try to align policies with the TPP since its rules will affect non-members unfavourably unless they follow the new *de facto* standards in the TPP.
- 3) *Stay outside and develop own regimes*. It is also possible that non-members will stay out and try to develop their own regulatory/institutional regimes. This choice will be difficult for a small country but may be an option for a big economy like China (e.g. the Silk Road Initiative).
- 4) *Stay outside and do nothing*. This option may ameliorate the economic impact of the TPP on the country.

It is still too early to predict the positions of non-member countries on the TPP participation issue. Asia-Pacific countries are carefully analysing the TPP and assessing the pros and cons of these approaches.

The participation issue is also affected by the position TPP member countries will take towards non-members, which will be decided by consensus. Therefore, the members' position and flexibility to newcomers are crucially important. TPP members are currently working together to extend participation²⁵ but their flexibility on the participation issue is currently unknown. Indeed, various movements and messages relating to the participation issue already exist. For example, at the TPP signing ceremony on 4 February 2016, members expressed their willingness to extend membership with conditions.²⁶ The US-ASEAN Summit on 15-16 February 2016 was the first test event for the US and ASEAN to exchange their positions on the participation of ASEAN members in the TPP.²⁷

However, new applicants may ask for special treatment or exemptions on certain sensitive issues. In the TPP, negotiations on sensitive issues were individually treated and solved in order to satisfy political and economic thresholds for the participation decision of the country concerned. In accession negotiations, would the process be the same? Could the members be flexible enough to accommodate the newcomers' difficulties?

Strong dispute settlement in the TPP is another issue related to participation. Since the TPP has a strong binding dispute settlement system, it may deter participation. If a newcomer asks for non-application or special consideration related to dispute settlement, how will the members react?

Already non-members have expressed various views on the participation issue but it is too early to predict what will actually happen in the near future. For example, Thailand, Indonesia, the Philippines, the Republic of Korea and Chinese Taipei released political messages that could be taken as positive for future participation in the TPP, at different junctures and levels.²⁸

China's position on participation in the TPP is crucially important. Again, it is too early to predict China's stance. Some believe that China will eventually join the TPP to realize further domestic reform and to retain its position in the development of GVCs in Asia-Pacific. Some believe it will stay out of the TPP and develop independent regimes, as in the case of the One Belt, One Road initiative in infrastructure. Furthermore, China may or may not put emphasis on the RCEP as the avenue to the FTAAP.

In his State of the Union address on 12 January 2016, President Obama declared:²⁹

With TPP, China does not set the rules in that region; we do. You want to show our strength in this new century? Approve this agreement. Give us the tools to enforce it. It's the right thing to do.

How will this political message develop in the future? How will that affect China and Asian non-members? Already the TPP is also directly or indirectly affecting FTA initiatives in Asia-Pacific. On the RCEP, the picture is not clear. The TPP may or may not accelerate and deepen disciplines in the RCEP. The road to the FTAAP could be a big issue in the Asia-Pacific Economic Cooperation (APEC) this year, which will be held in China, since both the TPP and the RCEP are described as routes to the FTAAP. Meanwhile, on 1 November 2015, China, Japan and the Republic of Korea confirmed the acceleration of CJK FTA negotiations in their meeting of leaders.³⁰

Thus the TPP has already made a political impact on Asian members due to its scale and depth of disciplines. The membership issue will be a big consideration for both TPP members and non-members in terms of its political and economic consequences. But it is still too early to predict what will happen and how membership will evolve.

The Americas

Since the TPP incorporates NAFTA countries and Latin American states, both are considered here.

NAFTA

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

The TPP is likely to advance NAFTA partners' trade with the other TPP members and within the trade bloc, and make the whole TPP area, including NAFTA, more attractive as an investment destination. However, as already identified in previous analyses by Petri and Plummer (2016), Cheong and Tongzong (2013), Freund, Moran and Oliver (2016) and the World Economic Forum (2014), tariff reductions under the TPP will have small effects. For example, according to Petri and Plummer (2016), the gains from tariff reduction accruing to the US, a large and already open economy, are tiny and only secured after very long implementation periods in sensitive sectors. The US also engages in very little new liberalization in services (Elliott, 2016; Hufbauer, 2016). Thus, most of the gains from the TPP are believed to accrue from reduction in non-tariff barriers; these are notoriously difficult to estimate, requiring a number of heroic assumptions. Moreover, while the contemplated changes in rules will help facilitate intra-TPP trade and investment, many of the new generation disciplines not previously contemplated in prior FTAs are best effort provisions in the TPP. The contemplated rule modifications will require little or no changes in laws in the NAFTA countries, though they will serve to prevent backtracking.

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

Market access

Trade in goods among NAFTA countries is essentially free³¹ and they trade predominantly with each other. In 2015, about three-quarters of Mexican and Canadian exports were destined to the US.³² That same year, imports from Canada and Mexico respectively represented 15.7% and 17% of US' total imports. Exports from the U.S.A. to Canada represented 19.21% and from U.S.A. to Mexico 15.5% of U.S.A. total exports.³³ Canada and Mexico are very large recipients of US foreign direct investment. While the TPP agreement will help consolidate these linkages, it appears unlikely to be the game changer it has sometimes been claimed to be. If Japan is excluded, NAFTA countries export less than 1% of their total exports to countries that are part of the TPP with which they do not already have an FTA (see Figure 2). And, with the exception of Vietnam, all the TPP countries have low MFN tariffs to start with. Japan attracts only 1% of Canada's exports, even less of Mexico's

exports, and 2.5% of US exports. Some of these exports, such as cereals, dairy, and clothing and textile, confront high Japanese tariffs and quotas. However, most do not, as Japan also has very low MFN tariffs, in the vicinity of a 1% MFN applied tariff, trade-weighted. (WTO, 2015) The prospects for the TPP to impact NAFTA imports are a little more robust, especially in Mexico, whose MFN tariffs are on average higher and more dispersed than the MFN tariffs of Canada and the United States.

Figure 2: FTAs between NAFTA and TPP Countries

	Australia	Brunei Darussalam	Canada	Chile	US	Japan	Malaysia	Mexico	New Zealand	Peru	Singapore	Vietnam
Canada				✓	✓			✓		✓		
US	✓		✓	✓				✓		✓		✓
Mexico			✓	✓	✓	✓				✓		

Sources: Websites of the governments of NAFTA countries, as of 13 November 2015.

Our conclusion, therefore, is that TPP tariff reductions have a small effect on the exports of NAFTA countries, and the gains will accrue mainly in Japan. TPP tariff reductions will have larger but still small effects on NAFTA imports, and the gains, small as they are, will accrue mainly in Mexico. Mexican textile, clothing, footwear and transport equipment will face increased competition from Asia. Moreover, these modest gains will only accrue over long implementation periods in the most sensitive sectors, as well as by compensating subsidies that the Canadian Government has promised its dairy farmers and that the Japanese Government has promised its pork farmers. Some sectors in agriculture will not be completely liberalized.³⁴ The TPP's restrictive and more enforceable³⁵ rules of origin, in areas such as garments and textiles, and automobiles and parts, on which Canada and Mexico were especially insistent, will also mitigate its market opening effects.

