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# Mega-Regional Trade Agreements and the Future of the WTO

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# Mega-Regional Trade Agreements and the Future of the WTO

The major economies have shifted trade negotiating emphasis toward mega-regional agreements. In particular, the emergence of three sets of negotiations—the Trans-Pacific Partnership (TPP) agreement among Australia, Canada, Japan, Mexico, the United States, and seven other countries; the Transatlantic Trade and Investment Partnership (TTIP) negotiations between the United States and the European Union (EU); and China’s pursuit of the Regional Comprehensive Economic Partnership (RCEP) negotiations—raises a host of short- and long-term questions for the multilateral trading system and the World Trade Organization (WTO).<sup>1</sup>

The foundation established by the General Agreement on Tariffs and Trade (GATT) and WTO, a multilateral system for trade, has remained largely unchanged since 1995. However, understanding the first wave of regional trade agreements (RTAs) that the United States and the EU developed in the 1990s provides context for the innovative elements of the forthcoming mega-regional agreements. In particular, for both the TPP and TTIP agreements, the desire to write new rules is an important driver of the negotiations. The new rules cover topics that include public health and product safety standards, labor and the environment, international investment, digital trade and e-commerce, and state-owned enterprises.<sup>2</sup>

These new RTAs have costs and benefits, and the mega-regionals pose a potential new threat to the multilateral system. However, direct steps can be taken to minimize such concerns. First, the return to plurilateral and critical mass agreements is a way to bring some of the mega-regionals’ new rules and issues into the system. Second, reforms to the WTO’s dispute settlement procedures are needed to further strengthen and sustain what is perhaps its most prominent function. Importantly, the United States, the EU, and the other countries should support the relevance of the multilateral system despite the allure and trappings of the mega-regional agreements.

## *THE NEW REGIONAL LANDSCAPE*

The GATT was established in 1947, and it shepherded the multilateral trading system until it was replaced by the WTO in 1995. Over their history, the GATT and WTO have provided three critical functions to the international system.

First, they have established a negotiating forum for countries to routinely convene, write basic rules for the trading system, and negotiate over country-specific commitments to liberalize trade and improve market access. Second, they have established a forum to resolve disputes. The WTO legal process allows for each interested country to make its case, and the WTO provides impartial, third-party adjudicators that generate legal rulings and determine compensation in the event of noncompliance. Third, they have established a technical administrative forum and process by which countries make and then report changes to their policies that affect trade. This reporting standardization provides transparency and leads to the efficient dissemination of information globally.

These fundamental institutional pillars of the current WTO evolved over decades but have been largely in place and unchanged since 1995. The second and third functions, in particular, have worked well over the intervening two decades. However, the lack of a coherent WTO legislative function has resulted in little change to the institutional framework and rules, despite a number of new negotiating interests arising from within the trading system's major actors.

### **The First Wave of Deeper Agreements in the 1990s**

Beginning in the early 1990s, the United States and the EU began to negotiate RTAs—each with different countries—that were deeper than the shallow integration approach of the GATT, which had mostly limited its disciplines to border barriers such as import tariffs.<sup>3</sup> For the United States, for example, this began with the Bill Clinton administration's side agreements on the environment and labor, which accompanied the 1994 North American Free Trade Agreement (NAFTA) with Canada and Mexico.

These additional commitments found in RTAs have come to be known as either WTO-plus or WTO-extra provisions. The WTO-plus builds upon provisions already undertaken multilaterally: import tariffs are the best example. Countries commit through the WTO to a certain maximum upper limit for their tariffs, and their additional commitment (WTO-plus) under the RTA involves lowering tariffs even further, albeit only to selected partners. WTO-extra commitments, on the other hand, are RTA provisions for which there is no WTO counterpart. These currently include labor and environmental standards.

There are interesting differences between these earlier U.S. and EU RTAs.<sup>4</sup> The EU tended to negotiate more WTO-extra provisions into its RTAs; nevertheless, most were not enforceable through the agreements' dispute settlement procedures. Since such provisions were not part of the WTO, they were not enforced there either. Although the United States negotiated fewer such commitments, it had more enforceable commitments in its RTA provisions. Nevertheless, even among the enforceable U.S. provisions, not all of them have actually been rigorously enforced. The recent Guatemala labor dispute under the Dominican Republic–Central America Free Trade Agreement is the only dispute to date in which the United States has attempted to enforce a trading partner's labor standards through RTA dispute settlement.

### **Mega-Regional Agreements in the Twenty-First Century**

A number of political-economic forces have contributed to the push toward the mega-regional agreements arising today.<sup>5</sup> One factor is the interest of multinational firms in global supply chains—the process by which firms organize their production across numerous countries—which causes the firms to lobby for new types of agreements to address their concerns.<sup>6</sup> This includes additional legal protection for their foreign investment as well as further reductions to the costs of shipping goods across multiple national borders. Firms want to produce goods that can be certified for multiple markets; they have thus also urged policymakers to improve coordination of product regulations historically set independently across different markets.

