Transatlantic Treaty (TTIP): topography of a controversial partnership

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Negotiated since July 2013, the Transatlantic Partnership (TTIP) seeks the establishment of a transatlantic market by bringing together the economic areas of the United States and the European Union. The TTIP project is focused primarily on non-tariff barriers, which are the health, social and environmental standards that hinder trade and investment. The Customs barriers between the United States and the European Union are already very low, even though European agriculture remains protected by tariffs on dairy products, meat and sugar which are also targeted. Besides the removal of tariff and non-tariff barriers, the TTIP project aims at liberalising investment, the opening of public procurement and the protection of intellectual property rights. These activity fields are each covered by one of the sixteen sections of the negotiating mandate, which would turn into as many chapters of the Treaty if finalised.

The present study aims to analyse, from the European standpoint, the key issues and challenges surrounding the TTIP negotiations. In the first chapter, we look at the arguments put forward by the Treaty’s leading proponents. In the second section, we analyse international trade’s new configuration and the way the TTIP project fits into the world’s “shifting” context, notably characterised by the growing power of China in international trade, by the disruption of world trade following the 2008 crisis and by the negotiation of bilateral and regional trade agreements for the purpose of bypassing WTO blockages. In the third chapter, we analyse the anticipated impact of the TTIP on growth and employment, on the basis of various studies published on the subject. We will find that, according to studies cited by the European Commission, the expected gains in terms of growth and job creation are at best very modest and unequally distributed, while other studies have projected significant job losses in Europe. In the fourth part, we describe the main parts of the TTIP project that are subject to controversy, such as the risk that the regulatory convergence process would be designed in a way that would result in a watering down of the existing and future standards, the introduction of an investor-state dispute settlement (ISDS) allowing the override of existing jurisdictions, the “ratchet effect” and the “negative list” principles on which the service liberalizing process is based. This last chapter ends with the analysis of the other transatlantic treaty, CETA, signed by the EU and Canada, highlighting similarities with the TTIP as well as the differences in timing, the CETA text being published, presented as finalized and ready to be ratified in 2015 or 2016. Finally, we will draw some conclusions on the costs and benefits of the proposed TTIP and on alternative strategies that the European Union could implement to more effectively achieve those objectives.
The TTIP is presented as a free trade agreement project between the United States and the European Union whose aim is to create a transatlantic market fostering trade and investment. The benefits anticipated by the negotiators of this agreement are economic growth and employment, products at lower prices for consumers, and a way to marginalise the growing power of China and the other emerging countries in world trade.

As stipulated in the TTIP negotiating mandate granted by the EU Member States to the European Commission in June 2013: “The objective of the Agreement is to increase trade and investment between the EU and the US by realising the untapped potential of a truly transatlantic market place, generating new economic opportunities for the creation of jobs and growth through increased market access and greater regulatory compatibility and setting the path for global standards.”

In the same spirit, Business Europe, the European Commission’s main industrial lobby, sent a message to the European Trade Commissioner, Cecilia Malmström, pointing out the expected gains in terms of growth and employment: “Trade is a key driver of jobs, growth and welfare. By promoting trade we contribute to improving living standards for people, and TTIP offers an unmatched opportunity for growth and development of golden standards.” A message echoed by the FEB, the Belgian Member of Business Europe: “Given the intensity of transatlantic trade flows (nearly 2 billion EUR a day in trade!) and that nearly 80% of our GDP comes from our exports, it goes without saying that our economy (particularly open) would benefit from the numerous positive effects of strengthening transatlantic relations. And this goes for the exporting companies as well as consumers and employment.”

For Karel De Gucht, former European Trade Commissioner who launched the TTIP negotiations, this treaty is an opportunity to set standards that could then impose themselves on emerging countries such as the BRICS, “Perhaps the biggest value of an agreement will be in our relationships with the rest of the world. Why? Because the EU and the US are the world’s largest markets and the most influential regulators. Any common approach will double that influence. And it may shape regulation around the world, including in countries like Brazil, India, China and Russia, where today’s standards are typically much lower than in the US and the EU.”

The TTIP is therefore supposed to allow the revival of the transatlantic economy and define the new world trade rules for the rest of the world.

Where does the idea of negotiating such a partnership come from? It is respectively in 1992 and in 1995 that the “Transatlantic Policy Network” (TPN) and “Trans-Atlantic Business Dialogue” (TABD) lobbies were created. The first brought together elected American and European officials, as well as large companies from both sides of the Atlantic, while the second brought together essentially European and American multinationals. The TPN published a document in 1994 entitled “Toward Transatlantic Partnership. A European Strategy”. The document specifies that it is the result of 18 months of preparation. It recommends that European policymakers “develop a specific bilateral policy for the European Union to further integrate markets and facilitate investment across the Atlantic, based on the concept of a North Atlantic Free Trade Zone.” The TPN specifies that this policy must notably include “regulatory cooperation”, “mutual recognition of product and process approval” as well as “treatment of foreign direct investments”. All the ingredients of the TTIP were already there.

It is no coincidence that, a year later, policymakers adopted at the Madrid Transatlantic Summit of 1995 the “new transatlantic agenda” which is committed to developing a “new transatlantic market” and aims to “remove barriers that impair the flow of goods, services and capital between [the US and the EU]”. The process remained in preparation until 2013 when the negotiations officially started, after many consultations between “stakeholders” (essentially TABC representing transnational companies) and political
statements. Among these, the European Parliament’s statement which asserts in 2006, “the urgent need [to] fix without further delay the goal of completing the Transatlantic Market by 2015, without impediment.”

Today, the negotiations are the subject of intense lobbying by various interest groups. It is estimated there are between 15,000 and 20,000 lobbyists in Brussels. The European Observatory on businesses established that among the 560 meetings between the Commission and interest groups before the start of negotiations, 92% represented the private interests of companies. Among the 25 lobby groups with the most contact with the Directorate General for Trade of the European Commission during the TTIP preparations, not one represented labour, environmental, or consumer unions. Within the top 50, there are only three that represent what can be considered as concerns close to those of the public interest. We find in this top 25: Business Europe (the most powerful lobby in Europe, representing European business federations), the European Services Forum (representing service companies such as Deutsche Bank, Ernst & Young or Microsoft), ACEA (European lobby of the automobile sector), CEFIC (chemical industry), Freshfel (fruits and vegetables traders) or Food and Drink Europe (representing in particular Nestlé, Coca-Cola and Unilever), not to mention the US Chamber of Commerce, representing all US industrial lobbies, considered the most powerful lobby in the world.

It is interesting to observe that the main TTIP advocates, who argue that it will be favourable to the public interest, are major business federations, which essentially defend the interests of large transnational firms. As we shall have the opportunity to come back to this, such a discourse carries contradictions, especially because it highlights the potential positive impact of the TTIP on employment and, particularly on small and medium enterprises, whereas organisations representing the latter maintain a lot more uncertainties with regard to the Treaty, as is the case of the Union of middle classes (UCM) in French speaking Belgium.

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10/ Un ‘deal’ pas vraiment gagnant aux yeux de l’UCM, La Libre belgique, 4 May 2015

The TTIP is supposed to boost the transatlantic economy and define the new world trade rules.
The TTIP is a reflection of the new inter-regional agreements on trade and investment that are being negotiated following the paralysis of multilateral negotiations at the WTO. Its objective is to bring about a regulatory convergence in order to create a large transatlantic market, in hopes of boosting growth and employment and slowing down the growing power of China and other emerging countries in global trade.

THE GROWING POWER OF CHINA AND THE EMERGING COUNTRIES IN GLOBAL TRADE

While the “first globalisation” of the late 19th century had led to geographically separate production and consumption, contemporary globalisation enables to geographically separate the various links of the production chain. From a few thousand in the 1970s, the number of transnational firms now stands at nearly 80,000 parent companies related to some 780,000 subsidiaries and sub-subsidiaries spread around the world. The strategy of transnational firms is therefore to break down the stages of production and subcontract the manufacturing of products in countries where unit labour costs are lowest.

Therefore, while, until the mid-1980s, world trade resulted essentially from exchanges between countries, today, nearly 80% of trade can be explained by exchanges of intermediate goods and industrial components between the links of the same production line. As summarised by Suzanne Berger, professor at the Massachusetts Institute of Technology, while before the 1980s, most international trade went through export and import across borders, “today, the national productive structures are closely related to those of other developed or developing countries. Everyday products should be labelled Made in the World.”

Within the global production chains, the large firms’ parent companies, mainly from the United States, Western Europe and Japan, determine the production sites’ localisation strategy and condense the majority of the added value. As summarised by Suzanne Berger: “Within a network, a company often enjoys greater power than the others. Even though it has no real rights over the others, it is the one to decide the production chain’s division and each participant’s assigned role. (...) Clearly, big firms are the ones to set the pace, not the subcontractors.” The result being that trade globalisation having occurred since the 1980s has essentially benefited parent companies of “headquarters economies” located in the Triad (USA-EU-Japan) specialised in product design and marketing. Until the end of the 20th century, two-thirds of world trade therefore represented North-North exchanges between industrialised countries, while the “factory economies” (emerging countries such as China), where the manufacturing of products was outsourced, limited themselves to ensuring the assembly operations of industrial components that represented only a marginal share of the traded products’ added value.

However, things evolved over the course of the 2000s. On the one hand, “factory economies” such as China and the other emerging countries have supported the development of their own parent companies that have increasingly invested in the global market. This resulted in an unprecedented growth for the developing country firms’ foreign direct investment (FDI) (cf. Chart 1): while 93% of outward FDI were the work of developed countries’ transnational corporations in 1999, they now represent only 61% of the total in 2013, against 39% for firms in developing countries (half of which comes from BRICS). In 2014, Asia, which is emerging, represented for the first time the world’s leading source of outward FDI, which demonstrates that there is an increasing number of firms from this region investing abroad, whereas they were virtually non-existent at the beginning of the 21st century.

