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# The Rise of Mega-Regionalism: Revealing Canada's Blind Spots

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## Key Points

- The fora for governance of international trade have shifted from global institutions to mega-regional alliances.
- A focus of mega-regional alliances is increasingly on knowledge-economy issues — innovation policies, intellectual property (IP) norms and data regulation — and knowledge governance is becoming increasingly mega-regional.
- Canada's room to manoeuvre around IP in the United States-Mexico-Canada Agreement (USMCA) was constrained by its failure to effectively strategize years earlier.
- Canadians need to pay attention not only to the mega-regional alliances that Canada is a part of, but also to those that Canada is not, because they provide the opportunities that Canada must seize to reshape international IP norms.

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## The Issue

### Mega-Regionalism Is a New Model for Economic Integration

The era of global multilateralism in international trade is coming to an end. The World Trade Organization's (WTO's) Doha Round, which sought to reduce multilateral trade barriers, has been declared "dead and buried" according to certain scholars.<sup>1</sup> New WTO reform efforts may be rekindled; however, the world has shifted toward international economic regionalism. The WTO defines regional trade agreements (RTAs) as reciprocal preferential trade agreements between two or more partners (whether or not from the same region), of which almost 300 are in force.<sup>2</sup> While these agreements can be called bilateral, free, regional or preferential trade agreements, there is a more important issue than naming.

A categorical change is happening in the nature and scope of next-generation instruments facilitating international economic integration. The emergence of *mega-regional* agreements may indirectly but effectively rewrite the rules of the global economy and change geopolitical power

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<sup>1</sup> Antoine Martin & Bryan Mercurio, "Doha dead and buried in Nairobi: lessons for the WTO" (2017) 16:1 J Intl Trade L & Policy 49.

<sup>2</sup> WTO, "Welcome to the Regional Trade Agreements Information System (RTA-IS)", online: <<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>>.

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## About the Author

Jeremy de Beer is a senior fellow with CIGI's International Law Research Program and a full professor of law at the University of Ottawa's Faculty of Law, where he creates and shapes ideas about technology innovation and IP, as well as global trade and development. An award-winning professor recognized for exceptional contributions to research and law teaching, Jeremy helps solve practical challenges related to innovation in the digital economy, life sciences industries and clean technology sector. He is also an author or editor of five books, including, most recently, *Innovation and Intellectual Property: Collaborative Dynamics in Africa*, and has published more than 50 peer-reviewed chapters and articles.

At CIGI, Jeremy leads a research project on the rise of trade regionalism and its implications for Canada's innovation and IP strategy. This includes assessing the implications for IP-related aspects of plurilateral, regional and mega-regional negotiations in the Asia-Pacific region, Central and South America, Europe and Africa.

Jeremy is the co-founder and director of the Open African Innovation Research Network and co-led the Trade Environment Technology Exchange, which worked with the Canada-European Union Comprehensive Economic and Trade Agreement negotiators to help Canadian and EU governments achieve greater understanding and convergence of policy measures.

As a practising lawyer and expert consultant, Jeremy has argued numerous cases before the Supreme Court of Canada and consulted for agencies ranging from national governments to the United Nations. He holds a B.A. and LL.B. from the University of Saskatchewan, and a B.C.L. from the University of Oxford.

structures.<sup>3</sup> Among the distinguishing features of this new kind of agreement are size and scope. The new mega-regionals involve not just two or three countries but several times that number. Moreover, new agreements transcend single continents, and so are also known as *cross-regional* or *inter-regional*.

One example is the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) between 11 countries in Asia, Oceania, South America and North America. Another is the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, including its 28 member states. These two mega-regionals are the first, but not likely the last, of a new kind of international economic law making.

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## Knowledge Governance Is Now Mega-Regional

New and emerging mega-regionals are notable not just for their geographic scope but also for their substantive breadth and depth. The ambitions of mega-regionals do not stop at tariff reduction; they go much further beyond the border. They are not merely trade agreements, let alone customs unions; they are much more tightly integrated economic partnerships. They address market access, regulatory cooperation, investment and competition, labour and employment, the environment, dispute settlement and more.

This policy brief argues that one of the most important aspects of new and emerging mega-regionals is the setting of rules to govern innovation and the knowledge economy, specifically on IP rights and data-driven e-commerce. Governance of innovation, IP and data are among the most economically influential and politically sensitive international trade topics of the modern era. These rules set the terms of access to, and control over, the twenty-first century's most precious commodity: knowledge.