Mexico and Canada will not see their worst fears realized, as they will face very little new trade diversion in the US, though there will be some increased competition in the US market from Asian manufactures, mainly from Japan in automobiles and light trucks, but only many years down the road. One of the TPP's significant contributions is that it will promote the development of value chains by connecting the FTAs previously negotiated between its partners. Specifically, through accumulation of origin, parties will be able to incorporate inputs supplied from TPP member countries into their final goods and export them with preferential treatment to any of their TPP partners. This is not possible outside of the TPP framework, despite the fact that many of its parties have signed FTAs with the same TPP partners. Another TPP accomplishment is the agreement on a single set of rules of origin, so that the rules applied to products coming from any member country are identical. This will benefit producers, since they will not be required to have separate production lines to comply with the rules of origin of different TPP partners.

On *services*, the TPP's main innovation is to shift market access provisions from a positive to a negative list. This represents a big improvement on liberalization in the WTO but not on NAFTA, nor on other FTAs already negotiated among TPP partners.

Mode 3, foreign establishment, accounts for the largest share of trade in services and this is treated under the *investment* chapter of the TPP. Overall, the substantive disciplines on investment are similar in NAFTA and the TPP (e.g. national treatment, expropriation, transfers, etc.). As to pre-establishment and post-establishment commitments, both the TPP and NAFTA establish no restriction to investments except for those activities mentioned in a "negative list".

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

Rules and regulatory cooperation

This section examines the additionality of the TPP with respect to NAFTA and other preceding trade agreements.

Technical barriers to trade. The TPP goes beyond NAFTA in reducing the potential for technical standards to impede trade. NAFTA calls for signatories to promote the compatibility of their respective standards-related measures; accept the results of the conformity assessment procedure of other parties; and negotiate mutual recognition agreements in order to achieve such results. Moreover, in NAFTA, an importing party should treat another party's technical regulation as equivalent to its own where the exporting party demonstrates that its technical regulation fulfils the importing party's legitimate objectives. In the TPP, parties explicitly enumerate mechanisms to facilitate the acceptance of the above-mentioned results, some of which are additional to NAFTA (e.g. recognize other parties' designation of conformity assessment bodies or unilaterally recognize the results of such conformity assessment bodies). An important contribution of the TPP is to include annexes on certain products (i.e. wine and distilled spirits, pharmaceuticals, cosmetics, medical devices, pre-packaged foods and food additives, organic products, and information and technology products) containing specific provisions on the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, marketing authorization and notification procedures. More demanding transparency provisions are also included in the TPP.

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

Labour and environmental standards. While NAFTA includes labour matters in a side agreement, the TPP incorporates labour in the agreement. Both agreements include provisions pertaining to enforcement, procedural guarantees, cooperation, transparency and public awareness relating to the parties' labour laws. The TPP provides for several further substantive labour commitments, such as that members must adopt and maintain labour rights under the International Labour Organization convention, including freedom of association, elimination of forced and child labour, and protection against discrimination in employment. The labour and environmental provisions in both NAFTA and the TPP are subject to the dispute settlement mechanism. However, while non-compliance with the side agreement under NAFTA generally engenders monetary sanctions, non-compliance under the TPP engenders suspension of the preferences accorded under the agreement, potentially entailing heftier penalties.

Intellectual property. The TPP's intellectual property protection provisions are broadly consistent with other US trade agreements, including NAFTA and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. However, the TPP is the first US trade agreement to include an explicit reference to protection for biologic drugs. The TPP also goes beyond previous US FTAs by providing greater specificity on the protection of internet domain names and on how to settle disputes relating to them. The agreement contains provisions to compensate patent holders for "unreasonable delays" in issuing patents. The TPP requires that parties provide a minimum term of protection for copyrighted works of life plus 70 years, going beyond NAFTA. The TPP provides stronger trade secret protection than preceding

FTAs, and makes criminal penalties mandatory for wilful infringements and for financial gain, including, for example, unauthorized camcording in theatres. However, the TPP steers away from strengthening geographical indications for food products and beverages, consistent with a long-standing defensive interest of agribusiness in the US.

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

Electronic commerce. One of the TPP's most innovative features, and most important additions beyond NAFTA, is the chapter on trade by electronic means. Among other obligations, the TPP provides that its parties may not impose duties on electronic transmissions; treat other parties' digital products less favourably; deny the legal validity of a signature only because it is in electronic form; and not require a covered person to use or locate computing facilities in the party's territory as a condition to conduct business.

State-owned enterprises. NAFTA has very few provisions pertaining to state enterprises and monopolies. These provisions state in general terms that SOEs must not provide non-discriminatory treatment and that they must act per commercial considerations. The TPP develops these obligations. For example, it stipulates that no party to the agreement may cause adverse effects to the interests of another party through the use of non-commercial assistance³⁶ that it provides to any of its SOEs with respect to the production and sale of goods or the supply of a service of the SOE. Although several exceptions apply to these provisions, the TPP clearly raises the bar on the commercial operation of SOEs.

A glimpse of the future

Difficult as it is to imagine that all the hard work that has gone into the TPP will be in vain, it is far from certain that the US Congress will, sooner or later, ratify the TPP. Even if the TPP is ratified, it will have taken only modest steps in furthering the unfinished North American integration agenda under NAFTA. A North American competitiveness agenda would include creating a 21st-century border (infrastructure, risk management, pre-clearance, customs cooperation); strengthening regulatory cooperation (the mutual recognition of regulations); liberalizing strategic services (e.g. telecommunications, air, land and sea transportation); implementing a common energy policy (including oil and gas exports, the Keystone Pipeline and clean energy, among others); establishing more robust frameworks for the temporary movement of people, permanent migration and border security; and eventually establishing a customs union.

Latin America

The impacts of the TPP on Latin America (LATAM) will be considerable. LATAM has tried several experiments with preferential trade since the 1960s, but none could integrate the region economically in a full common market. Currently, the geoeconomics of the region are complex, with the US, EU and now China having significant trade and investment interests in the area.

Comprised of 20 countries, Latin America encompassed 9% of world population in 2015³⁷ and produced a nominal GDP of around US\$ 5.6 trillion in 2015.³⁸ On the one hand, LATAM is home to many regional preferential trade agreements, such as the MCCA (Central American Common Market – 1960),³⁹ ALADI (the Latin American Integration Association – 1980),⁴⁰ Mercosur (the Southern Common Market – 1991)⁴¹ and CAN (the Andean Community – 1996).⁴² In 2011, the Pacific Alliance was created, increasing the overlap of trade arrangements in the region.⁴³ On the other hand, almost all Latin American countries are already partners of the US and/or the EU through FTAs. Bolivia, Ecuador, Cuba and members of Mercosur are the few exceptions, hesitating to deepen their trade relations with developed countries.

Interregional FTAs include a network of bilateral arrangements under the umbrella of ALADI,⁴⁴ which is the broadest trade agreement in LATAM. Such arrangements, however, are old style agreements, focusing on the reduction of tariff on goods rather than trade rule coordination.

Mercosur⁴⁵ is considered an “imperfect customs union”, with the partial liberalization of goods and services, the incomplete application of the common external tariff and a few dispositions on non-tariff rules. The regional bloc is facing some political adversities that started with Argentina’s economic crisis. The participation and political role of Venezuela also became a point of disagreement among Mercosur’s full members. With the beginning of a new liberal government in Argentina, bets are increasing that the process will move forward, pending the outcome of the political crisis in Brazil.

The Pacific Alliance, which accounts for more than a third of Latin America’s gross domestic product, chose another road, moving quickly on a path to integrate the four countries’ economies with other Pacific countries. These countries individually have more than 30 FTAs around the World. Mexico, Peru and Chile are also partners of the US and the EU, and currently participate in the TPP. Colombia is in line to join.

