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EMERGING MEGA-INTEGRATION BLOCS: LIMITS AND PROSPECTS*

ABSTRACT

The emergence of new mega-integration blocs is an important current feature of the global economic system. The United States, the European Union and Japan intend to set on their own terms new rules for trade, investment and settlement of disputes for the coming generation. All other players will have to accept these rules (capitulate) or be excluded from their potential benefits. However, this has the potential to backfire as important excluded players such as China may create a parallel system. The whole rules-setting process in the emerging mega blocs is both obscure and held captive by big corporations that tailor rules according their needs. Disenfranchised people in this process are treated not as citizens but as consumers, hence a lot of public resentment towards these emerging mega blocs. The planned arcane, *ad hoc* and private dispute settlement mechanisms are monumentally controversial. The ratification processes of the new mega deals are expected to have long, rough and uncertain journeys which could well end up running off the rails.

Keywords: TPP, TTIP, US, EU, China, Corporations, ISDS, Ratification
JEL Classification: F10, F13, F15, F50

RIASSUNTO

Accordi di mega-integrazione emergenti: limiti e prospettive

Il nascere di nuovi accordi di mega-integrazione è una caratteristica di rilievo del mercato economico globale. Gli Stati Uniti, l'Unione Europea e il Giappone vogliono stabilire autonomamente nuove regole future inerenti il commercio, gli investimenti e la risoluzione della controversie. Tutti gli altri soggetti dovranno accettare (o meglio subire) queste regole o

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saranno esclusi dai potenziali benefici. Tutto ciò può potenzialmente ritorcersi contro, in quanto importanti soggetti, come la Cina, potrebbero creare un sistema parallelo. Inoltre, l'intero processo normativo di questi accordi non è trasparente ed è gestito dalle grandi multinazionali che stabiliscono le regole a seconda delle loro necessità. In questo processo le persone non hanno diritti e non sono trattate da cittadini ma da consumatori, il che causa l'avversione delle popolazioni alla nascita di questi accordi. Il sistema di risoluzione delle dispute è controverso perché oscuro e creato *ad hoc*. Il processo di ratifica di questi nuovi mega accordi sarà lungo ed incerto e potrebbe anche finire fuori controllo.

1. INTRODUCTION

The global economy encounters a major turning point every generation and we are living at a time when we may witness such an event. The issue at stake is the emergence of several mega trade and investment integration blocs. Standard trade theory suggests that, in general, multilateral trade-liberalisation under the auspices of the World Trade Organization (WTO) offers and promises the biggest global gains. It is also the best way to assist the smooth operation of global value chains. Multilateral negotiations, however, have been deadlocked for almost a generation. At the same time, regional trade and integration deals are proliferating, although quite a few of the existing integration schemes may not be 'working well' (just look at Europe or Africa). Against this background hardly anyone noticed the Nairobi WTO Ministerial Conference (15-18 December 2015) and its Declaration[1]. The developed countries in attendance agreed to immediately abolish subsidies on farm exports, while developing countries will do the same before 2019.

Even though the Doha WTO Round - launched in 2001 - had many false dawns it ultimately failed because it was too ambitious. It tried to cobble together a synchronised deal over agriculture, manufacturing, services and development in the hope that mutual and beneficial horse-trading between partners would take place. Another reason for its failure was an out-of-date agenda. Issues pertinent to the Doha Round in 2001 (tariffs) were different from those affecting the real world in 2015, one dominated by spatially fragmented production (unbundled production; global value chains). The real issues at stake morphed over time from tariffs on trade

[1] https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.htm (accessed on 9 May 2016).

and farm subsidies into concerns over trade facilitation, taxes, investment, migrants and finance because of new global value chains and mega-trade and investment deals.

The Nairobi Declaration states that

> "new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations' (§30) ... Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members"(§34).

This means in plain English that there are a number of issues to be negotiated and a single WTO member can block the whole multilateral process. As a result, a subset of willing WTO members may go their own way. While the irritated young radicals did not pay any attention to the Nairobi conference, a lot of fuss remains regarding emerging mega-regional integration deals.

American President Barack Obama was clear on his country's objective regarding new long-term trade policy and international deals (The White House, 2015, p. 5):

> "At a time when 95 percent of the world's consumers live outside our borders, new trade agreements would help American businesses reach new markets and put stronger environmental and labor standards in place, to ensure that all countries are playing by the same, fair set of rules. The trade deals that my Administration is negotiating in the Atlantic and the Pacific regions would do just that".

The emerging mega-trade and investment blocs herald responses to the anaemic Doha Round of trade talks and the WTO's potential drift into oblivion. These new mega-integration blocs ('game changers') are the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), the Regional Comprehensive Economic Partnership (RCEP) and the Tripartite Free Trade Area in Africa, pacts which are the only important global trade and investment initiatives to have come about since the creation of the WTO (1995). The partners in these new mega deals are making strong new commitments which elevate liberalisation standards in non-tariff barriers (NTBs) created by differences in regulation, investment, environment, labour, agriculture, state-owned enterprises and the settlement of disputes outside the auspices of the WTO and out of regular courts. Another important feature of these new mega-integration deals is that big corporate behemoths hold strong sway in the creation of the deals' rules and standards.

This article is structured as follows. After this introduction comes a section that considers the mega-integration deal in the Pacific, the TPP (section 2). Section 3 presents the challenges and opportunities entailed in transatlantic integration (TTIP). The RCEP is the subject of section 4, which is followed in section 5 by issues affecting the African Tripartite Free Trade Area. Section 6 concludes the discussion on the emerging issue of mega-integration pacts.

2. Trans-Pacific Partnership

2.1 Introduction

The Trans-Pacific Partnership (TPP) is the first mega-trade and investment deal to have been concluded in the 21st Century. Twelve[2] negotiating parties concluded the agreement on 5 October 2015 and signed it on 4 February 2016, after seven years of negotiation. This grouping of countries connects 800 million middle-income consumers, involves 40 per cent of global gross domestic product (GDP) and includes 30 per cent of worldwide trade in goods and services. The TPP is being 'sold' to the public as one of the most important integration agreements in history. In essence, the TPP is a free-trade pact between the United States (US) and Japan because of the size of their economies. In many ways the deal is an extension of the updated North American Free Trade Agreement (NAFTA) on the Pacific-rim region.

2.2 Evolution and Issues

The TPP is a 2005 initiative by Brunei, Chile, New Zealand and Singapore. The group wanted to create a free-trade area to support the Asia-Pacific Economic Cooperation (APEC). This group of four countries was joined by Australia, Canada, Japan, Malaysia, Mexico, Peru, Vietnam and the US. The intention was to end negotiations in 2015. These are some of the most dynamic economies in the world. The US also wishes to contain China's overall resurgence, hence the US 'pressuring' Japan into joining.

[2] Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam.

The American intention is (1) to create a template for rules governing global trade, investment and dispute settlement that will last for decades to come and (2) to extend them to other countries in the APEC region and beyond. This TPP-related 'template engineering' is taking place without the involvement of China or the WTO. Special external US targets in the region include China and South Korea. If China wants to join the TPP group later on, it will have to 'capitulate' and to accept the deal crafted by the US and a few select others as it stands.

The TPP has 30 chapters (and hundreds of side documents) which build upon and tighten the WTO's rules, as well as introduce new tools for their implementation. The TPP rulebook refers to issues that include investment, elimination of tariffs, NTBs (to facilitate the operation of global supply chains), services, telecommunications, government procurement, state-owned enterprises, intellectual property, environment, regulatory coherence (to make trade and investment seamless and more efficient), currency manipulation (no currency wars) and a new arcane dispute settlement system. The TPP text[3] (including schedules and side letters) consists of about 6,000 pages[4]. It is a reader-unfriendly document, but a paradise for lawyers, consultants, politicians and masochists.

The TPP project is attractive, but ambitious. It is marred with problems. The economies are too different and spatially dislocated (transport costs are relatively important), leading to integration obstacles in spite of opportunities. Adam Posen has described the American way of thinking about the liberal treatment of agricultural trade in terms of obvious financial gains. He wrote that

"... if the goal is simply to protect Japanese farmers' way of life, the Japanese government can save a lot of money by directly subsidizing farmers with a small tax and avoid the tariff that is so costly to the average Japanese person. There is nothing good economically about the current policy"[5].

Japan, however, does not want only to secure (high or fair) standards of living for its farmers, but to also have secure supplies of rice from domestic sources in times of crisis.

[3] https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text (accessed on 9 May 2016).
[4] Hufbauer and C. Cimino-Isaacs, 'Why the Trans-Pacific Partnership isn't a bum deal?', Peterson Institute for International Economics, 5 February 2016.
[5] A. Posen, 'This is Japan's chance to lead TPP talks', Nikkei Asian Review, 18 April 2014.

Negotiations were not easy as there were many political minefields. The US was cautious about opening up its sugar, footwear, apparel and car markets. As a member of the TPP, Japan will be able to improve its access to the US market relative to China and South Korea; significant bait for Japan as it would improve its standing compared to that of its other two Asian competitors. Japan succeeded in the tariff protection of its six sacred farm products, which represent a huge part of the domestic farm business: rice, wheat, beef, pork, sugar and dairy products[6]. It also protected and secured an orderly contraction of its agriculture and ensured that old farmers will cease production without successors.

On the one hand, the farm lobby in Japan is excessively protected and strong and the ageing population supports farmers while the younger generation is increasingly concentrating on domestic issues. On the other, strong American farmers would torpedo any trade deal with Japan that would not offer them improved access to the Japanese market[7]. Still, farmers on both sides will be forced to be more efficient in production and to differentiate their output.

Many TPP countries were reluctant to open their dairy product markets, while the US pushed for the protection of pharmaceuticals, the environment and labour rights. In addition, the US strived to protect its own domestic carmakers from Japanese giants such as Toyota, Honda, Nissan and Mitsubishi. Japan already has a 'free' market for imported cars (no tariffs, no quotas) and regulatory needs are not excessive. There is, however, a formidable dealership structure (owned or controlled by the car manufacturers). Newcomers are free to rent or buy land but at exorbitant prices, making this process slow, expensive and uncertain. What is the meaning of

[6] The Japanese insurance market is also protected.

