the art of the state

IRPP

Volume VI

Redesigning Canadian Trade Policies for New Global Realities

Edited by Stephen Tapp, Ari Van Assche and Robert Wolfe

About this chapter

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Redesigning Canadian Trade Policies for New Global Realities, edited by Stephen Tapp, Ari Van Assche and Robert Wolfe, will be the sixth volume of The Art of the State. Thirty leading academics, government researchers, practitioners and stakeholders, from Canada and abroad, analyze how changes in global commerce, technology, and economic and geopolitical power are affecting Canada and its policy.

Chapter summary

Canada has an effective trade agreement with all of our significant trading partners in the World Trade Organization (WTO), but its rules are slow to adapt to the rapidly changing economic realities analyzed in other chapters in this volume. As trade negotiators experiment with alternatives, Robert Wolfe (Professor, School of Policy Studies at Queen's University) questions two common suppositions: that less-than-fully multilateral agreements are easier to negotiate; and that such preferential negotiations can more readily achieve the new agreements necessary for twenty-first-century trade. He concludes that proliferating preferential agreements are a symptom of fragmented global order, but they are not necessarily a solution.

With respect to the first supposition, negotiators are experimenting with agreements that vary on the topics covered, the number of participants engaged, the methods of negotiation and the legal relation of the results to the WTO. These negotiations will be hard to conclude, and harder to ratify. Wolfe then compares these agreements to the WTO, with its sophisticated Secretariat, strong committees and heavily used dispute settlement system. In practice, none of the agreements is likely to have robust institutional arrangements, such as transparency mechanisms, active committees of officials and effective dispute settlement. Institutional weakness might not impede successful implementation of their market access provisions, but it would undermine the effectiveness of new rules, and might be fatal for disciplines on the behind-the-border policies that are the focus of contemporary trade policy.

Wolfe also has low expectations for the substantive results of the current set of negotiations. Important aspects of the twenty-first-century trade policy agenda will not be covered. Overlaps will be confusing for countries that are part of more than one preferential agreement, while inconsistencies between agreements will be problematic for firms, as will be the omission of significant traders such as China. All of these problems can be addressed in the multilateral WTO framework.

The WTO is Canada's best hedge against uncertainty about what trade and investment patterns will look like in 20 years, and which countries will be key trade partners. Ensuring that the WTO will be fit for purpose requires finding a way past the obstacles to agreement on old issues in the stalled Doha Round, developing ways to discuss new issues and strengthening the institution. The key is a China-United States accommodation. Wolfe recommends that, in the near term, Canada seize the opportunity to launch bilateral talks with China in order to help both sides learn about further integrating China into the world trading system.

Résumé de chapitre

Des accords commerciaux unissent le Canada à tous ses partenaires clés de l'Organisation mondiale du commerce (OMC), mais leurs règles tardent à s'adapter à l'évolution accélérée des réalités économiques analysées dans les autres chapitres du présent ouvrage. Actuellement, des négociateurs essaient de nouvelles options, mais Robert Wolfe (professeur à la School of Policy Studies de l'Université Queen's) met en cause deux de leurs principales hypothèses, à savoir qu'il soit plus facile de négocier des accords multilatéraux partiels, et que de telles négociations préférentielles favorisent l'élaboration des nouveaux accords nécessaires aux échanges du 21e siècle. Son analyse l'amène à conclure que cette prolifération d'accords préférentiels est symptomatique d'un ordre mondial fragmenté et ne constitue pas nécessairement une solution viable.

En ce qui concerne la première hypothèse, les négociateurs élaborent des accords qui varient selon les domaines, le nombre de leurs participants, les méthodes de négociation et le rapport juridique entre les résultats visés et l'OMC. Or ces accords sont difficiles à conclure et plus encore à ratifier, estime Wolfe. Il les compare à ceux de l'OMC, qui est dotée d'un secrétariat expérimenté, de comités efficaces et d'un système de règlement des différends éprouvé. En pratique, aucun des accords n'est susceptible de reposer sur de solides arrangements institutionnels, qu'il s'agisse de comités de représentants actifs ou de mécanismes de transparence et de règlement des différends. Si cette faiblesse institutionnelle n'entravera sans doute pas l'application de leurs dispositions d'accès aux marchés, elle amoindrira à coup sûr l'efficacité des nouvelles règles et pourrait être fatale à des politiques intérieures sur lesquelles sont axées les politiques commerciales d'aujourd'hui.

Pour ce qui est de la seconde hypothèse, Wolfe attend aussi peu de résultats de l'ensemble des négociations en cours, qui feront l'impasse sur d'importants aspects des échanges du 21e siècle. Les chevauchements seront source de confusion pour les pays adhérant à plusieurs accords préférentiels, tandis que les incohérences entre accords et l'omission de grands pays commerçants comme la Chine créeront des difficultés pour les entreprises. Une série de problèmes qu'on pourra toutefois traiter au sein du cadre multilatéral de l'OMC.

À l'horizon des 20 prochaines années, l'OMC constitue pour le Canada la meilleure protection contre l'incertitude relative aux schémas d'échange et d'investissement, mais aussi aux pays qui seront alors ses grands partenaires commerciaux. Et pour maintenir l'efficacité de l'organisme, il faudra surmonter les obstacles à la conclusion d'accords sur les questions qui stagnent depuis la ronde de Doha, trouver les moyens de débattre plusieurs nouveaux enjeux et renforcer l'institution elle-même. La clé réside dans un arrangement entre la Chine et les États-Unis, soutient Wolfe. Il propose qu'à court terme, le Canada saisisse l'occasion pour lancer des discussions bilatérales avec la Chine qui aideront les deux parties à mieux comprendre comment le géant asiatique pourrait s'intégrer au système commercial international.

Canadian Trade Policy in a G-Zero World: Preferential Negotiations as a Natural Experiment

Robert Wolfe

TRADE NEGOTIATORS ARE BUSY TRYING TO RESHAPE THE RULES OF THE TRADING SYSTEM FOR the twenty-first century. Will they succeed? I explore two common suppositions: that less than fully multilateral agreements are easier to negotiate in today's fragmented global order, and that such preferential negotiations can more readily achieve the new agreements necessary to adapt to rapidly changing economic realities. The negotiations underway in bilateral, regional and multilateral configurations face varying prospects for reaching agreement, along with uncertainty about whether any one deal will have the hoped-for effects. This chapter develops an analytic framework for thinking about this natural experiment in institutional terms. Which variations on issues, participants and legal form will be successful? We cannot know the answer for some time, but my expectation is that governments will conclude that less than fully multilateral approaches are second best.

My baseline for comparison is the World Trade Organization (WTO), Canada's free trade agreement with 163 other countries, including all of our largest trading partners. The 1947 General Agreement on Tariffs and Trade (GATT) — formally an agreement, not an organization — made an enormous contribution to the development of an open, liberal and multilateral system of trade and payments, but globalization gradually exposed the weaknesses of its fragmented institutional structure. With more countries becoming active participants in global exchanges, therefore wishing to be active in elaborating the system, and with the scope of the system expanding to include new issues such as services and intellectual property as well as strengthened rules on agriculture and standards, a new organization was essential. The WTO, created in 1995, became the capstone achievement of the Uruguay Round of multilateral trade negotiations (1986-94), the eighth and last held under the auspices of the GATT. The instrumental elements

of the WTO include the many agreements and liberalization commitments in the Final Act of the Uruguay Round, a set of committees, a secretariat, transparency and surveillance procedures and a dispute settlement system. The WTO is also a forum for new negotiations. The Doha Development Agenda (known as the Doha Round) arguably started at the first WTO Ministerial Conference at Singapore in 1996, when ministers agreed to a work program on what came to be known as the "Singapore issues" — investment, competition policy, procurement and trade facilitation — while consolidating the Uruguay Round leftovers into a so-called built-in agenda. The round was formally launched, and China joined the WTO, at the Doha Ministerial Conference in 2001. Some elements of the Doha Round have concluded with agreements at the ministerials in Bali in 2013 and Nairobi in 2015, but the round as a whole remains blocked, after 15 years.

The glacial pace of the Doha Round is the backdrop for the proliferation of negotiations in what I call the natural experiment. The most important regional and plurilateral negotiations from a Canadian perspective are listed in Box 1.[1] Some of the negotiations in this set try to go deeper than the WTO on a plurilateral basis (the Environmental Goods Agreement, EGA) or to cover new issues, while others try to knit together and extend existing regional deals (the Trans-Pacific Partnership, TPP; the Regional Comprehensive Economic Partnership, RCEP) or to extend "best free trade agreement" provisions to all participants (the Trade in Services Agreement, TiSA).

With the exception of the Doha Round, I call all these negotiations preferential because they are less than fully multilateral, although the degree of intended preference varies, as does the possibility of actually excluding third parties from the benefits. The many negotiations underway outside the WTO do not contest its rules and principles, and they all build in some way on WTO foundations, but they aim to be more ambitious in some dimension than currently seems possible in Geneva. Some scholars describe all preferential trade agreements (PTAs) as "club goods," where more powerful participants can set the rules that others eventually will have to follow (Lamp 2015). Some members of the WTO clearly disagree with others on the priority to be assigned to different sets of trade policy issues, hence they think they can create new rules more efficiently in smaller, less heterogeneous groupings.