Second, the rise of China as a major power also triggered geopolitical and national security interests, especially in the United States. This contributed to a shift in negotiating emphasis toward the Asia-Pacific region, further spurring efforts for the TPP in particular.

### *Mega-Regional Agreements and Market Access*

The aggregate market access implications arising from traditional tariff cuts under the potential TPP and TTIP are anticipated to be modest, despite nearly 60 percent of world GDP and 40 percent of world exports arising from the TPP and TTIP countries.<sup>7</sup> The United States already has free trade agreements with six other TPP countries (Australia, Canada, Chile, Mexico, Peru, and Singapore); many of the other TPP countries also have preexisting RTAs with one another. Furthermore, the TTIP involves economies starting from relatively low applied tariffs; in sectors in which the United States or the EU has maintained high border taxes (e.g., footwear, textiles, and apparel), the other may not be a viable export source driving potential increases in comparative advantage-based trade.

To the extent that economic models predict some potentially sizeable aggregate gains to well-being arising from these agreements, the increases typically result from assumed reductions in nontariff barriers. Many of these reductions are due to the new rules and disciplines described below. However, nontariff barriers are more challenging to measure; thus, it is also more difficult to accurately predict the effects of their potential reductions.

### *New WTO-Plus and WTO-Extra Provisions and Their Enforceability*

The TPP and TTIP are less motivated by gains resulting from tariff reductions as opposed to those arising from new rules to coordinate reductions to perceived nontariff barriers to trade. The agreements would make enforceable some already established rules that were not enforceable under earlier RTAs. They also bring some new issues into major RTAs for the first time.

The TPP updates some provisions found in previous U.S. RTAs like NAFTA by making them enforceable through RTA dispute settlement. Important examples include labor and environmental standards. The growth of the internet since 1995 has brought digital trade and electronic commerce directly into the mega-regional agreements. The prospect of future accession to TPP by economies that embrace state capitalism, such as China and Russia, led to the incorporation of disciplines on state-owned enterprises (SOEs). Other relatively new provisions now enforceable through TPP include government procurement—for which there exists only a plurilateral agreement—and transparency and anticorruption.

Some new TPP provisions, including competition policy and regulatory coherence, are not yet enforceable through dispute settlement. Provisions on regulatory coherence build from the U.S. model that has established a federal-level office of information and regulatory affairs (OIRA) to rationalize the standards other set in a vacuum by individual U.S. regulatory agencies. To increase cooperation and reduce the chance that such standards develop into unintended nontariff barriers to trade, the provisions encourage regulators of all TPP countries to follow the U.S. model, conduct cost-benefit analyses or regulatory impact assessments, and allow for public comment before implementing policy changes. A proposed committee on regulatory coherence would encourage cooperation and information sharing on best practices among regulators across countries.

Regulatory coherence has arisen as an even more important topic for the ongoing TTIP negotiations between the United States and the EU. The TTIP has been lauded as an attempt to deal with the evolving regulatory divergence between standards introduced in Washington and those in Brussels.<sup>8</sup> Establishing not only rules but also an institutional process for regulatory cooperation between two high-standards economies will have important long-term implications for product standards globally, including for those goods produced and consumed well outside these two markets.<sup>9</sup>

### *New Rules on Dispute Settlement Over Trade and Investment*

The TPP and TTIP also have the potential to substantially affect the process by which countries resolve bilateral frictions over trade and foreign investment.

Consider disputes over international trade. Despite many RTAs having their own dispute settlement provisions, most formal disputes arising since 1995 between RTA partners have been adjudicated at the WTO. Canada, Mexico, and the United States, for example, routinely file disputes against one another in Geneva, even though in-house NAFTA provisions exist to adjudicate their potential grievances. They are not alone: roughly 15 percent of all WTO disputes have involved members of an existing RTA using the WTO to resolve their bilateral trade disagreements.

Also telling is that more than two-thirds of all WTO disputes initiated from 1995 to 2016 involved at least one future TPP member as either the complainant or respondent.<sup>10</sup> Furthermore, nearly 15 percent of initiated WTO disputes involved one future TPP country using the WTO to challenge another future TPP country. When taking account of the EU—another of the WTO’s most common litigants—the combined membership of the TPP and TTIP make up most of the WTO’s historical caseload.

One implication is that any effect of these new agreements—whether increasing or decreasing the number or types of disputes being litigated in Geneva—could substantially alter a WTO system that currently works.