[7] Japanese tariffs on imports for beef, pork and wheat will remain, but at a reduced rate. However, the 778 per cent tariff on rice will stay, but there will be an increase in the tariff-free quota by 10 per cent. These measures would be applied over a period of up to 16 years. Older farmers would hand over their businesses to a younger generation less attached to rural life ('TPP will unsettle East Asia's regional relations', Oxford Analytica, 7 October 2015). Deregulation of Japanese agriculture and partial liberalisation of imports in 1977 and 1990 showed that domestic production did not fall after the measures were implemented. Farmers became more efficient and diversified their output. As for the TPP, Todo thinks that by retaining trade barriers on rice and dairy products, Japan missed the opportunity to make further improvement in the production of those foods (Y. Todo, 'How TPP will change the Japanese economy', VOX, 24 December 2015). Todo's view is in a sense 'mechanical', which neglects equally important non-profit social and security dimensions. Farmers are a strong voting lobby in Japan. At the same time, the country wants, like many others in the word, to safeguard a certain level of domestic food production to be safe, at least to an extent, in the case of potential crisis.

free trade talks and deals when negotiators offer free market access safe in the knowledge that very few products would be imported[8]?

Under the auspices of the TPP, in its Chapter 19 the US signed detailed labour-related side agreements with Brunei, Malaysia and Vietnam. These countries have been requested to change domestic laws in order to allow independent trade unions, strikes, labour-related inspections, the respect of basic standards that affect working conditions, the ousting of discrimination and forced labour, as well as the treatment of immigrants with dignity. All these need to be achieved before these countries are permitted to trade freely with the US under the TPP. Labour (and other) standards are exported by the US because of US worries that these and other countries may outcompete US producers and undercut prices through poor domestic labour standards and other factors.

The environment and its protection standards are covered in its Chapter 20. Activities such as illegal taking and trade in logging and in wildlife, and illegal, unregulated and unreported fishing (a part of marine piracy)[9] are prohibited with the intention to improve management of resources and to strengthen environmental protection, as well as achieving conservation and sustainable-use biological diversity. Climate change is not included in the TPP because of the anxiety that it would not be endorsed by the US Congress.

A challenging feature of the TPP is that it tries to integrate countries at different levels of development. Chapters 21 and 23, respectively, deal with cooperation and development. The intentions are noble, but they are not supported by distinct resources. Article 21.5 reads:

"Recognising the different levels of development of the Parties, the Parties shall work to provide the appropriate financial or in-kind resources for cooperation and capacity building activities conducted

[8] 'Hyundai cars are of high quality, have better styling and are far less expensive than their Japanese rivals. Hyundai is arguably the most competitive company in today's global car business. Japan is the world's number three car market, has no import tariffs or quotas and its regulatory needs are not excessive. It should be an attractive market and, if anyone could compete in the Japanese market, it should be Hyundai' (C. Prestowitz, 'The hidden truth behind Japan's free and open market', Financial Times, 18 May 2012). Still, in spite of its efforts, Hyundai was not able to penetrate the Japanese market for a decade before pulling out in 2009. Domestic dealership (NTB) was not penetrable in Japan. If the free trade deal cracks such trade and competition barriers, the trade-creating outcome will be more than welcome.

[9] The US Trade Representative estimates that illegal, unregulated and unreported fishing alone amounts to the tune of $10 to $23.5 billion a year: https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/ustr-green-paper-conservation-and-trans-pacific-partnership (accessed on 6 May 2016).

under this Chapter, subject to the availability of resources and the comparative capabilities that different Parties possess to achieve the goals of this Chapter".

The term 'subject to the availability of resources' is open ended and does not provide a firm obligation. In this regard Freund (2016, p. 70) argues that

"the TPP is missing what the European Commission calls 'aid for trade' or 'trade-related assistance'. Many provisions in the agreement – on anticorruption, intellectual property rights, overseas data storage, for example – represent the advanced-economy (often the US) view. The offer of grants or technical assistance to improve trade capacity for low-income countries would have both allowed the United States to get stronger commitments and created a more development-enhancing agreement (although it would have made the agreement more difficult to ratify)".

Chapter 17 deals with state-owned enterprises (SOEs). These are enterprises in which the government directly owns more than 50 per cent of shares. While SOEs are not prohibited, the TPP aims at disciplining their operations. SOEs must not have unfair advantages over private enterprises. Even though Vietnam is a country with a sizeable state-controlled business sector, a clear long-term target of this Chapter is possible future Chinese entry into the TPP. China has a vast spread of SOEs. Non-commercial assistance (subsidies) to SOEs is not allowed. Transparency (Article 17.10) is the TPP leitmotif regarding SOEs and it is also a new standard. All SOEs must be publicly listed on the internet together with the government share in their capital; their annual financial statement; benefits received (including subsidies, grants, loans, debt forgiveness); and names of government officials in the management structure. A party may request in writing another party to disclose promptly information on subsidies (grants, loans or prices), the legal basis for such aid, its duration and the policy objectives of such actions. Subsidies are not banned, only those that are offered on discriminatory terms and ones that adversely affect other enterprises[10]. Injuries are not only material injuries to industries, but also the 'threat of material injury' (Article 17.8.1). Violations of those requests are subject to sanctions in trade (Article 28.20).

[10] Publicly owned enterprises have proven, even in the US, that they may provide a superior service at a lower price than private and supposedly competitive ones. Cast your mind back to the example of the Chattanooga (Tennessee) municipal internet service. http://www.businessinsider.com/chattanooga-tennessee-big-internet-companies-terrified-2014-7?IR=T (accessed on 7 May 2016).

2.3 Overwhelming Corporate Influence

There were hurdles in negotiations and uncertainty regarding the future of the TPP deal. The new trade arrangement is much less about trade and already-low tariffs, and more about 'other things' such as patents (drugs), copyrights (movies), SOEs, environment (pollution) and the settlement of disputes. There are fears that the TPP transfers excessive power to corporations. In doing so, democracy may be threatened.

The harmful impact of corporations on the act of setting the public policy agenda was addressed by Joseph Stiglitz, who wrote that:

"The real goal is to restrict governments' ability to regulate and tax corporations – that is, to restrict their ability to impose responsibilities, not just uphold rights. Corporations are attempting to achieve by stealth – through secretly negotiated trade agreements – what they could not attain in an open political process ... The (intended) effect is to chill governments' legitimate efforts to protect and advance citizens' interests by imposing regulations, taxation, and other responsibilities on corporations"[11].

Big corporate power may be the principal threat to democracy[12]. The concentration of excessive economic and political power in the hands of giant corporations in the US received a boost during the period 1981-2009, the era which started with President Ronald Reagan and ended up with George Bush Jr. Prior to that, the precautionary principle regarding various novelty goods (especially after the Thalidomide disaster) was a prominent feature of government policy. However, after the corporations 'privatised' the US government these big firms tend to favour trade negotiations behind closed doors in order

"to secure rules that would be defeated if they were open to public scrutiny or democratic accountability" (Lee, 2015, p. 318).

For instance, US Senator Ron Wyden stated in 2012:

"The majority of Congress is being kept in the dark as to the substance of the TPP negotiations, while representatives of U.S. corporations—like Halliburton, Chevron, PHRMA, Comcast, and the Motion Picture Association of America—are being consulted and made privy to details of the agreement. ... More

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[11] J. Stiglitz, 'Developing countries are right to resist restrictive trade agreements', The Guardian, 8 November 2013.
[12] 'People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices' (Smith, 2005 [1776], p. 111).

than two months after receiving the proper security credentials, my staff is still barred from viewing the details of the proposals that USTR [US trade Representative] is advancing. We hear that the process by which TPP is being negotiated has been a model of transparency. I disagree with that statement. … the representatives elected by the American people are afforded the same level of influence over our nation's policies as the paid representatives of PHRMA, Halliburton and the Motion Picture Association"[13].

While hundreds of corporate officials have access to information and a certain level of influence on negotiations at crucial early stages, the elected representatives, the civil society and the public are disenfranchised and kept in the dark. The concerning issue is who sets the laws in a democratic society? Are the deals thrown together by corporate lawyers? The US's reputation in terms of its supposed transparent, democratic and public law-making process has been severely damaged.

In the corporations-led arcane negotiation process public authorities have won a handful of significant victories. First, the TPP allows temporary safeguard measures regarding 'payments or transfers for current account transactions in the event of serious balance of payments and external financial difficulties or threats thereof' (Article 29.3). Second, the TPP allows for national tobacco control measures (Article 29.5). The mighty US tobacco industry here had a rare, but major defeat in the 'war' against public health. Other corporations fear that this precedent may be extended in the future to cover sugar-based products, spirits and other products of potential public health concern.

Corporations, for their part, argue that the level of regulation is heavy and restricts business. These firms are right as they exist to make profit. Laws and regulations exist to protect consumers, workers, the environment and the social structure. Secret negotiations by unelected negotiators and lobbyist-controlled processes which tend to prop up the interests and rights of unaccountable corporations have been strongly criticised from many sides, including by academics[14]. In a democratic process, public regulation is normally sponsored by citizens' demands. If the law-making process is hijacked by corporations (the wealthy), why then do the authorities need elections, voters or citizens at all? Instead of elected representatives, it is corporations and the wealthiest who may gain control over drug patents, movie rights,

[13] Congressional Record-Senate, 23 May 2012, S3517-S3518.
[14] J. Stiglitz, 'On the wrong side of globalization', New York Times, 15 March 2014.

intellectual property, labour laws, the environment and the judicial process. What is good for corporations and the wealthiest is not necessarily good for national economies and citizens. Secret negotiations by governments on the one hand and corporations and bankers on the other are not good social omens. Excessive corporate power may threaten the democratic process (as was the case with the big bailout of the banks [2007-09] where there was no democratic debate about the cost to taxpayers)[15]. The purpose of the Sherman Act of 1890 was to prevent such excessive corporate influence on politics. Nonetheless, the TPP will be a hard sell. Paul Krugman wrote:

"I am in general a free trader, but I'll be undismayed and even a bit relieved if the TPP just fades away... In short, there isn't a compelling case for this deal, from either a global or a national point of view. Nor does there seem to be anything like a political consensus in favor, abroad or at home... So don't cry for TPP. If the big trade deal comes to nothing, as seems likely, it will be, well, no big deal"[16].