Thinking about where to negotiate requires brief consideration of why states bother with trade agreements — in other words, what causes trade negotiations?[2] The first thing that shapes trade agreements is the trade policy problem

Box 1

Negotiations relevant to Canada in the natural experiment, as of early 2016

Multilateral

> Doha Round: World Trade Organization

Mega-regional

> CETA: Comprehensive Economic and Trade Agreement
  - Canada, European Union

> TPP: Trans-Pacific Partnership
  - Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, Vietnam

> RCEP: Regional Comprehensive Economic Partnership
  - ASEAN, plus Australia, China, India, Japan, New Zealand, South Korea

> TTIP: Transatlantic Trade and Investment Partnership
  - European Union, United States

Plurilateral*

> TiSA: Trade in Services Agreement
  - Closed group: Australia, Canada, Chile, Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Taiwan, Turkey, United States, Uruguay

> EGA: Environmental Goods Agreement
  - Open group: Australia, Canada, China, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, New Zealand, Norway, Switzerland, Singapore, South Korea, Taiwan, Turkey, United States

* Regional and plurilateral negotiations involve only a sub-set of WTO Members, but they differ in their legal relationship to the WTO.

to be solved. Economic change erodes the value of old agreements and of old negotiation models. Now that traditional market-access barriers (tariffs) are close to zero in most sectors in countries such as Canada, all the action is on the behind-the-border rules (domestic policy) that matter for global value chains (Van Assche, in this volume). What we trade now is bits and pieces, including such things as the after-sales service embedded in products. Agri-food trade also involves complex value chains. In recent firm-level trade theory and policy (see Lapham, in this volume, and Ciuriak et al. 2015), negotiators aim to lower the fixed costs of participating in international markets, and to facilitate importing as well as exporting, by eliminating tariffs on intermediate inputs and addressing regulatory uncertainty all along the supply chain.

Trade policy therefore begins as domestic policy, part of any government's growth and productivity agenda. Trade is also foreign policy, because borders between countries have real effects on trade flows, even if those effects happen through the discriminatory application of domestic policies based on the national origin of an economic actor. Governments need some reciprocal means to influence the choices other governments make about what to do at or behind those borders. Many of the critiques of the WTO as a treaty process are actually critiques of treaty processes in general. If you think that domestic politics is determinative of international outcomes, or that major powers (small ones, too) never let treaties drive policy change — even if they agree to codify changes already underway — then you have to think that formal international negotiations are a waste of time. I think negotiations are consequential, while acknowledging that the possibility and shape of any trade agreement is also affected by the nature of contemporary international order, the political context for any agreement among states.

The negotiations in question are all different. Negotiators are experimenting, but it is not a controlled experiment: no country, issue or technique was randomly assigned to one or another negotiation, and the negotiations vary on numerous characteristics. The set includes:

> multilateral deals with heterogeneous issues and participants (WTO);
> regional deals with heterogeneous participants and a traditional agenda (RCEP)
> ambitious preferential deals with heterogeneous issues but limited numbers (TPP) or more homogenous participants (the Comprehensive Economic and Trade Agreement, CETA; and the Transatlantic Trade and Investment partnership, TTIP); and
> plurilateral deals within a single domain with slightly more heterogeneous participants (TiSA).

I call this set a natural experiment because systematic analysis over time might allow some causal inference. We cannot know yet if the mega-regional negotiations — so called because they are large enough to have systemic impact — will either succeed in reaching a conclusion or be effective when implemented, nor can we know if the Doha Round will conclude in some form. In each case, analysts will be interested in how participants viewed the alternatives to reaching a negotiated outcome (Odell 2015). The ultimate

choice of governments will not be based on a comprehensive analysis of optimal possibilities, as if prior institutional choices were irrelevant, nor will the choice be entirely constrained by existing institutions. Following the logic of bounded rationality, governments will choose the option that is "good enough" to address the policy challenges they have identified (Jupille, Mattli and Snidal 2013). I do not ask if the policy concerns of trade negotiators are the right ones, only what we can learn from analysis of the institutional choices they make to reach their objectives.

I begin by situating trade policy in the context of a G-Zero world order, one without a group of countries able or willing to try to maintain a single institutional direction. I next compare the negotiations in the natural experiment to one another on two sets of criteria. The first set concerns whether the deals can be negotiated and ratified; the second set whether implemented deals will have the institutional characteristics to be effective. I then consider whether the WTO is fit for twenty-first-century trade policy. The travails of the Doha Round do not mean that global rules for twenty-first-century trade will necessarily be successfully written in the TPP, TTIP and TiSA, or that mega-regionals will necessarily take over as the main loci of global trade governance (contra Baldwin 2016).[3] My expectation is that these negotiations will not lead to a coherent set of rules for global value chains. Overlaps will be confusing for countries that are part of more than one PTA, while inconsistencies between agreements will be problematic for firms, as will be the omission of significant traders. As well, the negotiations do not cover important aspects of the twenty-first-century trade policy agenda, in part because of the difficulties of addressing behind-the-border issues preferentially. Even if new PTAs can be negotiated and ratified, their weak institutional structure might mean that they will have no more effect on trade than most existing PTAs.

In the conclusion, I ask if trade policy in a G-Zero world will take us back to a coherent multilateral trading system or forward to increased fragmentation. Losing what is left of the Doha Round would not be the end of the world for the WTO. Losing the WTO would be disastrous for the mega-regionals, however, because they are effectively WTO side agreements, as are all PTAs. Strengthening the WTO ought to be a central objective of Canadian trade strategy, whatever the outcome of the natural experiment.

Trade Agreements in a Changing International Order

The reference in my title to a G-Zero world alludes to the apparent absence of multilateral leadership. Whether or not the United States ever was a "hegemon" in the long decade of the 1950s, it manifestly is not one now (Reich and Lebow 2014). Similarly, whether or not the United States formed part of a group with sufficient economic and political weight to have the critical mass needed to provide global leadership with Europe and later Japan in the 1970s and 1980s (Snidal 1985), such a group would now need to be much larger than in the past. No such group now exists — hence we live in a G-Zero world.[4]

The notion of a G-Zero world implies an absence of hierarchy among governments, since no country or group of countries can impose global order. Just as important, governments no longer have the hierarchical authority over other actors that they once did. The problem for governments with the global value chains discussed in other chapters in this volume is that they are not territorial, even if they are concentrated in a particular region. A state-based mindset makes it difficult to apprehend what they are — hence, the WTO uses the term "made in the world" to characterize its effort to measure value-added trade. The object of trade agreements is commercial activity, but formal agreements might have little effect on the flow of transactions in the world. We tend to have a territorial conception of regulatory scope, which makes government-to-government negotiations seem normal, but perhaps the regulatory problem should be defined by participants. Global value chains solve many of their coordination and rules problems through private contract, including private standards. The challenges of a G-Zero world might not signal, therefore, that other entities are coming to substitute for the state in what the state does, but that states might be less able to make the rules (Ruggie 1993).

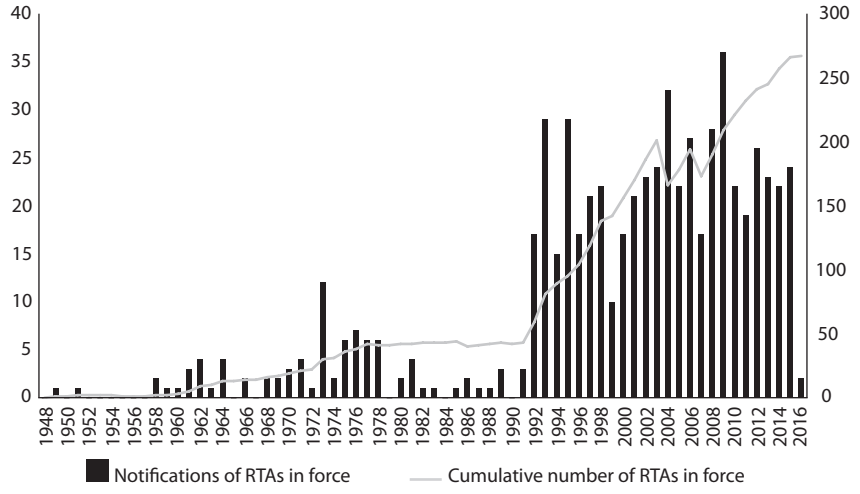
Whether or not we are living through a "crisis of multilateralism," many international negotiations are struggling. True, the system works (Drezner 2014), notably in ensuring that the response to the financial crisis of 2008 did not resemble the aftermath of the crash of 1929 (Wolfe 2012). The nuclear non-proliferation regime is observed in practice, even if the Comprehensive Nuclear-Test-Ban Treaty of 1996 is still not in force. But few deals are being done on new rules in any domain of international life. No new multilateral treaty was deposited with the United Nations in 2011, 2012 or 2013, continuing a decline since the turn of the century (Pauwelyn, Wessel and Wouters 2014), yet we observe an enormous

increase in informal modes of cooperation — some involve states, some civil society. The Financial Action Task Force is extraordinary: it has no secretariat and no treaty; rather, major like-minded countries simply say that anyone who does not play by their rules will have no access to their banking markets. The Guiding Principles on Business and Human Rights was the first process accepted by the UN Human Rights Council that was not negotiated by governments; it rests on thick stakeholder consensus, not thin state consent (Ruggie 2014). The 2030 Agenda for Sustainable Development adopted in September 2015 is a promising attempt to bring coherence to the UN system and to national policy, although it is not binding in any way, and the 2015 Paris Agreement on climate change, to which I return below, was a rare success.

Trade seems to fit the G-Zero pattern. After staggering along for its first six years, the Doha Round has been stalled since 2008, notwithstanding limited success at the last two ministerials, notably on trade facilitation and on export competition in agriculture. Generations of Atlanticism — shared elite perceptions — helped underpin the post-Second World War order. Every successful multilateral trade round has crystallized only when the Americans and the Europeans reached a basic accommodation, which then drove the rest of the bargains. If such a transatlantic accommodation happens again, it will not help the Doha Round. The blockage now is across the Pacific, but China and the United States have not yet learned how to find an accommodation.

