Trade Reform and the Development Deficit Beyond 2015:

Mega-regional Trade Agreements and their Impact on Developing Country Third-Party Members

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Abstract

Mega-regional trade agreements (MRAs) between developed countries will make up the bulk of future trade flows, yet their impact on non-party members, the majority of which are developing and least developed countries, has largely been overlooked. This paper takes as its starting point the observation that mega-regionals will have implications for poor countries. The negotiation of MRAs has taken place alongside the gutting of the development agenda from the multilateral trade system, illustrated by the start-stop nature of the Doha Round of negotiations. However, the consultation process around the Post-2015 Sustainable Development Goals (SDGs) provides an opportunity to advance an agenda of fairer trade and sustainable development. Thus far, these goals have not taken into consideration the fact that MRAs could reshape global trade rules and constrain development opportunities for poor countries. This paper argues that MRAs, if concluded, will undermine development priorities, leaving developing countries with a narrow set of options and little time to respond with appropriate economic and political measures. The paper’s case analysis of the Comprehensive Economic and Trade Agreement (CETA) provides insight into the new standards for bilateral agreements with implications for regional economic development abroad. Although a development deficit in global trade is not inevitable, the multilateral trade system must adjust to a new set of emerging development concerns that will arise from MRAs.
Introduction

The start-stop nature of the Doha Development Round of WTO negotiations largely signaled the removal of development from the international trade agenda. This took place amidst a rapidly changing landscape of international trade where a “development deficit” has emerged. Today, mega-regional trade agreements (MRAs) between developed countries will rewrite global trade and investment rules, yet their impact on non-party members, the majority of which are developing countries, has largely been overlooked. The development of the Post-2015 Sustainable Development Goals (SDGs)—the only global consultation on poverty reduction and sustainable development—have not taken into consideration the fact that MRAs, if concluded, will significantly constrain development opportunities for poor countries. What will the future of trade look like for developing countries that have been excluded from (or chose not to participate in) these agreements? Given the removal of development from the multilateral trade system and the absence of development considerations in MRAs, are prospects for development-led trade doomed?

This paper seeks to explain why a development deficit is a perennial feature of the international trade politics. It argues that MRAs, if signed, will undermine development priorities, leaving developing countries with a narrow set of options and little time to respond to this changing trade landscape. This argument will be constructed in three parts as follows: part I provides a brief overview of the current MRA landscape; part II analyses how the language used to describe MRAs (and who is using it) creates a “fear of missing out effect” with few reasonable options for developing countries; and part III explores how the Canada-European Union Comprehensive Economic and Trade
Agreement (CETA) will become a baseline for future agreements with the EU, namely the Transatlantic Trade and Investment Partnership (TTIP), which will rewrite global trade and investment rules to the detriment of development for low-income countries. I conclude with considerations on how the SDGs can better respond to this rapidly changing trade landscape.

I. The changing trade landscape

Regional trade agreements (RTAs) have historically developed alongside the multilateral trading system (MTS). RTAs began taking off in the mid-1990s while the multilateral system gained strength but have increased more rapidly over last 10 years, parallel to the stagnation of the Doha Round of negotiations. In 2013, eight new regional agreements entered into force, in addition to the 14 in 2012. To date, there are 253 active regional trade agreements. While 80 percent of these are bilateral, some are deeper and more complex, known as mega-regional agreements.

While twentieth century RTAs were about tariffs and hard preferences, MRAs are about foreign direct investment (FDI), global value chains (GVCs) and soft preferences, centered on competition and competitive devaluation, investment and government procurement. Mega-regional agreements are free trade agreements (FTAs) that cover a broad range of issues and are distinct from other preferential trade agreements (PTAs) and RTAs because of their size and scope. Where FTAs are considered “shallow,” MRAs are considered “deep” because they involve major players in the economy, cover a more expansive set of issues and pursue greater levels of liberalization than any previous FTA. Although there is no agreed upon definition, more specific attempts to set
boundaries for MRAs suggest that they: i) include three or more countries, ii) collectively account for 25 percent or more of world trade, and iii) go “well beyond” current WTO measures. The final component is the most relevant for this paper, given that services and regulation will have spillover effects for excluded parties.

There are a number of large bilateral agreements such as the EU-Japan FTA and the CETA between the EU and Canada that are significant but not large enough to be considered MRAs. The conclusion of the CETA negotiations was re-announced on 26 September 2014, signaling a major step towards the completion of the first major bilateral agreement. The EU is also negotiating the Transatlantic Trade and Investment Partnership (TTIP) with the US, which will be an MRA and the world’s largest bilateral agreement. The seventh round of negotiations concluded in September 2014, and the agreement may be completed by the end of 2015.

The most far-reaching MRA—in terms of geography and scope—is the Transpacific Partnership (TPP), which involves the United States and 11 countries from the Asia-Pacific. It developed from the 2005 Trans-Pacific Strategic Economic Partnership Agreement between Brunei, Darussalam, Chile, New Zealand and Singapore, which was the first preferential trade agreement (PTA) to link Asia, the Pacific and Latin America. The TPP expanded in three waves to include the US, Canada and Japan among others, and today the negotiating countries make up 40 percent of global GDP. Although seven of the TPP’s negotiating members are developing countries, the agreement houses no commitments to regional economic development.