It is interesting to note that once liberal-type economists such as Nobel Prize laureates Joseph Stiglitz and Paul Krugman, oppose the emerging mega-integration deals.

The US Senate granted the president the 'fast track' authority to negotiate the TPP in June 2015. The 60-37 vote was a victory for the big businesses that lobbied hard for the deal. The donations by a revealed list of big banks and manufacturers to the senators to support the deal were not a big problem for such corporate giants[17]. In fact votes could be 'purchased' quite cheaply.

The US presidential candidates criticised the deal and said that the TPP is 'a horrible deal' (Donald Trump) and that 'TPP is a disastrous trade agreement' (Bernie Sanders)[18]. Hilary Clinton did not publicly support the TPP because her presidential nomination depends partly on the backing of heavyweight labour unions.

[15] Another issue for studies is the impact of the military industry on decisions to partake and stay in wars (Vietnam, Iraq, Afghanistan,...).

[16] P. Krugman, 'No big deal', New York Times, 28 February 2014.

[17] T. Durden, 'Corporations win again: Senate passes Obamatrade fast-track bill', Zerohedge, 23 June 2015. http://www.zerohedge.com/news/2015-06-23/obama-faces-union-anger-ahead-corporate-coup-detat-trade-deal-fast-track-vote (accessed on 7 May 2016).

[18] G. Hufbauer and C. Cimino-Isaacs, 'Why the Trans-Pacific Partnership isn't a bum deal?', Peterson Institute for International Economics, 5 February 2016.

2.4 *Investor-State Dispute Settlement System*[19]

While it is a generally accepted principle that foreign investors deserve protection from volatile national legislation regarding expropriation or discrimination, the TPP and its investor-state dispute settlement (ISDS) system goes well beyond that principle. The ISDS allows foreign investors to dodge local courts and to request potentially unlimited compensation from the host government for losses in expected future profits because of changes in legislation in an arcane, private, corporation-friendly *ad hoc* tribunal.

The TPP and the still-to-be negotiated TTIP create a new legal system which benefits big foreign corporations to the detriment of host government policymakers and the local people. The setting of standards for food, environment (climate change) or the regulation of banks is taken away from local authorities and disenfranchised people and passed on in favour of big foreign corporations in order to create the legal conditions under which unwanted complications do not take place. Governments will be wary of introducing legislation that may be subject to the ISDS threat. Suppose that the British government makes a decision:

"This could be to outlaw dangerous chemicals, improve food safety, put cigarettes in plain packaging, or protect a place of natural beauty from fracking. Under the deal, a Canadian company, or any company with a Canadian subsidiary, can sue the British government if it thinks that the decision is unfair. And by unfair we simply mean they can't make as much profit as they expected to make. The trial would be held as a secret tribunal, overseen by corporate lawyers, and without any right of appeal. Canadian companies are doing this all over the world"[20].

The objective is to reduce regulation for corporations, ease standards that are a nuisance and remove unwanted obstacles that reduce profits. Would there be a 'race to the bottom' in food safety, protection of the environment, labour and banking standards? Social and environmental side effects would be submerged by unaccountable private business-related interests. What is the role here of the people? Are they only humble disenfranchised consumers or proud citizens?

The principal defect in the TPP's ISDS is the absence of a body for the appellate review of cases. There is no system to square conflicting rulings. Treaties, if structured in a systematic way,

[19] For a deeper consideration of the ISDS issue, the interested reader is invited to consult Jovanović (2016).
[20] N. Dearden, 'If you're worried about TTIP, then you need to know about CETA, The Independent, 29 September 2015.

reduce uncertainty, but different explanations of ambiguous and vague provisions increase uncertainty. Why?

"One reason is that the United States is so happy with its win-loss record in ISDS cases (13-0) that it did not want to risk the possibility of adverse appellate decisions" (Hufbauer, 2016, p. 118).

German judges in 2016 declared illegal the European Commission's proposed investment tribunal court. The German Association of Magistrates

"sees neither a legal basis nor a need for such a court. It says existing national courts are good enough and that efforts by the Commission to create a new court undermines jurisdictions across the Union"[21].

Hostile, biased and undemocratic legal systems do not exist either in the US or in EU countries. If such a large and respected Association of professional judges has serious reservations and objections, then the European Commission's proposal needs to be thoughtfully reconsidered. Hence, recourse to the private and overly industry-friendly courts (ISDS) should not be allowed outside the 'normal' and well-entrenched existing legal systems, even if they may be potentially slower than the ISDS. The operation of the legal systems in both Europe and the US can be considered rather stable, which is not necessarily the case in, for instance, certain developing countries.

Researchers question the expected benefits that ISDS may provide (increased inflow of FDI). Countries that accepted ISDS paid a high price and

"the evidence is that the benefits, if any, have been scant. In South Africa's review, it found that it had not received significant investments from the countries with which it had signed agreements, but had received significant investments from those with which it had not"[22].

Even though Brazil has rejected signing any deal which includes the ISDS, the country continued to attract a massive inflow of FDI. This Brazilian policy template is being considered by India, South Africa, Indonesia, Ecuador and Venezuela. Investors go first and foremost to places where they can make profits, not to places where they will find various investment-related accords (as their primary investment-related driver).

[21] N. Nielsen, 'TTIP investor court illegal, say German judges', EUobserver. 4 February 2016.
[22] J. Stiglitz, 'Developing countries are right to resist restrictive trade agreements', The Guardian, 8 November 2013.

Hufbauer (2016, p. 111) argued that bilateral investment treaties (BITs) increase FDI because they improve the legal aspects of the investment climate. Neumayer *et al.* (2016, p. 204) find ambiguous empirical evidence of strict commitments to protect TNCs made by the host countries on the stimulation of FDI inflows. In any case, this matter requires continuous observation and analysis.

In a report commissioned by the United Kingdom's (UK) Department for Business Innovation and Skills, Skovgaard Poulsen *et al.* (2013) refer to comprehensive studies on the US's BITs and state that:

"... few American BITs or FTAs [free trade agreements] with investment protection chapters have had an impact on American investment patterns. For those treaties that have had a measurable impact, it has been only marginal. Crucially, not a single investment treaty with a developed country – including Canada, Australia, Israel, and Singapore – has had an impact on US investment outflows. ... irrespective of the greater awareness of investment treaties in the US, they do not appear to have played a considerable role in promoting American investment abroad (p. 15). ... US investors have generally not taken much notice of investment treaties in the past when deciding where, and how much, to invest abroad – even when dealing with far more questionable jurisdictions than the UK" (p. 44).

In addition, regarding the arcane investment-related tribunals, they state:

"Ultimately, we conclude that an EU-US investment treaty that *does* contain ISDS is likely to have few or no benefits to the UK, while having meaningful economic and political costs" (Skovgaard Poulsen *et al.* 2013, p. 9; original emphasis).

The International Centre for Settlement of Investment Disputes (ICSID) (a part of the World Bank group) is the single most prominent institution for the settlement of investment disputes. It may morph into a global FDI-related court. However, a new treaty would be necessary for this (court-appellate body) transformation into a single, independent and permanent global legal institution to take place. In addition, in a system of fragmented bilateral investment treaties, this would also ask for a new global and unified FDI law.

The ISDS system based on the TPP template sidelines legitimate public demands (protection of health or environment) and policies that protect citizens from potential harm inflicted by big corporations. It is something that needs to be scrapped because it is beyond reparation.

2.5 External Countries

Overall, Ciuriak *et al.* (2016) state that the principal TPP beneficiaries are the US, Japan and Vietnam. Modest beneficiaries are Canada, Malaysia and New Zealand. For the Latin American countries and Australia 'the TPP is essentially a wash' (p. 2). In addition:

> "In terms of the quantitative impacts, the TPP gets merit points for sweeping away most of the tariff barriers in the region and regionalizing the rules of origin, which helps to streamline the "spaghetti bowl" effect of the many, overlapping and inconsistent trade agreements within the region. As a partial offset, like all preferential deals, it gets demerit points for the discrimination it introduces into trade relations, for partly replacing efficient protection (tariffs) with inefficient red tape (rules of origin compliance requirements), and for the subsidies that it will trigger for rice in Japan and dairy in Canada, as well as the entrenchment of the protected sugar regime in the United States" (p. 2).

As China was put aside by the TPP, the country reacted. China introduced a pilot project, an alternative to the established sclerotic World Bank, called the new Asian Infrastructure Investment Bank (AIIB)(2015), located in Beijing. While gloom-mongers in the US see the new AIIB as a Chinese-sponsored power grab, others take it to be a more lively, faster and more skilful lender than the US-controlled World Bank or the Japan-directed Asian Development Bank. The 57 founding AIIB members ensure that this bank follows tough social and environmental standards. Another new global bank, the New Development Bank (2014), located in Shanghai, is expected to offer further life to international investment finance[23].

Indonesia is a relatively large economy that to a large extent does not depend on exports. It is not a part of the TPP. The country may stay aloof from the agreement as its principal export items are natural resources. For such a structure of exports, (fluctuating) world prices rather than tariffs and NTBs are the main variables of concern. If Malaysia increases its palm oil exports to the TPP, something which could damage Indonesian exports, this may provoke concerns in

[23] The New Development Bank was also known as the BRICS Development Bank as it was founded by Brazil, Russia, India, China and South Africa.

Indonesia. At the same time, Vietnam is increasing its attractiveness as a location for businesses specialising in manufacturing. This is not only because of its geographical location but because local wages are also half of those in China and the country is a part of the TPP. Countries that are outside of the TPP such as Cambodia, Indonesia, Myanmar and Thailand may lose out on business to Vietnam.

South Korea and Thailand have expressed a certain level of interest in joining the TPP. As long as such like-minded countries are in the TPP, it has the potential to be a stable bloc. Once countries such as India, China or Russia consider joining that stability may be in question. In the meantime, moves may be made by China to stimulate a less demanding RCEP involving a similar group of countries[24]. What could be the reaction of the EU to these Southeast Asian and trans-Pacific integration initiatives? It is possible that the EU may passively neglect these manoeuvres and face potential discrimination if these groups are formed. Alternatively, the EU may seek free-trade deals with Japan, China and others and be more economically involved in this dynamic region.