The US public, and certainly many US politicians, fear China. Worry that China will challenge, rather than join, the existing order motivates the often-heard claim, most recently in President Barack Obama's 2016 State of the Union Address, that the United States has to make the rules in Asia through the TPP while it still can. Americans who see in China a threat to US primacy believe that "grand strategy" requires balancing China in every domain, including by creating new PTAs that consciously exclude China (Blackwill and Tellis 2015), a more honest rationale than the implausible claim that Chinese governance and economy are not ready to take on twenty-first-century disciplines. In any event, joining the TPP would require an accession negotiation, but after the 15-year slog to gain access to the WTO, China is unlikely to be willing to do that again. Multilateralism eventually might be challenged by emerging powers, such as China, that will not automatically follow Western leadership, but as yet they have no alternative order to propose (Laïdi 2014).

Figure 1
Regional trade agreements notified to the GATT/WTO by year of entry into force, 1948-2016



Source: World Trade Organization's Regional Trade Agreements Information System
Note: Goods, services and accessions to an RTA are counted separately. Cumulative number corresponds to all RTAs in force as of June 2016.

One manifestation of the G-Zero world is the turn to preferential agreements: since the turn of the century, the number of bilateral and regional agreements notified to the WTO increased to an annual high of 36 in 2009, declining to a still-high 24 in 2015; as figure 1 shows, 267 PTAs were in force as of June 2016. (The fact that they exist does not necessarily mean that they have any effect on either trade flows or relations among the parties.) In these inter-state negotiations, the foreign policy motivation can come first. Sometimes a trade agreement sends a signal about supporting new democracies, as in the negotiations between the European Union and Ukraine that precipitated the 2014 political crisis in Ukraine, or market-oriented governments, as in Canada's deals with Panama, Colombia, Peru and Honduras. China has used PTAs as a modern friendship treaty with Chile, Costa Rica, Peru, Pakistan, the Association of Southeast Asian Nations (ASEAN), Switzerland and the Gulf Cooperation Council; and both the RCEP and China's "Belt and Road" initiative — a new approach to regional cooperation — are partially intended as a political counter to the TPP (Zhao 2015), which is not surprising, given

the United States' explicit strategic objective in excluding China from the TPP. Even the TTIP is said to be important for strengthening transatlantic relations.

Proliferating preferential negotiations might be a symptom of the G-Zero challenge, at a time when all multilateral negotiations seem fruitless, or they might be a solution. PTAs attempt to deal with the policy issues of a changing world economy while responding to the institutional challenges of a G-Zero world. In the absence of a functioning multilateral approach to the challenges of globalization, and given the need for new rules to accommodate twenty-first-century trade patterns, countries might have no choice. Canada, for example, concluded that an ambitious agenda would be more achievable either with like-minded advanced economies, notably the European Union, or in settings where developing countries that seemed to be slowing down the WTO are not present, such as TiSA. The point then is not whether a preferential negotiation as such is the better way, but that it might seem to be the only way.

Comparative Institutional Analysis: Negotiability

How should analysts and negotiators learn from the negotiations in the natural experiment in order to think strategically about the possibilities for the future agenda in a G-Zero world? I address two themes: in this section, whether an agreement can be negotiated; and, in the next section, whether it will be effective. I consider negotiation transparency, ratification worries and new negotiation approaches, including plurilaterals. None of the factors I consider is novel, but all are more complicated in the current context. And they are interrelated: some sets of variations on each of these elements will impede or support successful outcomes.

Does the transparency of the negotiations matter?

Many politicians and civil society organizations have been critical of a lack of transparency in current trade negotiations. Arguments can be made with respect to legitimacy, on the one hand, and negotiating efficiency, on the other. Transparency appears to have contradictory effects on reaching an agreement, and on whether an agreement can be ratified.

Negotiation transparency has three interrelated connotations. The first is *internal transparency*, or how much participants in the negotiations know about what is

going on (for an extensive discussion, see Wolfe 2008b). Keeping everyone informed and providing ways for everyone to be heard remain challenges for the WTO because of its size and disparities in the capabilities of its members. But smaller negotiations are not immune. One reason for the slow pace of the TPP negotiations might have been the United States' insistence on treating many parts as a linked set of bilateral negotiations (hub-and-spoke), which made it harder for all parties to know what was going on, hence harder to make balancing tradeoffs, and yet concessions in one chapter often depend on concessions in another. Early in 2015 it was said, for example, that the United States and Japan had not told their TPP partners about the bilateral accommodations they had reached on market access for beef and pork. Canada and Mexico were reported to have been shocked at what was meant to be the final TPP round in July 2015 when they finally learned what the Americans had conceded to Japan on automobiles. Japan later bizarrely claimed that it did not know that the United States was not speaking on behalf of its partners in the North American Free Trade Agreement (NAFTA) in that aspect of the negotiations.

The second connotation is *external transparency*, meaning how much citizens know. In principle, all official WTO documents should be available to the public on its website, including minutes of meetings, dispute settlement reports and the results of negotiations (WTO 2002). In practice, WTO members have found myriad ways around these fine principles. The rules apply only to official WTO documents, but the most sensitive issues in negotiations often surface first in unnumbered "room documents" handed out during a meeting (available on a separate internal website) or in restricted documents that generally are not made available to the public. That said, in the course of the Doha Round most negotiating proposals were made public, and the chairs of each negotiating group tended to go on at some length in reports and briefings about where some of the blockages were in negotiations, before eventually tabling draft texts. That very openness might have been an obstacle to the round's completion. In contrast, in all the other negotiations in the natural experiment, all documents are closely held, limiting external transparency. Even CETA's 2013 Technical Summary was fairly opaque, and little beyond the chapter headings was officially known about the TPP while the negotiations were underway. The European Commission has tabled many of its own TTIP negotiating proposals, often in the form of draft texts, but the United States is more circumspect, and reports on the rounds of negotiations reveal little more than the chapters discussed. On the other hand,

the main elements of US negotiation mandates are now public, since they are enshrined in the 2015 Trade Promotion Authority legislation.

In between external and internal transparency is the third connotation, the *grey zone of briefings* for politicians and confidential consultations with economic actors. Trade negotiators cannot make it up: they cannot understand their country's interests in a given negotiation, either strategic or technical, without talking to traders in conversations that inevitably will be confidential.[5] Steve Verheul, Canada's chief negotiator for CETA, has said that consultations constituted probably the largest part of his job (House of Commons 2016). He had a core steering group that represented national organizations, a group of about 50 to 75 businesses that he kept informed and sector-specific groups, including autos, agriculture, fish and seafood and textiles and apparel. But negotiators are then criticized when business groups seem to know more about what is at stake than either citizens or their elected representatives. In TiSA, the Americans have criticized the European Union for sharing too much information with its own member governments, which, in turn, complain about the secrecy. In the TTIP, the two sides reached an agreement in December 2015 to allow more access to "consolidated texts" for EU politicians and officials, though not for the public.

One aspect of the natural experiment is striking: Canada's provinces were active participants in the CETA negotiations, and accepted explicit obligations (Goff 2016). In the other negotiations, however, their engagement has followed traditional lines. The degree of provincial involvement in a trade negotiation varies from none, to participation in confidential briefings, to active consultation, to presence in the room. The factors include provincial capacity (engagement in a lengthy negotiation can be resource intensive), the degree of provincial responsibility for the issue and the interest of the other side in having them engaged. On behind-the-border issues where their policies will be affected, provinces' understanding, and acceptance where appropriate, is increasingly important. But that does not necessarily require active provincial engagement in each new negotiation if the consultation process gives provinces a real opportunity to shape the Canadian position.

Part of the assessment of the natural experiment of all these negotiations that are underway will be whether a forum's transparency makes a difference to reaching a deal, and one that meets with public acceptance — hence, a deal that can be ratified. The transparency that modern governance demands undermines the privacy essential for negotiations (Stasavage 2004). Too much transparency

will kill any deal, but how much is too much? Negotiators are reluctant to say what they are doing in one negotiation to avoid revealing their hand to partners in other negotiations, or even in other chapters of the same negotiation. Increased transparency might hurt if it encourages posturing by negotiators and politicians. Negotiators have to be responsible for the overall balance of the deal, so releasing bits and pieces of information can be a mistake. If stakeholders can see the certain inclusion of things they do not like, while the possible benefits seem vague and diffuse, then they will mount opposition.

On the other hand, when trade negotiations go behind the border, politicians and stakeholders want to understand what is on the table. And negotiations can be endangered by attempted secrecy if a few leaked texts are posted on social media, provoking controversy that might be lessened if the whole context were visible to the public. The general lack of transparency in the TPP negotiations might have made US congressional approval of the Trade Promotion Authority in 2015 more difficult, since opponents were able to put the worst possible interpretation on leaked texts. Some "cleared advisors" knew what was actually in the chapters, but confidentiality provisions limited their ability to debate their reservations.

Ratification worries can cripple negotiations

Negotiators always assess whether the other side can ratify and implement a deal. They know that a signature is no guarantee — for example, the Anti-Counterfeiting Trade Agreement remains in limbo after the European Parliament refused ratification in 2012. In the crucial stages of designing the proposed International Trade Organization in 1948, negotiators convinced one another, but lost touch with currents of opinion at home, leading to its failure in the US Congress. CETA is the first significant deal since the Lisbon Treaty clarified EU competence in 2009. If it is seen as a "trade" deal, then it would need only to be ratified by the EU Parliament. But if some aspects are seen as nontrade, they would have to be ratified by all 28 EU national governments. Despite the new provisions in the final CETA text released in early 2016, fears about investor-state dispute settlement could still complicate ratification, especially in Germany. If CETA fails to be ratified, the European Union will face difficulties in future negotiations, especially with the United States.

