SEATINI

Strengthening Africa in World Trade

Mega-Regional Trade Agreements

How could they affect Uganda?

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SEATINI

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Introduction

Over the past few years, an increasing number of countries have negotiated regional and bilateral trade agreements outside the WTO with major economic powers or groups of countries. These include the Trans-Atlantic Trade and Investment Partnership between the US and the European Union (EU), the Trans-Pacific Partnership between the US, Canada, and several pacific countries, and (to a lesser extent) the Comprehensive Economic and Trade Agreement between Canada and the EU. While these agreements do not specifically include Uganda, the rules set out in them as well as the increased international competition implied by them have the potential to affect Uganda's economy, market access, and ability to participate in future bi- and multi-lateral trade agreements. These agreements go above and beyond traditional liberalization efforts (i.e. tariff reduction) by expanding negotiations to include regulations on competition policy, trade facilitation, investment, and government procurement. However, the agreements are not universally a threat to development, nor a boon to economic growth. Rather, there are both threats and opportunities to the rise of Mega-Regionalism, and governments need to be prepared to use their power to minimize the risks while benifiting as much as possible.

The issues covered by, and the countries included in these agreements serve a variety of economic and geopolitical interests. On the economic side, access to new markets, facilitating the use of global production networks, and attempts to stimulate growth without resorting to traditional fiscal stimulus policies are major factors pushing the developed countries to prioritize these agreements [14]. Also important here is the stall at the Doha round of negotiations at the WTO [1], which has led developed countries to pursue extra-WTO negotiations to get the trade expansion package they want. The issues these MRTAs tackle are considered "21st century issues", while the reduction of tariff barriers and agricultural subsidies are considered "20th century issues", and are no longer of interest to the global North.

On the geopolitical side, the US is trying to maintain its influence with the Asia-Pacific countries at a time when China and India are leading regional powers. The TPP represents a way to access Asian markets while also creating the trade rules that will be a basis for future agreements. Since China and India will likely be pressured to join the agreement, the rules will be applied to them without their power and influence shaping their writing. Beyond writing the rules, the US also wants to ensure that it is not locked out of Asian markets, as China is also signing many regional FTAs with the states in the area. However, some of these are also China's response to negotiations on the TPP, and represent a new rush to lock-in market access in the Asia-Pacific region [5].

Regardless of the reasons for the development of these agreements, they stand to have an effect on non-party states. The issues being discussed fall outside of the priorities set by most developing countries during the Doha round, and some of the provisions may indirectly affect the competitive balance in major markets, access to medications from generic providers, and the policy space available to governments for development in the global South. Despite these threats, there are some opportunities that arise from this trend, although policy action is needed to take advantage of them. The ability to enter large market blocs under a unified set of standards, the possibility of net trade creation for third-party states, and the likelihood of multi-lateral regulatory convergence all represent areas with potential gains for Uganda and other developing countries.

[1] This stall is largely due to a reluctance on the part of developing countries to engage in precisely the agenda items being forwarded in the MRTAs. Following the stall at the Doha round, the US threatened to initiate a series of bi-lateral trade agreements to forward its agenda [13].

SEATINI
Strengthening Africa in World Trade

This policy brief will assess both the threats and the potential opportunities that these agreements pose to Uganda and other developing nations. These include: increasing standards required to export products into any of these markets, preference erosion, increasing protection for intellectual property, standards harmonization, and a focus on developing trade rules on the Singapore issues without the input of developing country stakeholders. Most aspects of these agreements provide both threats and opportunities. However, action is required to avoid the potential negative effects and take advantage of the positive.

Threats and Opportunities

Preference Erosion

Through initiatives such as the *African Growth and Opportunities Act* (US) and the *Everything but Arms* agreement (EU), least developed countries have duty free access to both the US and EU markets for most products. As such, any agreement that reduces most favoured nation (MFN) tariff barriers between one of these states and another major player has the potential to erode the preferential margins granted to the LDCs. Most at risk for this kind of erosion would be products that:

a.) Make up a sizeable amount of trade between Uganda and either the EU or US;
b.) Have MFN tariff rates at or above 10%; and
c.) Are products that either the US or EU export.