2.6 Recap

TPP liberalisation would create conditions suiting an expansion in trade and investment. By joining it is possible that the involved economies may become revitalised. Who 'won' in the TPP deal? One answer is offered by the New York Times:

> "While supporters have promised broad gains for American consumers and the economy, the clearest winners of the Trans-Pacific Partnership agreement would be American agriculture, along with technology and pharmaceutical companies, insurers and many large manufacturers that say they could also expand United States' exports to the other 11 nations in Asia and South America that are involved"[25].

[24] A positive detente-related regional event took place in 2012 when China, Japan and South Korea agreed to launch tripartite negotiations on a free trade deal. This is most welcome, but it is a very long-term project. Countries have different trade and investment policies, their distribution systems are marred by heavy NTBs, their farming sectors are very special and they have a huge baggage of hard historical and territorial problems. Nonetheless, this willingness to cooperate, even integrate, may have an impact on North Korea, too.

[25] J. Weisman, 'Deal reached on fast-track authority for Obama on trade accord', New York Times, 16 April 2015.

Some parts of the TPP are half-baked. The issue in question refers to currency manipulation. TPP contracting parties have issued a *Declaration*[26] in which they promise not to manipulate their currencies as a means to stimulate exports or curb imports. This matter is relevant as cuts in tariffs and NTBs may be weakened and damaged by exchange rate manipulation. The intentions of the TPP are good, but no enforcement mechanism such as sanctions or (temporary) withdrawal of certain TPP privileges exists.

Even though the sizeable and important manufacturing and financial lobbies have an initial upper hand in the shaping of mega-trade and investment blocs, it may be too early to celebrate. The TPP is not yet a fully done deal. It must pass through uncertain and tricky national ratification battlefields. Full ratification is expected by the end of 2017. Alternatively, the TPP may become operational when ratified by at least six signatories that involve 85 per cent of the group's GDP.

There are concerns in the US Congress and even resistance from several important corners. For instance, the tobacco industry and states oppose anti-smoking regulations in TPP countries; pharmaceuticals receive a shorter monopoly period than they enjoy in the US[27]; while the car industry did not receive the rules-of-origin protection that it seeks – a 45 per cent norm for the local content for trade in vehicles will be implemented over a 25-30 year period in the TPP region. Japanese carmakers would be able to source more parts from Asian suppliers for cars they sell in the US than their American counterparts would like them to be able to[28].

Curiak *et al.* (2016, p. 25) had a revealing and critical view on the TPP. They wrote:

"The TPP has been labelled a '21st Century' trade agreement; unfortunately, all the existing assessments use a data and modelling framework better adapted to the mid-20th Century".

[26] https://www.treasury.gov/initiatives/Documents/TPP_Currency_November%202015.pdf (accessed on 9 May 2016).
[27] The US demanded a 12 year-long period for the protection of pharmaceutical patents. In the TPP it got five to eight years. A strong pharmaceutical lobby in the US Congress is unhappy about such a period, a very 'short' amount of time for the protection of patents. The battle will be between the ones that argue in favour of cheaper drugs and those who want to reward the pharmaceutical industry for successful innovation.
[28] The NAFTA local content norm of 62.5 per cent for vehicles is more restrictive than the TPP.

3. Transatlantic Trade And Investment Partnership

3.1 Introduction

Another controversial mega-integration deal in the making is the TTIP, which started out in obscurity in 2013. Parliamentary debate and media coverage about the formalisation of bilateral trade, investment and dispute settlement rules between the EU and the US was initially almost absent.

General transatlantic contacts for over a century were, with a few interruptions, relations of broad partnership and prosperity. The principal stated objective of the TTIP is to contribute to economic growth and innovation in times of uncertainty by making trade and investment seamless, secure, simple and efficient. The heart of this emerging mega-integration deal is in the harmonisation of transatlantic rules and deregulation. The TTIP elimination of the reminder of already-low tariffs and deregulation of trade in goods, services and FDI is expected to have a profound revitalising impact on the economies in the region and beyond. This emerging mega deal would connect 800 million consumers, cover almost a half of the global GDP and involve 40 per cent of global trade. Negotiations were expected to last until the end of 2014, but they were to take several more years[29].

The economic rationale for the transatlantic free-trade deal is found in securing and deepening trade and investment opportunities and potential; increased competitiveness in production and the shaping of global value chains; cooperation in regulation and standard setting; a new way of settling disputes (ISDS); and more than anything creating an out-of-the WTO template for trade deals for the coming generation, especially vis-à-vis China. The intention is to set a Western platform for trade and FDI for the future generation and to force China to 'capitulate' (take it or leave it). Would this be an attractive harbour for China and other currently excluded countries in which to dock?

[29] The EU-Canada Comprehensive Economic and Trade Agreement (CETA) (2014) is the most advanced EU free trade agreement (TTIP through the back door). If ratified, the CETA would eliminate almost all tariffs on mutual trade; open up public procurement at federal and provincial levels; ease movement of professionals; protect 145 EU products with Geographical Indicators (GI); simplify the regulation of trade (certificates); have an ISDS with a possibility to appeal rulings; and bring dialogue on new regulatory issues. Public services, one of the public's concerns, could be organised in each party in a way that suits partners. i.e., privatisation is not an obligation. The CETA text has 1598 pages: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf (accessed on 9 May 2016). If the deal were really about free trade, it would be at most only two pages long.

Tariffs on transatlantic trade are rather low, i.e. trade is largely free, but because of an enormous volume of trade, collected tariffs amount to billions of dollars and euros. Even though trade is rather liberal between the EU and US, a formal legal bilateral guardian treaty may be welcome, especially because of intra-firm trade and spreading global value chains. Therefore, the two partners have put a strong emphasis on regulatory cooperation in the TTIP. The focus is on the elimination or easing of unbecoming technical, sanitary, phytosanitary and other man-made barriers to trade. Once agreed and implemented, the TTIP is expected to be a 'living agreement'. It would have a Regulatory Cooperation Body that would run most of the TTIP's business. A reduction in the regulatory burden would assist many small and medium-sized enterprises to enter into US-EU trade or to expand their share[30].

3.2 Evolution and Issues

The TTIP has been provoking a lot of controversy, anxiety and a wall of public opposition, especially regarding standards (including debate on the European way of life). One of the main clashes is over the basic legal ideology used between the partners. In the US, everything that is not forbidden is authorised, while in Europe, whatever is not allowed is prohibited. The ambitious task the TTIP needs to overcome is to provide a platform for collaboration in regulation, rather than for regulation, i.e., to create conditions for regulatory cooperation instead of regulatory competition[31]. This idea is noble, but there is a real possibility that the whole process is being seized by big (foreign) corporations that want to remove all (even publicly justified) obstacles to trade, to the detriment of ordinary people. The VW scandal (2015) over fake information on exhaust emissions is the most recent example of the gravity of situations in which private business can set a nation's economic policy. The TTIP may enforce a system in which corporations are able to overrule the public policy-making process.

There are significant differences between the legal systems of the EU and the US. For instance, in the area of chemicals, the EU's Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) rules are much stricter than those of the US Toxic Substances Control Act

[30] Five million EU jobs depend on exports to the US.
[31] A rapid change in technology has overtaken the speed of regulation. This is obvious in the area of self-driving cars or electric vehicles. The challenge is to align the speed of changes in technology with the speed of regulation development. Current NTBs on vehicles in trans-Atlantic trade are equal to the *ad valorem* tariff of 26 per cent. Overcoming this NTB would significantly increase trade (EurActiv, 'TTIP's regulatory maze', 29 June 2015).

(TSCA), meaning that mutual recognition may not be feasible. Another example can be found in cosmetics, where the US restricts the use of 11 substances while the EU prevents the use of 1,300[32]. In addition, the TTIP may compromise EU consumer protection as more than 80 pesticides that are prohibited in the EU are approved for use in products made in the US[33].

Another example is food production[34]. This area is highly regulated in the EU 'from field to fork'. The US does not have federal standards for the production of meat that apply at farm level. Those US rules start to apply only when animals arrive in the slaughter house. A matter of special concern in the EU is the hygiene and safety of the entire food-production chain process. In the US, to conceal poor hygiene levels in slaughterhouses, firms are allowed to use chlorine dioxide at the end of the production process to kill pathogens in poultry meat. Even though this procedure is cost effective it is considered hazardous and forbidden in the EU. How would EU producers who follow high-cost hygiene rules be able to compete with the Americans? Slaughterhouses in Hungary which process poultry, cattle and pork are now under threat[35].

If the TTIP harmonises standards between the EU and the US, then European farming is in trouble on several counts. The TTIP favours big businesses. Almost all EU farmers are small and medium sized when compared to their American counterparts. The survival of EU farmers is now in question. No one can beat the quantity and price of large-scale American farmers' production. The quality of output is another matter. Output in the US is based on lower standards (compared to those in the EU), produce is full of hormones, pesticides, herbicides, other chemicals and genetically modified organisms (GMOs) which are forbidden in Europe. While consumers must be informed on food labels of how much salt, sugar or fats are contained in food, important information on GMO content is not required on US labels. Information on GMO content is becoming increasingly important for the decisions of European consumers. If information on the genes-edited content of food is concealed in the EU, this would sound the death knell for European GMO-free farmers. The EU is sensitive to this issue as the market for organic products in Europe quadrupled in the period 2006-2015[36].

[32] EurActiv, 'TTIP's regulatory maze', 29 June 2015.
[33] EurActiv, 'TTIP a threat to EU chemical safety standards', 25 June 2015.
[34] NTBs are especially high for food and beverages. Imports from the US face a 57 per cent tariff equivalent in the EU, while the same rate in the US for imports from the EU is 73 per cent (Francois, 2013, p. 19).
[35] EurActiv, 'TTIP: The downfall of EU agriculture?', 12 January 2016.
[36] EurActiv, 'GMOs and pesticides could be tolerated in organic food under new EU rules', 11 February 2016.