Moreover, the global 2008 crisis brought a dramatic halt to international trade, which had been the engine of global growth for many decades. After the free fall of 2009 and the equally spectacular recovery in 2010 (cf. Chart 2), the world trade growth almost stopped in constant dollars from 2011 – and it is even lower than the GDP growth in constant prices during the last three years, which is a practically unprecedented situation since the 1950s.


14/ Ibid., pp. 233-235


16/ J. Adda, Commerce mondial : le coup d’arrêt, Alternatives Economiques n°341, December 2014
CHART 3
THE GROWING SHARE OF EMERGING COUNTRIES IN WORLD TRADE

CHART 4
THE RISE OF SOUTH-SOUTH TRADE

Source: UNCTAD
Source: AlterEco
The international trade negotiations now focus primarily on standards and regulations.

Meanwhile, following the 2008 crisis and the recession in developed countries, China and other emerging countries began a reorientation of their development models towards their domestic market and developed South-South trade to reduce their dependence on Western markets. China strengthened competition rules and allowed an increase in wages, while seeking to strengthen regional integration in the framework of “ASEAN+3” which brings together Southeast Asian countries with Japan, South Korea and China. The share of emerging countries in world trade has therefore been increasing since the 2008 crisis (cf. Chart 3).

Finally, South-South trade has taken an increasing share in international trade since the early 2000s, following the recession in developed countries, and the rise of BRICS and other emerging countries in international trade. While North-North trade between developed countries accounted for over two-thirds of world trade in the early 1990s, it now accounts for less than half, while South-South trade went from less than a fifth to over a third of the world trade over the last decade17 (cf. Chart 4).

It is in this context of increasing rivalry between Western and emerging transnational firms that the United States and the European Union seek to regain control by negotiating the TTIP, allowing their firms to acquire a favourable regulatory framework to increase their market shares in the transatlantic market and, eventually, try to expand it to the rest of the world through bilateral and plurilateral agreements. As summarised by the French economist Jacques Adda: “More flexible than the rigid WTO framework, the inter-regional integration system allows bypassing the opposition of States openly hostile towards the US agenda, while maximising of the risk marginalisation of small or medium-sized economies which would refuse to play the game. It primarily benefits from excluding China, the sole serious competitor to the pursuit of the US hegemony in the long run. A dangerous prospect both for the economy’s stability and for world peace18.”

THE NEW TYPES OF INTERNATIONAL TRADE AGREEMENTS

After several decades of global trade liberalisation agreements negotiated within the GATT and then the WTO, the average customs duty fell from over 50% to about 5% worldwide. The customs tariffs became for this reason marginal in industrialised countries: they represent on average 3.4% in the United States, 5.5% in the European Union, 4.6% in Japan and even 0.2% in Singapore. They are hardly higher in emerging countries: 9.6% in China, 10% in Russia, 7.6% in South Africa, 13.7% in India and 13.5% in Brazil19.

The international trade negotiations are therefore now mainly focused on non-tariff barriers, that is, standards and regulations: end of 2013, 17,283 technical barriers to trade were thus counted and 12,212 sanitary and phytosanitary standards worldwide20. This is why the currently negotiated major trade agreements aim at “regulatory convergence”, namely the harmonisation of standards which represent the main obstacles to 21st century world trade. It is consequently the main target of the United States and the European Union in the TTIP negotiation.

Furthermore, the stagnation of the WTO multilateral negotiations coincided with the bilateral and regional trade agreements’ proliferation, resulting in the increasingly fragmented trade rules. The new generation of agreements that proliferated in the 2000s –more than 300 are currently in effect – usually concerned countries in different geographical areas and with diverse levels of development, that is, North-South bilateral free-trade that gene-

17/ Alternatives Economiques, Mondialisation & démondialisation, Special Edition n°101, 3rd trimester 2014
18/ J. Adda, op. cit.
19/ Alternatives Economiques, L’état de l’économie 2014, Special Edition n°100, 2nd semester 2014, p. 69
20/ Loc. Cit.
rally multiplied at the instigation of industrialised countries and integrated sensitive sectors that developing countries refused to liberalise within the WTO framework. As Robert Zoellick stated in 2004, when he was the Trade Representative of the United States: “We will not accept a veto against America’s march to open markets. We want to encourage reformers who want free trade. If others do not want to move forward, the United States will do so with those who want it.”

After supposedly wanting to favour the multilateral framework of the WTO, the European Union launched bilateral negotiations with several countries and developing regions. Therefore, the United States and the European Union increased the number of bilateral trade agreements with countries in Asia, Africa and Latin America. It should also be pointed out that the European Union, which makes regional integration a cornerstone of its international policy, did not hesitate to break some existing regional blocs in order to negotiate from a position of strength. In this way, when confronted with resistance from Bolivia and Ecuador during the negotiations initiated for a free trade agreement with the Andean Community of Nations, the EU chose to conclude a treaty only with Peru and Colombia. The Treaty is currently being ratified and is the subject of severe criticism from labour unions and civil society in Europe and in Latin America.

Meanwhile, following the negotiations’ failure in 1998 on the Multilateral Agreement on Investment (MAI), the trend towards the signing of bilateral agreements on investment has increased. Currently, more than 3000 agreements have been concluded (cf. Chart 5). Conventional bilateral agreements tended to lose ground during the 2000s due to the growing criticism over their content and the regional agreements’ gradual rise in power, which grew in economic importance following the development of regional production chains. These regional agreements have generally taken the form of free trade agreements integrating aspects linked to investment, which made them more suited to the reality of the global economy where trade and investment are becoming increasingly interlinked. The TTIP project falls into this category of “mixed” regional agreements, in the sense it covers trade and investment.
THE NEW GEOPOLITICS OF INTERNATIONAL TRADE

The negotiation of regional trade and investment agreements reflects the geostrategic rivalries between the different traditional and emerging trading powers, particularly between the United States and the European Union on the one hand, and the BRICS (Brazil, Russia, India, China, South Africa) on the other. Until the early 2000s, the United States and the European Union had a dominant influence in trade negotiations at the WTO, in which the content reflected their interests. Since then, the growing power of China (that joined the WTO in 2001) and more widely of the BRICS has changed the balance of power. The coalition of emerging countries (G21), who in 2003 posed an ultimatum to Western countries during the WTO summit in Cancun, helped thwart the United States and the European Union’s plans and paralyse the WTO’s multilateral negotiations. In this context, the different great powers sought to negotiate agreements based on their specific interests.

Firstly, industrialised countries sought to negotiate the establishment of free trade areas with key emerging countries, in order to circumvent the WTO blockages. Thus, the United States began negotiations with Latin American countries to establish a Free Trade Area of the Americas (FTAA), with Latin American and Asian countries to establish a Trans-Pacific Partnership (TPP) and with the European Union to conclude a transatlantic Treaty (TTIP). Meanwhile, the European Union, in addition to the TTIP, negotiated with its former colonies the Economic Partnership Agreements (EPAs), with Mercosur, the Andean countries and Central America on the American continent and with the ASEAN in Southeast Asia. The United States and the European Union also began negotiating many strategic bilateral agreements, such as the EU’s agreements with India, South Korea and Ukraine.

Secondly, emerging powers sought to counter Western hegemonic ambitions by negotiating rival agreements better reflecting their will to impose themselves as regional powers in a multipolar world. China therefore negotiated an agreement within the ASEAN+3 and within the APEC as alternatives to the proposed TPP project from which it is excluded, while Brazil helped create the UNASUR to counter the United States’ FTAA project and Russia sought to establish a Eurasian Economic Union integrating Ukraine to counter the association agreement aims between the EU and Ukraine. Meanwhile, India negotiated in November 2014 a “peace clause” with the United States at the WTO to maintain its food security program, after having threatened to derail the “Bali package” concluded in December 2013 on agriculture and trade facilitation.

The different great powers negotiate agreements according to their specific interests.

25/ The G21 was formed as part of the Cancun conference, it consists of South Africa, Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, the Philippines, Thailand and Venezuela.
26/ To know the status of more than 30 ongoing negotiations of trade agreements with the European Union, it is interesting to see this document from the Commission: Overview of FTA and Other Trade Negotiations, in May 2015
The TTIP in the context of international trading relations

By initiating the TTIP negotiation with the United States, in order to then impose transatlantic standards on the rest of the world, the message sent to emerging countries is unequivocal: “The West Against the Rest”. In doing so, the European Union’s objective is twofold: on an economic and social level, the TTIP is supposed to boost growth and employment in Europe; on a geostrategic level, TTIP is supposed to force China to eventually accept a liberalisation program based on the initially concluded terms with the United States or, if it refuses, isolate it on the world trade scene. However, the European Union risks losing both ways: the projections for growth and employment show that the expected gains may actually be losses, while China, which became indispensable to solving major global challenges – trade, monetary, climatic – is sure to create its own regional coalitions to counter the western hegemonic aims, along with all that this implies in terms of instability and global insecurity.27

Besides, the TTIP project has less to do with the lowering of tariff barriers than the standards and non-tariff regulation harmonisation, while the European Union has still not built sufficient internal common standards in key strategic areas such as energy, telecommunications and rail transport. The absence of a European social and fiscal harmonisation has caused internal imbalances that the TTIP would only exacerbate. In addition, the standards negotiated with the United States refer to some very sensitive issues like GMOs, hormone-treated beef, culture or shale gas. Therefore, as Pierre Defraigne outlines, “Europe will lose itself in its attempt to jump from one boat to another: between the European identity affirmation and dilution in the Atlantic area, the future of European identity will be at stake.”28. In other words, between the TTIP and the deepening of European integration, we must choose. However, to emerge from the crisis, the European Union needs deep and internal political, economic and social reforms rather than a transatlantic market, described by Hillary Clinton as “economic NATO” – a fitting comparison, since the absence of European Defence and its dilution in NATO have the effect of relegating the EU to the rank of a second-rate power on the world’s geopolitical scene, as illustrated by its inability to play a front-running diplomatic role in the conflicts that multiply on its doorsteps (Syria, Iraq, Ukraine, Israel/Palestine, Egypt, etc.).