No nation can conclude a deal with the United States without assurances that the deal will not be picked apart in Congress. President Barack Obama's

success in obtaining negotiation authority in 2015 made the final TPP agreement possible, though far from certain. The next drama will come when the agreement is discussed in Congress, which, given the rancor of Washington politics in 2016, might not happen until after the November elections. The president will not need fresh negotiation authority until at least 2018, and possibly 2021, but at some point other countries will again become reluctant to conclude deals with the United States in the absence of clarity on what might happen to the results in Congress.

Ratification of any international agreement is a challenge when citizens worry about globalization and are distrustful of political elites — the rejection of the EU trade agreement with Ukraine by Dutch voters in an April 2016 referendum is the most recent example. Jurisdiction based on territory might matter less and less, but citizens remain attached to the symbols of sovereignty even as their function erodes. Telling citizens that more trade is good for them does not build support. A trade agreement might look like an international treaty, but, as the issues more closely engage domestic officials, the negotiations will become more difficult, and the results might become harder to ratify — knowledge of which might impede negotiations. Uncertainty about domestic acceptance might be a generic problem for ambitious behind-the-border deals.

Are new negotiating approaches needed?

The Doha Round impasse that continued at the 2015 Ministerial in Nairobi confirmed many ministers and negotiators in the conventional wisdom that new negotiating approaches must be found. In particular, they all want to relax the straitjacket created by a particularly rigid understanding of the Doha Round's "single undertaking."[6] The EU trade commissioner, Cecilia Malmström, argues, for example, that "the WTO has made important progress…But this progress has been achieved by tackling problems individually or in small packages, not through a grand bargain in which nothing is agreed until everything is agreed by everyone…In some cases, we will have to work on trade deals between smaller groups of countries as well — so-called plurilateral agreements" (Malmström 2016). In evoking the idea of recent progress in the WTO, Malmström is endorsing the claim that the Doha Round's single undertaking was broken as early as the Bali Ministerial in 2013, when the Trade Facilitation Agreement (TFA) was seemingly adopted on its own. The United States, unlike some other WTO members, certainly want to believe that Nairobi

was the end for the single undertaking. The single undertaking, as defined in Doha and refined in Hong Kong, died in 2008, but that is only one of three meanings of the term. The WTO *acquis* is a single undertaking[7] — indeed, every negotiation is a single undertaking; the challenge remains what to put in a proposed agreement and which countries should participate.

When the number of active participants in multilateral trade negotiations increased dramatically in the 1980s, experience confirmed the well-understood proposition that the legitimacy gained by involving more participants comes at the expense of the efficiency associated with small numbers (Kahler 1992). Put differently, it can be argued that "simultaneous widening and deepening of institutions is unattainable because of the trade-off between increased size and growing heterogeneity within institutions" (Bradford 2014, 80) — except that the interests of smaller WTO members are not all that heterogeneous: negotiators do not have to accommodate 164 different sets of major interests. Many small countries share both overall and specific interests, hence the many coalitions that have arisen based on the common interests or shared characteristics of members (Wolfe 2008a). To the extent that a member has general interests, combining its voice in a coalition allows it to be heard. A member with a particular interest might be small enough to be allowed an exception, or to be ignored, without endangering overall agreement.

The number of voices that now must be heard in itself does not impede negotiation. The bigger problem is the wide variation in levels of economic development among those voices, leading to variation, both real and perceived, in the value of any new obligations, including in capacity to implement anything new. But it is worth stressing that the Doha Round broke down at the informal ministerial in July 2008 when Brazil, China, the European Union, India and the United States failed to agree on certain core issues, just as the Nairobi package only came together at the last minute in November 2015 when these five members reached agreement on new rules for export subsidies in agriculture.

Are small agreements easier to negotiate? Or, in contrast, is it harder to walk away from a big agreement? Any agreement can provoke political mobilization by interests opposed to a particular provision. Such mobilization is as easy against a small agreement as against a big one, but a small agreement might not engage enough domestic constituencies that perceive themselves winning from the agreement to create a large enough political coalition to override all

the smaller voices complaining about its parts. Sometimes tradeoffs are needed between trade in goods and new rules on services in order to reach an agreement. As one example, sometimes a concession on rice offered to one country can be balanced only by a concession on financial services offered by another country. In the TTIP, negotiations are complicated by the negotiating reality that reductions in EU tariffs, which are higher than US barriers, can be compensated only in some unrelated area of the negotiations. On some issues, such as government procurement, agreement among only a subset of countries is needed; on other issues, such as subsidies, binding rules require everyone to participate.

On the other hand, the size and complexity of the Uruguay Round package in 1993 might have slowed negotiations. The 2013 WTO Ministerial in Bali showed that a mini-package is possible if the large players want one, but it also showed that single-issue deals are hard to negotiate, even on something as useful, and as internally balanced, as the TFA (Hoekman, forthcoming). The Bali package succeeded only with the inclusion of development issues and agriculture. And even agriculture had to have balancing issues within that micro part of the Bali mini-package, a package that was adopted by consensus — in that sense, Bali was in itself a single undertaking, as was Nairobi two years later. A large agreement also creates multiple entry points for both critics and veto players. Problems are now showing up in the TTIP, where many aspects are stirring up a hornets' nest of opposition, without anybody having enough at stake in the outcome to ensure strong support for the negotiations, let alone ultimate ratification. In the TPP, we see various groups opposing or supporting ratification because of only one provision in the sprawling agreement — notably the so-called tobacco carve-out from investor-state dispute settlement.[8]

The final negotiability question is about the legal form of preferential agreements. All of the multilateral agreements from Bali and Nairobi, when they enter into force, will be part of the WTO *acquis*, and all of the institutional apparatus will apply.[9] None of the negotiations underway is intended to create competition for the WTO, but the nature of their relation to the WTO is one of the choices facing negotiators. Every trade agreement among WTO members is subject to legal challenge unless it is consistent with WTO rules. The options are a closed, stand-alone deal, bilateral or regional, that meets certain conditions for what is covered, or a plurilateral deal that has some form of integration into the WTO framework.

If participants want a deal to stand on its own, perhaps because they want to exclude others from its benefits, they could simply comply with the obligation to

notify the deal as a regional agreement to the WTO Committee on Regional Trade Agreements, where the standard of review for goods is whether an agreement eliminates substantially all discrimination among the participants. If it covered services, a deal would also need to meet the conditions on sectoral coverage. In both cases, PTAs could not make use of WTO institutions for surveillance or dispute settlement.

If the intent instead were to allow all WTO members to participate in the agreement and to make use of WTO transparency and dispute settlement mechanisms, then the negotiations could be concluded as a plurilateral agreement, meaning simply that it would involve a subset of WTO members. Two options are available. First, if only the participants would be bound by the deal, it could be concluded under annex 4 of the WTO Agreement, but that route requires permission from the full membership by consensus, which might now be unlikely for anything new (Hoekman and Mavroidis 2015). Replicating the Government Procurement Agreement might not be possible anytime soon.

The second option is a critical mass agreement in which participants in the negotiations incorporate the results in their schedules of commitments; such agreements come into effect upon acceptance by a predetermined number of participants The question is always: on which issues would critical mass be appropriate, and how should it be defined — in terms of the percentage of WTO members, international trade shares in the sector or both? Critical mass works for tariff reductions — as, for example, in the Information Technology Agreement — and it also worked for the 1997 Reference Paper on trade in basic telecommunications services. Could it work for scheduling other nontariff concessions (Hoekman and Mavroidis 2016)? Perhaps a group of countries could come to a binding agreement to be implemented on a most-favoured-nation (MFN) basis; such an agreement would not require consensus of the whole membership (Mamdouh 2014). The Reference Paper approach is suitable for any regulatory domain, if, once a critical mass of participants is achieved, free riding by other WTO members is not a concern.

TiSA is a closed plurilateral — meaning that participation is by invitation only — but participants appear not to have decided whether the results would be a regional integration agreement, or an annex 4 plurilateral or something akin to a Reference Paper. The Environmental Goods Agreement, like the Information Technology Agreement, is an open plurilateral whose results will simply be incorporated in the schedules of participants — meaning that any commitments that

it covers would apply to all WTO members. The difficulties members face over agreeing on the list of products to be covered by the EGA, however, do not augur well for the critical-mass approach. If the EGA does conclude, it is unlikely to have significant participation by developing countries (Wu 2014), since the way the negotiations are structured offers them no real basis to participate to advance their interests. Critical mass, despite its attractions, has limits.

A related issue is the inclusion of so-called ratchet mechanisms that ensure that parties to existing agreements benefit, under the MFN principle, from any new liberalization by another party. The TPP has strong ratchets for investment (article 9.12) and for services (article 10.7). Similar provisions are contained in the Canada-Korea agreement and CETA (articles 8.15 for investment and 9.7 for service). Hence, if the TPP (involving the United States) and CETA (involving the European Union) enter into force before the TTIP does, any enhanced liberalization between the European Union and the United States would automatically extend to Canada (unless the European Union had entered an MFN reservation on some aspect of CETA). Those hypothetical improvements in the services rules in the TTIP would also automatically extend to other TPP participants, notably Japan.