To ensure high-quality produce, the EU's rules deal with Geographical Indicators (GI). For instance, in the EU, only milk/cheese from the Greek mainland and the island of Lesbos is allowed to be labelled feta. The EU-Canada trade deal allows existing Canadian producers to continue making feta (and gorgonzola) cheese, but new producers will have to label it 'feta-style'.

The possible impact of the TTIP on third countries is also a contentious issue. Florida, for example, produces a lot of 'southern' fruits. The US would be able to export these citrus and exotic fruits to the EU. At least a part of the exports of those products from developing countries would therefore be replaced by those of US exporters. In order to avoid criticism over the potential introverted and trade-diverting slant adopted by the TTIP partners, the deal ought to be open for accession to third partners. Turkey is the case in question. This country has had a customs union with the EU since 1995. As such, there is a risk of the free entry of US goods into the Turkish market without reciprocal access for Turkish goods to the US market. Volkan Bozkir, Turkish EU Affairs Minister, said that Turkey would suspend the customs union agreement with the EU if Turkey is not a part of the TTIP[37]. A separate US-Turkey deal may be necessary.

3.3 The Template of Secrecy, again

The same undemocratic political mistake made in the TPP was repeated in the case of the TTIP: secrecy. Surreptitious decisions made by unelected and obscure negotiators (technocrats) have the potential to affect the lives and wellbeing of hundreds of millions of people for decades to come. Secrecy has increased public suspicion because democratic accountability can be seen to have been put to one side. This may well backfire. The political mandate for negotiations was not revealed, creating strong public resentment from the outset. Public confidence has been seriously damaged.

Certain public consultations started to take place only after the draft was leaked in March 2014. Joseph Stalin would be watching the realisation of this process with glee, amid the smugness of our democratic world. Well over three million people from 23 EU member countries signed a petition against the TTIP and a quarter of a million people marched against the deal in Berlin in

[37] S. Eraz, 'Turkey to suspend EU customs agreement if isolated from talks', The Daily Sabah, 11 November 2014.

October 2015. The protesters are against this vision of society that has filtered through the lenses of big corporations, one in which government regulation that reflects the concerns of the public is taken to be an obstacle to profit[38]. Concerned citizens and civil-sector activists have been lobbying the European Parliament, and this is slowly paying off. In addition, it is highly questionable as to whether the EU has a popular mandate to negotiate the TTIP and a similar deal with Canada.

The elite mocking the will of the people can be clearly seen in a statement made by one of the highest ranking EU officials:

> "Jyrki Katainen, vice-president of the European commission and a former Finnish prime minister, went further: "We don't change policies depending on elections."
> In other words, governments may come and go, people may vote for whoever they like, but the policies remain the same"[39].

Similarly, when EU Trade Commissioner Cecilia Malström was asked about the TTIP

> "... how she could continue her persistent promotion of the deal in face of such massive public opposition, her response came back icy cold: 'I do not take my mandate from the European people'"[40].

Is this the top EU power broker that Europeans want and need? If the top EU political brass continue to behave in such a manner, it may become increasingly difficult to argue in favour of such forms of European integration.

In order to mollify the strong criticism of the TTIP's secret negotiation, the German Ministry of Economy opened in January 2016 a tiny reading room where elected officials (members of the national Parliament) are able to read the TTIP text (this text was made available in Brussels only to a limited number of the European Commission's staff). The reading rules in Berlin are strict: the room is opened only twice a day for two hours; all electronic devices including mobile phones must be left outside the room; documents can be read only on a computer screen not linked to

[38] P. Inman, 'Prospect of TTIP already undermining EU food standards', The Guardian, 18 October 2015.
[39] I. Traynor, 'European disunion: Tsipras, Merkel and the conflict at the heart of the EU', The Guardian, 3 February 2015.
[40] J. Hilary, 'I didn't think TTIP could get any scarier, but then I spoke to the EU official in charge of it', The Independent, 10 December 2015.

the Internet; the reader may take notes, but is forbidden to copy any text from the screen; if sensitive information is leaked, future access to the documents may be denied[41].

The EU's disenfranchised citizens are kept in darkness, providing a fertile soil for worries such as the fear of

"a labyrinth of procedures that could tie up any EU proposals that go against US interests"[42].

Where is the sacrosanct independence of the European Commission, which exists to work independently in favour of the EU's interests?

Even though the public and civil society were kept in dark about the TTIP, the concern about 'what is done in the backroom' by unelected, obscure bureaucrats behind the people's backs and without the scrutiny of the civil sector was revealed in part. Greenpeace leaked 248 pages of negotiation documents on 1 May 2016. Concerns were justified that the

"TTIP is about a huge transfer of democratic power from people to big business"[43].

In addition,

"The precautionary principle, enshrined in the EU Treaty [Article 191], is not mentioned in the chapter on Regulatory Cooperation, nor in any other of the obtained 12 chapters. On the other hand the US demand for a 'risk based' approach that aims to manage hazardous substances rather than avoid them, finds its way into various chapters. This approach undermines the ability of regulators to take preventive measures, for example regarding controversial substances like hormone disrupting chemicals"[44].

Anti-TTIP activists were earlier flatly labelled as scaremongers by the TTIP 'quasi elite'. However, the leaked documents demonstrated that the actual situation is worse than anti-TTIP activists thought it to be. The sacrosanct EU precautionary principle and its obsession with regulation are being torpedoed by US corporate interests. Rather than avoiding the risk, the US

[41] J. von Daniels and M. Orosz, 'Berlin: 35 square metres of TTIP transparency', EUobserver, 1 February 2016.
[42] P. Gallagher, 'TTIP: Big business and US to have major say in EU trade deals, leak reveals', The Independent, 17 March 2016.
[43] http://www.greenpeace.org/international/en/press/releases/2016/Leaked-TTIP-documents-confirm-major-risks-for-climate-environment-and-consumer-safety/ (accessed on 7 May 2016).
[44] http://www.greenpeace.org/international/en/press/releases/2016/Leaked-TTIP-documents-confirm-major-risks-for-climate-environment-and-consumer-safety/ (accessed on 7 May 2016).

side wants to use its liberal regime to minimise it. If EU citizens and their elected representatives wish to ban GMOs, chlorine in poultry, or hormones and antibiotics in beef, that is their entitlement. The draft TTIP as it stands undermines this right. Are the EU and its principles in reality what they pretend to be?

3.4 Who Runs the Show?

The TTIP may be seen less as a trade deal and more as a deregulation manifesto for giant banks and big corporate titans. The 2015 VW pollution (exhaust emissions) scandal is just one of many in recent times which demonstrate the serious perils of a societal model in which big business runs the social show. Another fresh example of such disgrace is the global financial crises (2007-09) provoked by big banks' financial alchemy based on rules created by banks, i.e. the final 1999 repeal of the Glass-Steagall Act (1933). Corporations gain in this predominantly investor's charter (rather than a trade deal) enormous new influence and privileges. As a result, many in the public and in civil society regard the TTIP as a continuously expanding economic and political power snatch by big corporations and banks both in Europe and in the US, which must be resisted.

At the heart of the problem is the dilemma over how to treat the people. Are they citizens or consumers? Are they voters that are involved in the running of society or are they just disenfranchised numbers and an appendix to corporations and their profits? Are producers (industries) receiving privileges relative to consumers? If the people are citizens, then they ought to be engaged in the shaping of the rules and standards for the benefit of the whole society. If this process is left to (or hijacked by) corporations, then these firms would write rules and standards for themselves in service of their primary goal: profit.

There is nothing wrong in firms' running after profits. That is why firms exist. However, it is governments that ought to be taking care of wider social objectives, not simply following one corporations-led private goal. If corporations are in charge of the whole process (corrupt or blackmailed elected politicians; revolving doors of personalities from firms to the government and then back to firms), then this may not be a good omen for the democratic social process. One may enter not only into a post-democratic form of society, but also into a post-law situation.

Matthias Fekl, the French Minister for Foreign Trade, said that

"Europe has offered many compromises, in all areas, and has received no serious offers from the Americans in return. Neither for access to their public markets, nor for access to their agricultural and food markets, which remain closed". France would be prepared to pull out of the TTIP process "if nothing changes"[45, 46]. In any case, Fekl also said, "There cannot be an agreement without France and much less against France"[47].

Cecilia Malström, the EU Commissioner for Trade, referred to the TTIP and said that

"no trade agreement will ever lower the levels of consumer, environmental or social and labour protection we decide in Europe. ... any change would lead to more, not less precautionary approaches"[48].

That is what is *said* by the top executive politician. Here is what is being *done* in the area of EU food standards:

"The deal's negotiations have allegedly helped accelerate approval of new genetically modified products entering Europe. As a result, five new GMO products have recently been approved.

In addition, a new chemical wash for beef carcasses being sold into Europe has been approved. Washing beef in lactic acid raised concerns that unhygienic meat processing practices were being covered up by a final 'bleach'. European politicians were strong-armed into overcoming their concerns when they were warned that they were damaging the TTIP talks.

All of this leaves me alarmed but not surprised. In a briefing released today by Global Justice Now, other cases of health and safety concerns being 'overcome' are highlighted. Like the 31 pesticides with ingredients linked to cancer and infertility, which the EU wanted to prohibit. That's until the US warned politicians, again, that they were slowing down TTIP"[49].

This is just the initial taste of how the giant corporations may create laws and promote standards in their favour in the TTIP world. If unhappy, they would be able to sue governments in arcane

[45] EurActiv, 'France threatens to pull out of TTIP negotiations', 29 September 2015.
[46] TTIP will not end the Jones Act or Merchant Marine Act (1920) which strongly protects the US merchant marine industry.
[47] J. Rankin, 'Doubts over TTIP as France threatens to block EU-US deal', The Guardian, 3 May 2016.
[48] C. Malström, 'TTIP: what consumers have to gain', Speech at TACD Multi-Stakeholder Forum, Brussels, 26 January 2016.
[49] N. Dearden, 'TTIP is already letting big business shape our laws', The Independent, 19 October 2015.

courts (ISDS). The issue is not necessarily the new law/standard. The issue is how they are made. Who shapes and directs the process: the public and public interest (democracy) or big corporations (unaccountable private interest and profit)? Whose interests are promoted and preserved? And how? For instance, 31 dangerous new pesticides have arrived in the EU before the TTIP has even been finalised and ratified[50]. What will come once the deal is done and ratified? The TTIP is somewhat about liberalisation and deregulation of trade in goods and services, but it is much more about decisions and law-making. The political process has been captured by big corporations that (will) write laws for themselves.