On trade, the TPP dispute settlement procedures appear to elevate the WTO’s system to primacy by design. While a handful of WTO-extra provisions are only enforceable through TPP dispute settlement—for example, labor and environment—the TPP concedes most areas of traditional, market access emphasis to dispute-management by the WTO, including cases relating to antidumping and safeguards, and also likely those involving public health and product standards. Furthermore, unlike the WTO, there is no possibility of appeal for any disputes under the TPP’s system, and there is no TPP secretariat or staff that would provide the same sort of support that assists jurists. Under the WTO, appeals and secretariat staff help contribute to the stability of the system by ensuring that consistent legal decisions are made over time.

Under TTIP, one of the biggest proposed changes involves overhauling the rules for dispute settlement attached to the agreement’s investment provisions. Currently, whether under the investment provisions of RTAs or through separate bilateral investment treaties, there is a separate and much less transparent process by which investors (e.g., firms) can bring cases directly against foreign states for arbitration under investor-state dispute settlement (ISDS). The European Commission has proposed a significant modification to ISDS after experiencing substantial domestic political backlash at the onset of TTIP negotiations.<sup>11</sup>

The European Commission proposal for investment draws from the WTO’s system for resolving trade disputes along important dimensions. This includes both establishing a publicly appointed set of judges to hear disputes and to allow an appeals process to review and potentially modify first-stage decisions. However, even the commission proposal would not fundamentally alter the right of investors to initiate disputes against states without first convincing their governments to litigate on their behalf, as is the case under the trade dispute settlement procedures of the WTO and most RTAs, including the TPP.

## *RISKS AND BENEFITS OF MEGA-REGIONAL TRADE AGREEMENTS*

Not surprisingly, there are divergent views on the economic implications of RTAs, especially those that have already been implemented. One source of divergence involves drawing lessons from the effect that RTAs have had on subsequent policy decisions: whether RTAs are stumbling blocks or building blocks toward additional or future multilateral liberalization. Economic theory has long predicted that it could go either way. The reality from historical episodes, unfortunately, is not much clearer. In some important cases, multilateral liberalization has followed the formation of RTAs, but in others, RTAs created impediments that resulted in less subsequent multilateral liberalization.<sup>12</sup>

For TPP and TTIP, the answer to whether these agreements would be stumbling blocks or building blocks is even more unpredictable. Most of the predicted changes to economic activity arising from these agreements is due to how they address nontariff barriers through their new rules.

Another source of divergence involves whether deep integration issues should be brought into trade agreements at all. Here, the more primitive concern goes back to understanding the underlying purpose of the trade agreement.<sup>13</sup> Many deep integration issues require that governments give up an increasing amount of their policy space. For the shallow integration negotiations of the past, which were only over tariffs, giving up policy space made sense on economic efficiency grounds. From a global perspective, tariffs are never a first-best policy, and reining them in simply prevented countries from imposing international externalities on one another. The same cannot be said for most behind-the-border policies being negotiated in these deep agreements. From a global perspective and if set properly, domestic taxes, subsidies, and regulations are frequently the first-best policy to address local externalities and market failures without introducing major, secondary side effects.

The concern is that the haste of negotiators to conclude deep agreements could impose ill-conceived constraints on domestic regulators' access to such policies.<sup>14</sup> This could feed back into inefficient levels of domestic regulation. This is unsustainable in the long term and could result in failed trade agreements. But then this would eliminate the cumulative, global efficiency gains that have been painstakingly achieved through seventy years of cooperative, albeit shallow, trade agreements, such as the GATT/WTO, that limited their focus to reining in tariffs.<sup>15</sup>

## *POLICY RECOMMENDATIONS FOR THE TRADING SYSTEM*

The idea that RTAs might undermine the GATT/WTO system is not new; indeed, some of the concerns regarding regional agreements date back to the classic work of Jacob Viner (1950) on the inefficiencies of "trade diversion." Yet, the explosion in the number of RTAs since the early 1990s is unparalleled to that in earlier eras, and the depth of these RTAs is also increasingly complex.

### **The WTO's Response to the Rise of Regional Trading Arrangements**

Unfortunately, while the WTO membership appears to increasingly recognize that some problems associated with RTAs will plague the multilateral system, the WTO has taken few concrete steps thus far to address the competition introduced by RTAs.<sup>16</sup>

The WTO has been proactive in only a few initiatives. One involves creating a notification process and database for cataloguing RTAs. Also, WTO staff have worked to further characterize RTA provisions beyond the prior work of academics, perhaps in case the membership provides the WTO the

directive to do something more about it.<sup>17</sup> Furthermore, the WTO secretariat's economics research staff has brought the risks of RTAs to the attention of the membership by devoting its annual flagship to the topic. The reality, however, is that WTO efforts to date have been relatively minimal. While some of that is the mandate of the members, the WTO's response is also frequently consistent with incentives for self-preservation.