For both the US and EU, the main exports from Uganda that fall under condition *a* are coffee and fish, exports of which are summarized in Table 1. Neither of these is exported in significant numbers by either the EU or the US. However, neither good is subject to preferential tariffs under AGOA. Despite the agreement, coffee and fish exports to the US are still subject to MFN tariffs of 25%. As such, the new agreement will actually give the EU more preferential margins than are given to Uganda. While demand in the EU for Ugandan fish is high, and unlikely to be eroded by US exports, there is some potential for trade diversion (substitution of trade away from an efficient, low-cost producer towards a higher-cost producer due to a competitive advantage created by arbitrarily low tariff levels) within the US towards fish from the EU. The high preference margins the EU will enjoy may make its fish more competitive than Uganda's when exporting to the US.

Another product that could be affected is light oil, as this is a product that both entities trade in sizeable amounts. However, it is likely that the threats to Uganda's oil industry come from variation in prices far more than relative marginal changes in demand accruing from increases in trade flows. Oil made up 8% of Uganda's exports in 2014, but 99.99% of oil exports were to COMESA states and the rest of the world (outside the US or EU). That said, it has been estimated that Uganda could see a reduction of 0.18% of its exports to the US and 0.05% of its exports to the EU [10], but this is unlikely to apply to the oil industry due to the low amounts exported to begin with, and in either case, would not impact GDP in any appreciable way.

With respect to the TPP, trade with the US and Singapore makes up the vast majority of trade with signatories. Coffee exports to Singapore are in line with those to the US, while fish exports are negligible. These exports are similarly unlikely to be affected by the reduction in tariffs between TPP signatories, as most already have preferential tariffs [10]. In addition, Singapore is the second largest market for Ugandan exports within the TPP, but made up only 0.2% of its exports in 2014.

In conclusion, the available data indicates that traditional preference erosion is unlikely to be a major threat from the TTIP and the TPP. While the reduction in preference margins is large for fish coming from the EU into the US (due to high MFN tariffs faced by Uganda in that market), the amount currently exported suggests that this is unlikely to hurt Uganda's overall trade portfolio. Similarly, outside the US, the largest TPP market for Uganda is Singapore, which makes up a small portion of its trade, and that small portion is almost exclusively coffee exports. While there is some potential for preference erosion, it does not seem likely to represent a major threat.

Table 1: Coffee and Fish Exports in 2014

	Coffee	Fish	Trade Proportion
EU	$243M	$76M	21.15%
US	$17M	$60M	1.76%
Singapore	$15M	$0.52M	0.2%
MFN Tariffs	25%	25%	

Intellectual Property

Within the TTIP and the TPP, new rules on biologic patent protection have been added. These take the form of *Data Exclusivity Windows*, time frames under which the data used to certify a drug under a country's respective drug regulator (e.g. the FDA) cannot be used by generic companies to certify generic versions of protected medicines. In the TPP this window is 5 years, with a further 3 years granted for new clinical information that is used to approve a drug that contains a previously approved chemical entity (regardless of the national origin of that entity) [14]. These go above and beyond the TRIPS agreements, and would not have an opt-out clause for LDCs, as they often import, rather than manufacture domestically, the generic medicines they need. These protections would affect any nation that produces generic medicines, or any nation that imports them, if the nation they import from has signed an agreement with this clause. For Uganda, if India were to sign on to the TPP (which it may be pressured to do in the future), then it would not be able to create new medicines until 5 years after they come out. This would directly affect Uganda's health system, since Uganda imports the vast majority of its pharmaceuticals from Indian generic companies.

The IP provisions in the TPP have been contested by most of the countries negotiating the agreement. Australia provided vocal opposition to the inclusion of the data exclusivity windows, and the agreed upon time-frame goes no further than existing similar regulations in Canada. According to Draper *et al.*, the protections seem to have come almost exclusively from the US, who's position "seems to have been dictated by an overly zealous and aggressive pharmaceutical lobby", and many of the goals it was pushing for were not seen in the final agreement [5, p. 43].

Beyond the provisions affecting access to medicines, the IP protections are unlikely to have a substantial impact on development. Copyright protection for authors has been increased, but this will not have any third-party development effects, even if these rules were to be expanded the multilateral trading system eventually. Similarly, within the TTIP the IP discussion has centered on *Geographic Indications* (patenting names for speciality brands in accordance with their location, such as *Cognac* or *Champagne*[2]). Protection for this kind of intellectual property does not have any noticeable development effects, and could even benefit Uganda if geographic brands are produced here in the future and enter global markets.

Singapore Issues & Rule Harmonization

Both the TPP and TTIP focus on competition policy, trade facilitation, government procurement, and trade and investment, all of which are issues that have been resisted with respect to the Doha negotiations. It is no surprise that these regional trade agreements are trying to reach beyond the Doha stalemate to further these 21st century liberalisation issues.