27/ P. Defraigne, Departing from TTIP and Going Plurilateral, Madariaga Paper, vol. 7, n°9, October 2014
THE SIRENS OF US SHALE GAS TO BYPASS RUSSIA

The extensive redevelopment of power relations within world trade adds to the impact of the crisis between the West and Russia. Firstly, the geopolitical effect: the new Member States of the former Warsaw Pact have for the most part adopted, since the fall of the Berlin Wall, a foreign policy based on further alignment with Washington. The increase in tensions between Russia and its western neighbours since the Ukrainian revolution of spring 2014 (triggered by Russia’s opposition to Ukraine signing a trade association agreement with the EU) encourages them more than ever to strengthen these ties. Yet it is not only a question of international geopolitics: energy is one of the key issues. The European Union, a first world economy, is extremely dependent in terms of energy, its reserves of oil and gas being far too low to cope with domestic demand. It is therefore required to import 88% of its oil consumption and 65% of its natural gas, two figures that were actually growing over the last decade.

Energy dependency of the European Union

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<tbody>
<tr>
<td>All products</td>
<td>47.5</td>
<td>48.8</td>
<td>50.1</td>
<td>52.2</td>
<td>53.6</td>
<td>52.9</td>
<td>54.7</td>
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<td>53.9</td>
<td>53.4</td>
</tr>
<tr>
<td>Solid fuels</td>
<td>33.3</td>
<td>35.0</td>
<td>38.2</td>
<td>39.14</td>
<td>41.7</td>
<td>41.5</td>
<td>44.9</td>
<td>41.1</td>
<td>39.4</td>
<td>41.7</td>
<td>42.2</td>
</tr>
<tr>
<td>Crude Oil</td>
<td>76.3</td>
<td>78.5</td>
<td>80.7</td>
<td>82.3</td>
<td>83.8</td>
<td>83.5</td>
<td>84.9</td>
<td>84.1</td>
<td>85.1</td>
<td>85.9</td>
<td>88.2</td>
</tr>
<tr>
<td>Natural gas</td>
<td>50.9</td>
<td>52.0</td>
<td>53.6</td>
<td>57.1</td>
<td>60.3</td>
<td>59.5</td>
<td>61.7</td>
<td>63.4</td>
<td>62.1</td>
<td>67.1</td>
<td>65.8</td>
</tr>
</tbody>
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Source: Eurostat (online data codes: nrg_100a, nrg_102a and nrg_103a)

However, Russia is the largest supplier of oil (34%), gas (32%) and solid fuels, the main one being coal (26%)29. That is why a number of Member States see in the TTIP an opportunity to access the US shale gas imports, whose production, virtually non-existent a decade ago, now accounts for almost half of the United States’ total natural gas production.

It is currently estimated that the European shale gas reserves are up to more than 10 trillion cubic meters, the main deposits being located in France and Poland. Nonetheless, if the European Union has so far not been able to adopt a binding legislation on the matter, the Commission issued a series of recommendations aimed at limiting the impact of the shale gas production, which is extremely polluting for the environment. The convergence mechanisms on matters of regulation, which we will later analyse in this study, could endanger the future ability of the European Union to adopt binding legislation on the matter30.

29/ Eurostat, Production et importations d’énergie, May 2014
30/ Euractiv, Le gaz de schiste au cœur du sommet UE-USA, 26 March 2014
One of the TTIP’s main interests, according to the European Commission concerns, the gains in terms of economic growth and employment. The TTIP is thus presented as a powerful adjustment factor in a context of crisis affecting the European economy. However, after analysis, the estimated gains taken into account by the European Commission are very low, while other sources do not indicate gains, but considerable job losses in Europe.

THE EXPECTED GAINS IN TERMS OF GROWTH AND EMPLOYMENT

Though some technical aspects may seem complex, the main elements of the debate surrounding TTIP are relatively easy to summarise from a cost-benefit analysis. In short, governments need to ensure a tough balancing between, on the one hand, the expected gains from this vast partnership destined to ensure transatlantic trade’s expansion and, on the other, the necessary concessions on regulation concerns to obtain them. Indeed, the mandate given to the Commission by the European Union’s Member States focuses on three components: market access, regulatory issues and non-tariff barriers, as well as rules. Customs duties constitute only a subcategory of the first component, alongside instruments like the “investor-state” clause (ISDS) and the liberalisation of public procurement. The reason is easily understandable: customs duties between the United States and Europe being already close to zero, the TTIP claims to address non-tariff barriers, mainly legislative differences that constitute obstacles to the transatlantic trade. The agreement is expected to be concluded within two years and generate, according to the European Commission, an additional GDP growth of over 0.5% in ten years and a considerable number of new jobs. Although modest, these estimated gains in terms of growth and employment are based on questionable projections and could therefore turn out to be overly optimistic.

PROJECTIONS CALLED INTO QUESTION

In the debates on the TTIP opportunity, the Commission systematically bases its argument on a series of concomitant evaluations to support its position. These were respectively led by Ecorys (Netherlands), the CEPII (France) and the CEPR (United Kingdom).

According to these studies, such a treaty would eventually create a jump in gross domestic product for Europe up to 0.3% (CEPII) or to 0.5% (CEPR) and, according to the CEPR, a 545 Euros increase in annual household income. Similarly, the estimates of the European Centre for International Political Economy lead only to 0.06% of GDP growth per year on average in Europe and in the United States, and a rise in wealth of 3 cents per day and per person through 2029. The first conclusion that can be made from reading these figures is that the anticipated gains are very low. In addition, these studies do not take into account either the impact on employment, or the distribution of earnings within society.

From the outset, many observers not only questioned the independence of the study centres that presented these so called assessments, but especially the relevance of the results put forward. Since March 2014, a study from the Austrian Foundation for Development Research (ÖFSE) highlighted their methodological weakness: in particular, each of the studies stem from an extremely ambitious a priori on the expected gains, especially in terms of non-tariff barriers reduction. This element is interesting, because it highlights the contradiction in the European Commission’s current discourse: the Commission claims to generate important gains in terms of growth and employment, on the one hand, and limit concessions on social and environmental standards on the other. However, these studies show that one does not go without the other. It is also useful to observe the governance structure of an institute like the CEPR, which is funded by BNP Paribas, JP Morgan, Deutsche Bank and chaired by the Goldman Sachs vice president in Europe.
In October 2014, a study published by Jeronim Capaldo, a researcher from Tufts University (Massachusetts, USA), deconstructs one by one the projections of growth and employment put forward by the European Union from the negotiations’ opening. It demonstrates that there is a simple reason for the results’ conjunction: all are based on the same simulator model, called “computable general equilibrium”. However, the flaws in this model that dates from the 1980s have been demonstrated on numerous occasions, including by some of the world’s leading economists. It indeed sets out from an a priori of full employment and optimal allocation of resources, which to say the least does not describe the European Union today. Furthermore, this model does not account for profit and loss distribution and its impact on export, growth and employment.

By using another simulation model, namely the United Nations’ “Global Policy Model”, more adequate to describe issues like the impact of measures on effective demand, Jeronim Capaldo reached completely different results. According to him, the TTIP would potentially create jobs for the United States, but it would have a devastating impact on the European economy: decline in exports, reduction of the GDP’s growth ranging from 0.3% to 0.5% depending on areas, annual loss of revenue from 3 400 to 5 550 Euros per worker, removal of nearly 600 000 jobs, and tax losses of up to 0.64% of the GDP. The northern and western European countries would be most severely affected by many of these negative impacts.

In the following chart, Belgium is included in the “other European countries of the North”, along with the Netherlands and Finland. For these countries, the TTIP would generate a loss of 223 000 jobs (60 000 in Belgium), 4 848 Euros in annual revenue per worker, the loss of half a point of growth and a 2% decline in export.

It goes without saying that, like any scientific model, the one used by Jeronim Capaldo is itself subject to critical analysis. Nevertheless, it is extremely worrying to realise that the EU claims to negotiate a comprehensive international agreement on the basis of such a limited analysis of the situation.

The TTIP is presented as a powerful economic recovery factor
negative impact on the European economy. The expected result would therefore be a massive shift of jobs from the European Union (-600,000) to the United States (+783,000). This study has the merit of revealing the importance for the EU to deepen its construction initially through internal policies of social and fiscal harmonisation and re-industrialisation before considering adhering to a transatlantic Treaty.

Whatever the case may be, the studies of the impact of the TTIP on Europe’s growth and employment conclude in the best case scenario with a very modest gain and in the worst case scenario with considerable losses. It is therefore rather presumptuous to present the TTIP as a priority instrument for boosting Europe’s growth and employment.