From the beginning, the GATT explicitly permitted the formation of free trade areas and customs unions. The only requirement was that the agreement covered substantially all trade and did not result in increased trade barriers against RTA nonmembers. Should the WTO do more to confirm that actual RTAs cover substantially all trade? For the WTO, of course, this is not incentive-compatible. The more trade covered by preferential tariffs under the RTA, the less relevant becomes the WTO through its most-favored nation tariffs. Thus, the WTO would not want to enforce provisions that diminish its own relevance over tariffs.

Moreover, if governments find that an RTA led to an increase in barriers against nonmembers, they can inevitably take it upon themselves through formal GATT/WTO dispute settlement to address the issue. Examples of such disputes have arisen after the expansions of the European Economic Community, as well as the formation of Mercosur and other RTAs.<sup>18</sup>

A recent concern is that RTA members may be getting around the technical rules of the WTO by imposing new nontariff barriers on outsiders—relative to what they impose on RTA insiders—that are subtle and are less likely to be successfully litigated under the claim that they arose because of the RTA.<sup>19</sup> This is an area in which the WTO could and should be doing more.

Specifically, more analysis is needed to better understand and showcase potential conflicts that RTAs introduce with multilateral commitments, even if they are not direct violations of the WTO agreements. New analysis, however, requires new data collection. The WTO's integrated database on import tariffs not only does not contain information on preferential tariffs arising under RTAs but it also contains little to no information on nontariff barriers, especially those that may arise under the deep provisions of RTAs and discriminate against excluded countries.

### **A Framework to Bring New Issues into the Multilateral System**

The rise of mega-regional agreements indicates that major economies have the appetite to negotiate a more expansive set of disciplines over new issues, to lock them in under trade agreements, and to potentially make them enforceable through dispute settlement.

There are many reasons why new provisions have not made it to the WTO. A number of developing countries perceive that they are still owed something due to the Uruguay Round not leading to the positive outcomes that they had anticipated. The failure to conclude a Doha Development Round that would be to their liking and the fact that the WTO negotiations are consensus-based, that there are more than 160 members, and that the WTO agreements are all in the form of a single undertaking together imply that minorities of countries have been able to block multilateral progress.<sup>20</sup>

The WTO's single undertaking approach is recent and one that resulted from the Uruguay Round of negotiations (1986–1994). But it is not the only way that the multilateral system has functioned. Indeed, under the two immediately preceding multilateral sets of negotiations—the Kennedy Round (1964–1967) and the Tokyo Round (1973–1979)—the results were not a single undertaking. Each round also included a set of plurilateral agreements—referred to at the time as codes—that only subsets of GATT countries signed up to and to which their disciplines applied.



These Kennedy and Tokyo Round codes included what were at the time a number of new nontariff measures affecting trade, including antidumping, subsidies and countervailing measures, standards or technical barriers to trade, government procurement, import licensing, customs valuation, bovine meat, dairy, and trade in civil aircraft. The codes were initially established mainly among clubs of high-income countries. In many cases, it was not until the WTO's 1994 single undertaking that the provisions became fully integrated and enforceable in the multilateral system.<sup>21</sup>

Today, the WTO does retain a legal mechanism to allow its members to further develop additional plurilateral agreements.<sup>22</sup> If new rules are not needed, all that is required is for a core group of major economies to come together and agree to lock in nondiscriminatory—to the full membership—liberalization commitments in a particular sector. This can also arise through what are referred to as critical mass agreements (CMAs).

One important example of a CMA was the Information Technology Agreement (ITA) of 1997. Under the ITA, a group of major economies locked in tariffs at zero for an expansive set of IT-related products covering billions of dollars in annual trade. The 1997 ITA was subsequently updated by a group of countries that agreed to add another 200 IT products to the zero-tariff list, as announced at the Nairobi WTO Ministerial Conference in 2015.

Negotiations in other sectors have also begun, including a potential trade-in-services agreement (TiSA) and an environmental goods agreement.<sup>23</sup> However, the TiSA negotiations, for example, do not yet include all major powers, as China and India are not yet involved.

A priority for the multilateral system should be to analyze which new issues arising under the TPP and TTIP could and should also be plurilateralized. Beyond sector-specific agreements, this would address rules and processes and include not only labor and environmental standards but also regulatory coherence and how to integrate communication and decision-making by domestic regulators across countries with respect to public health and product standards.

The United States and other countries pushing the mega-regional agenda also seek forums to discuss other issues largely blocked from multilateral talks. This includes the internet and e-commerce, data, privacy, and new issues involving intellectual property rights. Given the rising importance in global trade of China and Russia—economies whose WTO accession negotiations started from non-market origins—provisions over SOEs and new transparency rules on subsidies are a priority. Finally, the European Commission's recent ISDS proposal and interest in a long-term investment court system suggest that it may be time to revive multilateral investment treaty negotiations. These had been put on hold first in the 1990s and then after the failed 2003 WTO Ministerial Conference in Cancún.