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3 Thilo Rensmann, ed, *Mega-Regional Trade Agreements* (Cham, Switzerland: Springer International, 2017); Jean-Baptiste Velut et al, eds, *Understanding Mega Free Trade Agreements: The Political and Economic Governance of New Cross-Regionalism*, 1st ed (London, UK: Routledge, 2017).

Rules that increase IP protection above the requirements of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) are a core feature of mega-regionals.<sup>4</sup> The ratcheting up of IP protection through bilateralism is not new.<sup>5</sup> But not all previous-generation RTAs include provisions on IP rights or, if they do, some merely incorporate the existing standards of other agreements by reference. In contrast, all new and emerging mega-regionals do, or will, address the knowledge economy with rules that go beyond multilaterally established minimum standards.

Looking at the issue another way, knowledge governance is increasingly being driven by mega-regional alliances, as opposed to the old ways of global consensus building via multilateral institutions such as the WTO or the World Intellectual Property Organization (WIPO). Since the mid-1990s, after TRIPS and the WIPO internet treaties, increased awareness, capacity and organization among developing countries and non-governmental organizations have created a “de facto geopolitical moratorium” on upward ratcheting of IP norms at the global multilateral level.<sup>6</sup> Mega-regionals are now where the action is.<sup>7</sup>

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## Canada Is Not Prepared

Canada must recognize at least two crucial aspects of the new world of mega-regional trade: first, *where* new alliances are emerging and, second, *what* new alliances are likely to do about knowledge governance. This policy brief focuses on the first issue, while foreshadowing

findings on the second issue to be more fully described in a forthcoming special report.

Canada was a pioneer of regional integration through agreements with the United States and then Mexico. The North American Free Trade Agreement (NAFTA) was among the first of its kind and represented a breakthrough in regional economic relations. Canada has also taken a global lead in negotiating next-generation economic partnerships, such as the CETA with the European Union and its member states. Canada is also a part of, albeit a latecomer to, the CPTPP. Now with the USMCA, Canada has a track record of negotiating mega-regional agreements and has acceptably prioritized mega-regions of interest.

However, Canada’s very recent attempts to ramp up economic integration with countries in Asia and Latin America would be much enhanced with a better understanding of the mega-regional alliances developing there. As well, Canada could do much more to recognize Africa as an emerging mega-region of global economic growth and power.<sup>8</sup> Canada’s mega-regional engagement with Europe now needs to take into account the Brexit negotiations and EU efforts to expand its mega-regional relationships elsewhere. In all of these processes, Canada would benefit from developing a strategy for enhanced public scrutiny of its regional trade negotiations.<sup>9</sup>

On the issue of knowledge governance, Canada very recently announced a domestic IP strategy for the country.<sup>10</sup> The strategy is intended to enhance Canada’s international competitiveness and contains some important measures likely to help make that happen. It does not address how to influence or respond to emerging international norm setting. And, despite years of urging from academics and industry, and a formal mandate

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4 Thomas Cottier, Dannie Jost & Michelle Schupp, “The Prospects of TRIPS-Plus Protection in Future Mega-Regionals” in Rensmann, *supra* note 3, 191.

5 Peter Drahos, “BITS and BIPS Bilateralism in Intellectual Property” (2001) 4:6 *J World Intell Prop* 791, online: <<https://doi.org/10.1111/j.1747-1796.2001.tb00138.x>>.

6 Jeremy de Beer, “International Intellectual Property Law: Introduction” in Oonagh E Fitzgerald, Valerie Hughes & Mark Jewett, eds, *Reflections on Canada’s Past, Present and Future in International Law* (Waterloo, ON: CIGI, 2018) 353.

7 Thomas Cottier, “Embedding Intellectual Property in International Law” in Pedro Roffe & Xavier Seuba, eds, *Current Alliances in International Intellectual Property Lawmaking: The Emergence and Impact of Mega-Regionals*, 4th ed (Geneva, Switzerland: International Centre for Trade and Sustainable Development, 2017) 15.

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8 Rohinton Medhora & Yiagadeesen Samy, “Introduction” in Rohinton Medhora & Yiagadeesen Samy, eds, *Canada-Africa Relations: Looking Back, Looking Ahead* (Waterloo, ON & Ottawa, ON: CIGI & Carleton University, 2013) 1.