### THE TTIP IMPACT ON EXPORT, GROWTH, EMPLOYMENT AND INCOME

Long-term effects of the TTIP

<table>
<thead>
<tr>
<th>Units</th>
<th>Export % GDP</th>
<th>GDP Diff. in %</th>
<th>Employment Thousands</th>
<th>Income EUR/employee</th>
<th>Taxes % GDP</th>
<th>Ratio Diff. in %</th>
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<td>1.02</td>
<td>0.36</td>
<td>784000</td>
<td>699</td>
<td>0.00</td>
<td>-0.97</td>
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<td>-0.07</td>
<td>-3000</td>
<td>-4245</td>
<td>-0.39</td>
<td>0.01</td>
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<td>-134000</td>
<td>-3402</td>
<td>-0.28</td>
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<td>-0.48</td>
<td>-130000</td>
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<td>-0.64</td>
<td>1.31</td>
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<tr>
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<td>-3000</td>
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<td>Other Southern Europe</td>
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<td>-0.21</td>
<td>-90000</td>
<td>-165</td>
<td>-0.01</td>
<td>0.33</td>
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<tr>
<td>EU Total</td>
<td>-583,000</td>
<td></td>
<td></td>
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</tbody>
</table>

Source: J. Capaldo

### TOWARDS A SHIFT OF EMPLOYMENT FROM THE EU TO THE UNITED STATES?

Most of the European governments, who claim to make growth, employment and debt reduction their top priorities, have formally shown their support for the TTIP. However, it is interesting to read that the study from Tufts University demonstrates that one of the main reasons why the transatlantic Partnership risks having negative consequences is because the EU, by setting binding targets for public deficit while not developing a common tax policy, deprives itself of the means to address the necessary adjustments to such a treaty’s arrival, unlike the United States, where 783,000 jobs could be created. It is therefore the combination of measures reducing the margin for political manoeuvre of the European Union’s Member States – in fiscal, social (lack of European harmonisation), budgetary (in particular via the Treaty on stability, coordination and governance; and accounting rules ESA 2010) and commercial areas (TTIP), that explains an overall negative impact on the European economy. The expected result would therefore be a massive shift of jobs from the European Union (-600,000) to the United States (+783,000). This study has the merit of revealing the importance for the EU to deepen its construction initially through internal policies of social and fiscal harmonisation and re-industrialisation before considering adhering to a transatlantic Treaty.

Whatever the case may be, the studies of the impact of the TTIP on Europe’s growth and employment conclude in the best case scenario with a very modest gain and in the worst case scenario with considerable losses. It is therefore rather presumptuous to present the TTIP as a priority instrument for boosting Europe’s growth and employment.
A DIVERGENT AND UNEVEN GROWTH

The impact of the TTIP on growth and employment in absolute terms is one thing, but the distribution of gains and losses between countries and sectors is another. Whatever the conclusions on the TTIP’s impact on the overall growth of the concerned economies are, they indicate that the distribution of gains and losses would exacerbate internal differences within the EU, benefiting the wealthiest countries, large rather than small enterprises, agribusiness not local farming, and capital instead of labour income. In other words, the TTIP is likely to cause divergent and uneven growth.

On the one hand, there isn’t in Europe, as it is the case in the United States, an equalisation system between States to reduce internal imbalances. This means that the losers will not have any compensation mechanism, reinforcing economic disparity between countries that are in the economic centre of the euro zone and those located on its periphery. On the other hand, the TTIP would inevitably provoke a merging and restructuring phenomenon in advanced sectors with high added value, which is likely to operate to the benefit of big transnationals’ shareholders and to the detriment of employees – the TTIP being bound to exacerbate the declining share of wages in the produced wealth.

Moreover developing countries, in which a significant share of revenue depends on export to the EU and the United States, would lose significant market shares. Indeed, a study produced by the European Parliament establishes that the EU and the US’ other trading partners would experience a significant economic downturn. In particular, developing countries that benefit most from preferential access to the EU and the US markets would suffer from “trade diversion”, as US and European export would have their access to the transatlantic market facilitated. Other studies identify declines in export levels up to 34% for Thailand or Indonesia (to the United States) or significant losses for the so-called “least developed” countries, located mainly in Africa. Finally, according to the IFO Institute based in Germany, countries like Guinea and Botswana could see their real incomes fall by 7.4% and 4.1% respectively.

Studies of the impact of the TTIP on Europe’s growth and employment conclude at best modest gains and at worst considerable losses.

42/ R. Bendini, P. De Micco, The expected impact of the TTIP on EU Member States and selected third countries, European Parliament
Small businesses oriented towards the local market are particularly threatened by the TTIP.

WHAT IMPACT ON THE SMES?

Since autumn 2014, the European Commission adopted a communication strategy specifically targeting small and medium enterprises (SMEs), devoting to them a chapter of the TTIP under negotiation. The negotiating mandate is particularly vague about this point since it states only that “the agreement will include provisions on trade-related aspects of small and medium enterprises”. The Commission also developed a factsheet on the TTIP and SMEs. It indicates that SMEs have everything to gain from the TTIP, as the removal of trade barriers such as customs duties and regulatory differences is also useful for the SMEs wishing to export or import. We also learn that the chapter dedicated to SMEs essentially guarantees access to an online helpdesk informing on regulations and US taxes. Such a helpdesk already exists in Europe. The only measure specifically dedicated to SMEs provided in the TTIP would therefore be a website. A representative of an association of British SMEs actually recently specified to the negotiators that it was not necessary to wait for the implementation of the TTIP, which could still take several years, to develop such information tools.

On a more serious note, the SMEs themselves do not seem particularly enthusiastic for the TTIP. A survey shows that the SMEs in Europe (including Belgium, Germany, Poland and France) are rather sceptical and perceive the TTIP as a treaty requested by and benefiting large transnational firms. In France, 94% of the SMEs surveyed believe that the potential gains from the TTIP will go exclusively to large enterprises. The website specialised in SMEs SME Insider stated that: “The benefits for SMEs, if any, are negligible. The risks are enormous.” The Executive Director of the NGO War on Want, John Hillary, argues that the regulations in place today are generally likely to protect SMEs from larger companies and that the TTIP, which aims to dismantle regulations, will only encourage the accumulation of capital and economic power within larger companies at the expense of smaller ones. A treaty allowing the increased imports of American products in Europe, based on less demanding and less expensive standards (labour law, environmental protection especially), will particularly affect SMEs. In particular, the SMEs basing their business model on high quality products meeting high standards will suffer from the increased competition of cheaper products. Assuming they want to adapt their production methods to less demanding and therefore cheaper standards, they will have more difficulty in doing so than larger companies that have already outsourced the majority of their production overseas (or could easily do so). Similarly, according to the Movement for Responsibility in Trade Agreements (MORE), the SMEs supplying components to large companies, and located in their close proximity would directly suffer from the possible relocation of these companies’ production units towards the United States in order to take advantage of a cheaper workforce with less social protections.

The small businesses oriented towards the local market are particularly threatened by the TTIP. In the United States, the Buy American Act gives preference to the purchase of American products (in fact the EU aims to secure its removal through the TTIP). In Europe, many local authorities have set up plans to strengthen the local economy by giving priority to local job creators in their public procurement. The British government recently pledged to grant 25% of its public contracts to SMEs. According to their available information, these two provisions could be made illegal by the TTIP which rejects any “discrimination” between local and multinational companies and aims to open public procurement to global competition.
According to Jeronim Capaldo, it is very difficult to isolate on a macro-economic level the TTIP’s impact on SMEs. The Commission is moreover unable to quantify or accurately assess the SMEs’ benefits, all the while maintaining that they will exist. Yet one can anticipate that a significant proportion of the 600,000 jobs lost in Europe by the TTIP according to this study will be in SMEs. The Commission itself notes that the SMEs employ two-thirds of the workforce in Europe’s private sector and have created 85% of new jobs between 2002 and 2010.

It is likely that certain export-oriented SMEs can effectively have their activity facilitated by decreases in customs duties and the harmonisation of regulatory procedures in the markets of certain products, which is actually the Commission’s main line of reasoning. However it must be noted that according to the Commission’s criteria, an SME is a company with fewer than 250 employees, while in Belgium for example, SMEs are defined as having less than 50 employees (representing 97% of total Belgian companies with less than 1% exporting to the United States). Overall, only 25% of over twenty million European SMEs export beyond their national borders. It can be concluded that the share of SMEs benefiting from the potential TTIP gains is low, while all SMEs are likely to be impacted by the increased competition from large transnational firms.

The share of SMEs concerned by the potential gains of the TTIP is low.

48/ During his intervention speech in July 2014 at the “Stakeholders event” organised by the European Commission during the 7th round of negotiations in Brussels
50/ Lindsey Kennedy, The secret business plan that could spell the end for SMEs, February 2015, http://www.smeinsider.com/2015/02/12/the-secret-business-plan-that-could-spell-the-end-for-smes/
Among the key issues negotiated within the TTIP project, three chapters are particularly prone to controversy: the risk that the regulatory convergence process leads to a weakening of standards protecting the public interest, the existence of an investor-state dispute settlement (ISDS), and the “ratchet effect” and the “negative list” principles governing the liberalisation process of the services sector, which accounts for two-thirds of transatlantic trade. Moreover, the TTIP could have a negative impact on several specific sectors, such as on the controlled designation of origin (AOC). Finally, the analysis of the treaty between the EU and Canada (CETA), the text having already been published, provides clarification on what the TTIP could look like.

**A REGULATORY CONVERGENCE TO HIGHER OR TO LOWER?**

The duplication of products’ compulsory certification procedures, where different legislative provisions exist on both sides of the Atlantic, is undoubtedly a cost to transnational companies. And when these different procedures aim at ensuring a similar degree of consumer protection, we need to harmonise and coordinate the procedures for the regulations’ implementation effectively, transparently and democratically. Yet all too often, the degree of consumer protection and protection of the environment and workers, including public health, are different. How can it be ensured in such cases, that the harmonisation does not converge to the bottom? The European Commission has stated repeatedly that there will be no lowering of the European standards, which is only partially reassuring when considering that this is not explicitly included in the negotiating mandate and that the US negotiators and lobbyists clearly and publicly identify as a priority, and even as a necessity, sensitive issues such as GMOs, hormone-treated beef, or even the outright abolition of the precautionary principle. According to Shaun Donnelly, former Assistant U.S. Trade representative for Europe: “The TTIP is not worth negotiating unless it covers the regulatory side, and, especially, if it ends the precautionary principle.” Therefore, this type of negotiation by definition implies concessions to be made by the various parties. How is it possible for example, that the harmonisation of regulations on cosmetic chemical products –1328 are banned in the EU against 11 in the United States– can be achieved without lowering the level of protection of European citizens?