A final observation on legal form: some say "voluntary codes" are proliferating as an alternative to attempts to reach formal treaties (Patrick 2015); others observe that "informal disciplines" can also be an alternative if participants are more relaxed about whether a rule has to be formally "binding." Let me give one example of a supposedly hard case: discipline on subsidies. The Export Credit Arrangement, based in the Organisation for Economic Co-operation and Development (OECD), created detailed rules and associated mechanisms that are formally nonbinding, but that gave rise to a shared understanding of appropriate rules across the governmental and quasi-governmental bodies that administer export credits in OECD countries (Shaffer, Wolfe and Le 2015). The arrangement was incorporated by reference as a carve-out to the illustrative list of prohibited export subsidies set out in annex 1 of the WTO subsidies agreement. Any WTO member that acts within the framework of the arrangement, even without being a formal participant in it, would be deemed to comply with WTO obligations.

What are the negotiating tradeoffs?

Small clubs can indeed reach agreement more quickly, but they do so by limiting the number of members committed to liberalization in the domain. The more

issues involve generalized principles of conduct, the more broad participation is valued; in contrast, the more agreements can be limited to selected parties and not make demands of nonparticipants, the more critical mass negotiations seem feasible. The more participants want the resulting agreement to be a public good, the more negotiating it as a club good can be problematic. As long as identical policies are not essential, which is usually the case in the WTO, broader agreements might end up being deeper (Gilligan 2004).

As noted, all negotiations are ultimately a single undertaking. Plurilateral and mega-regional negotiations try to solve the problem by reducing either the number of countries or the number of issues. The TPP was a single undertaking adopted by consensus in that all the parties had to accept all the obligations — except as modified by the dozens of bilateral side letters and exemptions.[10] The big difference between the WTO and the TPP was not the decision rule, therefore, but the small number of participants. The TPP package was broad enough to find balance, but might not have the right participants for ratification if key constituencies value a particular provision only if it applies to countries that are not part of the deal.

TiSA, in contrast, will have more participants than the TPP, but it covers only services, and balance within services alone might not be possible, especially as a plurilateral, despite the large swath of economic activity affected. Discriminatory liberalization in services is difficult because the benefits of regulatory changes are hard to restrict to a small number of participants. A small country might still be willing to make a deal with a larger country, but not the reverse. The problem is compounded because TiSA might be missing important sectors and markets. Although the extension of "best PTA" commitments among all TISA participants is worth having, none of these PTA commitments addresses sectors of highest export interest — as revealed in Doha Round requests — and many of the markets of most interest to participants are not at the table (Marchetti and Roy 2014). If participants negotiate subsequent PTAs with those countries, with provisions that go beyond TiSA, would all TiSA participants benefit? Transatlantic divisions on this "MFN-forward" provision might be a stumbling block in the negotiations. And if TiSA does include the MFN-forward rule, future services negotiations might no longer be possible except in the WTO.

The other tradeoffs involve transparency and ratification. Most proposals in the WTO are public, as are draft texts with commentary by the chair of negotiating

groups. The Doha Round negotiations are stalled, so perhaps transparency does not help. In CETA, the TPP, TTIP and TiSA, no proposals or draft texts have been made public, but, in the era of social media, we have seen many leaks posted, sometimes of out-of-date texts. And these negotiations are not moving fast, either. The results of this opacity are evident in Canada: despite considerable controversy about the TPP, the Angus Reid Institute (2016) reported at the time it was signed that "nearly half of all Canadians (49 percent) say they don't know enough about the TPP to form an opinion." I am not surprised. What matters for the public is the "permissive consensus" on trade policy (Mendelsohn, Wolfe and Parkin 2002), understood as the freedom to act that the public traditionally has accorded governments in international affairs, as long as they act in a way consistent with public goals and values (Wolfe and Mendelsohn 2005). As long as trade policy delivers prosperity without too much domestic disruption, the public is not interested in the details. The interesting questions about twenty-first-century trade policy are these: as it constrains domestic choices that might otherwise not be subject to international agreement, to what extent does trade policy enter areas that might be outside the permissive consensus? and is more transparency than traditionally offered during negotiations necessary to ensure ratification? Negotiating efficiency and the legitimacy of the process might be linked after all.

Comparative Institutional Analysis: Institutional Design for Successful Agreements

Once the parties have an agreement on paper, they have to bring it to life. The next set of questions, therefore, concerns whether the deal is worth having — that is, when implemented, will it meet its objectives? The answers depend on effective institutional design. Reciprocal obligations, the basis of any trade agreement, depend on opportunities for the constant development and affirmation of shared understanding of what the obligations mean (Wolfe 2015a). Parties hold one another to account for meeting their mutual obligations under the contract. I focus, therefore, on factors that I think affect whether or not a trade agreement works. The variables of interest are *transparency*, *accountability to partners* and a *secretariat*. If *enforcement* means that a process exists by which one party can seek clarification of its rights and a change in another party's behaviour, that includes *surveillance* as well as *dispute settlement*.

Mechanisms to ensure horizontal accountability

Some way for the participants to ensure they are all keeping their promises is essential for effective implementation of a trade agreement. Transparency obligations have undergone substantial transformations since the inception of the GATT in 1947. From an obligation to publish general laws affecting trade, the system now includes peer review by governments — in the form of monitoring and surveillance — and efforts to inform the public. If the goal of a trade agreement is to have binding commitments, and thereby reduce the policy uncertainty that would otherwise afflict trade relations, then the credibility of those commitments matters. Transparency ought to improve the operation of the trading system by allowing all members to verify that national law, policy and implementation achieve the objective of the agreement. Transparency as accountability requires some forum for interaction among officials. One basis for this interaction is a formal notification of new or implemented policy, with subsequent discussion in a committee, both of which are common in the WTO (Wolfe 2013). WTO notifications are collected in the Central Registry of Notifications, and made available in the searchable Integrated Trade Intelligence Portal. As a result of questions and challenge in a committee — sometimes stimulated by economic actors who have read a notification online — a government might provide more information, change policy or pressure other units of government to respond. Formal dispute settlement cases are few in number relative to the range of matters covered by the WTO or the extent of world trade. Rather than being the universe of collective efforts in Geneva to monitor implementation and compliance with WTO agreements, disputes are the small tip of a large pyramid (Wolfe 2005). And all of these WTO mechanisms are supported by a sophisticated secretariat with hundreds of staff.

Do other agreements create institutional mechanisms, and are these provisions used? We observe considerable institutional variation in PTAs (Steger 2012), but many agreements have more designed institutionalization on paper than is implemented in practice (Haftel 2013). US PTAs tend to have minimal structure (Fergusson et al. 2013). In the recent agreements that Korea has concluded with the United States and the European Union, for example, the institutional provisions "could be characterised as a form of procedural national treatment for interested and affected private persons of each signatory party" (Laurenza and Mathis 2013, 7). Neither agreement really goes beyond requiring normal EU or US administrative law practices, and neither agreement has provisions that

require formal notification of new measures to the other party. Although a degree of notification is required under CETA, routine notification to the WTO is usually sufficient to meet the obligation, as is often seen in PTAs. Similarly, the TPP has a great many provisions that allow parties to ask for more information or to request consultations of one sort or another, but the agreement does not have a formal centralized notification system analogous to that of the WTO. Moreover, many of the TPP's transparency obligations are bilateral, with a possibility — but not a requirement — to notify other parties through their contact points.

Transparency is important to the CETA parties in the operation of their trade policies (chapter 27), but evidently not in the implementation of the agreement. The parties must treat as confidential any material so designated by the other party (article 26.4), but only the Committee on Trade and Sustainable Development has an obligation to promote transparency and public participation. That committee must make its reports and decisions public (article 22.4.4), but no such obligation appears to apply to any other body, including the Joint Committee. In light of the relatively limited transparency provisions of chapter 26 of the TPP, however, how does one assess the likelihood of extensive publicity to other parties and to the public? Similarly, how much will surveillance work by exposing parties in front of one another and the public? The lack of structure in the TPP might work well for the United States, which can use embassy personnel in member countries to help monitor implementation and identify enforcement issues, but might limit the agreement's general effectiveness.

PTAs typically have commissions, co-chaired by the respective trade ministers, that meet once a year to supervise implementation and the committees established under the agreement. Lacking secretariats, support for these processes is provided by staff in each party's trade ministry. Meetings of the TPP Commission will be chaired successively by each party, and the party chairing a session is to provide any necessary administrative support. The chair will then notify the other parties of any decision of the Commission, which suggests that the parties have no current plans for a shared website for systematically recording decisions and making them available publicly. The CETA contact points under the Joint Committee (article 26.5) have a number of the responsibilities of a secretariat, but they are clearly units supporting the trade minister, who are the co-chairs of the committee, not autonomous units responsible for developing an agenda, issuing supporting documentation and recording the results.

The CETA Joint Committee, which must meet at least once a year, will be responsible for supervising the work of all the other committees created by the agreement. The provisions are largely permissive: the committees *may* do many things, but they are not *required* to do much on a regular basis. Some PTA committees, including under NAFTA, have a real agenda, but most are moribund. Although having them on the books can be helpful when a covered issue arises, for the most part trade ministries seem to find it simpler to send officials only to the related WTO committees. Indeed, many de facto meetings of a PTA committee happen on the margins of a WTO or other committee. For example, the US-Korea agreement created an Automotive Working Group, which met most recently in Geneva on the sidelines of a United Nations forum on global vehicle regulatory harmonization. Canada has sanitary and phytosanitary measures committees with seven partners, as well as the new one in the TPP, but they do not all meet. On the other hand, the Joint Management Committee under the existing Canada-EU Veterinary Agreement, which is augmented under CETA, meets at least once a year, with video conferences as necessary in between meetings. The Canada-US Consultative Committee on Agriculture is a bilateral, rather than a NAFTA, body that is actively used for sanitary and phytosanitary issues.