Another harmonisation or standardisation US-EU TTIP hurdle is in the area of cosmetics. For instance:

"… one EU consumer organisation launched a petition to keep cosmetics regulation out of TTIP, saying that the rules on the two sides of the Atlantic differ so greatly that harmonisation would be impossible. For example, while the EU has banned 1,378 chemical substances from being used in cosmetics, the US has only banned 11"[51].

The EU is, in general, much more precautionary than the US. This illustrates in part the fact that harmonisation of standards and technical norms are easy in theory, but can be formidable in practice. Many influential stakeholders have an impact on both the process and the outcome, especially regarding existing goods and services. Setting standards for the emerging new goods and services may be much easier as there are fewer embedded interests which may sway the process.

Innovation has always been an important ingredient in economic progress. Proponents of all novelties in the market-driven world are quick to label those that are *a priori* as cautious or those who are against certain novelties as being against science and progress. However, such flat labels are not always justified at all. Not all novelties are harmless. Just recall occurrences such as the Thalidomide catastrophe (1957) or the financial disaster (2007-09) produced by the new

[50] The EU directive on fuel quality aimed at a decrease in CO_2 emissions was weakened. This would allow importation of 'dirty' CO_2-extensive tar sands from the US and Canada. 'A great deal of evidence suggests that the weak implementation of this directive was a gesture to accommodate US and Canadian demands to soften the ground in trade negotiations' (M. Andesson and R. Nordquist, 'TTIP: "Reform" of investor dispute settlement clause not enough', EurActiv, 7 January 2016).
[51] H. Jacobsen, 'EU trade chief tells consumers not to worry about TTIP', EurActiv, 26 January 2016.

financial ‘alchemic’, along with certain toxic products from which the world has not yet recovered. Uncertainty, or the grey zones in science, are treated differently between the US and the EU. While big corporations have a strong influence on an ‘easier’ treatment of novelties in America, the Europeans are rather cautious. The European leitmotif is often to be ‘better safe than sorry’; the Europeans should push for such a spirit in the TTIP.

The European Parliament and many EU countries have a deep suspicion of and strong resistance to GMOs (gene-edited products) because of their perilous long-term health and safety effects. Chemically washed meats (to cover up unhygienic meat processing procedures), hormone treated beef[52] and GMO crops are not welcome in the EU. There has been strong pressure from the US on the EU to allow imports of GMOs even before the TTIP has been signed.

One of the issues in the TTIP standardisation alignment matters is to do with food. The *Codex Alimentarius* is a voluntary book of standards and practices that relate to food and food safety. It was created by the *Codex Alimentarius* Commission (Food and Agricultural Organisation and the World Health Organisation). Many consider the Codex to be a tool in the hands of big agribusiness. The *Codex*, for instance, permits much higher levels of pesticide residues on vegetables than is the case in the EU (Bartl, 2016, p. 12). What is the reference in the TTIP? If big business lobbies lead the regulation process (in food and other areas), then standards would be less precautionary. If this is the case, then consumers should be worried for both their health and the environment. An additional problem is that this *Codex* is recognised by the WTO as a global reference for the resolution of disputes concerning consumer protection and safety (supplements in food, such as vitamins).

[52] ‘The United States currently exports only around 15,000 tonnes of beef to Europe each year, a figure which could rise to between 300,000 and 600,000 tonnes after the TTIP, according to France’s national trade association of livestock and meat producers. The US is the world’s largest producer of beef and with higher production costs, French farmers may struggle to adapt their model to the new competition — something which is putting French politicians on high alert’ (C. Barbiere, ‘Farmers fear for their future as new TTIP round opens’, EurActiv, 18 February 2016).

3.5 Ratification

If ratified (which is not certain), the TTIP would strongly restrict industrial policy and government involvement in the EU economy. This would influence the pursuit of the cherished European social model. Some part of EU society may gain, while others may lose. It is on the policymakers to craft the balance between the two. The other mega deal, the TPP, is passing through a tough and uncertain ratification process. As long as this is the case, there may somehow be less urgency and political appetite to close the TTIP deal.

The TTIP could well be a hard sell on both sides of the Atlantic, too. In the US, AFL-CIO stated in 2014:

"Contrary to the promises that NAFTA would create U.S. jobs, it made outsourcing to Mexico much more attractive for U.S. companies. Most of the jobs displaced by trade with Mexico—415,000 jobs, or 60.8 percent of the total 682,000 jobs lost—have been in manufacturing"[53].

Any similar deal may be unappetising to the American public and trade policymakers. This may be in spite of the attractive political sales pitch that the US is creating an economic North Atlantic Treaty Organisation (NATO) which may contain China, Russia and others.

The European Parliament is suspicious about allowing particular private interests to have sway over laws and public policy. The 2014-2019 European Parliament will be leery regarding too-liberal markets and free trade, especially *vis-à-vis* the US, in spite of certain expected material gains from the TTIP[54]. Estimates are that the TTIP would add about 0.025 to 0.05 per cent to GDP in both the EU and the US annually (€545 per year for each EU household)[55]. This boils down to €2.60 a week per person (approximately the price of a cup of coffee) or €0.37 a day (do not rush to spend it all at once). If this is the evidence on TTIP-related gain given to ordinary people, well, it is rather feeble. There is not much to be excited about in this general overhaul of business laws. All the expected gross gains (hundreds of billions of dollars or euros) would not trickle down as consumers' gains, but rather they would end up largely as corporate profits.

[53] http://www.aflcio.org/Issues/Trade/NAFTA/NAFTA-Made-Outsourcing-Easy (accessed on 9 May 2016).
[54] The next European Parliament may be even harder on liberal rules.
[55] Francois (2013); A. Winters, 'The problem with TTIP', VOX, 22 May 2014; K. de Gucht, 'The Transatlantic Trade and Investment Partnership: where do we stand on hottest topics in the current debate?', European Commission (Lecture at Atlantikbrücke, Dusseldorf), 22 January 2014.

The calculated and expected economic gains from the emerging mega-integration deals are modest and would be slow in coming. Petri and Plummer (2016) calculated that the TPP would increase US real income by $131 billion (or 0.5 per cent of GDP) annually. There would be certain adjustment costs as some jobs would be lost, but new ones would be created. Non-members would largely not be affected by the TPP. Francois (2013) argued that the TTIP would lead to increased economic activity and job creation. Conversely, Carrere *et al.* (2015) reasoned that

"trade agreements can lead to higher unemployment if workers are reallocated into sectors with higher-than-average labour market frictions" (p. 25).

Carrere *et al.* (2015) found small and ambiguous net welfare effects in both the TPP and TTIP. Spatial distance remains a noted impediment to trade. A part of potential gains would be dissipated through transport costs. Mustilli (2015) reviewed various studies on the economic gains associated with the TTIP. These studies demonstrate positive economic gains, but are so small that they are on a par with a statistical error. The *ex-ante* consensus on the gains to come from mega-integration deals is missing.

Relatively modest expected gains from the TPP and TTIP may be explained by two factors:

- These mega-integration deals are in areas where tariffs are rather low, so trade and FDI are open in general. The potential for a significant boost in trade is rather limited.
- Services and other 'sensitive' areas have great potential for international expansion. However, the mega-integration deals are rather light on the opening up of these economic fields.

In a report commissioned by the United Kingdom's (UK) Department for Business Innovation and Skills, Skovgaard Poulsen *et al.* (2013) state:

"There is some reason to expect an EU-US investment chapter will impose meaningful economic costs on the UK. Based on Canada's experience under NAFTA, we would expect an EU-US investment chapter to be regularly invoked by US investors against the UK for governmental actions that would normally not be challengeable under UK law (p. 44-45; original emphasis).

Ultimately, we conclude that an EU-US investment treaty that *does* contain ISDS is likely to have few or no benefits to the UK, while having meaningful economic and political costs" (p. 9; original emphasis).

Consumer groups are mobilising because they fear that the deal will lower EU standards for everything. Agriculture, toxic-content goods such as GMOs, hormone-treated beef, chlorine-treated poultry; culture-related goods and dangerous issues regarding the ISDS mechanism in which corporations may have an upper hand will have a tough ride in the EU[56]. The ISDS would be a much-disputed issue in the European Parliament, which must approve the deal.

An internal EU agreement may be difficult, too. The internal EU crisis is revealing fragmentation inside the bloc. Countries such as Britain, Germany and the Netherlands already trade extensively with the US. They may argue in favour of the deal, which may boost their export-oriented economies. Other countries such as France or Italy depend more on the home market, hence their passion for free trade may be limited. The deep EU crisis is curbing its aptitude to act as a unified bloc. Perhaps the TTIP may easily turn out to be a showcase for the issue of how little the US and the EU are able to agree on. Ratification-related hurdles are many and important. Bulgaria, for instance, announced that it would not ratify the TTIP unless the US lifts visas for its citizens[57]. Greece would do the same if the principal agricultural geographical indicators are not protected[58].

A harbinger of tough and uncertain TTIP ratification times is the Dutch rejection of the EU-Ukraine Association Agreement in a referendum on 6 April 2016. The next target for the Dutch citizens is the TTIP. The Walloon Parliament refused to sign the EU-Canada Comprehensive Economic and Trade Agreement (CETA) on 27 April 2016. Bulgaria and Romania may not ratify the CETA because of the Canadian refusal to grant a visa-free regime to the citizens of their countries. The US opts for the differential treatment of EU citizens as visas are required for Bulgarian, Croatian, Cypriot, Polish and Romanian subjects. How can these countries make full use of the TTIP when they are treated so differently?

[56] An additional difficulty is the 'alleged US spying on EU institutions'. Normally, 'Partners do not spy on each other' (J. Chaffin, 'Report snags EU–US pact hopes', Financial Times, 1 July 2013). European worries were reinforced because, at the very same time, the US 'is taking a strong stand against a rising tide of cyber espionage from China' (Editorial, 'Spies, lies and ties; EU should reinforce defences if it wants to stop espionage', Financial Times, 2 July 2013). Does the US regard the EU as a partner or a threat?