9 Jeremy de Beer, “Applying Best Practice Principles to International Intellectual Property Lawmaking” (2013) 44:8 *Intl Rev Intell Prop & Comp L* 884, online: <<https://jeremydebeer.ca/wp-content/uploads/2014/05/Apply-Best-Practices-to-Intl-IP.pdf>>.

10 Government of Canada, Innovation, Science and Economic Development Canada, “Intellectual Property Strategy” (2018), online: <[www.ic.gc.ca/eic/site/108.nsf/eng/home](http://www.ic.gc.ca/eic/site/108.nsf/eng/home)>.

to act,<sup>11</sup> a comprehensive innovation agenda remains elusive for Canada. Perhaps for that reason, Canada is one of the few countries of the Organisation for Economic Co-operation and Development over the past several decades that has not systematically approached international trade negotiations with a proactive IP strategy. Canada rarely includes IP in its RTAs with developing countries and, even very recently, accepted most IP-related demands made by its trading partners.

In the USMCA, Canada resigned itself to accept a deeply flawed IP chapter, mainly because it had already capitulated to similar US demands as the cost of admission into Trans-Pacific Partnership (TPP) negotiations. When the US pulled out of the TPP, Canada pushed to suspend key IP provisions, knowing these bargaining chips would be needed for NAFTA renegotiation. Canada can learn from that experience. The policy mistake leading to the USMCA's IP chapter was made many years earlier, when Canada failed to grasp the importance of the emerging Asian mega-regional. Had Canadians strategized properly long before the TPP, Canada might have found allies in Asia to push back against the long-term US strategy to set its own favourable rules for the knowledge economy.

The increase in number and diversity of fora where knowledge governance is determined, and the injection of sub-state actors in federalist systems (such as the provinces and territories of Canada or even the member states of the European Union) into international negotiations involving sub-regional/subnational fragmentation of negotiating parties, are exacerbated in the context of innovation, IP and data governance. There are new issues of policy coordination, practical implementation challenges and even possible constitutional vetoes over aspects of ratification or implementation.

Therefore, domestic policy coordination at all levels of government should go hand-in-hand with an international strategy, but this needs to be strengthened in Canada. For a long time, Canada has known that its room to manoeuvre domestically is constrained by

the agreements it makes internationally.<sup>12</sup> The global economic and geopolitical difference now is that such constraints are coming not only from multilateral institutions or bilateral agreements but from mega-regional alliances, to many of which Canada will not be a party.

Recent policy work in Canada on RTAs has focused mainly on the latest crisis: NAFTA renegotiation.<sup>13</sup> However, there is an opportunity for more holistic, medium-term strategizing about Canada's place in a world of increasing mega-regionalism.

Negotiations and agreements elsewhere in the world are, in the medium term, crucial to Canada's interests because they develop the new norms and practices with which Canada will soon need to reckon. Canada cannot be prepared for future strategic engagements with prospective trading partners if it is unfamiliar with their perspectives, objectives and constraints. Fresh insights about future trading partners are best gleaned by looking at their relationships with others, before negotiations with Canada even begin. Canadians would be wise to begin paying more attention to their blind spots.

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## Relevant Mega-Regional Alliances

Mega alliances are emerging or evolving in at least three regions of relevance to Canada: the Asia-Pacific region, Latin America and Africa. In each of these areas, it is important to begin grappling with the short-, medium- and long-term strategic importance of the innovation policy, IP norm setting and data governance that will shape the twenty-first-century global knowledge economy.

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11 Letter from Prime Minister of Canada Justin Trudeau to Minister of Innovation, Science and Economic Development Navdeep Bains (12 November 2015), online: <<https://pm.gc.ca/eng/minister-innovation-science-and-economic-development-mandate-letter>>.

12 Jeremy de Beer & Michael Geist, "Developing Canada's Intellectual Property Agenda" in Jean Daudelin & Daniel Schwanen, eds, *Canada Among Nations 2007: What Room for Manoeuvre?* (Montreal, QC: McGill-Queen's University Press, 2008) 176.

13 See e.g. "Reviewing Canadian Copyright Policy", *Policy Options* (12 June 2017), online: <<http://policyoptions.irpp.org/magazines/june-2017/reviewing-canadian-copyright-policy/>>; "Trade Policy for Uncertain Times", *Policy Options* (24 July 2017), online: <<http://policyoptions.irpp.org/magazines/july-2017/trade-policy-for-uncertain-times/>>.