The newer the issue in PTAs, the weaker the institutional apparatus. The TPP electronic commerce chapter contains obligations in an area where all that the WTO has been able to manage is an on-going work program, but the chapter has no institutional provisions. Article 14.15 provides that the parties should "endeavor" to cooperate, without saying how. The TPP environment chapter might be integral, rather than being a side agreement, but its provisions are mostly aspirational, with little likelihood of enforcement (Wold 2016), although the associated committee might prove to be active. The TPP services chapter does not create a committee — only a working group on professional services, with no notification requirement additional to the general obligation in chapter 26.

One way in which the 2015 Paris Agreement on climate change is instructive for the WTO is its stress on process over formal rules. The Paris Agreement works only if everybody notifies the United Nations Framework Convention on Climate Change Secretariat of their nationally determined contributions — along with the steps being taken to achieve it — and if there is robust surveillance of those notifications. An attempt to get "binding" targets would have failed. Perhaps the nationally determined contributions approach is better suited to a world where dif-

fering domestic economic and administrative structures make hard rules difficult to negotiate. The best trade example might be the Trade Facilitation Agreement, since it contains universal obligations while allowing extensive differentiation in implementation by developing countries. Vested interests can resist the reforms associated with facilitating trade, just as such interests resist climate change mitigation. The national committees the agreement requires have the potential to create a stronger focus on implementation, in part through linkage to donors and the private sector in the country; the transparency and accountability mechanisms embedded in the agreement will also help bring it to life (Hoekman, forthcoming).

Dispute settlement in PTAs

Most PTAs include provisions that establish procedures for resolving disputes among their signatory states (Allee and Elsig 2016). Despite the ubiquity of dispute settlement mechanisms in PTAs, however, government-to-government disputes are relatively infrequent. (The investor-state mechanisms that feature in many PTAs are discussed in Newcombe, in this volume.) The vast majority of dispute settlement mechanisms in PTAs have not been used at all for formal disputes. For example, participants in the ASEAN Free Trade Area adopted a dispute settlement mechanism in 2004, but it has never been invoked (Villalta Puig and Tat 2015). Only three cases have been brought under chapter 20 of NAFTA, and only one case has ever been brought under any other PTA to which the United States is a party (Chase et al. 2013). Similarly, trade remedy cases under NAFTA chapter 19 have been on the decline (Herman 2010). Indeed the most important Canadian-US trade remedy conflict, the perennial softwood lumber saga, is now handled outside both NAFTA and the WTO. Scholars have analyzed the apparent strengths and weakness of the design of these mechanisms, trying to explain the variation (Koremenos 2007; Li and Qiu 2015), but they have not really studied why governments invest so much negotiating effort in mechanisms they will not use.

In a now classic analytic framework for PTAs, the covered subjects are divided into "WTO-plus" (WTO+), corresponding to WTO topics where bilateral commitments go beyond multilateral obligations; and "WTO-extra" (WTO-X), where the topics are not currently covered by WTO disciplines (Horn, Mavroidis and Sapir 2010, 1567). Although a great many WTO-X provisions are included in EU and US PTAs, few are enforceable. Enforceability here simply means whether the provision is drafted in terms of aspiration or of obligation — hence whether it

could be invoked before a regional or domestic court, not whether the institutional means of enforcement envisaged by the agreement are either practical or used (Horn, Mavroidis and Sapir 2010). Many US and Canadian PTAs prior to the TPP exempted sanitary and phytosanitary provisions from dispute settlement. Further limiting enforceability, even provisions that might be drafted in obligatory language are sometimes explicitly carved out from the dispute settlement mechanism procedure (Lejárraga 2014). The assumptions about enforceability might be that the way provisions are drafted will have an effect on behaviour, that policy is more likely to be shaped by obligatory than by aspirational drafting or even that the mere existence of dispute settlement provisions affects behaviour. But little research has tested these assumptions.

It is easier to suggest why the mechanisms are not used. In the absence of a supranational disputes body, as in the European Union, power differentials might determine outcomes with no need for a formal dispute (Tallberg and Smith 2014). Indeed the US preference, especially with smaller trading partners, is bilateral, "government-to-government engagement" to resolve disputes without lengthy litigation (United States 2016).

One problem with any dispute mechanism is simply composing a panel: a senior official, like the WTO director-general, can be essential in facilitating the selection of panelists, although the new CETA and TPP procedures might prove effective. Another problem is support for the panel: a trade dispute is a complex matter requiring sophisticated technical support in developing materials, managing documents and assisting in drafting reports, hence the WTO Secretariat makes a growing contribution to dispute settlement (Nordstrom 2005). The increasing number of panels and appeals, and the growing length of the reports, places a heavy burden on Secretariat resources: even with dozens of staff in the legal division, a new complaint can wait over a year to be heard, despite a relatively small number of disputes — only 13 new complaints in 2015, below the long-run average, and only 5 circulated panel reports (Leitner and Lester 2016). But a secretariat is uncommon in PTAs, even for supporting dispute settlement (Chase et al. 2013). The lack of such a secretariat able to help research an issue, including consideration of consistency with past decisions, could undermine confidence in a PTA dispute settlement mechanism, contributing to the lack of use of such a mechanism.[11] As well, participants might might not value such mechanisms. The benefit of adjudication, some argue (for example, Vidigal 2015), is to trigger

community pressure for cessation of the breach; for this effect, the weight of the broad WTO membership, with the attendant publicity, is decisive.

A different hypothesis is that PTA partners have fewer occasions for disputes. Existing irritants might have been a motivation for engaging in the negotiations, so that conclusion of the agreement might signal that the partners have reached a new accommodation. This hypothesis receives support from an analysis of disputes between PTA partners in the WTO dispute settlement system. If we take out "old" disputes that predate the PTA and count as "new" those disputes that postdate the agreement, we observe relatively few "new" disputes. One reason might be that PTAs create a framework to solve most past disputes among the partners and to anticipate many future disputes (Mavroidis and Sapir 2015). It could also be that having learned how to talk to one another in the PTA negotiations, officials carry on in the same vein, perhaps on the margins of WTO committees.

Part of assessing the natural experiment over the next few years will be to ask whether this relative lack of institutional structure for transparency, discussion and dispute settlement makes a difference to the effectiveness of newer, more ambitious PTAs in a G-Zero world.

Negotiations for Twenty-first Century Trade Policy: Is the WTO Doomed to Growing Irrelevance?

The focus so far has been on generic features of negotiability and institutional design. I now want to turn the lens, and ask if there is something about twenty-first-century issues that makes them better suited for PTAs. Such agreements are not useful for some traditional issues. The texts of PTAs sometimes mention fulfilling WTO commitments on domestic support in agriculture, but they do not contain new obligations (Fulponi 2015). The TPP mostly does not mention subsidies, except to exclude them from national treatment obligations in certain chapters, and although its disciplines on fisheries subsidies (article 20.16) go beyond any previous trade agreement, they might be too aspirational and vague to mean much.[12] The CETA subsidies chapter contains no real disciplines — only requirements for consultations — and its transparency provisions effectively rely on notifying the WTO. And PTAs are almost silent on such trade remedy issues as antidumping (WTO 2015c) for practical reasons: such issues are

hard to negotiate and harder to implement outside a multilateral context. On the other hand, both CETA and the TPP include significant improvements in market access, notably in agriculture — perhaps because participants could address market access barriers among themselves without having to discuss more sensitive issues of interest to developing countries.

More trade in cheese is not what motivates the claims for an ambitious twenty-first-century agenda. So-called twenty-first-century trade issues addressed in PTAs include investors' rights (see Newcombe, in this volume), intellectual property protection, competition policy, government procurement, consumer preferences, regulation, services (including financial services and temporary movement of workers), digital trade and state-owned enterprises. Some would add currency manipulation (an old and intractable issue), local content requirements and climate change. Many PTAs, including Canada's, now include ambitious environmental chapters (see the briefing on PTAs in WTO 2015d).

Trade negotiations for global value chains

Richard Baldwin concludes — from his analysis about the progressive unbundling of globalization and the changing industrial organization of production — that PTAs offer the better vehicle for addressing twenty-first-century trade (Baldwin 2016). Other theorists argue that the rise of global value chains, or offshoring (Antràs and Staiger 2012), actually stimulates the formation of PTAs, although empirical evidence is lacking (Bagwell, Bown and Staiger 2015).

I think the general argument is that, at the intensive margin of trade, a firm in a global value chain knows what problems it is facing for a given product in a given market, and it either solves its problems through private contracting or lobbies its government for the trade policy response it needs (for a related argument, see Blanchard, in this volume). The firm's desired trade policy could well be a PTA, if it can solve its problem without creating new rules that competitors can use; if its supply chain involves a limited number of countries, then the firm might see no need for the widespread use of a new rule. Defining a negotiation on the basis of a supply chain also might help to overcome the negotiating disadvantages of small groups discussed above. This argument has limits, since governments are also interested in the extensive margin of trade — that is, the expansion of trade in products that previously were not traded, the diversification of exported prod-

ucts into new markets and the entry of new trading firms, where a multilateral approach can be simpler (Ciuriak et al. 2015).

It is interesting, therefore, that all these new things are appearing in trade negotiations, and it is interesting that the TPP has a number of novel chapters. Neither, however, validates the assumption that the current WTO is not set up to provide the disciplines supply chains need. The rules emerging in PTAs rarely go far beyond the rules of the WTO, with the exception of investment, and PTAs rarely make much substantive progress in areas not covered in the WTO (Hoekman 2014). Indeed, some scholars find that the WTO-X provisions that are included in PTAs have little affect on trade (Kohl, Brakman and Garretsen 2016). Services commitments in PTAs go well beyond proposals in the Doha Round (Marchetti and Roy 2014), but their impact might be limited. Whatever the intent, services reform in PTAs is de facto MFN treatment, applying to every trading partner, not just the PTA parties, because of the difficulty of discriminatory application of domestic law (Miroudot and Shepherd 2014). Many important services sectors cannot be liberalized effectively for just one trading partner, any more than it makes sense to cut domestic subsidies or simplify border procedures subject to the new Trade Facilitation Agreement for just one partner. Indeed, many of the things Baldwin sees as important for twenty-first-century supply chain trade are already on the WTO agenda, or could be — for example, nothing inherent in the structure of the WTO prevents a resumption of work on investment or competition policy. Indeed, Newcombe (in this volume) concludes that the current bilateral approach to investment will need to give way eventually to a multilateral framework.