MRAs have drawn significant international attention and stirred public debate (most often after they have been signed in secret) for their impacts on contracting parties.
However, relatively little is known about how these agreements will affect non-members. As Figure 1 illustrates, the majority of MRAs exclusively involve developed countries. Of the total number of countries involved, sixty-three percent are highly industrialized. Of the 166 countries that are not involved in MRAs, the majority of which are developing and least developed countries. Uri Dadush predicts these excluded countries comprise over 80 percent of the world’s population. The GDP growth rate of these countries is three percent faster than developed countries per year, and will soon account for over half of world trade.  

China, India, Brazil, Russia and South Africa (the BRICS group), have been largely excluded from MRA negotiations. To some extent, they have shown no real interest in deep RTAs or MRAs, perhaps because they can attract enough FDI on their own, and are not dependent on MRAs for growth. However, geopolitical considerations warrant greater scholarly attention. In the case of TPP, China was excluded from the negotiation’s onset mainly because the US sought to prevent economic power consolidation in East Asia. Although China has attracted the most public attention for its absence in MRAs, several other middle-income countries are developing regional FTAs in response to the development of MRAs. Most noteworthy is the
Regional Comprehensive Economic Partnership (RCEP), which includes the Association of Southeast Asian Nations (ASEAN) countries and the six countries that have FTAs with the ASEAN including India and China. The RCEP negotiations\textsuperscript{16} began in November 2012 and while at an earlier stage than the TPP, the agreement is stated to be as comprehensive, particularly in terms of non-tariff barriers.\textsuperscript{17} Unlike the TPP, the RCEP includes measures of special and differential treatment and “flexible implementation schedules” for LDCs.\textsuperscript{18} This was a direct response to US- and EU-led FTAs. For the remaining BRICS countries, Brazil can work within the Pacific Alliance (Chile, Colombia, Mexico and Peru), South Africa is developing an agreement with the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC) and the East African Community (EAC) for a Tripartite Free Trade Area, and Russia is negotiating with the Eurasian customs union.\textsuperscript{19}

What about the rest of the world? By way of illustration, the Pacific Alliance will continue to engage in economic and trade integration with a focus on developing relationships with the Asia Pacific, and attempt to insert themselves into global value chains (GVCs); MRAs with the EU mean that the Mercosur bloc (Argentina, Brazil, Paraguay, Uruguay and Venezuela) could lose out of the European market because the agreement has been under negotiation for 10 years with little no ending in sight; likewise, the US has been negotiating a Middle East Free Trade Agreement (MEFTA) since 2003 and after ten years has not made significant progress; and the Pacific Agreement on Closer Economic Relations (PACER) Plus with Australia, New Zealand and the Forum Island Countries builds on the 2002 PACER umbrella agreement, which takes place alongside a smattering of Economic Partnership Agreements with the EU. However, the
majority of countries—the Africa-Caribbean-Pacific grouping—have been sidelined by these negotiations and remain largely silent about the development of MRAs. For example, African countries are not a part of any MRA and instead are developing inter-country regional markets like the COMESA—EAC—SADC Tripartite Agreement.20

The exclusion of the smallest and most vulnerable countries, and the neglect of sensitive issues for included developing countries will undermine global development. The WTO Director General (DG), Roberto Azevêdo, is generally in support of MRAs, noting in his recent address to the US Chamber of Commerce in March 2014 that they have a “clear role to play.”21 Later in the year, however, he made it clear that regional and mega-regional agreements, although important, are not a substitute for the multilateral system, noting that big issues, such as trade facilitation, and (unresolved) sensitive issues, such as export subsidies in agriculture and fishing and support measures, can only be negotiated at the WTO. As development has been carved out of the Doha Round in any substantive manner, and development issues have been disregarded because they exclude the overwhelming majority of small and poor countries, prospects for trade-led development have all but disappeared (if they every really existed at all).

II. Decoding the discourse of mega-regional agreements

There is a new discourse emerging around the promotion and proliferation of MRAs, which is distinct from that used by trade experts in the multilateral system over the last decade. The old MTS language revolved clearly around the Doha Round and trade experts have employed dramatic terms to describe the situation—“Doha is dead,” “doomed” and “deadlocked”—and to capture the necessity of concluding the negotiating
As Rorden Wilkinson observes, this language has been characterized by medical terminology, for example, referring to the Round as a patient being in a “coma” or on “life support, and the subsequent need to “revive” it. As dire and pessimistic as the language around the Doha Round was, the language around MRAs is equally confident. This section explores who is using this language and why. A critical review of the literature shows that the type of language used by trade experts limits the set of policy options deemed reasonable for non-member parties, particularly developing countries.