The most serious problem against the economic integration process is that the different FTAs agreed by LATAM countries are based on divergent economic philosophies, which can be traced back to the classical debate between the protectionists and free-traders. The Pacific countries defend a liberal economy and multiple trade negotiations to open their markets, and wish to be integrated with developed economies. The Atlantic countries prefer a closed regionalism, defending a larger political space for their economic policies, which means a veiled protectionism.

Mercosur is an example of a trade arrangement grounded in the second type of economic philosophy, although it first emerged as an example of open regionalism in the 1990s, in Fernando Henrique Cardoso’s presidency. The bloc at that time tried to integrate with the US through the Free Trade Area of the Americas (FTAA) and the EU (Mercosur-EU) but, after the election of President Lula in Brazil in 2002 and President Kirchner in Argentina in 2003, its members opted for a more protectionist economic model and a policy of trade isolation from extra-regional FTAs. They preferred multilateral negotiations, where, from their standpoint, the main interest in agriculture could be better defended against the subsidies policies of developed countries.

[The division between the free-traders and protectionists will be accentuated by the TPP under the leadership of the US. The results are evident in the GDP consolidated data: according to the International Monetary Fund, Mercosur was expected to suffer an economic contraction in 2015, with the region’s heavyweight, Brazil, slated for negative growth of -3.8%, while the Pacific Alliance was predicted to grow an average of 4.25% in the same period.⁴⁶]

More recently, a new actor has emerged on the LATAM scene – China – changing the geoeconomy of the region and challenging the role of the US as the hegemon of the Americas. Since the beginning of the 2000s, China’s presence has rapidly been increasing in LATAM. China is not only becoming the region’s main trade importer, but it is also supplanting the US and the EU as the most relevant supplier for Latin American countries. Its investments in the region are also increasing, in sectors such as oil, communications, mining, transport, agribusiness and the environment.

Nonetheless, the new economic fact in the Americas is the TPP. It goes further than the WTO paralysis, and cuts deals among its members to foster intra-trade and support regional value chains. Most of Latin America’s main economies are isolated in protectionist and nationalist practices; the TPP clearly changes the geography of the region. This situation became clear when the quotas and rules of the TPP were shared among its members, isolating Mercosur’s members and other protectionist Latin American countries and indirectly defying Chinese commercial expansion.

In a historical comparison, the TPP can be considered the new Treaty of Tordesillas for LATAM, which in the 15th century tried to establish influence zones between great powers fighting for trade and investments with new rules. But instead of Portugal and Spain, the hegemony of the past, the clash is now between China and the US. The whole of Latin America is under dispute.

Brazil, individually, under the Labour Party administration, is still betting on South-South trade and the protectionist model of integration for Mercosur, but changes in the medium term can be glimpsed. For the government of Brazil, the preferential trade agreement with the EU is now considered politically palatable. Argentina, the second most important economy in South America, will certainly change the game, pressing for a Mercosur-EU agreement and an agreement with the US. The challenge then will be presented to Brazil.

Time will show whether the costs of refusing to accept the new model for FTAs – the one based on rules and not on tariffs – will be politically acceptable for Brazil and Mercosur, pressing them to look for a partnership with the TTIP in particular.

Sub-Saharan Africa⁴⁷

Historically, economic integration in Africa was shaped by the ideology of pan-Africanism, the realities of regional state formation imposed by decolonization processes,⁴⁸ and the economic realities of being subsistence economies with trade dominated by commodity exports. Consequently, it is no surprise that the internal structure of regional economic arrangements in Africa mirrors Latin American weaknesses in terms of “hardware” and “software” deficits. Arrangements remain weak and characterized by little internal trade.⁴⁹ Thus, notwithstanding the fact that until recently Africa was going through a period of unprecedented economic growth, the continent remains among the least globalized regions in the world and most disconnected from GVCs, while also being the least integrated internally.

African integration attempts have taken three directions: integration with neighbours and other countries because of economic linkages, history and security; continental efforts driven by the African Union (AU); and global integration, unilaterally, and through the WTO. Regional integration was initially shaped by import substitution thinking, the dominant economic paradigm in the 1960s and 1970s as post-colonial states sought to build industrial bases. That experience gave way to the debt crisis of the 1980s and 1990s, and adoption (many would say imposition) of structural adjustment policies embodied in the Washington Consensus. The impact of structural reforms is still widely debated, and this has implications for trade strategy going forward.

In the current context, the primary driver of continental economic integration is the African Economic Community, established through the Abuja Treaty and expected to be achieved through a progressive, linear integration process. Eight regional economic communities (RECs) were identified as pillars.⁵⁰ The Tripartite Free Trade Area (TFTA) is also being negotiated between the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC), and is considered by many to be Africa’s own version of a mega-regional trade negotiation.⁵¹ The TFTA is supposed to set the foundation for wider continental integration, but there are many question marks over whether it will ultimately conclude or not.

These RECs are at different levels of theoretical economic integration, from FTAs to customs unions to common markets. The major challenge is the mainstreaming of regional integration nationally or, rather, of its failure.⁵² Given the chronic institutional weaknesses of most Sub-Saharan states, there are also questions about the most appropriate institutional form RECs should take; in essence, it is difficult to see how new, institutionally challenged states could adopt a European-style integration process.⁵³ This underscores the point about enduring pre-colonial relationships, particularly in Francophone Africa where monetary and currency policies, for example, are set in Paris under the African Financial Community (CFA) scheme.⁵⁴

Integration with the global economy is defined by the Doha Round negotiations at the WTO, access to the US's African Growth and Opportunity Act (AGOA), and the Economic Partnership Agreements (EPAs) recently concluded with the EU and which are intended to replace both the Generalised Scheme of Preferences (GSP) and the Everything but Arms (EBA) scheme extended to LDCs. The engagement between Africa and emerging economies, such as the BRICS group (Brazil, Russia, India, China and South Africa), which lacks the formalized structures of the EU and US, should also be added to this mix.⁵⁵

The reaction to the mega-regional negotiations has been largely muted in African capitals and continental institutions. The focus is mostly on infrastructure development, industrialization and the improvement of intra-regional trade. A perusal of AU documents reveals a preoccupation with Doha Round negotiation issues while emphasizing the primacy of multilateralism. South Africa is one exception; the government has been particularly vocal about condemning the emergence of the mega-regionals as an attempt by the global trading majors to circumvent the Doha Round and craft trade rules outside of the WTO. There is little apparent public debate on the implications of these mega-regionals for countries and their global trading relations, which may indicate that countries view these mega-regional negotiations as just another regional trade agreement process not necessarily of relevance to Africa. It is also useful to point out that while mega-regionals may have been influenced by such developments as the Doha impasse, slowdown in global trade and a change in production patterns, among other things, the motivations for African regional integration have always been different. There is also the aspect of existing preferential trading arrangements with both the US and the EU (AGOA, EBA, GSP) that are possibly being taken for granted as fortresses against potential negative impacts of the mega-regionals. The AGOA covers about a third of US tariff lines and the utilization of AGOA preferences has not been impressive outside of the energy sector, whereas the EU's GSP provides preferential market access for roughly 65% of all tariff lines for qualifying developing countries. Of more relevance to African LDCs is the EBA scheme, which provides for duty-free access, subject to a quota for sensitive (to the EU) commodities, across all products except arms and armaments.