[2] Note that this only protects the name, not the product. For example, producers can still make 'sparkling wine', but simply cannot call it 'Champagne'.

Singapore Issues

Some of the rules that are being put in place have greater implications for developing countries (such as Uganda) than others. The government procurement chapters of the TPP appear to mirror the 2011 WTO revised Government Procurement Agreement (GPA). Only some goods and services are covered under this agreement, and state and local governments are exempt from the new rules. Most of the regulations are driven by big-ticket, federal contracts, and overall the chapters likely reflect a way to get partner countries on board with existing GPA commitments without requiring accession to this agreement (not all WTO members have acceded to the GPA or its revisions, and Uganda specifically has not) [5]. Major construction projects are covered under this agreement, and this seems to be the driving force behind its inclusion. However, national policies can still override competitive requirements when necessary (e.g. *Buy American* provisions could still be added to stimulus bills), so while the principle is to open up the market, some policy space is preserved.

With respect to trade facilitation, both the TPP and TTIP will contain agreements on customs regulations and trade facilitation to streamline the process of exchange [14]. These regulations are in line with the Bali declaration, and will require the incorporation of standards and technology into customs and border procedures to simplify the process of getting goods into and out of a country. Most analyses tend to view trade facilitation agreements as a positive for developing countries, as the adjustment costs incurred to upgrade trade infrastructure are usually financed by developed countries [14]; these financial flows are often particularly effective forms of aid, specifically in low-income countries [3].

The investment chapters of the TPP and TTIP contain some of the more problematic provisions for developing countries. Chief among these is the use of the investor-state dispute settlement mechanism to manage disagreements between multi-national companies and the countries hosting their investments. While originally created in an attempt to promote investment in developing countries (by increasing the confidence of potential developed-country investors that their investments would not be expropriated), the mechanism has evolved to grant extensive rights and powers to foreign investors. This goes beyond protection for the purpose of promoting investment; evidence has shown that there is little correlation between international investment agreements containing ISDS mechanisms and actual levels of investment [15]. However, there are considerable risks involved with granting such power to multi-national corporations. There have been numerous instances of large corporations suing countries for implementing policies that were in the public interest, but which also implicitly cost the corporation money (in terms of lost investment, or future profits). These include disputes between a tobacco company and Uruguay, numerous water companies and Bolivia, and a gold company and El Salvador [7, 8]. In these instances, the companies were suing the government for environmental legislation intended to curb pollution, or managing prices to keep water affordable, among other policies. Unfortunately, ISDS has the potential to restrict the policy space available for developing countries by granting investors effective veto power over any policy, however democratically enacted, that interferes with their ability to realize their expected profits. While there is some level of protection needed from deliberate and exploitative expropriation, the levels of protection in ISDS go beyond reasonable assurances. These mechanisms are now making their way into mega-regional trade agreements, and both the TPP and TTIP include chapters on investment containing ISDS measures. If these agreements form the basis of future plurilateral or multilateral agreements, strengthened ISDS could become a more global norm, and this is a threat to developing countries.

Competition policy is often considered an 'ex-Singapore issue', as it has been introduced in many bilateral agreements over the past decade and a half [5]. While the objective of competition policy is to ensure a competitive playing field for member countries and protect consumers, the rules have a tendency to devolve into a mechanism to ensure fair and competitive access to developing country markets, rather than ensuring all aspects of the combined markets are competitive. A major issue not often covered by trade agreements is whether or not a nation has the right to legislate around anti-competitive effects outside their own jurisdiction [13]. Within the TPP, these issues are not covered; rather, the agreement focuses on competition laws and institutions necessary to promote transparency and due process in dispute settlement, as well as consumer protection. Also of interest are rules governing state-owned enterprises, which seek to ensure that these types of businesses act in a competitive (non-exclusionary) way. Nothing in the TPP covers the ability of governments to react to anti-competitive behaviour in another country (e.g. responding to major mergers in the US that create market power in a third party country) [11]. These rules, if globalized, may limit the ability of governments to back national 'champions': Businesses which have the technical capacity and comparative advantage necessary to compete effectively in global markets and grow. To the extent that this limits the policy space available to developing countries, were they to choose to use it, it could be perceived as a threat to their national development policies.