On the normative question of whether and how deep integration issues should ultimately be brought into the WTO, doing so may constrain domestic policy space, the downside of which may be an inability for domestic policymakers to regulate efficiently in response to political, economic, and societal shocks at home. This concern needs to be weighed against a better understanding of what international externality or international coordination failure is leading countries to take on binding commitments for that particular issue in the first place.

### **Sustaining the Preeminence of the WTO's Functioning Dispute Settlement System**

One clear policy implication arising from the new RTAs is that introduction of competition among different trade agreements in the area of dispute settlement will not work. Two different trade agreements covering the same economic (market access) jurisdiction with competing court systems would

inevitably render inconsistent legal rulings. Such fragmentation of international trade law and jurisprudence would increase policy uncertainty that would discourage firms from investing in international commerce. It would also increase the challenges facing the domestic policymakers that seek to craft regulations consistent with their international obligations. From what is known about the mega-regional agreements to date, it seems that they strive to avoid this fate.

However, more could be done to strengthen the multilateral WTO dispute settlement system in light of new pressures potentially introduced by increased trade arising under the mega-regional agreements. More trade suggests that even more of the basic WTO disciplines will suddenly become relevant in bilateral relationships and could lead to unavoidable trade frictions that will require WTO dispute settlement to clean up.

Concrete items to be moved up the list for WTO secretariat reform include not only additional resources but also a reprioritization of existing resources given these new needs. This includes addressing a number of WTO secretariat staffing issues in the area of dispute settlement. Appellate body jurists should be moved from part-time to full-time schedules, both due to the increasing workload and to improve transparency and prevent conflicts of interest. Furthermore, the first-stage panelists involved in WTO disputes also all currently have other jobs, given the WTO's funding model, and can only devote some of their time to the task of adjudication. The permanent, full-time staff of the WTO secretariat that supports the jurists on dispute settlement is also relatively small. There are also few PhD economists in the WTO, despite the fact that they are needed to assist in litigation that is increasingly data-intensive and heavy in empirical evidence.<sup>24</sup> Each of these elements contributes to a dispute resolution process that proves too slow for some commercial interests. A fix would enhance support and trust in the multilateral system.

Furthermore, discussions could be launched, even if only on a plurilateral basis to start, to bring investment disputes into a WTO-like system. In the long term, more exploratory analysis is needed that would examine the tradeoffs of bringing them into a scaled-up WTO dispute settlement system. This is clearly on the radar of the European Commission, which also included in their TTIP ISDS proposal of 2015 that "in parallel to the TTIP negotiations, the Commission will start work, together with other countries, on setting up a permanent International Investment Court. The objective is that over time the International Investment Court would replace all investment dispute resolution mechanisms provided in EU agreements, EU Member States' agreements with third countries and in trade and investment treaties concluded among non-EU countries."

## CONCLUSION

Consider a final motivation for the United States, EU, China, and other major parties to make the WTO even more resilient to the potentially growing influence of the mega-regional agreements: transparency. The WTO is also increasingly important because it enhances transparency by disseminating information on trade policy changes that are expected to affect trading partners' market access. This information is required not only for commercial market participants but also for domestic policymakers.

In 2008, the global economy became embroiled in the largest and deepest economic crisis since the Great Depression, presenting the WTO system with its first major stress test. Shortly after the economic contraction began, trade flows collapsed simultaneously all over the world. However, at the

time, the cause of the trade flow collapse was unknown. The depth and global proliferation of the Great Recession from 2008 to 2010 sparked fears that protectionist forces might still be forthcoming.

The WTO secretariat itself was admittedly ill prepared in 2008 to immediately respond to the information problem of whether protectionism—and flows of new trade barriers—had changed considerably with the onset of the crisis. Independent efforts by the World Bank and Global Trade Alert sparked competitive pressures that spurred the WTO, through emergency actions under its Trade Policy Review Body, to provide more frequent, detailed, and more independent data on changes to trade policy taking place across its member countries.<sup>25</sup>

Nevertheless, the Great Recession episode also highlights that the WTO system itself has become essential during times of crisis. Even the external monitoring efforts of the World Bank and Global Trade Alert were only possible during the crisis because of trade policy reporting requirements demanded by the WTO. Countries had committed to undertake and implement—long before the crisis—this sort of reporting simply because the WTO agreements required them to do so.

Put another way, while the WTO secretariat may have been slow to react during the crisis, there was no reaction at all by the major RTAs in place at the time. It is almost inconceivable that trade policy monitoring efforts would have arisen under the EU, NAFTA, Mercosur, or any other prominent RTA. Furthermore, even if something were to have arisen eventually, it would have been regionally fragmented in nature. Future trade policy monitoring at a global level hardly seems within the mandate of any of the new mega-regional agreements, including the TPP and TTIP. There is thus a continued demand for this other critical functionality of the WTO.