Given that MRAs are in a relatively nascent phase, there is a small but quickly growing body of literature addressing them. A survey of this scholarship reveals that this is resoundingly dominated by policy and trade experts from think tanks in developed countries, mainly the US, EU and Canada. The voices that are shaping the debate include that of Richard Baldwin (Centre for Economic Policy Research [CEPR]), Simon Evenett (University of St. Gallen), Dan Ciuriak (CD Howe Institute) and Bernard Hoekman (European University Institute [EUI]). Other notable mentions are Karen Bhatia (General Electric Company), Uri Dadush (Carnegie Endowment for International Peace), Anabel González (World Bank), Peter Draper (South African Institute of International Affairs [SAIIA]) and Ricardo Melendez-Ortiz (International Centre for Trade and Sustainable Development [ICTSD]). This group forms an epistemic community, which provides “intellectual leadership” in trade knowledge and disseminates ideas about the values of trade liberalization and the inevitability of MRAs. Of this list, Ricardo Melendez-Ortiz, former Permanent Representative of Columbia to Geneva, is the only Southern trade intellectual and NGO representative. This socio-geographic imbalance is also reflected
in the fact that primarily Northern-based think-tanks have published on MRAs. Although not an exhaustive list, these include: the European University Institute (EUI), the World Economic Forum (WEF), the European Centre for International Political Economy (ECIPE), the Wilson Centre, the Inter-American Development Bank, ICTSD, International Institute for Sustainable Development (IISD), the Centre for Global Development (CGD) and the Commonwealth. The only non-Northern institution actively engaging this issue is the SAIIA. This obvious concentration of scholarship by Northern-based institutions narrows the parameters of debate. While, for example, debate over the future of the multilateral system is contentious, there is a shared optimism about the value and continued expansion of RTAs and MRAs. There is an absence of critical scholarship on the potential impacts of MRAs which indicates a need for a greater diversity in sources of knowledge, both from developing countries and by trade ambassadors that fall outside the traditional cadre of trade liberalization evangelists.

One of the most repeated phrases associated with the TPP negotiations is that the agreement is taking place between “like-minded countries.” Yet, six of the 12 negotiating parties are developing countries. Despite significant differences in levels of development and interests, and despite promises of progress, there are serious sticking points in the negotiations. For example, although both developed and emerging countries seek market access, developing countries are looking to harmonize existing agreements on tariff matters, while developed countries are seeking deeper integration with a focus on NTBs such as regulations, financial and investment standards, services, government procurement and intellectual property. Developing countries will be expected to make large concessions in these areas. While these countries may be like-minded in their
ambition for trade liberalization, the false sameness that the term “like-minded” conjures artificially narrows the real plurality of trade-led development agendas. Despite significant differences, these countries have been called like-minded by proponents of the TPP for the purpose of promoting a new brand of trade liberalization.

Moreover, this “like-minded” narrative has normative implications, wherein countries included in MRAs have advantages (access to markets and capital, attractiveness to investors, integration into GVCs etc.) over non-included WTO member-states, which are non-likeminded participants. This is perpetuated by language such as the “high quality” rules of the TPP, and its reputation as a “first class agreement,” at least according to the US.\textsuperscript{31} This effectively creates a tiered trade system between included and non-included countries. This is concerning for two main reasons: i) MRAs circumvent democratic processes and have been immune to transparency when compared to the MTS, and ii) countries that are not included have few policy options to respond to this changing trade landscape with appropriate economic and political measures. For example, the TPP’s intellectual property rules are designed to “prevent knowledge spillovers”; the regulatory and service chapters will constrain policy space for regional economic development; and the financial sector regulation will reify a financial architecture that has produced global instability.\textsuperscript{32} Regardless, the notion of like-minded countries can be said to create patterns of inclusivity and exclusivity. MRAs confer implicit legitimacy to included countries to produce a domino effect for non-included countries. Given the reasonable assumption that the rules will eventually be multilateralized,\textsuperscript{33} these countries must subscribe to the logic of MRAs and GVCs with
little concern for the initial adjustment costs, as well as the long term uncertainty of implications from mechanisms like the ISDS, as explored in Part III.