The impact of mega-regionals is most likely to be felt in the market access arena. Even then, this depends on the extent to which an African country uses the corresponding preferential access scheme, the country's export structure and destinations, and whether any mega-regional country exports the same products to the market in question. On the positive side of the ledger, the fact that trade complementarities in Africa's trade with the EU and US are high might lead to enhanced market access, but with the potential disadvantage of locking in African economies as commodity exporters. This could affect African countries' ability to upgrade in GVCs. On the other hand, diversification of export baskets would expose African economies to competition from Asian countries with more competitive products, particularly in relation to the TPP, meaning they could acquire preferential market access into the same US market that Africa will be competing for.⁵⁶ Finally, the fact that the TTIP, the TPP and the RCEP in Asia, centred on China, incorporate the major GVC hubs of the world could also disincentivize multinational corporations from investing in Sub-Saharan Africa outside of the resource sector or for efficiency-seeking purposes.

The impact on African trade is also subject to other factors. Africa's recent growth patterns have increased its attractiveness, resulting in different external partners tussling for increased engagement in trade and investment. The US and EU are competing for enhanced economic influence on the continent within the context of shifts in Africa's trade and investment patterns towards emerging economies such as China, India and Brazil.

Given that the EU remains Africa's biggest trading partner, the TTIP has the greatest implications as far as impact on current market access is concerned. Since there are 33 LDCs in Africa, out of a total of 54 countries, the future of the EBA scheme is particularly important. No major changes seem to be in the cards, so the most serious challenge for individual African states is the possibility of graduating from the scheme upon achieving a consistently higher development status. Since the continent as a whole is growing, in some cases still rapidly, this possibility is likely to assert itself in coming years. In this light, the EPAs are particularly important since they offer current and future non-LDCs the security of an FTA with the EU. However, EPAs generally do not cover much beyond market access for

goods, so the regulatory agenda associated with the TTIP would still have to be engaged in such cases.

Concerning the AGOA, with the October 2015 renewal under the belt, the consensus in Washington appears to be that FTAs, at least with the relatively more advanced African states such as South Africa, Kenya and Nigeria, should replace the AGOA when it expires in 2025. Therefore, those African states, like Lesotho, that depend on AGOA market access would be well advised not to place long-term reliance on the scheme. Rather, if maintaining such market access is a priority, then African states need to carefully consider which aspects of the TPP agenda they could adopt, and which not, and whether the resulting balance would be sufficient to convince Washington to sign on to “African FTAs”. It is by no means clear that there is any such will in Washington, nor is it likely to evolve in the future.

Regarding the TPP specifically, a recent study⁵⁷ shows that it is a major export market for some African LDCs, especially for the fruit and vegetable product groups, and textiles and apparel. Therefore, the TPP will likely have an impact on African LDCs’ exports.

This applies particularly to production and product standards but also to sustainability standards (social, environmental). The special emphasis on sustainability standards indicates their growing role not only in private but also in public standards requirements. Compliance with those standards is increasingly important for producers in low-income countries. Compliance not only guarantees market access but also would positively affect the firms’ efficiency and productivity due to capacity development. Moreover, compliance with standards is crucial for enterprises aiming at upgrading within value chains. Furthermore, in the case of specific products, standards harmonization, as envisaged by the TPP, can reduce “lock-in” effects. After a company has invested in the accreditation of a certain standard applicable in one TPP country, it may be costly to switch to another standard in another TPP country. But if that standard is recognized by different parties to the TPP, then another market could open up to the exporter concerned.⁵⁸

However, compliance with international and sustainability standards is a costly process, and includes the costs of acquiring and maintaining the accreditation (resource costs, trained staff). These standards accreditation costs can be difficult to bear for small and medium-sized enterprises and small-scale producers. Since it is likely that these enterprises and producers characterize textiles and food production in African LDCs, they risk being excluded from participation in TPP-related value chains.

Besides standards, another important issue in the TPP talks is rules of origin, especially for the textile industry. These could have an impact on exports of African LDCs, since the TPP-region is a major export market for yarn, fabric and apparel. This impact is most likely to be experienced through investment diversion, as producers look to relocate their production into TPP member states. This is a particular concern for China, since it is not included in TPP negotiations, but it may also become a concern for some African LDCs.

China is reportedly moving towards formalizing its trade and investment arrangements with Africa. This will add another dimension to the current EPA and AGOA discussions.⁵⁹ China will continue to constitute a growing market for traditional African exports, principally commodities. But sustained development is ultimately linked to economic diversification, which requires adding value to exports and upgrading value chains. China could well be a part of this story, particularly by relocating medium-sized manufacturing firms to the continent,⁶⁰ but the markets for such products will almost certainly be primarily in the developed countries, especially the US and EU. Still, China’s willingness to join the TPP could open up more opportunities for African exporters in the enlarged TPP market.

It is more difficult to discern how these trends will play out at the country level in Sub-Saharan Africa. Nonetheless, it is apparent that three of the major economic powers – South Africa, Angola and Nigeria – are pursuing increasingly inward-looking trade strategies. In Southern Africa, Namibia is increasingly mimicking its South African neighbour, a strategy that draws on and resonates with developments in some of their landlocked SADC neighbours, notably Zimbabwe and Zambia. Ghana stands out as a country seemingly intent on pursuing a more

outward-looking trade strategy. For the rest, it is not clear that trade strategy – whether of a more liberal or inward-looking posture – features high on the policy radar screen. Furthermore, at the continental level, “smart industrial policy” is being actively pushed and gaining traction in various regional policy networks.⁶¹ These ideological currents draw from, and feed, growing resource nationalism, which leads to a particular take on the GVC “narrative”. And since investment inflows into the continent are gathering pace, this trend releases pressure to reform from African states that are sceptical of trade and investment policy liberalization. By contrast, in East Africa, a counter trend towards trade and investment liberalization is discernible, notably in Kenya and Rwanda. Furthermore, the African Development Bank is advocating a view more consonant with the GVC agenda.⁶² This also feeds into the continental conversation on trade.

Clearly the countries in Sub-Saharan Africa that are already inclined to pursue integration into GVCs by way of regulatory upgrading and trade and investment policy liberalization will be better placed to manage the transitions heading their way. Those that adopt a more sceptical posture will play for time, meaning they will likely continue with their domestic status quo while beefing up regulatory capacities and mitigating liberalization to the maximum extent that current policy space affords. Of course, nothing is predetermined, and domestic political economies, interacting with powerful external headwinds, will continue to play decisive roles in each individual state.

Part 3: A Return to the High Politics of the TPP

The direction in which mega-regional trade agreements evolve has substantial implications for the global trading system, and therefore for how non-members react to them. If deeper regional and plurilateral arrangements are used to complement an inclusive multilateral system that accommodates the diverse needs of its members, then frictions between parties and non-parties could be reduced through enhanced cooperation in trade and investment. On the other hand, if the trading system becomes increasingly divided into exclusionary blocks, some of which reflect the interests of major emerging powers, while others exclude them, trade and investment frictions could create additional tensions, not only in the economics realm, but in the broader set of geostrategic issues over which many disagree.

In the 2015 report, *The High and Low Politics of Trade*,⁶³ three broad scenarios were identified for how mega-regional trade agreements (the TPP and TTIP) might impact on the global trading system. These scenarios are highly relevant to consider how the TPP might impact on different regions; accordingly, they are reproduced here, with some modifications. To conclude, the question of how failure to ratify the TPP would impact on the global trading system is posed.