Regulatory issues in the WTO and PTAs

The most important twenty-first-century trade issue might be regulatory cooperation (see Hoekman, in this volume; Mavroidis 2016). Regulatory differences between markets create difficulties for firms in global value chains even when the regulations are technologically up to date, well drafted and adopted in a process that gives stakeholders advance warning with an opportunity to comment — which is the "good regulatory practice" ideal, not the norm. The WTO already has an important regulatory agenda, notably in the agreements on technical barriers to trade and sanitary and phytosanitary measures, as well as in the General Agreement on Trade in Services. PTAs now usually include such provisions, too,

but do not go far beyond the WTO (Molina and Khoroshavina 2015). Canada's PTAs contain many such measures that go beyond WTO obligations, but about half of the provisions are unenforceable (Villalta Puig and Dalke 2016). Both CETA and the TPP have provisions, especially on regulatory procedures and transparency, that go beyond the WTO, although they often reflect recommendations of WTO committees — such as the requirement to notify parties about final regulations, including those based on international standards. As is typical in PTAs (Latrille and Lee 2012), the TPP provisions on domestic regulation do not make much of an advance on the related WTO provisions.

The intent of the above procedures is to ensure that regulations do not create unnecessary obstacles to trade, but global value chains would benefit from going farther — hence many PTAs, including the mega-regionals, now have regulatory cooperation or regulatory coherence chapters. The distinction matters: the first involves a degree of collaboration among regulators, aimed at aligning new regulations in some way; the second aims at improving the domestic regulatory process. The TPP chapter on "regulatory coherence," for example, amounts to little more than extending what is known as "good regulatory practice" to a wider group of countries.[13] The European Union wants a similar chapter in the TTIP, one that might make the regulatory approaches on both sides of the Atlantic more similar, though its provisions would not be enforceable (European Commission 2016a).

Good practice will lead to better regulations, ones on which affected actors have had a chance to comment, but it does not necessarily diminish the regulatory differences between countries that impede global value chains. Of course, that might not matter for many smaller countries: as long as the rules of a large market are clear and applied in a nondiscriminatory way, their producers might not care if their home government can influence the evolution of the rules in that market. Such countries are rules takers, and the attractions of a large market makes taking the rules worthwhile. But large countries have other concerns. The European Union has long wanted to create a "regulatory cooperation body" in the TTIP to ensure continuous regulator-to-regulator dialogue (European Commission 2016b). The United States, although preferring to focus only on good regulatory practices and administrative procedures, has recently signalled more openness to such a mechanism. As Hoekman shows (in this volume), CETA is an innovation on regulatory cooperation in a trade agreement, in part because, in the Regulatory

Cooperation Forum, it would create a formal mechanism to facilitate joint initiatives between Canadian and EU regulatory authorities.

Trade negotiators are usually from the ministries with responsibility for measures at the border. As trade policy goes behind the border, one challenge is to find the best way to engage the responsible officials both in supposedly "domestic" departments and agencies and in subnational jurisdictions, since trade negotiators might lack the knowledge to negotiate on their behalf or might not be able to bind them. A trade agreement cannot in itself achieve regulatory alignment, for example, but it can create an enabling framework. Real regulatory cooperation requires the engagement of domestic regulatory officials on an agency-to-agency basis, not negotiators from the trade ministry, and it cannot be achieved a few dozen standards at a time. The best current example of a model that works is the Canada-United States Regulatory Cooperation Council, which is not part of NAFTA. Such institutions might be the best way to promote agency-to agency cooperation, but this approach might work only between countries with similar regulatory cultures and highly integrated markets, and not be something that could be incorporated in any trade agreement.

In sum, the WTO does not have an explicitly twenty-first-century agenda, but it might be better placed than PTAs to develop one, especially on issues such as services, regulation and subsidies disciplines, where multilateral approaches, by avoiding free-rider problems, are inherently easier. At a minimum, PTAs also face the challenge of making progress on these behind-the-border issues. The RCEP will do little on rules issues — hence the US preoccupation with making the rules in Asia while it still can might be premature. On the other hand, all trade negotiations are a form of "learning by doing," meaning that sometimes the most important result can be greater understanding of new issues. The demonstration effect seems to be one of the European Union's objectives with regulatory cooperation in the TTIP, as working with the United States on difficult issues could give impetus to broader negotiations (European Commission 2016a). CETA creates a new approach to investor-state dispute settlement, with an explicit objective that it evolve into a fully multilateral investment court. Similarly, the United States apparently hopes that some of the TPP chapters will provide models for negotiations in plurilateral and multilateral contexts. Such a role for PTAs justifies the negotiating effort, but it also suggests that the WTO is far from being irrelevant for twenty-first-century trade issues.

Back to the Future: Trade Policy in a G-Zero World

International order is now more complex without the simplifying logic of the Cold War or of US dominance. The unusual set of negotiations in the natural experiment are caused both by this fragmentation and by the desire to make progress on rules for a global economy characterized by global value chains. Bilateral, regional and multilateral agreements show considerable institutional variation in how they are negotiated and implemented. I know of no model that would allow conclusive predictions of what mix of factors will produce the best negotiation result in a particular set of circumstances, but comparative analysis over time should allow us to draw some causal inferences.

Prospects for the natural experiment

The outcome of this natural experiment is far from evident. The TPP negotiations finally concluded in 2015, but we are unlikely to know until sometime in 2017 whether the agreement can be ratified. The legal scrub of the CETA text was largely finished in early 2015, but its release was held up until early 2016 by the European Union's cold feet on investor-state dispute settlement, the issue that will make ratification uncertain. RCEP ministers keep meeting, with no conclusion in sight yet, but in the end the RCEP might do more to liberalize market access than do most PTAs, because many of the participants start off with higher traditional barriers. The TTIP has a long way to go, with little possibility of a conclusion before the next US president takes office. The TiSA negotiations have made some progress, but have yet to address institutional issues. Meanwhile, WTO ministers at Nairobi in 2015 could not even agree on whether the Doha Round was alive or dead, let alone on how to add new issues to the negotiating agenda. What was obviously impossible in Nairobi was to muster the diplomatic effort to build support for anything ambitious. Absent a crisis — perhaps caused by an outbreak of antidumping actions on Chinese steel exports — the large, emerging economies might resist further liberalization, not least because the easy issues have been addressed, thereby motivating other countries to pursue plurilateral options for market access (WTO 2016). But frustration with the WTO might be misdirected.

Many of the Doha Round's problems were due to a general malaise in multilateralism and to structural changes in the world economy that undermined the premises of the round (Wolfe 2015b). Power matters: it has shifted and dif-

fused, but the system has not caught up. The system still works, of course, in part because of the dynamism and leadership of the United States. But that country cannot do it alone. What is hard to estimate is what grouping of countries will be needed to reshape the world trading system. We know that the G7 is too small, but the G20's membership is probably too amorphous, with little demonstrated capacity for leadership. The inescapable country is China. I do not mean that China will develop the power to determine the world's rules, but any deal that both China and the United States support has at least a chance to attract adherents both from the OECD and developing countries.

Here is the other way in which the 2015 Paris Agreement on climate change is instructive for the WTO and for other international organizations in a G-Zero world. As an idea for a climate package began to emerge, France led a massive diplomatic effort over many months to build support. The Americans and the Chinese made a major contribution to momentum a year in advance, and the United States and many other countries, including Canada, made it clear at the highest levels in Paris that they wanted an outcome. Multilateral agreement is still possible, therefore, although the effort required — including the high level of transparency and the presence of thousands of stakeholders outside and even in the meeting hall — might make Paris the exception that proves the rule.

Until the United States and China learn how to develop a transpacific accommodation comparable to the one painstakingly established across the Atlantic, the G-Zero world will lack coherence, especially on trade. Trade policy was one of the tools the United States used to exclude the Soviet Union, which did no harm to the trading system because the Soviet Union also excluded itself. Excluding China from the process of developing new rules might seem to make geopolitical sense, but it undermines the usefulness of the results, given China's significance to world trade flows and the participation of its firms in so many global value chains.

So, should the old trade powers negotiate with, or around, China? The answer depends on the answer to another question: can new disciplines improve conditions for global value chains without China's participation? If acceptance by China, India and Brazil of any new twenty-first-century disciplines is thought important, along with acceptance by other fast-growing developing countries, it seems likely that those disciplines eventually will have to be discussed in a multilateral context. China already might be moving in this direction, with its plan

to use its role as 2016 chair of the G20 and of the G20's Trade and Investment Working Group to strengthen the role of G20 trade ministers in supporting the multilateral trading system.

Whether or not all the negotiations in the natural experiment succeed, are ratified and strong obligations implemented, the trading system will still need to consider how to align the results of all the agreements that have already been concluded with any new ones. Firms in global value chains, especially firms with operations in Asia, will be frustrated by the complexity of overlapping agreements — notably, rules of origin (Moroz, in this volume; Estevadeordal, Suominen and Volpe 2013). For example, the concerns of Mexico and Canada about rules of origin for auto parts in the TPP held up the final deal. Japan apparently wanted lower TPP content rules because its firms have supply chains that include countries, such as Thailand, that are not in the TPP, which illustrates the problem for global value chains with any rules that are less than multilateral. And the network of agreements will have major gaps in terms of countries and issues. Ratchets, MFN clauses and better rules of origin might be vital in a world of overlapping preferential agreements, but they might not be sufficient to ensure a coherent global trade policy architecture.