## Asia-Pacific

A starting point for considering developments in the Asia-Pacific region is to examine the activities of the Association of Southeast Asian Nations (ASEAN). Formed in 1967, its member states now include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Even more important, however, is to understand the issues arising as a result of the expansion of ASEAN to “ASEAN plus three,” which adds China, Japan and South Korea, and “ASEAN plus six,” which further includes Australia, India and New Zealand. So far, ASEAN has focused on collaboration, not norm setting, in the area of IP. Complicating matters is a potential cross-regional free trade agreement between ASEAN and the European Union.<sup>14</sup> The European Union may find in ASEAN a receptive partner on topics such as geographical indications.

Last year, Canada announced exploratory free trade agreement talks with ASEAN nations,<sup>15</sup> public consultations on a possible Canada-China free trade agreement, and continued negotiations toward a Canada-India Comprehensive Economic Partnership Agreement. In that context, of particular importance now to Canada is the most recent development of the Regional Comprehensive Economic Partnership (RCEP).<sup>16</sup> While negotiations toward RCEP are difficult, and agreement far from certain, if successful it would create a mega-region stretching from India to Japan — including China, all of ASEAN and all of the “plus six.” Canada cannot engage with any single country or group of countries in this region without understanding the broader context of *their* regional integration with or without Canada.

Experts have begun to consider knowledge governance-related issues arising from RCEP, described as “a battle to define the IP law for

Asia in the twenty-first century.”<sup>17</sup> Peter Yu envisions three possible scenarios for RCEP: a pact to rival the CPTPP, a building block toward an even larger mega-regional, or an alternative path to the Washington Consensus model of norm making.<sup>18</sup> A rival pact would suggest the emergence of different knowledge governance rules than contained in the CPTPP, perhaps tailored to the demands of China and India. A building-block model would suggest compatibility, perhaps even redundancy, with CPTPP norms on knowledge governance. An alternative path would be the most disruptive, but by far the least likely scenario, given the existing commitments of countries including Japan, Korea and Australia.

One common challenge with mega-regionals is the lack of public participation in negotiations or access to proposed texts. All the public knows about knowledge governance under a potential RCEP is derived from leaked texts and inferences. The most recent information available, dated October 2015, indicates that despite the opportunity for a custom approach that reflects distinctly Asian values, RCEP may become a “copy and paste” job from Western RTAs that will benefit American and European enterprises.<sup>19</sup>

Canada can best prepare for different plausible outcomes from RCEP, or future integration in the Asia-Pacific mega-region, by studying the knowledge governance norms of the key negotiating parties.<sup>20</sup> Japan, a highly industrialized country, and Korea and Singapore, newly industrialized countries that have already signed TRIPS-plus RTAs with the United States, are likely to seek or at least accept further ratcheting-up of IP standards. Australia, which also has a TRIPS-plus RTA with the United States, might have been expected to do the same, but its political discourse surrounding IP has changed significantly since a

14 European Commission, “Countries and Regions: Association of South East Asian Nations (ASEAN)” (2017), online: <<http://ec.europa.eu/trade/policy/countries-and-regions/regions/asean/>>.

15 Government of Canada, Global Affairs Canada, News Release, “Canada takes another strategic step in the Asia-Pacific region: exploratory free trade agreement talks agreed to with ASEAN nations” (8 September 2017), online: <[www.canada.ca/en/global-affairs/news/2017/09/canada\\_takes\\_anotherstrategicstepintheasia-pacificregionexplorat.html](http://www.canada.ca/en/global-affairs/news/2017/09/canada_takes_anotherstrategicstepintheasia-pacificregionexplorat.html)>.

16 European Commission, *supra* note 14.

17 Anupam Chander & Madhavi Sunder, “The Battle to Define Asia’s Intellectual Property Law: From TPP to RCEP” (forthcoming) UC Irvine L Rev.

18 Peter K Yu, “The RCEP and Intellectual Property Norm-setting in the Asia-Pacific” (2016) Texas A&M University School of Law Legal Studies Research Paper No 17-74.

19 Chander & Sunder, *supra* note 17; Kimberlee G Weatherall, “RCEP IP Chapter Leaked 15 Oct 2015 – Weatherall Section by Section Comments in Brief.pdf” (2016) Working Paper, online: <<https://works.bepress.com/kimweatherall/35/>>.