Standards Harmonization

An explicit purpose of the TPP and TTIP is regulatory coherence: Coordinating policies to be consistent across jurisdictions. This contains both threats and opportunities for Uganda. The threats come from increasing the standards needed to export to global markets (such as the EU), and the implications for countries who have negotiated bilateral agreements under previous standards. That is, if agreements were signed in the past under one set of standards, and those standards increase, then there is an implicit reduction in market access and competitive ability for Ugandan firms, despite having opened up Uganda's markets to greater imports (as in the case of the EAC-EU Economic Partnership Agreement). These are most likely to come in the form of Sanitary and Phytosanitary (SPS) measures, as well as technical barriers to trade (TBT). If these measures are considerably higher than existing standards, they may represent effective barriers to trade. However, the SPS measures in both the TPP and TTIP are considered to have low potential for discrimination against outside parties, while the TBT measures in these agreements are considered to have low to medium *de facto* potential for discrimination [14, p. 23]. While any country able to meet the standards will not be penalized (i.e. no *de jure* discrimination), some countries may find it harder to meet the higher technical barriers (e.g. the cost of bringing goods into compliance with other standards and laws), especially if their technical or financing capacity is already low. This may pose some risk to Uganda, as meeting regional standards is already a challenge for many producers (especially farmers).

Where regulatory coherence provides some opportunity is for those producers that manage to meet the higher standards. For example, under the TTIP, regulations in either market would be recognized, so a product that can be exported to the EU could also be exported to the US. To the extent that these rules have high potential for multilateralization (as is the case for both SPS and TBT [14]), successful producers stand to gain from a unified standard, or mutual standard recognition by being able to export to multiple markets by meeting that single standard. The key take-away here is not necessarily that higher barriers are an issue, but that some government intervention may be needed to continue to help producers meet standards and take advantage of global harmonization. A failure to do so may mean that

Ugandan producers are left out of global markets as other countries' producers are able to enter quickly and gain market share following the implementation of global standards. This constrains the policy options available for development, as attention would need to shift to helping producers attain global standards in a timely manner, as opposed to other pressing development needs.

New 'Rules of the Game'

While the *Singapore Issues* and standards harmonization have their own threats and opportunities, the rise of MRTAs cannot be seen exclusively as a set of isolated economic agreements. The explicit intention behind these agreements is to create a template for future trade negotiations. The rules being set for the next few decades of trade are being negotiated by a select group of partners without the input of key stakeholders who will most likely end up being pressured to join without ever getting to shape the rules they are agreeing to follow. For example, while the TPP involves only 12 countries, experts expect that all the ASEAN countries will eventually be pressured to join (for fear of losing out on preferential access to the US market). This is especially likely if China moves to join the TPP, as it has indicated it will [5]. Another important consideration is that Brazil, China, South Africa, and India have all been excluded from RTAs over the last decade (except insofar as they have led their own continental RTAs). This is worth noting because these countries have been leading the charge against the *Singapore Issues* in the Doha round. Essentially, the developed countries seem to be going around the stalemate of the WTO to write the rules they want. By signing multiple regional agreements with a large enough fraction of world trade, eventually these can/will be harmonised into a multilateral agreement. This will happen despite the rules never having the input of many developing country stakeholders. The potential for the TPP/TTIP rules around SPS, TBT, and regulatory coherence to become global standards is high, while the risk is lower for government procurement rules and competition policy [14]. Overall, these agreements are likely to be the starting point for any RTA with a major power moving forward, and have the potential to gradually shape the multilateral trading system.

Conclusion

The collapse of the Doha round of negotiations and the subsequent rise of MRTAs has reshaped the global trade landscape. Agreements at the WTO require consensus from all members to pass, and finding this consensus has become increasingly difficult. In response to the Doha stalemate, MRTAs have ushered in a new wave of regionalism, and have the potential to set the standard for global trade rules for the next century. While there is some potential for positive effects (accruing to countries who are able to expand trade outside the WTO), third party countries left out of these agreements face both threats and opportunities. The main threats have been shown to come from changes to intellectual property protection for *biologics*, changes to investment laws, and increasing standards necessary to export to global markets. Conversely, increased availability of finance to adjust border and customs procedures to facilitate trade, the potential of some trade agreements to result in net trade creation, and the ability to enter global markets under uniform standards (provided they can be met) all represent potential areas of opportunity for Uganda and other developing countries moving forward. Negotiators should not see mega-regionalism exclusively as a threat or a boon to trade, but should recognize the risks involved and the government action necessary to take advantage of the opportunities and minimize the potential threats.

SEATINI

Strengthening Africa in World Trade

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