Losing what is left of the Doha Round would not be the end of the world for the WTO. Losing the WTO would be disastrous for the mega-regionals, however, because they are effectively WTO side agreements, as are all PTAs. Regional agreements cannot be comprehensive — they depend on rules, such as subsidies and trade remedies, that have to be supplied multilaterally. PTAs also rely on WTO transparency mechanisms, including notifications, committees and even dispute settlement. None of the PTAs is likely to have strong institutional arrangements in practice, whatever is put on paper, which might not impede successful implementation of their market access provisions, but would undermine the effectiveness of new rules and be fatal for regulatory cooperation. Robust transparency and surveillance systems are essential for behind-the-border policies. WTO transparency and accountability mechanisms are likely to remain the most useful for the trading system.

Implications for Canadian trade strategy

We will not know for a couple of years if CETA and the TPP can be ratified, and it will be a few years more before we know whether either works in practice, hence my conclusions about Canadian trade negotiation strat-

egy are necessarily tentative. Canada navigates as best it can in this messy trade landscape, but Canadians should be aware of its imperfections, have a concept of what would be better and a strategy for how to get there.

Canada will never again have the centrality it once did as a member of the old Quad — with the United States, the European Union and Japan — but going back to a coherent trading system should be its main objective. Canada is not and will not become a central player in global trade networks, and it is not a significant trading partner for any of the major players except the United States. Maintaining access to the US market and US-centric supply chains at least as good as that available to any other US trading partners will remain the primary objective of Canadian trade policy. I expect that Canada will ratify the TPP if the agreement gets through the US Congress. If the TPP fails, Canada and Mexico might want to capture any improvements the agreement made to NAFTA in some way. Canada will remain engaged in TiSA, and for the same reason will want to be part of any other plurilateral the United States initiates. The RCC will remain central to efforts to improve access to the US market.

Similar logic applies to CETA, if that agreement is not ratified, although in that case the TTIP negotiations likely would collapse, and the WTO might be the only forum for transatlantic trade negotiations. If CETA and the TTIP do fail, the cause would not be a protectionist response to the prospect of enhanced market access, given how low most tariffs already are. The likelier cause would be an absence of the "permissive consensus" for new rules on behind-the-border issues and the associated decline of trust in political elites. The TPP might fail for the same reason. Any new WTO agreements will face the same challenges, but the more transparent negotiation context might make it easier to rebuild public trust.

The November 2015 mandate letter from the prime minister to the minister of international trade includes the objective of developing "a targeted strategy to promote trade and investment with emerging markets, with particular attention to China and India." Pursuing that important objective requires asking about the problems in Canada's commercial relations with China, how China fits in Canada's broader trade policy objectives and how Canada fits in China's trade strategy. The Canada-China Economic Complementarities Study released in August 2012 has languished on the back burner ever since, with no apparent efforts to move towards some sort of closer trade relationship. After the 2015 election, the Chinese ambassador to Canada said that "We are ready to work closely

with the new Canadian government to usher in a better future through, among other initiatives, the negotiation and conclusion of a bilateral free-trade agreement at an early date" (Zhaohui 2015). Canada should seize this opportunity. China will be interested in part by a desire to prove to the United States that it can be done, and in part to secure access to Canadian resources. The negotiations will not be straightforward. Would the objective be just traditional market access, or would it include the familiar twenty-first-century agenda for trade negotiations, perhaps wrapped in a broader agreement on international economic policy?

Answering these questions will not be easy, given all the difficulties with less-than-fully multilateral negotiations I have enumerated above. Nonetheless, I think Canada should negotiate with, not around, China. China is the world's biggest trader, but the WTO will not be able to address the implications until a new agenda can be agreed upon. That will not happen until the United States and China start cooperating with each other. Although I have argued that, in the long run, a multilateral approach will be best for both Canada and China, they might be able to make an advance bilaterally, and the effort would help both sides learn about further integrating China into the world trading system.

As for the injunction in the minister's mandate letter to pay attention to India, how should Canada negotiate with a partner that has limited export interests? Should Canada accept a low-ambition deal in return for first-mover advantage (Rao and Tapp 2015), or wait? Would Canada's achievable interests be in traditional market access, or could negotiations make progress on environment, investment, government procurement and other twenty-first-century issues? Such questions are even harder to answer with respect to smaller developing countries. Canadian negotiators could try to guess where else growth will take place or how its composition will change, and pursue trade agreements there, but negotiating strategy should aim at positioning Canada to take advantage of growth wherever it occurs. Given the uncertainty over what trade and investment patterns will look like in 20 years and which countries will be key for negotiating agreements, the WTO is the best way to hedge that bet. It remains a valuable Canadian free trade agreement with 163 other countries, including the United States.

If the WTO matters for Canada, negotiators should consider risks to the WTO that lurk in the weeds, such as the erosion of capacity in the Secretariat and delegations. Canada has always maintained a strong mission in Geneva — a leadership role that should continue, especially on institutional issues. I observed

above that, as twenty-first-century trade policy constrains domestic choices that might otherwise not be subject to international agreement, it enters areas that might be outside the permissive consensus — hence, more transparency during negotiations and in the implementation of agreements is essential. Here, too, the WTO has comparative strength, but much work is needed to improve all aspects of its accountability mechanisms, including the vital assessments conducted in the Trade Policy Review Mechanism. Another potential leadership role for Canada could be in creating a group of countries to fund increased data collection and analysis both in the WTO Secretariat and in developing countries.

Existing WTO transparency mechanisms will be valuable in generating the information needed to assess any new plurilateral agreements. The WTO Secretariat should also be tasked, as the common agent of the members, to pay special attention to collecting ongoing information about the operation of regional or preferential trade agreements (Mavroidis and Wolfe 2015). Ministers made an interesting advance in this direction at Nairobi, instructing the Committee on Regional Trade Agreements (RTAs) "to discuss the systemic implications of RTAs for the multilateral trading system and their relationship with WTO rules" (WTO 2015b, para 28). The committee was previously reluctant to discuss cross-cutting issues common to many RTAs, such as rules on technical barriers to trade (horizontal) as opposed to issues arising with particular agreements (vertical). We know little, if anything, about the workings of those schemes after their review by the committee has been completed. A bridge must be built to ensure a steady flow of information about the operation of PTAs both for general transparency purposes and to learn about innovations that could be emulated. Such an effort is essential if trade policy in a G-Zero world is to take us back to a coherent multilateral trading system, instead of forward to increased fragmentation.

Notes

I am grateful for the illuminating comments by and many helpful conversations with colleagues and officials in Ottawa and Geneva, including Bob Carberry, Liesbeth Casier, Terry Collins-Williams, John Curtis, Bernard Hoekman, John O'Neill, Evan Rogerson, France St-Hilaire, Don Stephenson, Petros Mavroidis, Sandy Moroz, Stephen Tapp, Alice Tipping, Peter Ungphakorn and Ari Van Assche.

1 Regional and plurilateral negotiations involve only a subset of WTO members; they differ in their legal relationship to the WTO.

2 The debate among economists about why governments negotiate trade agreements can be characterized as one between scholars who think governments are engaged in terms of trade manipulation (Bagwell, Bown and Staiger 2015), which makes heroic assumptions about the information available to negotiators, called by some the so-called standard model (well explained by Blanchard, in this volume); and scholars who think governments worry about protectionism, the practitioner's model, which becomes a story about domestic interest mobilization in which trade policy is determined by lobbying (Ethier 2013; Regan 2015). Neither model has much to say about the institutional questions addressed in this chapter, and neither addresses international policy coordination as a motivation.

3 Neither the TTIP nor the TPP will be big enough to have a huge impact on the rules in other parts of the world. Parties to the TPP represent about one-fifth of world trade, and only two-fifths of their own trade is with each other (World Bank Group 2016, Figure 4.1.2). The TTIP looks like a big deal, but it would affect less than 5 percent of world trade (WTO 2014, Table 1.4). Participants in the TPP and the RCEP have a comparable share of world trade, at the moment, but the latter is growing faster.

4 I take the phrase, but not my analysis of causes or prospects, from Bremmer and Roubini (2011); see also Bremmer (2012).

5 On the value of domestic trade policy consultations, see Halle and Wolfe (2007).

6 When the 2001 WTO Ministerial Conference adopted the Doha Development Agenda, it launched an integrated work program with the understanding that "the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking" (WTO 2001). On the complexities of the term "single undertaking," see Wolfe 2009, 2015b.

7 The WTO *acquis* is shorthand for the ensemble of the legitimate expectations of members created by the various agreements and their subsequent interpretation.

8 Under Article 29.5, a party may deny the benefits of the investment chapter with respect to claims challenging a tobacco-control measure.

9 Continuing debate on the exact legal status of the Nairobi agreement on export subsidies in agriculture does not undermine the generality of this argument.

10 CETA also piles exception upon exception; see de Mestral (2015).

11 For a longer list of the problems with PTA dispute settlement, see Pauwelyn (2014).

12 The agreement does require notification of fisheries subsidies in a WTO format, but not necessarily to the WTO, perhaps because of the ambiguity of fisheries subsidies in WTO rules.

13 In this sense, it does not go beyond Canada's Cabinet Directive on Regulatory Management or US Executive Order 13563 of January 18, 2011, on "Improving Regulation and Regulatory Review."

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