20 Christoph Antons & Reto M Hilty, eds, *Intellectual Property and Free Trade Agreements in the Asia-Pacific Region* (Heidelberg: Springer Berlin, 2015).



pathbreaking Productivity Commission report that recommended more flexibility and limitations on IP rights. China is somewhat schizophrenic on IP, torn between the limitations that might promote development in western and rural regions of the country, and protections tailored to China's new global status as a prolific acquirer of IP. India remains slightly more toward the IP importer/user side of the scale, as are most of ASEAN's original members, although some have already acceded to the TRIPS-plus requirements of the CPTPP, and Malaysia seems inclined to follow the paths of Korea and Singapore. Canada had the most to gain by strategically partnering with New Zealand to hold the line on copyright term extension, before giving that up in the USMCA. Canada may still find an ally in New Zealand if Canada is serious about protecting the rights of Indigenous peoples, for example, in respect of traditional knowledge.

## Latin America

Three Latin American countries are already members of the CPTPP: Chile, Mexico and Peru. To effectively engage further with this larger region, Canadians must better understand current and potential IP-related developments involving the Mercado del Sur (Mercosur), a sub-regional block including Argentina, Brazil, Paraguay and Uruguay (and, although suspended, Venezuela). Formal negotiations toward a possible Canada-Mercosur free trade agreement are already under way.<sup>21</sup> In that context, Mercosur's relationships with other regional associations are important for Canada to understand.

On the multilateral level, Brazil has been Mercosur's most active advocate for flexibilities in the global IP system, including the Doha Declaration at the WTO and the Development Agenda at WIPO. However, the recently rekindled negotiations of a trade agreement between the European Union and Mercosur could pressure countries to

move regional IP norms in a different direction.<sup>22</sup> While the European Union will no doubt seek to expand protection for geographical indications, the former colonies of its member states will likely resist such measures and focus instead on measures to protect the traditional knowledge of Indigenous and local communities.

There is overlap between those relationships and Canada's consultations on a possible Canada-Pacific Alliance free trade agreement.<sup>23</sup> The Pacific Alliance, which includes Latin America's three CPTPP members plus Colombia, as well as dozens of associated and observer states,<sup>24</sup> is a more outward-looking group of countries interested in economic rather than socio-political ties. Relatively strict IP standards exist in and among some Pacific Alliance countries, often due to RTAs containing TRIPS-plus standards,<sup>25</sup> for example, Colombia's agreements with the United States and the European Union, and the involvement of Mexico, Chile and Peru in the CPTPP.

More work must also be done to explore IP-related implications of agreements between Mercosur and the Andean Community (CAN), which includes Bolivia, Colombia, Ecuador and Peru. CAN seems to be Latin America's pioneer when it comes to regulating IP issues at the regional level.<sup>26</sup> Members of CAN may be bound by RTAs when members sign with third parties individually, and by

21 Government of Canada, "Joint statement on the launch of negotiations toward a comprehensive free trade agreement between Canada and the Mercosur member states" (2018), online: <[http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/mercocor/joint\\_statement-declaration\\_commune.aspx?lang=eng](http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/mercocor/joint_statement-declaration_commune.aspx?lang=eng)>; Government of Canada, Global Affairs Canada, "Minister of International Trade welcomes first round of negotiations with Mercosur countries in Ottawa" (2018), online: <[www.canada.ca/en/global-affairs/news/2018/03/minister-of-international-trade-welcomes-first-round-of-negotiations-with-mercocor-countries-in-ottawa.html](http://www.canada.ca/en/global-affairs/news/2018/03/minister-of-international-trade-welcomes-first-round-of-negotiations-with-mercocor-countries-in-ottawa.html)>.

22 European Commission, "Mercosur", online: <<http://ec.europa.eu/trade/policy/countries-and-regions/regions/mercocor/>>.

23 Government of Canada, Global Affairs Canada, "Consulting Canadians on a possible Canada-Pacific Alliance Free Trade Agreement" (2017), online: <[www.international.gc.ca/trade-commerce/consultations/pacific-alliance-pacifique/index.aspx?lang=eng](http://www.international.gc.ca/trade-commerce/consultations/pacific-alliance-pacifique/index.aspx?lang=eng)>.