The TTIP is undoubtedly the European trade treaty project with the highest level of ambition, and the one that arouses the most public attention. In terms of regulatory convergence, it aims to go further than its predecessors. Indeed, the European Parliament declared in April 2013 wanting to “achieve even more ambitious results with the United States” than in previous trade agreements. It is therefore very difficult at this stage to anticipate the scope and concrete impacts of the arrangements that it will include on the matter. Nonetheless the nearest approximation is probably the treaty negotiated between the European Union and Canada (CETA, cf. infra), which contains such a chapter. The agreement’s negotiations were concluded in September 2014 and its text is now public. Although it is not yet ratified or implemented and its concrete impacts are consequently invisible, we can at least analyse the content.

The text on “regulatory cooperation” includes plans to “reduce unnecessary differences in regulations”. Let us recall that the commitments taken in such treaties are binding and subject to a dispute settlement body between the signatory States, which can impose penalties if they do not respect the commitments made. The degree to which commitments on matters of regulations may be the subject of such proceedings is not clear at this stage, yet it is useful to emphasise that these are binding commitments, even when sometimes expressed in an open manner. The chapter encourages the Treaty’s parties to exchange information, including information that is “non-public concerning the proposed regulatory initiatives, at the earliest possible stage”, while being ready to “justify themselves if they refuse to begin a regulatory cooperation procedure”. The parties are also encouraged to
consult private entities, mentioning NGOs and companies, without the agreement specifying a framework of transparency or parity between the different types of consulted stakeholders. Concretely, this would risk creating even more opportunities for business lobbies to influence legislation behind closed doors, protecting at times private interests over public interest.

The chapter on the TTIP’s regulatory cooperation is of course not yet completed, though leaks, and positions published by the Commission, have revealed certain elements that are under negotiation. We discover that “horizontal” regulatory cooperation mechanisms are expected, meaning cross-sectoral, as well as specific mechanisms by sector, under the aegis of a Regulatory Cooperation Body (RCB), a new institution to be created. The RCB will have to “consider the new regulatory cooperation initiatives, based on the contributions of one of the two Parties or of the stakeholders” and each of the parties (the EU, including its Member States, and the USA) must communicate at least once a year to the other a schedule of all the proposed regulatory changes and the impact assessment results thereof on trade and investment. The parties should offer access and a “reasonable” time period so the “stakeholders” can voice their opinions. Considering that during the TTIP’s preparation phase of the negotiations, the “stakeholders” consulted by the Commission were more than 90% representatives of business interests, and when we consider the disproportionate amount of human and financial resources between lobbyists representing traders’ private interests – who therefore have far more resources to analyse the many projects on regulations and draft opinions – and those defending in one form or another the general interest, according to Corporate Europe Observatory, AK and OGB, The Fire Power of the Financial Lobby, 2014, we understand why these mechanisms were described by Monique Goyens, Director of the European Consumer Organisation (BEUC), as a “surreal institutionalisation of lobbying”. This is not surprising given that the two biggest transatlantic lobbies have themselves, ever since 2012, judged the regulatory cooperation essentially as a means for “co-writing regulations”.

Lobbies judge the regulatory cooperation as a means for co-writing regulations.


54/ According to Shaun Donnelly, former official in the US government on trade policies, now a lobbyist for “International Business”, “TTIP is only worth doing if the regulatory side is covered, such as getting rid of the precautionary principle.” See http://corporateeurope.org/trade/2013/12/regulation-none-our-business

55/ Corporate Europe Observatory, Regulation – None of our Business?, 16 December 2013


58/ For the financial industry only, private interests have 30 times more resources devoted to lobbying than organisations defending the general interest, according to Corporate Europe Observatory, AK and OGB, The Fire Power of the Financial Lobby, 2014, http://corporateeurope.org/sites/default/files/attachments/financial_lobby_report.pdf


60/ Corporate Europe Observatory, TAFTA : les réglementations verrouillées, February 2015, http://corporateeurope.org/fr/international-trade/2015/02/tafta-les-reglementations-verrouilles
Let’s also reiterate that the European Commission has the exclusive legislative initiative at the European level. As a consequence, the Parliament cannot initiate any new regulations, being entirely dependent on the Commission to do this, limiting its ability to propose new laws to protect consumers, workers or the environment. It is one of the only parliaments in the world to cope with this constraint. The creation of a technocratic body to filter all new proposed legislative options upstream would only exacerbate this context of “democracy in chains”.

Furthermore, lowering standards is not science fiction, as it has already occurred in the framework of the negotiations. Formal leaked negotiation documents demonstrate intent, under the guise of the regulations’ harmonisation, to allow streams of imported oil sands into Europe, which is considered “the dirtiest oil in the world”. As highlighted by Juliette Renaud of the NGO Friends of the Earth: “The European Directive on fuel quality is probably the first European policy dismantled by this trade agreement, even before the negotiations conclude”. It is unfortunately not the only one. The TTIP negotiations have already led to the EU allowing the import of beef dipped into lactic acid, a “goodwill gesture” conceded even before the treaty is finalised to show Europe’s determination in offering serious concessions. The United States’ chicken industry has heavily emphasised its intention to use the TTIP to export chicken washed with chlorine to the EU. This chlorination process at the very end of the production chain partially replaces the hygiene monitoring measures throughout the production chain and is therefore less expensive, but also less secure in terms of preventing human contamination. Canadian farmers, in turn, can practice the chlorination of beef, and there is a concern that farmers will get its recognition in the EU via the “Joint Committee on Sanitary and Phytosanitary Measures” established by the CETA. Finally, in May 2015, the Guardian revealed, according to documents of the European Commission, a new regulation that would have resulted in the banning of 31 potentially carcinogenic pesticides, which has been shelved due to pressure from the United States as part of the TTIP negotiations.

In response to the concerns introduced by the TTIP on matters of food standards, the Commission has made numerous statements to reassure the population, going so far as to accuse the Treaty’s critics of lying to the people. Yet for their part, the US negotiators clearly highlight several of these issues as a precondition sine qua non for the conclusion of such a treaty. For example, the US Secretary of Agriculture claimed: “There will be a trade agreement with the Europeans only if Brussels agrees to seriously discuss the beef trade – as well as other tricky questions”. Many observers believe that the Commission’s unilateral decision in April 2015 to allow the import of 19 new GMO products including 11 from the agriculture giant Monsanto is a direct consequence of US pressure within the TTIP framework. Against this US offensive position, there is no explicit safeguard in the mandate given to the Commission: the only two red lines defined by the Council concern the audio-visual sector arising from the “cultural exception” loudly demanded by France in June 2013, as well as some public services, as long as they are supplied in the exercise of governmental authority, under the terms of the General Agreement on Trade in Services (GATS), which defines them on a very restrictive basis: “All services that are supplied neither on a commercial basis nor in competition with one or more service suppliers”. This means that services such as education, culture or health, if they are not exclusively covered by the State, are potentially targeted in the negotiations (see below).
THE ISDS: PRIVATE INTERESTS AGAINST PUBLIC INTEREST?

The chapter that has generated the most controversy is the so-called arbitration clause “ISDS” (Investor-to-State Dispute Settlement or arbitration clause between investors and states). It has been criticised so much that the European Commission launched a public consultation on this subject. The ISDS allows a private investor to challenge before an arbitration court a public measure of general interest if it affects its expected profits, and this, without going through the competent national courts beforehand. In principle, this type of dispute is entrusted to a panel of three arbitrators in charge of refereeing – the investor chooses an arbitrator, the State a second, and the third is chosen jointly by both parties, or by a third body if they cannot agree.

In the past, the initiators of this type of clause justified it by their fears concerning foreign investor discriminatory treatment in countries with unpredictable courts, as in the case of the first treaty of its kind between Germany and Pakistan in 1959. But, how to justify its existence today in a treaty between democratic and stable countries, with effective judicial systems? What excuse could there be to justify the perpetuation of this mechanism, with just any country, when we know the abuses it has allowed? Such clauses in existing agreements have for example already allowed transnational companies to challenge a rise in Egypt’s minimum wage, nuclear phase-out or protection of rivers in Germany, or even health warnings on cigarette packs in Australia and Uruguay. These arbitration cases are actually still pending. However more than 300 have already been concluded, allowing for example to charge 29 million Euros to Slovakia for limiting the impacts of the public health insurance’s privatisation, 13 million US dollars to Canada for banning a fuel additive to protect its citizens’ health, 15 million USD to Mexico for not having granted a concession to a mining project threatening to pollute its rivers and soils, and to sentence the Argentinean State for having controlled water’s price in a severe economic and social crisis context, leading to the settlement in 2015 of over 400 million dollars in damages from the Argentinean State to the firm Suez.

The lowering of standards has already taken place within the negotiation framework.

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64/ Brent Patterson, Will chlorinated beef from Canada be on its way to Europe?, The Council of Canadians, May 2014, http://canadians.org/blog/will-chlorinated-beef-canada-be-its-way-europe
According to Juan Fernández-Armesto, a Spanish judge specialised in this type of arbitration: “I sometimes wake up at night thinking about it, and I still don’t understand how sovereign States could have even accepted the principle of an arbitration related to investment. (...) Three private individuals are empowered to examine without any restriction or appeal process, all government actions, all decisions of the courts, and all laws and regulations emanating from the Parliament.” In total, over 600 disputes of such have been opened in 95 countries since the late 1980s, of which about half have been concluded, with 40% going in the States’ favour and 60% in the investors’ favour. The majority of cases therefore lead to either a settlement agreement with compensation, or to a sanction at the States’ expense.