[57] 'Bulgaria Will Not Sign TTIP Unless US Lifts Visa Requirements', Novinite, 26 November 2014.

[58] S. Michalopoulos, 'Greece to block TTIP unless geographical indications are protected', EurActiv, 17 May 2016.

Warning signs about TTIP ratification are multiplying as uneasiness is becoming more and more evident in Germany, France and Austria, amongst others. The European perception of the US is changing. Many Europeans view the US increasingly in the same way they view China or Russia. This is especially pronounced after Edward Snowden's (2013) disclosure of decades of sweeping American corporate spying on allies[59]. The 25,000 anti-TTIP protesters in the provincial town of Hannover in April 2016 were just the continuation of this trend.

One of the most problematic matters for some time now has been the EU's paralysis. Martin Schultz, the President of the European Parliament, said at the end of 2015 that

"no one can say whether the EU will still exist in 10 years' time"[60].

The EU is unable to decide on important matters. Ever since the financial crises (2007-9), the EU has been muddling through a chain of crises, one arriving after the next. The situation was somehow manageable. The EU is facing serious crises which include the eurozone quagmire; no prospect of economic growth; Schengen area existential troubles; an uncontrolled overdose of immigrants; youth unemployment; energy supply problems; Syria, Libya, Ukraine and Russia; as well as potential disintegration (Brexit, Grexit), all at the same time. This may be too much to handle simultaneously. If one adds the controversial TTIP, a common EU stance on it may be a far cry from reality. Even if there are EU decisions (i.e. on migrants, public expenditure), member states often disregard them. The EU may well be on s path to irrelevance (like the League of Nations). The EU will exist, but it may morph and increasingly look like the Holy Roman Empire (962-1806), which was full of institutions and ceremonies, but lacking in real substance and impact. It may wither away through negligence, such as the members' disregard for decisions that deal with, for instance, the eurozone, budgets or migrant quotas, which are respected by nobody.

A good test for the future of the TTIP would be the ratification process of a similarly arcane deal between the EU and Canada (CETA). This is not yet a done deal, either. If the TTIP negotiations or ratification encounter a similar debacle, the signal to the wider economic community may be that the US and the EU are out of step regarding economic integration.

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[59] A. Chassany and M. Stothard, 'France gets tough on corporate espionage', Financial Times, 9 May 2016.
[60] K. Connolly, 'European Union in danger from forces that want to drive us apart', The Guardian, 8 December 2015.

"Years not months of hard slog lie ahead, by which time the US is likely to have a president much less wedded to the idea of striking trade deals. The TTIP has just been kicked into the long grass for a very long time, and perhaps for good"[61].

4. Regional Comprehensive Economic Partnership

The RCEP is another mega free-trade agreement in the making in economically dynamic Asia. It includes the ten ASEAN countries, China, Japan, South Korea, Australia, New Zealand and India. It may connect 3 billion people, cover a quarter of global GDP and 40 per cent of world trade. This 2011 project is an attempt to combine two regional initiatives: the Chinese sponsored ASEAN+3 (China, Japan and South Korea) and the Japan-sponsored ASEAN+6 (Australia, China, India, Japan, New Zealand and South Korea). The RCEP's goal is to reach an agreement before 2017.

China, Japan and South Korea are keen on trilateral talks in spite of the dispute over islands (petroleum and gas deposits may be in the area). Japan prefers a bigger membership and wider coverage (services, trade in manufactured goods, competition, investment, dispute settlements, ...) in order to contain the might of China, which prefers trade in manufactured goods while being hesitant about services. China takes the RCEP to be an alternative platform for pursuing integration (a free-trade area) in the Pacific and Indian Ocean areas. On the one hand, Japan may have an upper hand in the setting of the negotiating agenda and may potentially play, if necessary, a constructive brokering role between the US and China. On the other, foot-dragging India has a rather low level of motivation for an overall opening of its market, especially to Chinese, Japanese and South Korean goods.

The RCEP is being negotiated in parallel with another regional deal, the TPP. However, the RCEP has a less ambitious template than the TPP, which seeks the elimination of all tariffs (including farm goods), the liberalisation of services, and limits to the operation of SOEs. The RCEP may exclude agricultural goods and focus on trade in manufactured goods and FDI. Contrary to the TPP, the RCEP does not intend to draft new trade rules, but rather to consolidate or harmonise the plethora of existing and overlapping regional free-trade

[61] L. Elliott, 'TTIP has been kicked into the long grass', The Guardian, 3 May 2016.

agreements into a coherent deal in order to smooth trade and global value chains. Countries that may not wish to join or are unable to qualify for the TPP, may wish to accelerate negotiations and join the RCEP in order to mitigate the potentially adverse impact of the TPP.

The positioning of the Association of South-East Asian Nations (ASEAN) developing countries is rather mixed as they may be split between the pro-TPP camp and the pro-RCEP group. Some may even have multiple memberships. High standards in the TPP and rather slim considerations linked with development-related issues have created tough conditions for developing countries seeking to join the TPP.

Developed ASEAN countries will seek the liberal treatment of FDI while less developed ASEAN countries may request development aid. The RCEP may benefit corporations and facilitate the smooth operation of their supply chains which may be impeded by the existence of various bilateral deals (the 'noodle bowl') with dissimilar rules of origin. The TPP and RCEP may be regarded by some as rival deals. However, they are not necessarily so, as players such as Japan, Australia, New Zealand, Malaysia and others are participants in them both. The two integration groups may become a platform for a single trade and economic integration deal in the long run which may cover both Asia and the Pacific region. Nonetheless, the TPP and TTIP face serious troubles in their ratification processes. Their future is uncertain. Does this mean that the RCEP has a chance of being the only surviving mega-integration bloc? If so, China may be the winner in this mega trade-deals game.

5. Tripartite Free Trade Area

The overlapping membership of countries in different integration groups in Africa may undermine the value and success of various schemes. The United Nations Economic Commission for Africa (2004, p. 41) stated:

"The overlap among regional economic communities also adds to the burdens of member states. A country belonging to two or more regional economic communities not only faces multiple financial obligations, but must cope with different meetings, policy decisions, instruments, procedures, and schedules. Customs officials have to deal with different tariff reduction rates, rules of origin, trade documentation, and statistical nomenclatures. The range of requirements multiplies customs procedures and paperwork, counter to trade liberalization's goals of facilitating and simplifying trade".

The integration goals of each group may be very unclear (even contradictory), as there may be competition between the groups, institutions and countries. It may be quite inefficient to spend scarce public human and financial resources on running simultaneously complicated and demanding integration deals. However, overlapping membership may allow certain countries to profit from this diversity and gain from the favourable hub-and-spoke position.

The principal reasons for the poor results of integration arrangements in Africa include their unrealistic ambitions, unworkable time frames, the low level of economic development of involved countries (they have few goods to trade), import-substitution policies and constant problems with the distribution of gains from integration. If these are taken together, it is not surprising that intra-regional trade has always been very low level, just a few per cent of their total trade. Economic integration in the region may be fruitful in the future if the countries abandon their past economic policies and introduce transparent and guided policies (as was the case in South-East Asia) that are supported by best practice in corporate and state governance. Other types of integration policies have already been tried out in the region with results that were at best disappointing.

An additional, but relevant, part of the explanation of the poor performance of integration agreements in Africa is explained by Gathii (2010, p. 577):

"Often these obligations are assumed on the understanding that compliance will not be stringently enforced ...".

If an agreement is to be effective, it should be realistic and should have monitoring tools; there should be a reliable dispute settlement mechanism and sanctions for non-compliance. Institutions should be improved.

Integration efforts in Africa received yet another big push in 2008 when the leaders of 26 countries announced the creation of a (tripartite) free trade zone from Egypt to South Africa.

The idea was reconfirmed in 2011[62]. The African Union launched at its June 2015 summit negotiations aimed at the creation of the Continental Free Trade Area among all of its 54 states. In spite of ambitions to close the deal by 2017, negotiations will drag for many years to come.

The new Tripartite zone would associate 600 million consumers and would merge three existing trade blocs: the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC). This new Grand Free Trade Area or the Tripartite Free Trade Area, signed in June 2015, would first strive to remove NTBs and tariffs on trade, and in the second phase would turn to services and intellectual property rights. Industrialisation and infrastructure development are also on the agenda. While this merged group has a firm grounding, the challenges are enormous: disparate levels of economic development and production potentials between member countries; the differing sizes and locations of countries (landlocked and littoral); meagre hard infrastructure; lack of supply chains; limited possibilities for economies of scale; high tax rates; insufficiently educated labour; poor work ethics; corruption; red tape; competition from China and so on. This noble integration task may, therefore, take a long time to be realised. The best first and second steps should deal with soft infrastructure; that is, trade facilitation.

Consideration of economic integration in Africa should shed light on the involvement of China in the region. Resource-hungry and cash-replete China invests heavily in Africa, especially in the development and export of resources. Chinese involvement in the region more strongly reflects China's late involvement in the 'global economy' than its overall rise. The EU and US vilified the engagement of China in Africa, especially because of its cooperation with, and aid to, countries such as the Sudan and Zimbabwe. While the Western world is conditioning assistance, aid and business towards democracy (lethal medicine for the African dictators) and respect for human including gay rights, China is interested in pure business and pays cash[63]. Many resource-rich countries in Africa direct their trade and investment relations towards China. Whether or not this is in the long-term interests of those countries is another matter, but the fact remains that

[62] Stratfor, 'Africa: The limits of a new trading bloc', 23 October 2008; International Centre for Trade and Sustainable Development, 'Egypt-to-South Africa free trade zone on the move', 15 June 2011.

[63] An interesting observation deals with gender-related employment by Chinese firms in Africa: 'Factory managers were particularly impressed by female workers. "They are hardworking and quick at learning," one manager commented, "and they don't drink [a common problem with male workers] so they are more likely to show up to work on time"' (Shen, 2013, p. 20).

some African economies are turned toward China, which does not tie business and aid to political concessions.