Building blocks

In this scenario, the ultimate outcome of mega-regionals is one free trade zone spanning the Asia-Pacific region and covering 40% of global GDP, with tariffs completely eliminated and barriers to investment completely removed; another covers the transatlantic space and is of similar shape and magnitude. This is the "full success" scenario, in which the forces of competitive liberalization⁶⁴ would be unleashed. In it, China is closely watching the TPP process, and calibrating its own domestic economic reform programme to mirror potential negotiating outcomes to the extent possible.⁶⁵ Similar, albeit more embryonic discussions are taking place in other significant developing countries, such as India, Brazil and South Africa, briefly reflected upon in Part 2 of this report. Furthermore, and bringing the RCEP into the mix, if the RCEP, TPP and TTIP all removed barriers in a sector of mutual interest, the incentive would be strong to consolidate this mutually via critical mass sectorals as well as plurilaterals among willing members at the WTO. Under these circumstances, it is possible to envisage a revitalized WTO with a variable geometry at the centre of a trading system capable of meeting the diverse needs of its participants.

Stumbling blocks

This is the more likely scenario of the three, since trade agreements always involve trade-offs and compromises, and both US driven mega-regionals are almost certain to fall somewhat short of the lofty and ambitious goals aspired to in their founding declarations. Moreover, our assessment of the content of the TPP, published in a recent separate White Paper ("Will the Trans-Pacific Partnership Agreement Reshape the Global Trade and Investment System? What's In and What's New? Issues and Options") affirms this view. This is simply a manifestation of the age-old maxim that trade agreements involve a set of second- or even third-best policy choices (the best scenario always being free trade). Be that as it may, even if the TPP manages to consolidate existing liberalization efforts undertaken by all the parties to it and to provide domestic political cover for implementing reforms to some of the most intractable domestic economic problems in member countries, considerable progress will still have been made. That would be a significant outcome from the standpoint of promoting global trade liberalization and regulatory convergence. If it operates primarily through either mutual recognition or mutual equivalence modalities, in terms of which outsiders' access to both markets is enhanced, the result could be positive for outsiders. Yet the WTO's centrality would by no means be assured through such an outcome, since the major developed countries that have traditionally exercised leadership over the global trading system would not have been able to decisively seize the initiative. In addition, many WTO members would be excluded.

Crumbling blocks

Since the TPP has already been concluded, the key outstanding issue is whether it will enter into force and, within this, whether the US will ratify it. If not, then the entire TPP project will be significantly diminished. As for the TTIP, given the advanced stage of the talks and the enormous amount of political capital that has already been spent by leaders on it, it is unlikely that the negotiations will be allowed to fail. Instead, negotiators will do what GATT negotiators did after six years of negotiations in the Tokyo Round, which is to draw a line in the sand and call failure a success.⁶⁶ Here one envisages a much more modest agreement that contains significant exclusions in the TTIP, with largely hortatory declarations on achieving future progress in areas where the talks have proven difficult (e.g. IPR, environment, labour, etc.). In a scenario of failed TPP ratification and a limping or in-limbo TTIP, the competitive liberalization impulse would sputter, leaving the WTO at an impasse. This scenario would hasten potential Chinese leadership of the global trading system but, in the interregnum, positioning among the major powers would likely be intense, putting the very future of the system at stake as the major powers move to shore up regional alliances.

In this light, the crucial question is: what if the TPP is not implemented?

What if the TPP is not implemented?

The answer to this question centres on US trade politics. Given current developments in the US, the passage of the TPP is by no means certain. Indeed, there is a distinct possibility it could have to be renegotiated or will be rejected entirely.

While the Obama administration has strongly promoted the TPP, it faces considerable opposition in the US Congress, both from a large number of Democrats who traditionally oppose free trade agreements as well as some Republicans who are unhappy about concessions that have been made on some of its specific provisions. These include what they regard as inadequate protection for biologic drugs, the retained ability of TPP members to require local storage of financial services data, and the exclusion of tobacco from investor-state provisions.

The economic evidence indicates that rather than trade, the loss of manufacturing jobs in the US over the past decade is primarily due to the combination of rapid productivity growth and American preferences to spend more of their incomes on services. Nonetheless, in the current election campaign, trade agreements, such as the NAFTA, and the offshoring of US production have frequently been blamed for the declines in manufacturing employment as well as for slow US wage growth. Whatever its merits, this is a plausible narrative that has made support for the TPP politically risky. Both presidential candidates, Donald Trump and Hillary Clinton, are on record as opposing the TPP, as were other unsuccessful candidates, such as Bernie Sanders on the Democratic side and Ted Cruz on the Republican.

In the current political environment, therefore, the TPP is certainly not a done deal. The best chance for its passage is probably during the so-called lame-duck session of Congress that will be held after the elections in November and prior to the new president and Congress assuming office on 20 January 2017. Faced with the prospect of having to deal with either Hillary Clinton or Donald Trump, some of the more free trade Republicans may be willing to drop their complaints and settle for the agreement on the table. However, given the mood of the Congress, it is certainly possible that, if brought to a vote, the agreement might be rejected. This would not only mean that the US would be unable to participate in the TPP but that the remaining countries would be unable to implement an agreement that excluded the US, since they would be unable to reach the 85% of the total GDP of the 12 members required for implementation.

With the failure of the TPP, the US would probably not be willing to conclude the TTIP negotiations, which are facing considerable opposition in Europe. Given the inability of the US to deliver congressional support for the TPP, the EU would be less prepared to make politically costly concessions and, without the TPP, European motivations to undertake TTIP would be reduced. Under these circumstances, mega-regionals involving the US would

probably be dead. As a result, the implications for US participation in the global trading system would be bleak: the US strategy of using mega-regional agreements to achieve deep integration would now be an additional failure to be added to the Doha Round.

Nonetheless, the importance of providing appropriate governance for the operation of global supply chains, discussed in the companion White Paper, will remain salient for many other countries in Asia and elsewhere. Accordingly, other mega-regionals (such as the RCEP and Pacific Alliance) and other types of agreements involving the EU, Japan and other developed countries could well proceed without the participation of the US. Without US participation, the prospects that these agreements would constitute building blocks in a more integrated global system would obviously be reduced.

Even if it is not actually rejected, if the Obama administration fails to obtain the passage of the TPP in 2016, it is unlikely that the agreement would be implemented in its current form. The consequences of failing to pass the TPP in 2016 could be quite different depending on whether Trump or Clinton is elected but, in both cases, many of the conclusions in this report would have to be revised.

Hillary Clinton was originally a supporter of the TPP negotiations, but she has rejected the final agreement. Among her objections, she has pointed to the “failure to include provisions relating to currency manipulation”, “weak rules of origin for automobiles” and “a flawed investor-state dispute settlement system”. If Secretary Clinton is elected and the agreement is passed in the so-called lame-duck session of the Congress, she would probably accept and implement it, although she might also try to negotiate additional agreements in areas she feels might need to be strengthened. If the agreement has not been passed by the time she assumes office, Secretary Clinton could either abandon it or, more likely, seek to renegotiate the agreement to incorporate the additional provisions she feels are necessary. However, resuming negotiations with the US making additional demands could prove difficult, especially for some TPP signatories that have already ratified the agreement. Thus, it is quite possible that a new version of the TPP could not be negotiated. But even if it were, especially if the Democrats enjoy significant gains in Congress, ratification of a new agreement could become even more difficult.

If Donald Trump is elected the next President of the United States, then even if it has been approved by the Congress in 2016, the TPP would be in jeopardy. Candidate Trump has made his opposition to US trade deals in general one of the centrepieces of his candidacy. He has argued that these agreements have had adverse effects on the US economy, resulting in large trade deficits and job losses. Article 1 of the US Constitution ultimately gives the Congress the right to regulate international trade, including establishing tariffs, drafting and implementing trade agreements, and other provisions affecting commerce within the US, but the president has the ability in his executive role to withdraw unilaterally from international agreements and even from treaties. Thus, after giving six months’ notice, President Trump could withdraw from both the regional and multilateral agreements that the US has signed. This would be a severe shock to the trading system. Even if he indicated a willingness to renegotiate these agreements (albeit on terms he would regard as more favourable to the US), there would be a long period with considerable uncertainty that could undermine global confidence in open markets.