These aforementioned assumptions and the language used to convey them rely, in large part, on the inability of the Doha Round to be concluded. This provides an easy scapegoat for developed countries’ ambitious alternative channels of trade, yet this conjecture remains unsubstantiated. Even though there are a number of factors attributed to the Doha’s failure, this “Doha Excuse” has not been empirically assessed. Proponents of the Doha Excuse—the US and the EU—place the blame on the intransigence of developing countries to agree on the negotiated package. Meanwhile, developing countries blamed the US and EU for their protectionism. Yet we know that a plethora of factors have contributed to the Doha’s slow down, including macroeconomic factors such as community prices and trade flows, and the fact that each successive round deals with more and more sensitive issues and thus takes longer to conclude. The same academic treatment has not been afforded to understanding the coinciding rise of RTAs. In 1998, John Whalley gave a number of potential rationales for RTAs including countries’ strategic concerns, the strength in multilateral system, and the traditional gains of market access in the post-war era. Yet there has been little written since on the proliferation of RTAs. One exception is the interjection by Wang Wong that geopolitical considerations need greater treatment in this context, given the changing power dynamics between the US and Asia in the background of the TPP. Despite a poor understanding of the rise of MRAs, the Doha Excuse has become “conventional wisdom” as the explanation for the vacuum in trade governance, which MRAs have boldly begun to fill. Even if the Doha Round had concluded in 2008 or 2013, developed countries would not have been satiated,
given the levels of liberalization they seek today. Developed countries engaged in MRAs have leveraged the Doha Excuse to justify their pursuit of agreements that will have unknown global implications outside of a rules-based MTS. These countries use the Doha Excuse as exogenous factor that has catalyzed MRAs, rather than that fact that these agreements are fulfilling their economic and political self-interest. The US in particular is pushing to shape rules on new areas like the environment, the protection of labour rights, and role of state-owned enterprises (SOEs) through the TTIP and TPP. Thus it might appear that MRAs are forward thinking and can meet the demands of the current global trade landscape. Although social and environmental concerns need a place in the trade agenda, they have become window dressing to justify the fact that a handful of wealthy industrialized countries are pursuing an agenda that will benefit them and few others. In sum, although it is important to acknowledge the Doha Round’s stagnation, it is necessary but not sufficient for understanding the current trade landscape and the rise of MRAs. While global trade rules must evolve, countries that are excluded will suffer because MRAs will damage their terms of trade and weaken their trade preferences.

Just as trade experts used the bicycle metaphor to convey the necessity of concluding the Doha Round, MRAs requires the “GVC revolution”\textsuperscript{41} for momentum. Global value chains are intimately tied to foreign direct investment (FDI) and trade. According to Peter Draper, Simon Lacey and Yash Ramkolowan, developing countries must “plug into” GVCs by adopting regulatory reform packages through MRAs.\textsuperscript{42} This conditionality is an essential ingredient for countries in the new trade system, but bears some resemblance to the conditionalities of the 1980s when developing countries were prescribed structural reforms to integrate into the industrialized trade networks. Today,
while developed countries have relatively few legal and economic reforms to make in order to negotiate MRAs, developing countries must undergo significant, unilateral reforms in order to be allowed into the game. While the International Monetary Fund and World Bank once espoused the values of structural adjustment programs and developed countries championed them, today they are similarly proponents of GVCs. Their support lends legitimacy to GVC’s role as the metric for world trade and a necessary precursor for development. This drastically simplifies the processes and reforms that developing countries are required to undergo: GVCs requires smooth entry and logistics, and financial and physical infrastructure, which are service based. This explains the prominence of services and non-tariff barriers (NTB) for “standard-related disciplines” in MRAs, which has become their driving force, and strengthens the links to trade and investment through FDI. This triple threat of investment, trade and GVCs is used “to keep the bicycle moving forward” in order to maintain the particular currency of trade liberalization. Consequently, developing countries are led to believe that they must become integrated into GVCs in order to industrialize, regardless of their vastly different socio-economic positions and levels of development.

MRAs are often termed “twenty-first century agreements” because of the range of new issues being covered. This is imbued with the logic that they are an appropriate and natural development given the complexity of trade and the stagnation of the MTS. This perceived homogeneity adds weight to the notion that MRAs are inevitable because the negotiated issues are not contentious. However, these agreements are not the inevitable development pathway for the rest of the world. If the TTIP and TPP are concluded—there is a likelihood that they could get hamstrung in the US Congress—there is little
evidence to suggest that the BRICS group would eagerly await accession opportunities. Regardless, the current framing of MRAs and the assumptions they embody effectively leave developing countries without a reasonable choice. Either they accede to mega-regional agreements, namely the TPP, with unreasonably high standards, or they are left waiting for the Doha Round to conclude, which would not significantly affect their development prospects. They are thus advised by experts to undergo unilateral reforms such as increasing regulation and product standards, reducing tariff and NTBs, and developing infrastructure.\textsuperscript{48} This is done in order to eventually join an MRA.\textsuperscript{49} Non-included developing countries that are able to make unilateral reforms will be rewarded in subsequent FTAs, thus MRAs like the TPP represent a “giant step forward for developing countries.”\textsuperscript{50} According to the prevailing logic, RTAs will expand or merge with other RTAs such as the Pacific Alliance or the Tripartite Free Trade Area in Africa, non-included countries will continue building FTAs as a response triggered by a fear of missing out, agreements will become multilateralized, and the MFN principle expanded.\textsuperscript{51} However, not only is it highly unlikely that developing countries will lower tariffs on their own, it is even more unlikely that that will develop higher industry standards, potentially discouraging FDI, or to adhere to “behind the border regulatory norms.”\textsuperscript{52} Undertaking unilateral reforms is not only politically untenable, but there is no guarantee that they will be successful, or that the interested country will be allowed to accede into mega-regional agreements. This means that many poor countries will never have the hope of joining MRAs. However, these pressures are unlikely to disappear in the near future.\textsuperscript{53}