The fundamental problem of the ISDS is that it helps to promote firms’ private interests at the expense of the public interest. Indeed, as there is no uniform system governing global relations between investors and States, the rules are embedded in over 3,000 bilateral agreements for which the terms on investment protection are usually vague and subject to interpretation. This gives disproportionate power to the arbitration courts: instead of applying the existing rules, they created their own rules through the jurisprudence generated by their decisions. However, those decisions have increasingly been regarded as breaches of investment protection public policies aimed at protecting the environment, social rights, health and human rights.

**CHART 7**

**THE INCREASE OF DISPUTES BETWEEN STATES AND INVESTORS**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of annual cases</th>
<th>Number of cumulative cases</th>
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<td>110</td>
<td>630</td>
</tr>
<tr>
<td>2013</td>
<td>120</td>
<td>680</td>
</tr>
</tbody>
</table>

Source: UNCTAD, ISDS database
Currently, the European negotiating mandate chapter on the protection of foreign investments forecasts that any foreign investor may enter an international arbitration court according to an ISDS mechanism, including if they consider that they were denied a “fair and equitable treatment” after having suffered from whatever form of “discrimination” in comparison to other foreign or local investors, or suffered from an “expropriation”, which may include an expropriation of their future expected profits. These vague terms leave significant room for interpretation by private arbitrators, who tend to favour the investor rather than the State. Some settlements have exceeded over one billion dollars with the procedures’ cost being extremely high even when the State wins the procedure – as in the case of the Philippines that paid more than 50 million dollars for a procedure that in the end dropped all charges against the country76.

Moreover, the main collateral effect of these special rights granted to foreign investors is to increase the States’ reluctance to propose measures on behalf of the public interest, because of the implicit or explicit threat of such procedures77. For example a Canadian lobbyist openly said that he had already obtained the withdrawal of projects of public measures simply by threatening to initiate these proceedings78. Some lobbyists do not even hide and publicly declare that “more cases like the one of Philip Morris [threatening to sue the UK for plans to introduce plain packaging on cigarettes] are precisely the goal of the TTIP”, arguing that the profits of transnational firms must be protected against political decisions79.

The United States is a partner with whom an ISDS clause is particularly useless. Indeed, contrary to most litigated against States who lose in the majority of cases, the United States has never lost a single ISDS arbitration, despite having cases brought against them 17 times. Part of the explanation may be related to the fact that these disputes’ main place of settlement is the International Centre for Settlement of Investment Disputes (ICSID), a World Bank division, in which the US government has a blocking minority within the Board of Directors, an influence that has been exercised in at least one case (the Loewen case), to convince an arbitrator to lean in favour of the US State, under the threat of jeopardising the whole ISDS system if he threatened US sovereignty80.

The European Commission and the pro-ISDS lobbies like to repeat that they are surprised by the concerns raised about the ISDS in the TTIP since the ISDS already exists in over 3,000 treaties worldwide. Civil society organisations have been denouncing these treaties for many years and are urging governments to

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73/ Friends of the Earth Europe. The TTIP of the Anti-Democratic Iceberg. October 2013
75/ Arnaud Zacharie, ISDS : quand les intérêts des firmes priment sur les choix démocratiques des États, Imagine Demain Le Monde, July-August 2015
77/ For more detailed knowledge of these investment protection mechanisms, see in particular ABI: une camisole de force pour les États, 2011, http://www.cncd.be/abi-une-camisole-de-force-pour-les,
78/ It’s a lobbying tool in the sense that you can go in and say, ‘Ok, if you do this, we will be suing you for compensation.’ Kirby added a moment later: It does change behaviour in certain cases. Kip Keen, Landmark Canada/EU trade agreement could have major implications for miners, October 2013, http://www.mineweb.com/mineweb/content/en/mineweb-political-economy?oid=2097833&sn=Detail

The fundamental problem of the ISDS is that it helps to promote the firms’ private interests at the expense of the general interest.
The main issues and challenges of the TTIP negotiations

withdraw from them (in order to put an end to them, as did South Africa in 2012 with its treaty signed with Belgium) or not to ratify them (such as Brazil, which never ratified any of them despite in 2013 being the 5th world destination in terms of foreign direct investment, after the United States, China, Russia and Hong Kong81). In addition, the TTIP is far from being just one additional treaty. Treaties containing the ISDS clauses were essentially signed between developing and rich countries, and consequently only cover a limited part of the world's transnational investments. However, those in the TTIP would cover between two and three times more investment flows than all the treaties signed by the USA until now82.

When we observe the abuse caused by this type of clause, which threatens States with having to pay for democratic decisions made in the name of the public interest, can we in all tranquillity offer this option to US investors, the world’s leading users of this type of arbitration, and go against European democratic deci-
sions? The European Commission’s new President, Jean-Claude Juncker himself, expressed his reservations on the matter: “My Commission will not accept that the Member States’ jurisdiction of courts be limited by special schemes for investor-State dispute-settlements83”. However, the Commission’s new President has conditioned his refusal to the judgment of his first vice president in charge of the rule of law, Frans Timmermans, while several Member States have so far shown ambiguity on the subject.

The public consultation on the ISDS organised by the European Commission gave a conclusive outcome: a record level of participation of nearly 150,000 responses, of which 97% simply said no to the ISDS, whatever its formulation, in the TTIP and in the CETA, rejecting explicitly the «reformed» ISDS version in the CETA, presented as a basis for the consultation. The European Commission did not understand the message and concluded for the need for more reform of the ISDS in the TTIP, without changing anything in the CETA, proposed as is for ratification. Yet in February and March 2015, a new proposal emerged, proposed by the Social Democratic group in the European Parliament84, and the Member for centre-right and former Commissioner Viviane Reding85, which seems to have inspired the proposal of the European Commission for an “ICS” (Investment Courts System) to replace the current ISDS system: that of a permanent court to deal with civil disputes related to investments. This proposal requires some warnings and a broad public debate. It seems that it will be necessary to take into account the guidelines proposed by Professor Van Harten, specialist of the ISDS, who himself had come up with a similar idea in his thesis’ conclusion of 2007. According to him, a permanent court could be an accep-
table response only under three conditions: replacing the ISDS system which would therefore be repealed, removing the mono-
poly available to investors for complaints (which requires establi-
shing obligations to be respected by investors, where the ISDS does not allow States to file complaints against them) and repre-
senting only a complement to national courts, accessible only after having exhausted the regular judicial channels86.

Similarly, the UNCTAD (United Nations Conference on Trade and Development) highlights that the ISDS uses an inappropriate model to resolve disputes between commercial actors on matters of politics and public rights. The monopoly of complaints entrusted to companies involves a pro-investor bias in international relations governance: the ISDS has been designed to ensure the new pro-
tions of private investors, not to encourage them to respect the host countries’ laws. Rather than the centralisation of investors-states disputes in a permanent arbitration court, which would ensure greater coherence but not necessarily more fairness to the system, the UNCTAD proposes to change approach, going from a mechanism among States and investors to a mechanism between States, as is the case in commercial matters with the Dispute Settlement Body of the WTO, while advising developing countries not to sign this kind of treaty which reduces their margins for political manoeuvre87.

These various available options require a broader reflection on the following questions: does the world we want to build which is based on sustainable development and human rights, require a strengthening of investor rights? Should it not be a priority to strengthen the mechanisms that enforce the respect of basic human rights by investors, for example through the adoption of a binding global treaty “business and human rights”, an idea proposed idea by many developing countries at the UN’s Human Rights Council, and rejected by the European countries and the United States in 201488?

82/ Gus Van Harten, A report on the flawed proposals for investor-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP) and the Canada-EU Comprehensive Economic and Trade Agreement (CETA). 3 February 2014
86/ Gus Van Harten, Press conference on 3 March 2015, Residence Palace Press Centre
Our social protection system is potentially threatened.

**LIBERALISATION OF SERVICES: NEGATIVE LISTS AND RATCHET EFFECT**

Services account for over 65% of the developed economies’ activity. The TTIP will dedicate a chapter on the liberalisation of services, which may include the opening of public services such as health, education or water to private companies. The American government indicated that it wishes to use the TTIP to open the market of European services to US companies and specifically “resolve the issue of awarded monopolies” in the field of public services. Belgian mutual health societies also expressed their concern in unison that “the integration of health insurance in the TTIP opens the door to the system’s privatisation and towards a two-tier health system”. A WHO report also warns against health systems’ segmentation and fragmentation resulting from reforms focusing on business objectives. What’s more, the chapter on intellectual property rights risks granting pharmaceutical companies drug patents of a longer duration, which would hamper the production of generic drugs and weigh down health spending. It is therefore our social protection system that is indeed potentially threatened.

The European Commission maintains that public services are protected since it is expected to exclude services “supplied in the exercise of governmental authority” as defined in the WTO Agreement on trade of services (GATS). However, the Commission had itself already long recognised that this clause does not effectively protect public services, given the narrow definition that it gives, pushing it in 1994 to introduce additional reserves to realistically preserve public services in its bid for the GATS. Since then, the Commission has changed its position and explicitly seeks to include a maximum of services in trade agreements, including public or general interest services, clearly excluding only services related to sovereign functions such as justice, border or air traffic control. As the TTIP and CETA represent treaty projects that go the furthest in liberalising services in the history of European trade policy, their exact impact on public services is therefore difficult to accurately predict.

The European Union’s original proposal on the liberalisation of services in the TTIP was “leaked” in June 2014 and confirmed that medical and health-related services, social services, education (at all levels), postal and financial services, telecommunications, transport, energy, water, cultural and environmental services are on the table for negotiation, and are subject to EU proposals opening US companies’ access to these service activities in European countries. The only sector that remains clearly excluded at this stage is that of audio-visual services, following pressure from the Belgian and French governments who had to threaten to veto the launch of negotiations of the TTIP in order to obtain it. We note in this regard that the US government announced that it will “work aggressively” in the interest of its television and film industry to include audio-visual services. The European Commission itself stated that it does not consider audio-visual services to be definitively excluded and could try to reintroduce them at a later stage.