Candidate Trump has also threatened unilaterally to impose high tariffs on Chinese and Mexican imports. While he might be able to do this for a limited period of time under US law – the 1974 Trade Act allowed the president to raise tariffs temporarily up to 15% for 150 days in response to “large and serious US balance of payments deficits” – eventually a President Trump would have to obtain the agreement of Congress. Ultimately, the Congress could prevent him from implementing this approach. Nonetheless, the imposition of even temporary tariffs of this magnitude would clearly violate US WTO and NAFTA obligations and have the potential to ignite a trade war. Whatever new measures Candidate Trump might take, however, his presidency would almost certainly entail a dramatic change in the US role as a leader in the global trading system. If he actually followed through with the policies he is proposing, it would upend many of the presumptions and analyses on which this report is based.

In sum, developments in the US need to be watched closely. Unfortunately, the third scenario – that of “crumbling blocks” – now needs to be seriously considered. If Hillary Clinton is elected prior to the passage of the TPP, the future of the TPP would be in doubt. But it is possible that by going back to the drawing board, the parties could rescue the agreement. If Donald Trump is elected, however, the future not only of the mega-regionals but also of a trading system in which the US plays a leadership role could seriously be threatened. Under these circumstances, it will be more likely that the influence of China and other emerging economies in the trading system will become stronger, although they are a long way off assuming the kind of leadership the US has historically provided. Therefore, whether regionally or multilaterally, trade agreements that seek deeper international integration are much less likely to be concluded.

References

- Baldwin, R. and Nakatomi, M., "A world without the WTO: what's at stake?" Centre for Economic Policy Research (CEPR), Policy Insight No. 84, July 2015.
- Cheong, I. and Tongzon, J., "Comparing the Economic Impact of the Trans-Pacific Partnership and the Regional Comprehensive Economic Partnership" in *Asian Economic Papers*, Vol. 12, No. 2, pp. 144-164, 2013.
- Council on Foreign Relations, *North America: Time for a New Focus*, Independent Task Force Report No. 71, 2014.
- Dadush, U. and Osakwe, C., "A reflection on accessions as the WTO turns twenty" in Dadush and Osakwe (eds), *WTO Accession and Trade Multilateralism: Case Studies and Lessons from the WTO at Twenty*, Cambridge University Press, 2015.
- Elliott, K. A., "How Much 'Mega' in the Mega-Regional TPP and TTIP: Implications for Developing Countries", CGD Policy Paper 079, Center for Global Development, 2016.
- Freund, C., Moran, T. and Oliver, S., "Tariff Liberalization", Chapter 2 in *Assessing the Trans-Pacific Partnership*, Volume 1: Market Access and Sectoral Issues, Peterson Institute for International Economics, 2016.
- Hoekman, B., "Supply Chains, Mega-Regionals and Multilateralism A Road Map for the WTO", CEPR Press, 2014.
- Hoekman, B. and Jackson, S., "Shifting Focus in Trade Agreements – From Market Access to Value-Chain Barriers", 2013.
- Hoekman, B. and Mavroidis, P., "WTO 'a la carte' or 'menu du jour'? Assessing the Case for More Plurilateral Agreements", in *The European Journal of International Law*, Vol. 26, No. 2, Oxford University Press, 2015.
- Hufbauer, G. C., "Liberalization of Services Trade", Chapter 7 in *Assessing the Trans-Pacific Partnership*, Volume 1: Market Access and Sectoral Issues, Peterson Institute for International Economics, 2016.
- International Monetary Fund, *Direction of Trade Statistics Yearbook*, 2015.
- Koopman, R., Powers, W., Wang, Z. and Wei, S.J., "Give Credit Where Credit Is Due: Tracing Value Added in Global Production Chains" in B. Leycegui, *Reflections on Mexico's International Trade Policy 2006-2012*, Ministry of the Economy of Mexico, ITAM, 2012.
- Low, P., "WTO Decision-Making for the Future", World Trade Organization Staff Working Paper ERSD-2011-05, 2011.
- Nakatomi, M., "Global value chain governance in the era of mega FTAs and a proposal of an international supply-chain agreement", VoxEU Columns, 15 August, 2013a.
- Nakatomi, M., "Plurilateral Agreements: A Viable Alternative to the World Trade Organization?" Asian Development Bank Institute, Working Paper No. 439, 2013b.
- Nakatomi, M., "Sectoral and plurilateral approaches in services negotiations: Before and after TISA", European Centre for International Political Economy, Policy Brief No. 02/2015, 2015.
- Petri, P. A. and Plummer, M. G., "The Economic Effects of the TPP: New Estimates", Chapter 1 in *Assessing the Trans-Pacific Partnership*, Volume 1: Market Access and Sectoral Issues, Peterson Institute for International Economics, 2016.

Kimberly Ann Elliott et al. "*Assessing the Trans-Pacific Partnership*", *Volume 1: Market Access and Sectoral Issues*, Peterson Institute for International Economics, 2016.

Warwick Commission, "The Multilateral Trade Regime: Which Way Forward?" The University of Warwick, 2007.

World Economic Forum, *A Plurilateral 'Club-of-Clubs' Approach to World Trade Organization Reform and New Issues*, Geneva: World Economic Forum, 2010.

World Economic Forum, *The Shifting Geography of Global value Chains: Implications for Developing Countries and Trade Policy*, Global Agenda Council on Global Trade System, Geneva: World Economic Forum, 2012.

World Economic Forum, *Foreign Direct Investment as a Key Driver for Trade, Growth and Prosperity: The Case for a Multilateral Agreement on Investment*, Geneva: World Economic Forum, 2013.

World Economic Forum, *Mega-regional Trade Agreements: Game-Changers or Costly Distractions for the World Trading System?* Global Agenda Council on Trade & Foreign Direct Investment, Geneva: World Economic Forum, 2014.

World Trade Organization, International Trade Centre and United Nations Conference on Trade and Development, *World Tariff Profiles 2015*, WTO, 2015.

World Integrated Trade Solutions (WITS), Trade Data (UN Comtrade), Exports of U.S., Mexico and Canada [database], 2015.