This section implicitly asks whether MRA trade diplomacy is driven by Western-led trade liberalization.\textsuperscript{54} This has been the outspoken perception of China,\textsuperscript{55} but it has
also manifested itself in subtler ways: the geopolitical stalemate in the Doha Round, which is a hangover from “generations of Atlanticism” and the elite-driven agenda in the post-Cold war world order. Although slowly waning, this is still exercised through material power, in the zealous pursuit of MRAs led by the US and EU, but also through symbolic power in the language used to characterize and justify them by members of the dominant epistemic community, as evidenced in this section. The sense of inevitability in the branding of MRAs has discursively reproduced legitimacy in the value of trade liberalization. While it is beyond the scope of this paper to trace the roots of symbolic power in RTAs, we must ask about its implications for them, which have and will become more pronounced through the development of MRAs. The first major bilateral agreement to be signed, the CETA, requires examination because it will act as a template for future MRAs, as explored in the next section.

III. How the CETA could help undermine global sustainable development

The Canada-European Union Comprehensive Economic and Trade Agreement is arguably the first major bilateral agreement to be signed. Although it is not considered a mega-regional by the ECJPE, the CETA does represent a historic moment in international trade because it will form a baseline for future agreements with either Canada or the EU. The EU is the largest economy in the world with a per capita GDP of 25,000 euros (500 million consumers) in 2013. In addition its economic clout, the EU has been leading several global trade initiatives including the TTIP, which will create the world’s largest free trade area to date. The CETA is significant because it will act as a floor for liberalization in the TTIP. Thus, it is important to understand how the CETA’s provisions
will help shape future global trade and investment rules for non-participating third parties, the majority of which are developing countries.

But how can we measure development losses from MRAs? As Dan Ciuriak suggests, this is difficult given limited information about the negotiations, and thus we can only make “best guesses” about how excluded economies will fare.\(^6\) It is clear though that large economies (those who are, not coincidently, driving MRAs) will benefit,\(^6\) and that developing countries “consistently suffer welfare losses.” Ciuriak argues that the TPP and TISA will mean than developing economies will lose 0.05 percent of GDP or $7-8 USD billion.\(^6\) Although a similar study has not been conducted on the CETA, given the conclusion of the agreement in September 2014, we can better predict its impacts beyond measures of GDP. As described below, the CETA will have impacts in three areas, explored below: i) rule making, ii) non-tariff barriers, and iii) enforcement through binding arbitration.

**i. Rule taking, rule making & the balance of power**

As identified by several trade doyens, developing countries have long been “rule takers” rather than “rule makers” in the international trade regime.\(^6\) However, developing countries have had comparatively more influence within the multilateral trade system than outside of it. Notable examples include the concessions made by the EU to APEC during the Uruguay Round of negotiation, and the influence of Cotton Four countries in framing the debate around export subsidies for cotton in the Doha Round (although it was ultimately stifled by the US).\(^6\) More recently, India was able to significantly affect the Doha Round of negotiations in Bali over a debate on public stockholding programmes for
food security purposes, whilst they drew a perverse response from the US and EU. While the development of RTAs such as the RECP may act as a “counter-balance,” to US- and EU-led MRAs, the WTO provides a much more equitable and diverse forum for development-led trade.

Multilateralism makes sense for the global economy: it improves efficiency and competitiveness, and reduces chances of distortion. It also allows poor countries to have a voice (however limited) over the rules that affect their collective destinies. By contrast, critics contend that MRAs will likely breed new global inconsistencies in standards, provide a competitive advantage for certain countries, and increase trade distortions. While there are so-called positive economic benefits from spill-over effects for low-income countries that are not included in MRAs, this must be balanced with trade diversion and the impacts of unresolved sensitive issues.

Multilateralism is required to broach development-sensitive issues such as agricultural export subsidies and domestic support, fisheries subsidies and anti-dumping measures. Many of these issues were part of the Doha Development Round. Given that the Doha Round was hung on disagreement over terms like “box of subsidies,” “policy space,” “special and differentiated treatment” and even “development,” it is inconceivable how MRAs could begin to approach development in a sustainable or equitable way. Thus, development has been removed from the international trade agenda to the detriment of developing and least developed countries (LDCs). While MRAs liberalize most areas of trade, neither the CETA nor the TTIP will touch agricultural export subsidies, a thorn in the side of world trade for developing countries. Thus agreements like the CETA will further shift the balance of power that was afforded to
developed countries within the MTS and prevent development concerns from being adequately addressed.

**ii. Removing non-tariff barriers**

The CETA will contribute to improved international compliance with future global standards for trade and investment. This will manifest itself most clearly in new investment standards on a number of issues ranging from scope and coverage to performance requirements, standards of treatment, investment liberalization and regulatory cooperation. New standards for some countries and not others—with the respective availability and mechanisms for compliance—will increase transaction costs with other countries and undermine regulatory trust and competition. This argument has been made by the IISD concerning the TPP and TTIP, and is also applicable to the CETA that it has made commitments on regulatory harmonization. It follows that for developing countries, whose adjustment costs for more stringent standards will be much higher, must still compete with exports from countries engaged in MRAs and may have to undergo unilateral regulatory changes to keep pace.