## ENDNOTES

1. The other seven countries involved in the TPP agreement are Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. The countries involved in the RCEP negotiations include the ten member states of the Association of Southeast Asian Nations (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) and the six countries with which ASEAN has hub-and-spoke free trade agreements (Australia, China, India, Japan, South Korea, and New Zealand).
2. Unfortunately, less will be said in this piece regarding a potential RCEP agreement, given the lack of negotiating progress to date. While important, given the size of China and the potential number of countries involved, all that is known is that its path would seem more driven by earlier regional agreement negotiations that focused mostly on tariff reductions, as opposed to the negotiations of new rules of the sort contained in the TPP or TTIP as described here.
3. The EU became an increasingly deep-integration agreement over time, proceeding from a six-country pact over steel in the 1950s to a customs union to steps toward internal factor market integration by the 1990s. However, the result of the UK referendum on exiting the EU (Brexit) in June 2016 raises fundamental questions about EU integration and whether it may have been too deep or not deep enough, or have otherwise suffered from some flaw of institutional design.
4. These conclusions are drawn from the study by Horn, Mavroidis, and Sapir on U.S. and EURLAs arising before 2008. Japan also began negotiating a number of RTAs of its own in the 2000s, including deals with Chile, Mexico, and Peru. See Henrik Horn, Petros C. Mavroidis, and André Sapir, "Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements," *The World Economy* 33, no. 11, November 2010, pp. 1565–1588.
5. Mansfield and Milner provide a book-length treatment of the political-economic determinants of RTA formation, with a particular emphasis on variation explained by domestic political forces. See Edward D. Mansfield and Helen V. Milner, *Votes, Vetoes, and the Political Economy of International Trade Agreements* (Princeton, NJ: Princeton University Press, 2012).
6. The fact that global supply chain activity has affected trade policy negotiations is not new. Indeed, Blanchard, Bown, and Johnson provide evidence that such influences even affected the tariffs set by high-income and emerging economies over the period 1995 to 2009. See Emily J. Blanchard, Chad P. Bown, and Robert C. Johnson, "Global Supply Chains and Trade Policy," National Bureau of Economic Research (NBER) Working Paper no. 21883, January 2016.
7. The Peterson Institute for International Economics (PIIE) and Schott and Cimino-Isaacs provide a textual assessment of the TPP and economic model-based estimates of anticipated changes in market access in important sectors and countries due to the agreement. See PIIE, *Assessing the Trans-Pacific Partnership, Volume 1: Market Access and Sectoral Issues*, PIIE Briefing 16-1, February 2016; Jeffrey J. Schott and Cathleen Cimino-Isaacs, eds., *Assessing the Trans-Pacific Partnership, Volume 2: Innovations in Trading Rules*, PIIE Briefing 16-4, March 2016. For estimates resulting from a potential TTIP, see Peter Egger, Joseph Francois, Miriam Manchin, and Douglas Nelson, "Non-Tariff Barriers, Integration and the Transatlantic Economy," *Economic Policy* 30, no. 83, July 2015, pp. 539–584.
8. As motivation, see the Barack Obama administration's 2012 Executive Order, "Promoting International Regulatory Cooperation," May 1, 2012, <https://www.whitehouse.gov/the-press-office/2012/05/01/executive-order-promoting-international-regulatory-cooperation>.
9. Sheargold and Mitchell analyze the TPP regulatory coherence chapter in Elizabeth Sheargold and Andrew D. Mitchell, "The TPP and Good Regulatory Practices: An Opportunity for Regulatory Coherence to Promote Regulatory Autonomy?" *World Trade Review*, February 2016. Alemanno (2015) explores the Regulatory Cooperation Chapter of the TTIP negotiations from the EU's perspective (elements of their proposed approach have been made public), including formation of a Regulatory Cooperation Body, an institutional mechanism to operationalize cooperation by regulators on both sides of the Atlantic. See Alberto Alemanno, "The Regulatory Cooperation Chapter of the Transatlantic Trade and Investment Partnership: Institutional Structures and Democratic Consequences," *Journal of International Economic Law* 18, no. 3, 2015, pp. 625–640. For other explorations of issues of regulatory coherence in a potential TTIP, see Bernard Hoekman, "Fostering Transatlantic Regulatory Cooperation and Gradual Multilateralization," *Journal of International Economic Law* 18, no. 3, 2015, pp. 609–624; Simon Lester and Inu Barbee, "The Challenge of Cooperation: Regulatory Trade Barriers in the Transatlantic Trade and Investment Partnership," *Journal of International Economic Law* 16, no. 4, December 2013, pp. 847–867; and Thomas J. Bollyky, "Better Regulation for Freer Trade," Council on Foreign Relations, June 2012, <http://www.cfr.org/trade/better-regulation-freer-trade/p28508>.
10. These statistics draw from Chad P. Bown, "Dispute Settlement, the Trans-Pacific Partnership, and the WTO," April 2016, which also explores the arguments presented in this subsection in much more detail. For a general introduction to WTO dispute settlement, see Chad P. Bown, *Self-Enforcing Trade: Developing Countries and WTO Dispute Settlement* (Washington, DC: Brookings Institution Press, 2009) and Christina Davis, *Why Adjudicate? Enforcing Trade Rules in the WTO* (Princeton, NJ: Princeton University Press, 2012). For an introduction to the TPP's dispute settlement provisions, see Jennifer Hillman, "Dispute Settlement Mechanism," in Schott and Cimino-Isaacs, eds., *Assessing the Trans-Pacific Partnership, Volume 2*. Mavroidis and Sapir notably consider a potential TTIP agreement and argue that it could lead to fewer disputes between the United States and EU. See Petros C. Mavroidis and André Sapir, "Dial PTAs for Peace: The Influence of Preferential Trade Agreements on Litigation between Trading Partners," *Journal of World Trade* 49, no. 3, 2015, pp. 351–372.