Endnotes

- ¹ World Economic Forum (2014), *Mega-regional Trade Agreements: Game-Changers or Costly Distractions for the World Trading System?* Insight Report.
- ² World Economic Forum (2015), *The High and Low Politics of Trade: Can the World Trade Organization's Centrality Be Restored in a New Multi-Tiered Global Trading System?* Available at http://www3.weforum.org/docs/WEF_GAC15_The_High_Low_Politics_Trade_WTO_Centrality_report_2015.pdf. Accessed 30 June 2016.
- ³ Essentially meaning free access to the liberalization benefits provided by the TPP.
- ⁴ Meaning that a sufficient number of large traders are covered by the arrangement such that free-riding by outsiders does not negate the incentive to liberalize.
- ⁵ Nakatomi (2013a). Available at <http://www.voxeu.org/article/it-time-international-supply-chain-agreement>. Accessed 7 July 2016.
- ⁶ Baldwin and Nakatomi (2015).
- ⁷ Unlike the General Agreement on Tariffs and Trade (GATT) (Article 24) and the General Agreement on Trade in Services (GATS) (Article 5), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) does not have an MFN exemption clause for FTAs. TPP members are bound by the results of the TPP's IPR accords and should apply them to non-members as well.
- ⁸ In the International Standards Organization, in many standards, various options/standards are listed in parallel as satisfying its criteria.
- ⁹ In the US-Korea and EU-Korea FTAs, the Republic of Korea introduced a different and inconsistent definition of international standards in autos and electronics.
- ¹⁰ For example, obligations to introduce either “pre-established damages” or “additional damages” to copyright infringement and trademark counterfeiting.
- ¹¹ Already in the TPP, methods 1) to 5) are widely used to find consensus among the members and could perhaps help to find solutions in future membership extension and harmonization with other mega FTAs such as the TTIP.
- ¹² See B. Hoekman and P. Mavroidis (2015), *Regulatory Spillovers and the Trading System: From Coherence to Cooperation*, E15 Task Force on Regulatory Systems Coherence, for the merits of utilizing plurilateral agreements. Available at <http://e15initiative.org/wp-content/uploads/2015/04/E15-Regulatory-OP-Hoekman-and-Mavroidis-FINAL.pdf>. Accessed 7 July 2016.
- ¹³ Nakatomi (2015).
- ¹⁴ As in the case of the telecommunications and financial services agreements, MFN extension will pave the way towards realizing the consensus (or at least silence) of all members in the WTO.
- ¹⁵ One view is that in such a situation, no consensus is needed. The members of such an agreement can simply schedule it and go ahead with their obligations, and MFN status will ensure consistency with WTO requirements. It is possible to schedule WTO + obligations provided these are implemented on an MFN basis.
- ¹⁶ World Economic Forum (2010) “A Plurilateral ‘Club of clubs’ Approach to World Trade Organization Reform and New Issues”; and Warwick Commission Report (2007) “The Multilateral Trade Regime: Which Way Forward?”, University of Warwick, available at <https://www2.warwick.ac.uk/research/warwickcommission/worldtrade/report/>, propose possible directions for the reform with concrete conditions for softening the consensus requirement. The use of unilateral commitments as in GATS Article XIII is also an option to be discussed further as a tool for certain members to introduce new commitments/rules, thus avoiding the consensus requirement (see Hoekman and Mavroidis, 2015).
- ¹⁷ Baldwin and Nakatomi (2015).
- ¹⁸ In the Trade in Services Agreement (TiSA) negotiation, the US is pushing for a services FTA. TiSA as an FTA will seriously risk undermining the GATS agreement; see Nakatomi (2015).
- ¹⁹ Japanese business expresses strong interest in extending the results of the e-commerce chapter in the TPP to other agreements.
- ²⁰ Nakatomi (2013a); Hoekman (2014); Hoekman and Jackson (2013), available at <http://blogs.worldbank.org/trade/shifting-focus-in-trade-agreements-from-market-access-to-value-chain-barriers>. Accessed 7 July 2016.
- ²¹ World Economic Forum (2012) “The Shifting Geography of Global Value Chains: Implications for Developing Countries and Trade Policy.”
- ²² Low (2011); Baldwin and Nakatomi (2015); Nakatomi (2013b).
- ²³ See “Potential Macroeconomic Implications of the Trans-Pacific Partnership” in *Global Economic Prospects 2016*. Available at <https://www.worldbank.org/content/dam/Worldbank/GEP/GEP2016a/Global-Economic-Prospects-January-2016-Implications-Trans-Pacific-Partnership-Agreement.pdf>. Accessed 30 June 2016.
- ²⁴ See Baldwin and Nakatomi (2015).
- ²⁵ See the TPP signing ceremony statement: “Trans-Pacific Partnership signed in Auckland”, 4 February 2016. Available at <https://www.beehive.govt.nz/release/trans-pacific-partnership-signed-auckland>. Accessed 25 June 2016.

²⁶ Ibid.

²⁷ See “Remarks by President Obama at Opening Session of the U.S.-ASEAN Summit”: “Together, we can continue to support the aspirations and dignity of our citizens.In joining the TPP, Singapore, Vietnam, Malaysia and Brunei have committed to high labor and environmental standards.” Available at <https://www.whitehouse.gov/the-press-office/2016/02/15/remarks-president-obama-opening-session-us-asean-summit>. Accessed 29 June 2016.

²⁸ See the following, for example: “Thailand Expresses Interest in Joining Trans-Pacific Trade Talks, as TPP Leaders Set New Deadline” (<http://www.ictsd.org/bridges-news/bridges/news/thailand-expresses-interest-in-joining-trans-pacific-trade-talks-as-tpp>); “Joko Widodo says Indonesia will join TPP free trade deal” (<http://www.bbc.com/news/world-asia-34645097>); “Aquino hints of TPP membership for Philippines” (<http://cnnphilippines.com/business/2015/11/20/President-Benigno-Aquino-III-Trans-Pacific-Partnership-TPP-membership-PH.html>); “Joint Fact Sheet: The United States-Republic of Korea Alliance: Shared Values, New Frontiers” (<https://www.whitehouse.gov/the-press-office/2015/10/16/joint-fact-sheet-united-states-republic-korea-alliance-shared-values-new>).

²⁹ See “Remarks of President Barack Obama – State of the Union Address As Delivered”. Available at <https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address>. Accessed 29 June 2016.

³⁰ See the “Joint Statement on Economy and Trade Cooperation”. Available at <http://www.mofa.go.jp/mofaj/files/000129793.pdf>. Accessed 29 June 2016.

³¹ Since 2008, all tariff barriers have been eliminated under NAFTA, except for restrictions maintained by Canada in dairy, poultry and eggs. To reciprocate, Mexico did not liberalize such goods vis-à-vis Canada. A similar situation prevails under the TPP.

³² 81% of Mexico’s exports and 76% of Canada’s exports go to the U.S., according to data of 2015 from *Trade Data (UN Comtrade)* retrieved from World Integrated Trade Solutions (WITS), Available at: <http://wits.worldbank.org/>.

³³ *Trade Data (UN Comtrade)* retrieved at WITS, 2015. Available at: <http://wits.worldbank.org/>.

³⁴ Under the TPP, practically all industrial goods will be free of tariffs on conclusion of the phaseout period. In agricultural goods, not all parties liberalized all of their tariff lines, establishing certain restrictions that will apply permanently (e.g. Canada (5.9%), Japan (19%), Mexico (3.6%) and Peru (4%).

³⁵ The TPP includes rules to foster compliance with the parties’ laws or regulations. Specifically, provisions furthering cooperation, verifications, enforcement and monitoring mechanisms are included to prevent acts such as duty evasion, the falsification of documents, fraud, smuggling or the violation of restrictions to imports.

³⁶ “Non-commercial assistance” means assistance to a SOE by virtue of that SOE’s government ownership or control, where assistance entails direct or potential transfers of funds or of goods or services (other than general infrastructure) on terms more favourable than those commercially available to that enterprise (TPP article 17.1).

³⁷ United Nations, *World Population Prospects: The 2015 Revision, Key findings & advance tables*, New York, 2015, p. 1. Available at https://esa.un.org/unpd/wpp/publications/files/key_findings_wpp_2015.pdf. Accessed 30 June 2016.

³⁸ International Monetary Fund, research data. Available at <http://www.imf.org/external/pubs/ft/weo/2010/02/weodata/weorept.aspx?sy=2014&ey=2014&scsm=1&ssd=1&sort=subject&ds=.&br=1&pr1.x=52&pr1.y=4&c=193%2C156%2C922%2C199%2C184%2C132%2C134%2C534%2C536%2C186%2C136%2C112%2C158&s=NGDPD%2CPPPGDP&grp=0&a=>. Accessed 2 February 2016.