The CETA’s industry-friendly intellectual property rights (IPR) provisions are also an area of concern for global development interests. Chapter 22 will mean that the CETA, if fully implemented, will delay the time for generic drugs to enter the market. This is against the background of decreasing research and development (R&D) spending in Canada, and globally. One estimate suggests that the CETA will increase the total annual costs for patented drugs by seven percent. Although these price hikes will have little effect on the global pharmaceutical market, increasing drug costs and decreasing
R&D spending could become a dangerous formula in the intellectual property rights regime. An inroad has already been made through the TPP negotiations where the US is actively pursuing stringent IPR standards.\textsuperscript{76} This has costs for development, given the significant concerns by developing countries about the accessibility of generic drugs during the negotiations for, and the response to, the Agreement on Trade-Related Aspects of Intellectual Property Rights.

The CETA will increase the risk of “downward harmonization” of standards by Europe to Canada. Chapter 26 of the CETA text is nebulous and could potentially allow business lobby a far-reaching hand in to regulatory co-operation. A driving key principle in this chapter is to “eliminate unnecessary barriers to trade and investment.”\textsuperscript{77} Determining what level of regulation is necessary is difficult, particularly when the precautionary principle is under attack, given that regulatory co-operation should “establish, when appropriate, a common scientific basis.”\textsuperscript{77} These provisions will not adequately shield public interest on issues like food safety, and service provision from foreign corporate interests. This will affect standards in bilateral agreements with the EU, many of which are being negotiated with the ACP.

Although international aid has been excluded from the CETA’s procurement chapter, the CETA has granted the EU unlimited market access to all of Canada’s sub-central government entities which include crown corporations, provinces and territories, municipalities, universities, school boards and hospitals. Procurement of this kind is unprecedented. If similar levels of liberalization were sought through the TPP this would violate the WTO’s protections afforded to developing countries that have signed the Government Procurement Agreement (GPA) such as Chile, Malaysia and Vietnam. The
CETA also failed to protect the provinces and marginalized communities’ regional economic development capacities, even though it had the opportunity to do so.\textsuperscript{78} If similar concessions are made by countries in the TPP there will be grave consequences for development: without developing countries at the negotiating table, development friendly tools cannot will not be included in MRAs like the TPP, such as Duty-Free-Quota Free treatment to LDC exports, loosening Rules of Origin on LDC imports, reducing agricultural export subsidies, and enhancing the General System of Preferences (GSP).\textsuperscript{79}

Despite significant liberalization in all sectors, one area that has not been treated with the same level of ambition has been the environment. While inclusion of social and environmental standards has been lauded, chapter 25 on “Trade and Environment” makes no mention of climate change and lacks enforcement mechanisms. This has led to the criticism that this chapter serves to legitimize the agreement and Canada’s economic agenda.\textsuperscript{80} While this will not directly affect developing countries, it legitimizes the (poorly managed) integration of environmental concerns into free trade agreements, which has implications for sustainable development and the treatment of resources in future FTAs with developing countries.

Finally, Canada has not ratified key labour mobility and temporary foreign worker rights conventions, which the CETA will ask Canada to implement.\textsuperscript{81} If the same approach is taken in TTIP, it must be adjusted for the fact that the US has not signed or ratified most ILO agreements.

\textit{iii. Enforcement—unlimited rights to investors}
Investment liberalization through ISDS provisions is the most controversial element of MRAs. Commonly cited are concerns about legitimacy, transparency, high arbitration and legal costs, and the subjectivity of arbitrators’ decisions.\textsuperscript{82} Perhaps the largest source of consternation is that investors have “acquired rights” thorough agreements like the CETA, which cannot be rolled back.\textsuperscript{83} Foreign investors can go “treaty-shopping”\textsuperscript{84} under the MFN clause for whichever standards are in their best interest, importing higher standards or benefiting from higher standards in other investment relationships, known as free-riding. The CETA takes a ratchet approach to the liberalization of investment rules, meaning that they will be nearly impossible to reverse once agreed upon.\textsuperscript{85} Although this is not the first time this method has been used, the CETA will help normalize its use. The ratchet may also have a “chilling effect,” which would reduce government regulatory capacity and may encourage other countries seeking FDI to follow a similar path.\textsuperscript{86} However, the relationship between FDI and RTAs with ISDS provisions is ambiguous, but some research shows that there is not necessarily a positive correlation.\textsuperscript{87}

Developing countries have historically been the target of the ISDS mechanism. The most pertinent example is Mexico’s experience with the North American Free Trade Agreement’s (NAFTA) Chapter 11, which contains the investor-state mechanism. As of 2010, Mexico had lost 11 of their 19 disputes and had paid over $187 million in damages.\textsuperscript{88} Both the number of cases lost and the cost in compensation is higher in Mexico under NAFTA than in Canada and the US\textsuperscript{89} combined. Foreign investors have since begun to leverage the ISDS mechanism to attack industrialized states and American companies will be able to use the investor-state dispute mechanism in Canada. However,
developing countries remain easy targets because of they lack robust domestic legal protection for investment.