11. For background on the proposal, see European Commission, "Commission Proposes New Investment Court System for TTIP and Other EU Trade and Investment Negotiations," European Commission Press Release Database, [http://europa.eu/rapid/press-release\\_IP-15-5651\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5651_en.htm), September 16, 2015. For an analysis of the proposal, see Stephen Kho, Matthew Bate, Alan Yanovich, Brendan Casey, and Johann Strauss, "The EU TTIP Investment Court Proposal and the WTO Dispute Settlement System: Comparing Apples and Oranges?" Mimeograph, April 2016.
12. Stumbling block evidence that RTAs negatively affected the multilateral tariff liberalization that the United States and EU undertook during the Uruguay Round is provided, respectively, by Nuno Limão, "Preferential Trade Agreements as Stumbling Blocks for Multilateral Trade Liberalization: Evidence for the U.S.," *American Economic Review* 96, no. 3, 2006, pp. 896–914, and Baybars Karacaovali and Nuno Limão, "The Clash of Liberalizations: Preferential vs. Multilateral Trade Liberalization in the European Union," *Journal of International Economics* 74, no. 2, 2008, pp. 299–327. Building block evidence that Latin American free trade areas led to additional unilateral liberalization during the 1990s is provided by Antoni Esteveadeordal, Caroline Freund, and Emanuel Ornelas, "Does Regionalism Affect Trade Liberalization toward Nonmembers?" *Quarterly Journal of Economics* 123, no. 4, 2008, pp. 1532–1575. Surveys of the economic literature include Caroline Freund and Emanuel Ornelas, "Regional trade agreements," *Annual Review of Economics* 2, no. 1, 2010, pp. 139–166; Nuno Limão, "Preferential Trade Agreements," in Kyle Bagwell and Robert W. Staiger, eds., *The Handbook of Commercial Policy* (Netherlands: Elsevier, forthcoming).
13. A more complete articulation of these concerns can be found in Kyle Bagwell, Chad P. Bown, and Robert W. Staiger, "Is the WTO Passé?" *Journal of Economic Literature*, forthcoming. See also Kyle Bagwell and Robert W. Staiger, "Will International Rules on Subsidies Disrupt the World Trading System?" *American Economic Review* 96, no. 3, 2006, pp. 877–895, which suggests that current WTO rules limiting subsidies in particular may be excessively stringent.
14. Consider, for example, the difficulty confronting TTIP negotiations of incompatible automobile safety standards imposed by two arguably high-standard economies. See Caroline Freund and Sarah Oliver, "Gains From Harmonizing U.S. and EU Auto Regulations under the Transatlantic Trade and Investment Partnership," PIIE Policy Brief 15-10, June 2015. The United States demands standards to protect passengers, due to the incidence of high-speed collisions. On the other hand, the EU puts a premium on protecting pedestrians due to the incidence of city-based collisions. See National Public Radio, "Why Cars From Europe and the U.S. Just Can't Get Along," Planet Money, Episode 533, April 18, 2014. It may simply be impossible technologically to design one standard to meet the equally important local conditions specific to each market.
15. One open research question is again motivated by Brexit, and whether certain elements of the EU arrangement led to sufficiently large regulatory inefficiencies for the UK relative to its preferences so as to contribute to the June 2016 referendum vote to leave the RTA.
16. The WTO announced on April 16, 2016, "WTO members revived this week long-standing talks to deepen the WTO's scrutiny of RTAs in line with instructions laid out by ministers last December. Provisions in the recent Nairobi Ministerial Declaration, said the new committee chair, could pave the way for a more constructive review of how these deals affect the wider multilateral trading system." See WTO, "Members Renew Attempts to Deepen WTO Scrutiny of Regional Trade Agreements," April 8, 2016, [https://www.wto.org/english/news\\_e/news16\\_e/rta\\_08apr16\\_e.htm](https://www.wto.org/english/news_e/news16_e/rta_08apr16_e.htm).
17. For the WTO Regional Trade Agreements Information System, see <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>. For the WTO Database on Preferential Trade Arrangements, see <http://ptadb.wto.org/default.aspx>. For the annual flagship, see WTO, *World Trade Report 2011: The WTO and Preferential Trade Agreements: From Co-Existence to Coherence* (Geneva: WTO, 2011). On the expansion of characterization of RTA provisions across more agreements, see Claude Chase, Alan Yanovich, Jo-Ann Crawford, and Pamela Ugaz, "Mapping of Dispute Settlement Mechanisms in Regional Trade Agreements: Innovative or Variations on a Theme?" WTO Staff Working Paper, No. ERSD-2013-07, 2013, which builds upon Horn, Mavroidis, and Sapir, "Beyond the WTO?"
18. See, for example, the list of formal GATT and WTO disputes presented in Bown, "Dispute Settlement, the Trans-Pacific Partnership, and the WTO," Table 5.
19. While only one example, there is some evidence from antidumping use that, conditional on a country implementing new, import protection of some form, RTA members are more likely to increase their antidumping use on RTA outsiders relative to RTA insiders. See Thomas J. Prusa and Robert Teh, "Protection Reduction and Diversion: PTAs and the Incidence of Antidumping Disputes," NBER Working Paper No. 16276, August 2010. Discriminatory policy application may also arise via the imposition of a safeguard that can discriminate between RTA insiders and outsiders. For examples, see Chad P. Bown, Baybars Karacaovali, and Patricia Tovar, "What Do We Know About Preferential Trade Agreements and Temporary Trade Barriers?" in Andreas Dür and Manfred Elsig, eds., *Trade Cooperation: The Purpose, Design and Effects of Preferential Trade Agreements* (Cambridge, UK: Cambridge University Press, 2015), pp. 433–462.
20. The only multilateral agreement negotiated since the establishment of the WTO has been the Trade Facilitation Agreement (TFA), which was concluded in Bali in 2013. As of the time of writing, the TFA is still awaiting ratification from a sufficient share of the WTO membership to enter into force.
21. The WTO period did continue with two plurilateral agreements, which had first been negotiated before the Uruguay Round. One plurilateral agreement that has continued under the WTO is the government procurement agreement, which was recently updated. Another example is the Civil Aircraft Agreement. The plurilateral Bovine Meat and Dairy Agreements were terminated in 1997.
22. This is Article II.3 of the agreement establishing the WTO. For a discussion, see Bernard Hoekman and Petros C. Mavroidis, "Embracing Diversity: Plurilateral Agreements and the Trading System," *World Trade Review* 14, no. 1, 2015, pp. 101–116; Bernard