³⁹ The MCCA was created by the Managua Treaty (1960).

⁴⁰ After the failure of the ALALC (the Latin American Free Trade Association), ALADI was created by the Montevideo Treaty (1980).

⁴¹ The founding treaty of Mercosur was signed in Asunción in 1991.

⁴² In 1996, in an amendment to the Cartagena Agreement (1969), the Andean Pact was transformed into the Andean Community.

⁴³ The Pacific Alliance is a regional integration initiative comprising Chile, Colombia, Mexico and Peru, officially established on 28 April 2011. See <https://alianzapacifico.net/en/que-es-la-alianza/#what-is-the-pacific-alliance>. Accessed 22 February 2016.

⁴⁴ ALADI includes 13 Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela.

⁴⁵ Comprising Argentina, Brazil, Paraguay and Uruguay, with Venezuela (2012) as a new member, and Chile, Bolivia, Colombia, Ecuador and Peru as associate members.

⁴⁶ International Monetary Fund, “World Economic Outlook Update”, p. 6, research data. Available at <http://www.imf.org/external/pubs/ft/weo/2016/update/01/pdf/0116.pdf>. Accessed 22 February 2016.

⁴⁷ This section is adapted from “Mega-Regional Trade Negotiations: Implications for Emerging Atlantic Economies” by M. Dube and P. Draper, in *Atlantic Currents: An Annual Report on Wider Atlantic Perspectives and Patterns*, published by the German Marshall Fund, October, 2014, pp.15-32.

⁴⁸ French decolonization was quite different to British, the two constituting the dominant paradigms, and both to Portuguese decolonization.

⁴⁹ Organisation for Economic Co-operation and Development (OECD), African Development Bank (AfDB) and United Nations Development Programme (UNDP), (2014), *Global Value Chains and Africa's Industrialisation: African Economic Outlook 2014*. Available at

<http://www.africaneconomicoutlook.org/en/theme/global-value-chains-and-africa-s-industrialisation>.

Accessed 30 June 2016.

⁵⁰ The Intergovernmental Authority on Development (IGAD); Arab Maghreb Union (AMU); Community of Sahel-Saharan States (CENSAD); Economic Community of West African States (ECOWAS); Economic Community of Central African States (ECCAS); Southern African Development Community (SADC); Common Market for Eastern and Southern Africa (COMESA); and the East African Community (EAC).

⁵¹ Since it accounts for a very low share of world trade and does not contain an extensive “WTO plus” regulatory agenda, this claim does hold up.

⁵² Economic Commission for Africa (2010), *Assessing Regional Integration in Africa IV: Enhancing Intra-African Trade*. Available at <http://www.uneca.org/sites/default/files/PublicationFiles/aria4full.pdf>.

Accessed 30 June 2016.

⁵³ See P. Draper (2010), “Rethinking the (European) Foundations of Sub-Saharan African Regional Economic Integration: A Political Economy Essay”, Working Paper No. 293, OECD Development Centre. Available at <https://www.oecd.org/dev/46013902.pdf>. Accessed 30 June 2016.

⁵⁴ The French Treasury backs two African currencies: the West African CFA franc and the Central African CFA franc, which are exchangeable although they cannot be used in the respective zones. They are used in 14 countries, 12 former French colonies, plus Guinea-Bissau (a former Portuguese colony) and Equatorial Guinea (formerly a Spanish colony). The term CFA means *Communauté financière d'Afrique* in West Africa, and *Coopération financière en Afrique centrale* in Central Africa. Source: Wikipedia. Available at http://en.wikipedia.org/wiki/CFA_franc. Accessed 12 September 2014.

⁵⁵ See United Nations Development Programme (2011), *Regional Integration and Human Development: A Pathway for Africa*. Available at

<http://www.undp.org/content/dam/undp/library/Poverty%20Reduction/Trade,%20Intellectual%20Property%20and%20Migration/RIR%20English-web.pdf>. Accessed 30 June 2016.

⁵⁶ See R. Sandrey (2014), “Mega-regional Trade Agreements and South Africa's Trade Strategy: Implications for the Tripartite Free Trade Area Negotiations”, Occasional Paper No. 195, South African Institute of International Affairs. Available at <http://www.saiia.org.za/occasional-papers/mega-regional-trade-agreements-and-south-africas-trade-strategy-implications-for-the-tripartite-free-trade-area-negotiations>. Accessed 30 June 2016.

⁵⁷ See S. Fricke, A. Freytag and P. Draper (2015), *African Least developed Countries and the Trans-pacific Partnership and India: Assessing the potential for compliance of African LDCs to possible TPP standards, and the evolving role of India*, prepared for the International Institute for Sustainable Development under the auspices of the Knowledge Partnership Programme.

⁵⁸ World Economic Forum (2013) “Foreign Direct Investment as a Key Driver for Trade, Growth and Prosperity”, 23-25.

⁵⁹ Ibid.

⁶⁰ See M. Davies, P. Draper and H. Edinger (2014), “Changing China, Changing Africa: Future Contours of an Emerging Relationship”, in *Asian Economic Policy Review*, Vol. 9, Issue 2, pp. 180-197.

⁶¹ See United Nations Economic Commission for Africa (2013), *Making the Most of Africa's Commodities: Industrializing for Growth, Jobs and Economic Transformation*, Economic Report on Africa 2013. Available at <http://www.uneca.org/publications/economic-report-africa-2013>. Accessed 30 June 2016.

⁶² OECD, AfDB and UNDP, op. cit.

⁶³ World Economic Forum (2015), *The High and Low Politics of Trade: Can the World Trade Organization's Centrality Be Restored in a New Multi-Tiered Global Trading System?* Available at http://www3.weforum.org/docs/WEF_GAC15_The_High_Low_Politics_Trade_WTO_Centrality_report_2015.pdf. Accessed 30 June 2016.

⁶⁴ This notion is associated particularly with C. Fred Bergsten, former Director of the Peterson Institute for International Economics, and Richard Baldwin. The former argues that as the US secures FTAs with other countries, those countries become like-minded with the US and seek to form FTAs along similar lines with third parties. Soon those left outside emulate the FTAs, and ultimately the logic finds its way back into the WTO in the form of new agreements. See C. Fred Bergsten (1996), “Competitive Liberalization and Global Free Trade: A Vision for the Early 21st Century”, Working Paper 96-15, Peterson Institute for International Economics. Available at <https://piie.com/publications/working-papers/competitive-liberalization-and-global-free-trade-vision-early-21st>. Accessed 30 June 2016. Baldwin identified the “juggernaut” effect, whereby major multinational companies seek regulatory convergence in order to smooth the operation of their global value chains, and lobby host governments to provide it particularly through mutual recognition. This pressure finds its way into FTAs, thereby creating a juggernaut effect reinforced by competitive liberalization. See Richard Baldwin (1993), “A Domino Theory of Regionalism”, NBER Working Paper 4465, National Bureau of Economic Research. Available at <http://www.nber.org/papers/w4465>. Accessed 30 June 2016.

⁶⁵ See P. Draper (2013), “SA’s trade status is at risk as China grapples with Doha”, in *Business Day*, 6 December. Available at <http://www.bdlive.co.za/opinion/2013/12/06/sas-trade-status-is-at-risk-as-china-grapples-with-doha>. Accessed 25 June 2016.

⁶⁶ The GATT negotiators in the Tokyo Round failed to bring agricultural trade more fully under GATT disciplines and to end the proliferation in vertical export restraints by concluding a safeguards agreement, with the consequence that both had to wait until the Uruguay Round.