High trade costs impede not only regional integration in Africa, but also the participation of African countries in global production, trade and supply chains. Those costs include poor infrastructure (transport and communication) networks; conflicts; remoteness; landlocked locations; isolation; transit-related problems; NTBs; excessive procedures at borders; non-automated customs clearance; lack of transparency; poor governance; corruption and piracy. Trade facilitation[64] (South-East Asian style and supported by the post-Doha WTO) may be a promising example to follow in Africa in order to include the continent in global production and supply chains (even the creation of an 'Africa factory'). A rise in automation is necessary. Still, there are certain actions under way, for instance in the COMESA, to alleviate obstacles to trade, while the African Development Bank is becoming more involved in the financing of road and energy networks. However, apart from the mere trade in goods, countries should also pay attention to competition policy, FDI and services as promising sources of employment and growth.

Corruption is endemic throughout Africa. It shows that institutions (including the rule of law) are weak. Public contracts, especially for large hard infrastructure projects, and bribes at frontiers and elsewhere dissipate funds and distort the operation of markets. As such, this hampers integration efforts and undermines economic development.

The UN Economic Commission for Africa (2012, pp. 106-110) has identified trade opportunities for the continent. COMESA has a high potential for ores, spices, fruits and flowers. EAC potential for trade is in coffee, tea, spices, fruits and flowers. The opportunities for the Economic Community of West African States (ECOWAS) lie in skins, coffee, fish, tobacco, cocoa and metals. SADC's possibilities are in ores, precious stones, metals, cut flowers and so on. While there are no doubts that these identified potentials exist and persist, it is sad and disappointing that this UN institution tacitly argues in favour of the perpetuation of the existing economic and trade structure based on primary commodities. The challenge and development need is to change that structure – to upgrade it. Local economies should add value to available resources, not just exploit and export them.

[64] Trade facilitation refers to a reduction in cost and time to ease and simplify the trade transaction process.

Economic integration in Africa remains an aspiration of the political elite that asks for a great deal of effort, resources, will and time to be translated into reality. Popular backing for, the understanding of and civil participation in integration efforts in Africa are almost non-existent.

6. Conclusions

The future relevance and impact of the WTO or instead its drift into oblivion will be shaped and challenged by external events such as the emerging mega-integration deals: the TPP, the TTIP and the RCEP. Tariffs are already low, so the big (American-led) international trade wheels are looking for real custom-made solutions to NTBs, standards (health, safety, labour, environment) and trade and investment issues (settlement of disputes) outside of the WTO. If a global multilateral trade and investment-liberalisation agreement is becoming impossible, then regional integration agreements may be a useful substitute (Lipsey and Smith, 2011). If, however, the post-Doha WTO cannot handle new issues satisfactorily as seems to be the case, it appears possible that the regional trade organisations and various bilateral deals may take their own, potentially uncoordinated, paths.

Developing countries are taking relatively lower standards to be their (temporary) competitive advantage. As willingness to compromise in the WTO is rather low, one would expect to experience for at least for some decades a higgledy-piggledy trading and investment system in which regional deals are the principal ballgame in town. Would Brazil, China, Russia and Indonesia accept high transatlantic standards in trade and investment with the US or EU just because such high standards (set by corporations to oust foreign competition) exist in US-EU-Japan relations? The seamless global trading and investment system is being carved up regionally. The emergence of mega-trade and investment arrangements creates a situation in which global trade and investment policy issues, especially strict new ones, would be discussed and eventually settled in different regional fora away from multilateral and WTO solutions. If differing regional solutions are found (standards, norms, policies, practices, settlement of disputes), then globalisation may be converted into the safeguarding of current market shares, especially by big developed countries.

The American intention is to sideline the WTO and to create its own template for global trade and investment deals, one that can also settle disputes in decades to come. This new US trade, investment and dispute settlement 'template engineering' is happening without the involvement of China or the WTO. China is a globally dominant producer and trader. At the same time, China may be the 'natural heir' to the US as the custodian of the liberal global trading and investment system. It may be insidious and dangerous to exclude this important country from negotiations and trade rule-making that will shape the coming decades. This would be like staging Hamlet without the prince! It is bizarre that past champions of the multilateral system such as the US or the EU are bypassing the WTO in the shaping of the world trade and investment system.

If China wants to join the 'mega group' later on, China would have to accept the deal, the standards and rules as they stand, crafted outside of the WTO by the US (and a few select others). Instead of being the 'rule maker', China would be forced to become a 'rule taker' and to capitulate. This may backfire as China may create and enforce its own parallel trading and payments system with its big (Russia, India, Brazil) and small but growing partners (countries in Asia, Africa and Latin America)[65]. The new China-sponsored development and investment banks may rival the World Bank or the Asian Development Bank. If the Western objective is to open up and keep hold of fast-growing markets in Asia, it may not be a good idea to exclude those countries from negotiations and rule-making. The emerging global trading and investment system has the potential to turn out damaged and split.

Are the mega deals a becoming alternative to the multilateral trade and investment system? Would there be smooth operation in an international system in which prime economic players such as China are excluded? We have doubts, as the parties may go in different directions.

The TPP and TTIP create a new legal system which benefits big foreign corporations to the detriment of host governments and local people. Are the locals mere disenfranchised consumers

[65] 'History suggests that monetary arrangements last only as long as the political economy that supports them. Given the dramatic changes in the global economy marked by the rise of the emerging world, it is hard to imagine that prevailing currency alignments can survive. Indeed, China claims to be gradually freeing its capital account and encouraging trade denominated in yuan. That may finally bring down the curtain on the dollar era initiated by Bretton Woods. Yet in practice China is reluctant to give up the perceived safety of a managed exchange rate. Gold habits are hard to break' (The Economist, 'Not floating, but flailing', 5 July 2014).

and an appendix to corporations or are they proud citizens? Are their real concerns taken into account or are the corporations and the arrogant, unelected and unaccountable elite running the show in the smug Western democratic countries?

The emerging mega trade and investment blocs – such as the TPP and TTIP – would level the business playing field for the US, EU and Japanese corporations. These mighty lobbies are therefore seeking to promote their own standards and an upscaling in the 'global flattening' of the economic landscape vis-à vis the developing countries. Lipsey (2004, p. 12) argued that:

"… it is policy imperialism to argue that the poor must accept the standards of environment and labour protection that the rich ones can now afford (but could not when they were poor)".

Unless developing countries are assisted by the developed world to accept new 'highest' WTO+ standards, not to mention assisted in their application, the new upgraded rules may not come close to being realised for a long time to come.

The early generations of economic integration deals of the 1950s and 1960s were primarily concerned with tariffs (trade and competition). The 21st century integration of emerging mega pacts are about 'other things'. An across-the-board elimination of most barriers to trade and investment, together with the standardisation of rules and deregulation is at the heart of emerging mega-trade blocs such as the TPP and TTIP. This economic liberalisation and harmonisation slant is the demand of most big corporations. If these powerful lobbies succeed in their demands and take charge in the standardisation process, then those that find value in certain aspects of public regulation should worry. The new integration deals ought to pay more attention to the needs and concerns of citizens. If this is neglected, a strong, popular backlash may undermine the deal.

Ciuriak and Xiao (2015, p. 13) note a dangerous shift in mega-trade deals from public to private interests, both in standard setting and in dispute settlement systems. They note:

"… the ongoing de facto privatization of standards setting, which will be facilitated by providing multinational firms privileged access to regulatory consultation mechanisms built into the agreements, including in such areas as core labour standards and environmental regulation. Overall, the privatization of rules and standards has potentially major competitive implications since private rules are not subject to

WTO commitments regarding MFN [Most Favoured Nation] and national treatment, nor can they be challenged through recourse to WTO dispute settlement".

Many quantitative studies about the effects of new mega-integration deals on welfare have produced questionable and ambiguous results. Calculated and expected economic gains are rather modest *per capita* and slow in coming. Most of those gains would end up in the form of corporate profits and little would trickle down to the person in the street. The question remains as to whether one should be proud of what the emerging mega-trade deals, as they stand now, will bring for the generation to come?

There is a touch of hypocrisy in the policy stance of the US on the one hand advocating free trade and exporting various domestic standards, while on the other refusing to open up its domestic market for farm goods such as sugar and cotton. Rather than moving towards a free-trade regime, even on a regional basis, what one has is an architecture of various complicated and toxic regionally managed trade systems. Nick Dearden argued that:

"TTIP has become a symbol of all that's wrong with globalised capitalism – soaring inequality; a planet on the brink of catastrophic warming; an erosion of democratic control in an economy where planning is done by big business in their own interests"[66].

In addition, Stiglitz concludes:

"In 2016, we should hope for the TPP's defeat and the beginning of a new era of trade agreements that don't reward the powerful and punish the weak"[67].

One ought to keep in mind that many past mega-trade deals have not gone anywhere. Deals such as the ones in Africa, the Free Trade Area of the Americas or the APEC may be seen as examples of such disappointments. If one of the new mega-integration deals succeeds, it will be the first one to do so. Their rocky and highly uncertain ratification processes are still to take place.

The TPP and TTIP are emerging new mega-integration deals that provide big corporate behemoths with new far-reaching deregulation sway over the process of running societies. Big

[66] N. Dearden, 'TTIP symbolises the worst of global capitalism. Cameron pushes it at his peril', The Guardian, 20 May 2016.
[67] J. Stiglitz, 'In 2016, let's hope for better trade agreements and the death of TPP', The Guardian, 10 January 2016.

corporations are on the march and attempting to conquer without check. If these controversial new mega deals come to fruition they will have been reached in an obscure way and will create a new legal system and standards that many in the outside world (especially small and weak countries) will have to accept and follow. These new standards are to the benefit of big foreign corporations and are a detriment to host government entitlement to regulate and the ability of disenfranchised local people to demand protection. The new mega-integration deals present few and highly uncertain palpable gains to citizens. Continuously rising economic inequality in society symbolises the shift of wealth to the owners of capital based on the transfer of democratic entitlements from people to big corporate titans. However, a spread of civil resistance, especially against the TTIP in the EU countries, if successful, shows that the deal is not only on shaky grounds, but also on its way to a slow death.

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