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Hoekman and Petros C. Mavroidis, "WTO 'À la Carte' or 'Menu du Jour'? Assessing the Case for More Plurilateral Agreements," *European Journal of International Law* 26, no. 2, 2015, pp. 319–343.

23. Indeed, plurilateral agreements under the WTO are not a new idea. As soon as the Cancún Ministerial breakdown in 2003, when it became clear that the initial 2001 Doha agenda might leave countries at a long-run impasse, analysts began increasing calls for consideration of a "variable geometry" or "club of clubs" approach to keep the WTO system relevant in the new issues that were not under consideration of the Doha agenda. See, for example, the discussions in Robert Lawrence, "Rulemaking Amidst Growing Diversity: A 'Club of Clubs' Approach to WTO Reform and New Issue Selection," *Journal of International Economic Law* 9, no. 4, 2006, pp. 823–35; Philip I. Levy, "Do We Need an Undertaker for the Single Undertaking? Angles of Variable Geometry," in Simon Evenett and Bernard Hoekman, eds., *Economic Development and Multilateral Trade Cooperation* (London: Palgrave Macmillan, 2006), pp. 417–437.

24. For a discussion, see Chad P. Bown, "The WTO Secretariat and the Role of Economics in DSU Panels and Arbitrations," in Chad P. Bown and Joost Pauwelyn, eds., *The Law, Economics and Politics of Retaliation in WTO Dispute Settlement* (Cambridge, UK: Cambridge University Press, 2010), pp. 391–433.

25. For a discussion, see Chad P. Bown, "Introduction," in Chad P. Bown, ed., *The Great Recession and Import Protection: The Role of Temporary Trade Barriers* (London, UK: CEPR and World Bank, 2011), 1–51; Daniel Drezner, *The System Worked: How the World Stopped Another Great Depression* (Oxford, UK: Oxford University Press, 2014).

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