24 Pacific Alliance members are Chile, Colombia, Mexico and Peru; associate and observer states are Argentina, Austria, Belgium, Canada, China, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Georgia, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Lithuania, Morocco, the Netherlands, Norway, Panama, Paraguay, Poland, Portugal, Romania, Serbia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Turkey, Ukraine, Uruguay, the United Arab Emirates, the United Kingdom and the United States.

25 Yi Shin Tang & João Paulo Teodoro Hernandes, "The Politics and Outcomes of Preferential Trade Strategies: Evidence from TRIPS-Plus Provisions in US-Latin America Relations" (2016) 50:6 J World Trade 1061, online: <[https://journals-scholarsportal-info.proxy.bib.uottawa.ca/pdf/10116702/v50i0006/1061\\_tpaooptiuar.xml](https://journals-scholarsportal-info.proxy.bib.uottawa.ca/pdf/10116702/v50i0006/1061_tpaooptiuar.xml)>.

26 Lilianna Lizarazo Rodríguez & Philippe De Lombaerde, "Regional and inter-regional economic rules and the enforcement of the right to health: The case of Colombia" (2015) 15:3 Global Social Policy 296 at 303, online: <[https://journals-scholarsportal-info.proxy.bib.uottawa.ca/pdf/14680181/v15i0003/296\\_raierathcoc.xml](https://journals-scholarsportal-info.proxy.bib.uottawa.ca/pdf/14680181/v15i0003/296_raierathcoc.xml)>.

decisions of CAN's regional parliament on matters including the granting of IP rights. For example, Colombia successfully challenged Peru over a Peruvian grant of a new use patent to Pfizer.<sup>27</sup>

Other steps toward Latin American regional integration on IP include Mercosur resolutions on protocols for the harmonization of trademarks, industrial designs and drug policy.<sup>28</sup> Implementation of harmonization efforts has, however, been spotty and IP integration remains far from a reality within Mercosur. It is interesting that the Pacific Alliance has limited IP and science, technology and innovation commitments to the establishment of working groups. The most notable mega-regional development on IP administration is the creation of the Regional Cooperation System on Industrial Property.

The web of agreements in the Latin American region highlights why Canadians should not concentrate only on the most recent and high-profile cross-regional agreement, the CPTPP. Understanding the threats and opportunities for Canada in respect of IP norm making and/or administration requires a holistic view of the many dimensions of regionalism in Latin America, as in Asia.

## Africa

A third region requiring renewed attention is Africa, which was deprioritized for many years by Canada. Over the past two decades, while Canadian trade policy was neglecting Africa, the continent has exploded in terms of economic activity and geopolitical power.<sup>29</sup>

Canada must re-engage to develop a strategic approach to trade with and in Africa.<sup>30</sup>

African countries have negotiated and signed an increasing number of free trade agreements at both the continental and sub-regional levels. Important IP-related agreements include the various economic partnership agreements signed in 2014 by the European Union and several sub-regions of Africa,<sup>31</sup> such as the Common Market for Eastern and Southern Africa (COMESA),<sup>32</sup> as well as the ambitious China-Africa "Ten Cooperation Plans" of 2016.<sup>33</sup> While the European Union and China are aggressively investing in Africa, Canada has stayed waiting on the sideline. Because these agreements are placing different standards for trade between Africa and Canada's important trading partners, such as the European Union and China, it is necessary to determine whether these differentiated policies may put Canada at a disadvantage in future attempts to expand trade and IP in Africa and its sub-regions.

Contemporary free trade agreements in Africa are characterized by increased fragmentation of rules, as well as their maximum utilization of the differentiation principle to support greater flexibility in adapting international IP policies to meet regional development goals. For those reasons, efforts have so far focused on the implementation of TRIPS itself. Countries that are experimenting with TRIPS-plus norms have not had much success.

Morocco was to be Africa's only member of the failed Anti-Counterfeiting and Trade Agreement, for reasons having more to do with geopolitical alliances than economic self-

27 John Bateman, "Use claims in the Andean Community" (2000) 103 *Managing Intell Prop* 62, online: <<https://web-a-ebSCOhost-com.proxy.bib.uottawa.ca/ehost/detail/detail?vid=0&sid=e83c2d86-5513-45dd-9c53-07b2688b4217%40sessionmgr4010&bdata=JnNpdGU9ZWVhc3QtbGl2ZQ%3D%3D#AN=3672724&db=bth>>.