Concerning education, the existence of a provision that would protect present and future measures on “publicly funded education” cannot be totally guaranteed. For one, it is very difficult to clearly distinguish educational services financed by public funds from those financed by private funds, as nothing is detailed clearly on the matter. Moreover, education concerning the European internal market was also supposed to be protected in the “service directive”, which did not however prevent the European Commission from initiating proceedings for non-compliance against the new Slovenian Law on Higher Education, which according to
the Commission would be “incompatible with the freedom of establishment and provision of services”.

The “leaked” document also specifies that this offer “is similar to the offer made by the EU as part of the TiSA negotiations of November 2013”. This allows us to touch upon this other major trade deal that is the TiSA (Trade in Services Agreement), also currently under negotiation. Negotiated by a small group of States comprising the EU, the United States and 21 other countries, this agreement seeks to go further in the liberalisation of services than was stipulated in the GATS concluded in 1995 between all WTO members. The European Commission has responded to the leak by publishing its initial offer to TiSA, which indeed shows an opening for the irreversible liberalisation of a number of public services and/or services of public interest.

Unlike trade in goods, which faces customs barriers, services in many countries are subject to other types of regulations such as the limitations on the number of service providers, their value, the number of operations, persons employed, or the participation of foreign capital. Specifically, the chapters on the liberalisation of services in a commercial treaty typically provide three areas of liberalisation: market access, national treatment, and most favoured nation treatment. Concretely, this implies the automatic authorisation of market access for foreign service providers, the prohibition of any difference in treatment between local and foreign service providers, and the obligation to give service providers of the concerned country (in this case the United States) treatment at least as favourable as the one accorded to suppliers from other countries. Regarding these 3 areas, the EU had adopted until recently (including in the GATS) the approach known as the “positive lists”, where only explicitly

90/ Letter from Demetrios Marantis, US trade representative to John Boehner, spokesman in the House of Representatives, March 20, 2013
96/ Written reply to Michael Froman, US Trade Representative, the Ways and Means Committee of the Congress on the President’s trade policy, 18 July 2013
97/ Member States endorse EU-US trade and investment negotiations, Commission européenne. 14 June 2013; M. Barroso, vous n’êtes ni loyal ni respectueux !, Le Monde, 18 June 2013
100/ EPSU, ETUCE. Update on the Comprehensive Economic and Trade Agreement (CETA), the Transatlantic Trade and Investment Partnership (TTIP), and the Trade in Services Agreement (TiSA), Background paper, December 2014, http://www.csee-etuuce.org/images/BackgroundDocs/background-document TTIP-training.pdf
102/ It is these types of limitations which are covered by the GATS
The main issues and challenges of the TTIP negotiations

mentioned sectors can be liberalised. Yet in the CETA, TTIP and TiSA, the EU is beginning to adopt a “negative list” approach, which means that all sectors are liberalised, except those that are explicitly protected. It is an approach that is actively promoted by the lobbies of the European and US service companies as a way to maximise the number of liberalised services 103. Certainly it is clear that this method will lead to an opening to the private sector of many more service sectors to the point that it will only take one Member State failing to protect a sector or formulating it too narrowly for a whole range of activities to become subject to competition with transnational private companies.

We should highlight that these lists are laid down by each Member State individually, and generate hundreds of exceptions and limitations, the scope of which may be difficult to assess. To give just one example out of hundreds of pages of negative lists, the Czech Republic and Slovakia have specified in this list that they reserve the right to require that at least 60% of the capital of companies providing audit services, is held by nationals 104. By ratifying the TTIP without explicitly including similar exemptions in its negative list, a Member State like Belgium would therefore definitively renounce adopting a similar policy and many other sections of its authority to regulate the economy. The European Public Service Union also noted that no exemption is provided for emergency services, police, courts and prisons 105. These sectors are not mentioned either in the EU offers for the TTIP and the TiSA 106, nor in the final text of the CETA 107. Though private prisons remain the outstanding in Europe, one could be worried about the impact of the TTIP on European prisons management, knowing the intense lobby work from the US private prison industry 108.

The TTIP further provides ratchet and standstill clauses, which mean that there is no turning back once a sector has been liberalised, without withdrawing from the whole agreement, which has never been seen before. A negotiator of the Commission acknowledged that it is very difficult to go back on the commitments made in such agreements, citing the example of the GATS in which Ukraine and Bolivia must now negotiate with 160 WTO members in order to review their room for manoeuvre in terms of health services. The mechanism therefore implies a drastic liberalisation, without possible amendment thereafter.

Financial services deserve special attention, in that their liberalisation can involve a deregulation that would weaken some of the measures taken following the 2008 financial crisis. At a time when many are calling for urgent additional reforms to protect us from future financial crises 109 and while the United States’ financial regulations in place such as the Dodd-Frank Act are deemed more effective on the matter than the European regulations, the Commission insists on including the liberalisation of financial services in the TTIP, an agenda promoted by the City of London with the European and US banking sectors. The US government already agreed to water down the rules governing access to the US financial services market, including the removal of capital controls 110.

Finally, the ISDS arbitration clause, already analysed above, will allow US investors to sue public authorities who decide to re-collectivise services that have been privatised or outsourced to private companies 111. Other arbitration treaties have already had this effect: when the Slovak people chose a new government in 2006, particularly in response to the unpopular decision to pri-
All services are liberalised, except for those that are explicitly protected.

vatise a portion of the health insurance system, one of the first decisions made by the new government was, in compliance with its election promises, to limit the power of the private health insurance companies to take advantage of the public health system. Many insurance companies have sued the Slovak government, which eventually had to pay 25 million Euros in compensation to the Dutch company Achmea. The same company initiated arbitration in 2013 to prevent the Slovak government from setting up a public insurance system, which would allow for health coverage for all citizens of the country.

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103/ Regulatory Cooperation Component services in the sectors to year EU-US Economic Agreement, Joint Declaration of the European Forum services and the Coalition of Service Industries, November 12, 2012; EUROCHAMBRES views and Priorities for the negotiations with the United States for a Transatlantic Trade and Investment Partnership (TTIP), EUROCHAMBRES principle declaration, December 6, 2013


PDO: “FROMAGE DE HERVE” CHEDDAR VERSION AND “VIN DE BORDEAUX” MADE IN USA?

The German Minister of Agriculture Christian Schmidt caused quite a stir in the German and European press by declaring in January 2015: “If we want to seize the opportunity of free trade with the giant US market, we can no longer protect every sausage and every cheese as being a specialty.” This statement reinforced the concerns expressed by various associations regarding other possible “Kentucky Fried Bratwurst” and Bavarian cheeses Made in California. In reality, what is the current situation?

These concerns fall under the TTIP chapter on geographical indications, which include in particular the protected designations of origin (PDO). By the admission of the negotiators, this is one of the most difficult chapters to negotiate as the starting positions are simply incompatible. The European Commission says it wants to strengthen the protection of European geographical indications, like wine or cheese, via its bilateral trade agreements such as the TTIP, because they would not be sufficiently protected under the WTO rules. On their side, the USA has a different system, based on the notion of trademarks, protecting specific names such as the Roquefort or Cognac appellations. Yet this system is very expensive, and the legal costs to enforce a designation are prohibitive. Other designations are considered in the United States as generic and cannot be protected as originating from a specific region.

The geographical indications recognised and protected by the Commission on the EU territory amount to 1451, 19 of which are in Belgium (including for example the “Pâté Gaumais”, “Vieille Gueuze”, “Fromage de Herve” and “Jambon d’Ardenne”). The US food lobbies have made it clear that there is no question of preventing them from producing and selling in the United States products called “feta” or “parmesan”. 177 members of the US Congress have accordingly asked the US Secretary of Commerce to “work aggressively against European efforts in this matter, so as to preserve these products’ domestic and export opportunities”.

The analysis of the EU-Canada agreement (CETA) does not fail to raise concerns: the EU managed to have Canada accept the PDO principle, yet obtained recognition only for 144 names, accounting to about 10% of the total – none of which are Belgian. France (42 products), Italy (41) and Spain (21) are the three Member States with the most protected products.
The CETA is the precursor of the TTIP and an open door for US firms established in both Canada and the EU.

CETA: A PRECURSOR AND A TROJAN HORSE OF THE TTIP?

The former European Commissioner for Trade, Karel De Gucht, said it straight out: “On services and investment market access, the outcome of CETA goes well beyond achieving parity with NAFTA [The North American Free Trade Agreement signed by Canada, the United States and Mexico],” because it includes “a number of other elements which are very valuable to the EU, such as further binding and ratcheting of legislation relating to the economically most important sectors including postal, telecoms, financial services, professional services.”

The links between CETA and TTIP are numerous. Beyond the obvious geographical link (is the CETA not also, literally, a “transatlantic treaty?”), we can cite an internal document of the European Commission, which welcomes the agreement reached in the CETA as being especially thorough in contrast to past agreements, also being a “solid step for our negotiations with other countries.” The CETA would be the first agreement signed by the EU to include an arbitration clause, the liberalisation of services through a negative list, or the creation of a regulatory cooperation body – these approaches are also included in the TTIP mandate. It should be noted that the CETA is not only the precursor of the TTIP, especially because it would be the first agreement between the EU and a G7 country, but it is also an open door for 81% of companies originating from the United States established both in Canada and the EU, to sue European states before arbitration courts through their Canadian subsidiaries, without even waiting for the TTIP.