The number of ISDS cases globally has risen dramatically over the last 10 years. In 2013, there were 57 known new cases, 45 of which were brought by developed countries. In total, three-quarters of known ISDS cases were brought against developing countries, with a concentration in Latin America and the Caribbean. An overwhelming 90 percent of ISDS claims were brought by investors from the EU and the US. This is troubling in light of a recent report by Gus Van Harten, which found that arbitrators’ rulings tend to be more favourable to complainant investors from major Western capital exporting countries. By contrast, in the WTO’s DSB, the EU and US together have been complainants in only 41 percent of cases.

Unlike with the ISDS mechanism, developing countries have been the complainants in approximately one third of all Dispute Settlement Body (DSB) cases. However, the growing acceptance and use of the ISDS could eclipse the WTO’s dispute settlement system: in 2013, there were 568 ISDS cases and 474 DSB cases and the frequency of ISDS cases is increasing at a faster rate. While the DSB will remain relevant because it is the forum for state-to-state trade disputes, the growth in ISDS claims warrants greater attention. Although developing countries use the DSB less frequently than developed countries, there is greater potential for their engagement, which MRAs would undermine.

According to David Gantz, the ISDS mechanism in the CETA is more “friendly” to host governments than some bilateral investment treaties (BITs) of the past. But whether this is necessary in developed countries with independent legislatures is
debatable. Regardless, once the CETA is ratified with the ISDS, it will become a required element of the TTIP. The first consequence of this could be US-China BIT negotiations.

In sum, the CETA is not “development friendly.” However, the extent to which this is true will vary from region to region and must be contextualized with other MRAs unfolding across the Atlantic. How likely are these concerns to materialize? According to Werner Wnendt, Germany’s ambassador to Canada, the CETA “is not a blueprint for the TTIP agreement.” However, by his own admission, the CETA “sets standards” for similar agreements. And, popular opinion sees the CETA as a “template” for the TTIP. This must be understood in the context of the current landscape. If the TTIP is signed, it will have the same ambitious levels of liberalization as the CETA and will set global standards on trade, investment and intellectual property rights. While this agreement will be difficult to multilateralize, Mexico, Canada, Turkey, Norway and Switzerland have voiced interest in joining the TTIP, and some trade pundits predict harmonization with existing FTAs like NAFTA. Given that Canada now has an FTA with the EU, this will make this harmonization process easier. As for the TPP, it will most likely conclude after the TTIP, which is still slated to conclude in 2015. It is unlikely that TTIP will directly influence TPP but it will contribute to legitimizing the approach, comprehensive nature and certain provisions, namely in investment and NTBs. Furthermore, the US might use the TTIP as leverage for TPP. Given that the TPP includes developing countries, the rules will be extended to non-included developing countries, which must anticipate what a post-TPP trade might look like. It is uncertain whether acceding countries would require mutual equivalence and separate agreements, or just to demonstrate similar standards. Although there are doubts about the conclusion of either
the TTIP or TPP, if one is signed it could be a tipping point for future investment reforms. The signing of the CETA is significant in this regard.

While middle-income and emerging powers have begun to react to MRAs with their own trade and investment initiatives, developing and least developed countries have not (with the exception of the Tripartite Free Trade Area). Today, while poor countries have one vote in the WTO, they have absolutely no ability to influence MRA developments. Even if these countries are able to accede into some mega-regionals and meet the required conditions, there is no guarantee that the traditional benefits of market access will outweigh the costs of ascension. But even this option seems incredibly unrealistic. The more likely scenario is that poor countries will pay hefty costs from being unprepared to engage with MRAs, and will not be able to meet the demands of changing global market conditions.

**Conclusion: the future of trade we need**

The development deficit is a perennial feature of the trade system both in the MTS and in MRAs because developing countries have not had full participation in the negotiations, and because of a systematic attempt by developed countries to act without regard for global development objectives. The consultation process taking place around the Post-2015 Development Agenda provides a tremendous opportunity to facilitate the advancement of reform policy proposals to pursue an agenda of fairer trade and sustainable development. However, the current proposal by the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda falls short in several key areas. The Zero Draft, a compilation of proposals by the Member States during the 12th session
of the Open Working Group (OWG), was released in June 2014. This set of indicators will become the basis for the Post-2015 Sustainable Development Goals. The final goal (No. 17) rearticulates the targets from MDG 8, and are much less ambitious than many proposals. There were several notable changes from the original member proposals, for example: i) sub-target 17.1 on “reduce[ing] distortions in international trade” was narrowed to only addressing agricultural subsidies and no reference was made to the “development” nature of the Doha Round; ii) “technology transfer” was struck in favour of “international collaboration and access”; and iii) the target on domestic resource mobilization makes no mention of structural barriers such as tax evasion and malpractices by multinational corporations. Despite persistent calls for international financial institution and trade regime reform by developing countries in the OWG, there was no mention of new financial resources from the international community. Making progress towards these revised targets will be inevitably hamstrung by a fundamentally unequal international financial and trade architectures that are further legitimized through MRAs.