28 Félix Vacas Fernández, "The Protection of Intellectual Property in MERCOSUR" (2010) 2 *Bloom Collect Web* 317.

29 World Bank, Press Release, "Economic Growth in Africa is on the Upswing Following a Sharp Slowdown" (19 April 2017), online: <<http://www.worldbank.org/en/news/press-release/2017/04/19/economic-growth-in-africa-is-on-the-upswing-following-a-sharp-slowdown>>; Jake Bright & Aubrey Hruby, *The Next Africa: An Emerging Continent Becomes a Global Powerhouse*, 1st ed (New York, NY: Thomas Dunne Books, 2015).

30 David Luke & Phil Rourke, "Canada's Progressive Trade Agenda Starts in Africa" (2017), online: United Nations Economic Commission for Africa <[www.uneca.org/stories/canada's-progressive-trade-agenda-starts-africa](http://www.uneca.org/stories/canada's-progressive-trade-agenda-starts-africa)>; Marc Kielburger & Craig Kielburger, "Why Canada Should Do Business With African Countries", *HuffPost* (14 July 2017), online: <[www.huffingtonpost.ca/craig-and-marc-kielburger/why-canada-should-do-business-with-african-countries\\_a\\_23030033/](http://www.huffingtonpost.ca/craig-and-marc-kielburger/why-canada-should-do-business-with-african-countries_a_23030033/)>.

31 See European Commission, "Economic partnerships", online: <<http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/>>.

32 COMESA, *Treaty Establishing the Common Market for Eastern and Southern Africa*, online: <[www.comesa.int/wp-content/uploads/2016/06/COMESA-Treaty.pdf](http://www.comesa.int/wp-content/uploads/2016/06/COMESA-Treaty.pdf)>; COMESA, *COMESA Treaty*, online: <[www.comesacompetition.org/wp-content/uploads/2016/03/COMESA\\_Treaty.pdf](http://www.comesacompetition.org/wp-content/uploads/2016/03/COMESA_Treaty.pdf)>.

33 People's Republic of China, Ministry of Commerce, "2016 Business Review XXVI: China-Africa Trade and Economic Cooperation Makes Steady Progress" (2017), online: <<http://english.mofcom.gov.cn/article/newsrelease/significantnews/201702/20170202515699.shtml>>.

interest. The East African Community's (EAC's) policy on anti-counterfeiting, anti-piracy and other IP rights violations also failed, because it did not adequately recognize the interests of least developed country members.

Most notably, Africa is now home to the world's most ambitious mega-regional alliance: the African Union's Continental Free Trade Area (AfCFTA).<sup>34</sup> This mega-regional integration would go further than the Tripartite Free Trade Area, which is an agreement among the EAC, COMESA and the Southern African Development Community. IP administration will also be impacted by the creation of the Pan-African Intellectual Property Organization, which, if done well, could work harmoniously with Africa's existing agencies, the Organisation Africaine de la Propriété Intellectuelle and the African Regional Intellectual Property Organization, to improve policy coordination, information sharing and efficient administration. The continent's future is likely to involve continued growth in technology and entrepreneurship across a range of sectors, vibrancy and resilience in the informal sector, and ongoing innovation in Africa's Indigenous and local communities.<sup>35</sup>

As there are significant innovation, IP and data-related issues that will be addressed in the next phase of negotiations over the Continental Free Trade Area (CFTA),<sup>36</sup> this is the perfect moment to engage with Africa. Negotiations on the IP aspects of the AfCFTA are "Phase II" matters that are just beginning to be discussed. Historically, Canada's IP relationship with Africa has been attempted benevolence; for example, then Prime Minister Jean Chrétien's "Pledge to Africa" in respect of access to generic medicines. Now, Canada must pay more attention as transformative events unfold in real time to reshape the continent from aid recipient to trading partner.

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## Conclusion

Canada has significant blind spots when it comes to new and emerging mega-regional alliances to which it is not a party. While Canada's experiences with mega-regional agreements such as NAFTA, CETA and CPTPP offer competitive advantages, the country risks falling behind without a medium-term strategy to engage with innovation policy making, IP norm setting and data governance in the twenty-first-century global knowledge economy. Canada should develop a forward-looking, international strategy to address the rise of mega-regionalism that reflects and supports its domestic interests. That strategy needs to, first, recognize that the world is gravitating toward mega-regional norm setting for the knowledge economy, and second, develop a well-informed analysis of the specific IP issues for key regions of interest. This policy brief has addressed the first challenge, setting the stage for detailed, ongoing work to address the second challenge.