It should be noted that the CETA is the first European agreement to adopt this “negative list” logic, where all services are liberalised except for those specifically preserved, despite the “positive list” having always been favoured by the EU. It would therefore create a dangerous precedent. Germany is the only Member State that has included an exemption on its national social security

114/ European Commission, Agriculture and rural development, DOOR (Database of Origin and Registration), http://ec.europa.eu/agriculture/quality/door/list.html
118/ Julian Beltrame and Mike Blanchfield, EU boasts of huge gains in Canadian trade deal, November 2013, http://www.cbc.ca/m/touch/news/story/1.2325983
120/ This logic features in this particular document, the annexes of CETA that lists a series of services exempted from certain liberalisation measures: Annex I Reservations for Existing Measures and Liberalisation Commitments, July 2014, http://eu-secretdeals.info/upload/2014/08/ceta-6.pdf
The main issues and challenges of the TTIP negotiations

It is very likely that the CETA and TTIP require ratification by the Member States’ parliaments.

system in the health and social service sectors, protecting it from all forms of liberalisation provided in the Treaty. Other European Member States are consequently not protected at the same level from an opening to the international competition of services related to social security. There isn’t an exemption for waste management services in Belgium for example, as opposed to Germany and Sweden which have made the effort to do so; therefore meaning Belgium is open to private Canadian service providers who will benefit from a treatment similar to Belgian suppliers. Another example: according to Ellen Gould, the total liberalisation of telecommunications services, on which the EU explicitly stated that no exceptions were planned for European Member States, would prohibit public authorities in Europe from concluding exclusive contracts with telecommunications service providers, like Manchester City did recently for example to provide free and public WiFi for its citizens.

On a different note, in treating foodstuffs just like any other good, and in accelerating their traffic on international routes – Canada is pleased for example to have achieved a further increase in quotas without taxation for exporting 50 000 tonnes of beef and 75 000 tonnes of pork to the EU – the CETA promotes export-oriented intensive agro-business, to the detriment of local smallholder agriculture, which is increasingly appreciated by consumers. No serious impact studies have been led, or are planned, to know the exact impacts of the CETA – which farmers will suffer from these increased imports? – based on the proposed final text. Such impact studies seem a strict minimum before starting the democratic debate on the adoption of this treaty.

It should be underlined that the European Trade Union Confederation, which is the voice of more than 70 million European workers, has clearly expressed its opposition to the CETA, notably because it does not effectively protect workers’ rights and public services and that it contains the arbitration clause which weakens democracy for the benefit of transnational firms’ power.

The CETA negotiation was presented on September 26th 2014 by the Canadian Government and the European Commission as completed. The text of 1 600 pages was immediately released. It is subject to legal verification and a translation into 24 languages of the European Union that will probably last until the final quarter of 2015. It will then be submitted successively to European governments within the Council for signature, then to the European Parliament for a “yes or no” vote on its approval and finally, if it is considered as falling within mixed jurisdiction between the Union and its Member States, to the governments and parliaments of European countries to ratify before a final formal approval by the Council and being published in the Official Journal of the European Union.

It is very likely that the CETA, like the TTIP, will be considered as mixed. Firstly, because these two treaties cover such a number of areas that it is almost inconceivable that they only concern European issues exclusively. Secondly, because the European Member States clearly threatened the Commission to refuse the CETA, if it is presented as non-mixed. Regarding the TTIP, the Commission itself has repeatedly stated that it will most likely be mixed. What’s more, the EU-Colombia-Peru Treaty was considered mixed despite its coverage in terms of competences being much smaller. However, the Commission sometimes makes general statements on the fact that Member States should not systematically consider trade agreements as mixed; we must therefore remain attentive to this debate, which is not permanently closed.
However, if a treaty is considered mixed, it means that only one national parliament – or perhaps regional in Belgium – may decide to refuse to ratify the agreement and thereby prevent its entire enforcement on all the concerned territories (the EU and the USA for the TTIP). Yet even if the CETA was considered mixed, it would be unwise to rely on the rejection of a single regional or national parliament just at the end upon ratification. First of all, because the treaty would be provisionally implemented upon approval by the European Parliament. Most provisions would already have been in effect for many years before the national parliaments would have the opportunity to refuse, which would make any rectification particularly arduous.

For national policymakers, the key step will be the signature phase. In Belgium, the approval of each regional, community and federal government will be required for Belgium to sign the CETA, and these decisions could already be taken in the year 2015. Indeed, the federal government will ask the Regions and Communities to grant it full powers to sign the CETA agreement on behalf of Belgium. This step is usually not a formalised item on the agenda of the Regions and Communities’ Council of Ministers, let alone a parliamentary debate. This is, however, an act that engages the federal entity and indicates the agreement’s support.

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123/ Belgium, like each Member State, clarified its protected sectors’ list, which can be found in Annexes 1 and 2. European Commission, Consolidated CETA Text, published on 26 September 2014, http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf, pp 1233 to 1241 and 1522 to 1529. There is no mention of waste management. Again, has there been a public debate in Belgium about the composition of this list? Is it just made of services protected by the current Belgian laws, retaining no leeway for the future? The Belgian governments should at least organise this debate before any decision leading to sign the treaty is made.


The TTIP project pursues essentially two aims: firstly, to boost growth and employment, secondly, to curb China’s growing power by isolating it on the international trade scene. However, after analysis, it is feared that the European Union will lose on both counts. First, the projections for growth and employment leave at best hopes of modest gains and at worst considerable losses in Europe. This is explained by the fact that the European economic and social problems are mainly the result of its internal contradictions and its austerity and social dumping policies introduced since the 2008 crisis. Indeed, to increase the competitiveness of countries in crisis, the cost of labour has been significantly reduced in most European Member States, as in Italy (-3% between 2010 and 2013), Spain (-4%), Ireland (-4.9%), Portugal (-3.3%) and obviously Greece (-15.4%), weighing heavily on domestic demand, which, despite different data between Member States, decreased by 4.5% on average between 2008 and 2013 in the eurozone. Meanwhile, cuts in public spending – while firms and households were looking to deleverage themselves – resulted in lower investments, recession, unemployment and lower tax revenues, leading to deflationary pressures, a decline in the volume of industrial production – by 10% on average in the European Union since the 2008 crisis – and rising debt – which reached in the first quarter of 2014 a new record of 96.4% of GDP on average in the eurozone. Therefore, rather than a blind race towards a TTIP project that would exacerbate internal asymmetries of European integration, the EU would be better off adopting a European social and fiscal harmonisation and establish economic policies necessary for its re-industrialisation and socio-ecological transition.

Conclusion

Moreover, the strategy of isolating China risks not only failing, but is also likely to strengthen conflicts between blocs, with all that this implies in terms of fears for stability and global security. Such a prospect might well spell the end of multilateralism, which is more necessary than ever in a world becoming multipolar. Whether in trade, climate or financial markets, China and the other emerging economies are now part of the problem and the solution. Seeking to isolate China in such a context could therefore be counter-productive; also it is obviously unrealistic to expect stabilising the international system without its involvement. This is why Pierre Defraigne, who believes that rather than building a new international economic order the TTIP is trying to extend the old, advocates including China in the negotiations.

However, such negotiations would imply adopting a different approach to the one that proceeds with the levelling down of standards and regulations in the name of competitiveness. Certainly, transnational firms have an incentive to benefit from a level playing field to avoid unfair competition and unnecessary obstacles. Such an option, however, does not mean that a process of standard harmonisation should take place to lower standards, at the expense of protecting the rights of workers, consumers or the environment – as tends to be the case with the ISDS, regulatory cooperation, negative lists and ratchet effect present in the TTIP. It is symptomatic that the most ambitious regulations in the United States and Europe – such as the Dodd-Frank Act on financial regulations in the United States, or the precautionary principle in Europe – are considered by negotiators of the TTIP as barriers to
Rather than build a new international economic order, the TTIP is trying to extend the old.

It is the maximisation of the developmental nature of international trade that matters.
More generally, the UNCTAD analysis of public policies towards foreign investment shows that, while liberalisation policies remain the majority, they have been decreasing since the early 2000s, in favour of restricting or regulating measures of investments, whose share rose from 6% to 27% between 2000 and 2013 (see Chart 8). In the same vein, the strengthening of rules to curb the massive tax evasion allowed by transnational firms’ tax optimisation strategies – notably revealed in the scandals of the “Offshore Leaks” and “Lux Leaks” – would benefit public state revenues, whether they are in the United States, the European Union, China, or other emerging countries.

All in all, such an approach consisting of negotiating ambitious environmental and social standards would involve defining an adequate mandate for the negotiators of trade agreements. A proposed “alternative trade mandate” has therefore been developed by organisations of the European civil society, including the CNCD-11.11.11, and supported by hundreds of European parliamentarians which could inspire a reorientation of the European Union’s trade priorities.

### Chart 8

**Changes in National Investment Policies**

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<th>Year</th>
<th>Liberalisation</th>
<th>Restriction / Regulation</th>
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Source: UNCTAD FDI-TNC-GVC Information System, FDI/TNC database (www.unctad.org/fdistatistics)

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140/ UNCTAD, op. cit., 2014, p. 106
Bibliography

Berger S., Made in Monde. Les nouvelles frontières de l’économie internationale, Seuil, 2006


Cermak M., 10 ‘myths and facts on TTIP’ of the European Commission confronted with negotiating texts, Presentation hearing in the House of Representatives, 2 May 2014, https://goo.gl/vy5iQ9; English version here https://goo.gl/4h1YPX

Cermak M., Indecent work-based competition is not the only way, Advocacy for a clean consumer warranty, Working paper, June 2015, https://goo.gl/a0iOKD


CNCD-11.11.11, Stoppons le TTIP et le CETA, http://www.cncc.be/stop-ttip


Defraigne P., Le dangereux mirage du "transatlantisme “ commercial, Madariaga College of Europe, December 2013-January 2014


Zacharie A., Mondialisation : qui gagne et qui perd. Essai sur l’économie politique du développement, LBDE/La Muette, 2013

Zacharie A. and Cermak M., Nous consommons, mais à quel prix ?, Point Sud n°21, October 2014