In order for development to be meaningfully incorporated into the global trade system through the SDGs, the goals must reflect the current landscape. That is, they must recognize that MRAs could reshape global trade and international investment rules. The SDGs must: i) protect non-party members from exclusionary policies, ii) protect developing countries flexibility, procurement, and regional economic development programs, and iii) provide narrow criterion for the use of ISDS, and make the DSB more accessible for developing countries. Acknowledging the role that MRAs will play
in hardening the development deficit is essential to a Post-2015 SDG framework that reflects current and future challenges facing low-income countries.

This paper attempts to draw attention to the consequence of MRAs for trade’s development deficit. MRAs, if concluded, will have very real consequences for global development, leaving poor countries with a narrow set of options and insufficient time to respond. The case of the CETA illustrates how new standards for MRAs will constrain regional economic development abroad through NTBs, the ISDS and the broader power asymmetries in the international trade regime. Although a development deficit in global trade is not inevitable, the multilateral trade system must adjust to a new set of emerging development concerns that will arise from MRAs. This must be addressed in the SDGs for any hope of attracting a global debate. Should this silence continue, MRAs will likely entrench the development deficit for the world’s smallest and most vulnerable countries.
Endnotes

1 Amy Wood has a Master of Arts in Global Governance from the Balsillie School of International Affairs.


5 Ibid.

6 Roberto Azevêdo, “Regional Trade Agreements Cannot Substitute the Multilateral System,” Inter Press Service, 15 October 2014.


10 Ibid.


12 MRAs do not often include the Trade in Services Agreement (TISA), a plurilateral deal aimed at tariff reductions, because it is limited to the services sector.


16 The Regional Comprehensive Economic Partnership is made up of 16 countries: the 10 members of the Association of South-East Asian nations (ASEAN)—Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam; and six states that have free trade agreements with ASEAN—Australia, China, India, Japan, Korea and New Zealand.


20 Ibid.


26 Ibid. 10.


31 Dan Ciuriak, “Mega Regionals and the Developing Countries,” 10.

32 Ibid.

33 Sinan Ülgen, “Locked In or Left Out?”


36 See Robert Wolfe, “First Diagnose, Then Treat.”


38 Robert Wolfe, “First Diagnose, Then Treat.”


42 Peter Draper et al. “Mega-regional Trade Agreements,” 5.


Peter Draper et al. “Mega-regional Trade Agreements,” 15.

See for example Peter Draper, Simon Lacey and Yash Romkolowan, “Mega-regional Trade Agreements: Implications for the Africa, Caribbean, and Pacific Countries.”


Ibid., 20.


Ibid., 4.


Dan Ciuriak, “Mega Regionals and the Developing Countries.” Inkyo Cheong also attempts to quantify the impact of the TPP on non-member states by looking at a percentage change in GDP. He predicts that there will be a negligible impact (less than 1 percent increase) on most countries. See: Inkyo Cheong, “Negotiations for the Trans-Pacific Partnership Agreement: Evaluation and Implications for East Asian Regionalism,” *ABDI Institute*, July 2013.


Ibid., 3-4.


The effects of trade diversion and preference erosion are not expected to be substantial overall but may have strong sectoral impacts. There is little research on this with the exception of textiles and clothing in the TPP (see Harsha V. Singh, “Trans-Pacific Partnership Agreement: Its Impact on India and Other Developing Nations,” 20). How this would affect inter-EU trade has attracted slightly more attention, see for example a case study on trade diversion effects on Swiss inputs on the TTIP Rules of Origin (Emanuela Balestrieri, “Transatlantic Value Chains with Swiss Participation and Rules of Origin: Is Trade Creation Dominating Trade Diversion?” State Secretariat for Economic Affairs SECO, July 2014, 52-82) and a paper on trade growth effects in North America and Europe (Gabriel Felbermayr, Benedikt Heid and Sybille Lehwald, “Transatlantic Trade and Investment Partnership (TTIP): Who benefits from a free trade deal? Part 1: Macroeconomic Effects,” Global Economic Dynamics and Bertelsmann Stiftung, 2013).

Aboriginal communities were exempted from the procurement chapter.

Elizabth Sheargold, “Mega-Regional Agreements and Economic Integration in the Asia-Pacific,” 4.
Peter Draper, Simon Lacey and Yash Romkolowan, “Mega-regional Trade Agreements,” 5.

As Slawomir Dorocki identifies, there are a number of factors contributing to this trend included technological advances, outsourcing, and the relocation of cost inefficient research stages to developing countries. See: Slawomir Dorocki, “Contemporary Trends in the Development of the Pharmaceutical Industry in the World,” Contemporary Issues in Polish Contemporary Geography, No. 25 (2014): 3.


Aboriginal communities were exempted from the procurement chapter.

Scott Sinclair, “Pharmaceuticals,” 58.

Ibid., 406.

Aboriginal communities were exempted from the procurement chapter.

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Ibid.

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