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34 African Union, "CFTA – Continental Free Trade Area", online: <<https://au.int/en/ti/cfta/about>>; TRALAC, "African Continental Free Trade Area (AfCFTA) Legal Texts and Policy Documents", online: <[www.tralac.org/resources/by-region/cfta.html](http://www.tralac.org/resources/by-region/cfta.html)>; United Nations Economic Commission for Africa, "African Trade Policy Centre", online: <[www.uneca.org/atpc](http://www.uneca.org/atpc)>.

35 Jeremy de Beer et al, *Knowledge & Innovation in Africa: Scenarios for the Future* (Open A.I.R., 2013).

36 Caroline Ncube et al, "Intellectual Property Rights and Innovation: Assessing Regional Integration in Africa (ARIA VIII)" (2017) Open AIR Working Paper 5.



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# Acronyms and Abbreviations

<b>AfCFTA</b>	African Continental Free Trade Area
<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CAN</b>	Andean Community
<b>CETA</b>	Comprehensive Economic and Trade Agreement
<b>CFTA</b>	Continental Free Trade Area
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CPTPP</b>	Comprehensive and Progressive Trans-Pacific Partnership
<b>EAC</b>	East African Community
<b>IP</b>	intellectual property
<b>Mercosur</b>	Mercado del Sur
<b>NAFTA</b>	North American Free Trade Agreement
<b>RCEP</b>	Regional Comprehensive Economic Partnership
<b>RTAs</b>	regional trade agreements
<b>TPP</b>	Trans-Pacific Partnership
<b>USMCA</b>	United States-Mexico-Canada Agreement
<b>WIPO</b>	World Intellectual Property Organization
<b>WTO</b>	World Trade Organization



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## About the International Law Research Program

The International Law Research Program (ILRP) at CIGI is an integrated multidisciplinary research program that provides leading academics, government and private sector legal experts, as well as students from Canada and abroad, with the opportunity to contribute to advancements in international law.

The ILRP strives to be the world's leading international law research program, with recognized impact on how international law is brought to bear on significant global issues. The program's mission is to connect knowledge, policy and practice to build the international law framework — the globalized rule of law — to support international governance of the future. Its founding belief is that better international governance, including a strengthened international law framework, can improve the lives of people everywhere, increase prosperity, ensure global sustainability, address inequality, safeguard human rights and promote a more secure world.

The ILRP focuses on the areas of international law that are most important to global innovation, prosperity and sustainability: international economic law, international intellectual property law and international environmental law. In its research, the ILRP is attentive to the emerging interactions between international and transnational law, Indigenous law and constitutional law.

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## About CIGI

We are the Centre for International Governance Innovation: an independent, non-partisan think tank with an objective and uniquely global perspective. Our research, opinions and public voice make a difference in today's world by bringing clarity and innovative thinking to global policy making. By working across disciplines and in partnership with the best peers and experts, we are the benchmark for influential research and trusted analysis.

Our research programs focus on governance of the global economy, global security and politics, and international law in collaboration with a range of strategic partners and support from the Government of Canada, the Government of Ontario, as well as founder Jim Balsillie.

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## À propos du CIGI

Au Centre pour l'innovation dans la gouvernance internationale (CIGI), nous formons un groupe de réflexion indépendant et non partisan doté d'un point de vue objectif et unique de portée mondiale. Nos recherches, nos avis et nos interventions publiques ont des effets réels sur le monde d'aujourd'hui car ils apportent de la clarté et une réflexion novatrice pour l'élaboration des politiques à l'échelle internationale. En raison des travaux accomplis en collaboration et en partenariat avec des pairs et des spécialistes interdisciplinaires des plus compétents, nous sommes devenus une référence grâce à l'influence de nos recherches et à la fiabilité de nos analyses.

Nos programmes de recherche ont trait à la gouvernance dans les domaines suivants : l'économie mondiale, la sécurité et les politiques mondiales, et le droit international, et nous les exécutons avec la collaboration de nombreux partenaires stratégiques et le soutien des gouvernements du Canada et de l'Ontario ainsi que du fondateur du CIGI, Jim Balsillie.

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