

TRADE, INCLUSION AND EXCLUSION IN EUROPE AND THE AMERICAS

Abstracts

[Transatlantic investor protection as a threat to democracy: The potency and limits of an emotive frame](#)

Gabriel SILES-BRÜGGE (University of Warwick)

A campaign by civil society organisations (CSOs) turned a relatively obscure area of international economic law, investor-state dispute settlement (ISDS), into the focus for opposition to the Transatlantic Trade and Investment Partnership (TTIP) – and later also the European Union (EU)-Canada Comprehensive Economic and Trade Agreement (CETA). This article analyses how civil society organisations (CSOs) had some power in shaping the EU's position but also highlights the limits of their influence. Combining insights from constructivist International Political Economy with scholarship emphasising the importance of emotions in the framing strategies of CSOs, I contend that such groups were able to create a polysemic 'injustice frame'. Characterising ISDS as a threat to democracy and the rule of law aroused anger and was sufficiently ambiguously framed so as to have wide appeal. The ambiguity of the frame and concreteness of the target, however, were also its Achilles Heel, as it provided space for the Commission to undertake specific reforms that could also be legitimated in terms of their democratic credentials.

Elitsa GARNIZOVA (London School of Economics)

[*Non-tariff measures and modes of justification in EU trade policy*](#)

Current events such as the backlash against trade policy and globalisation, resulting in the revoking of Trans-Pacific Partnership Agreement by the Trump presidency and contributing to the vote for Britain exiting the European Union, show that regional and international cooperation on trade policy issues is reversible. Dominant theories in International Relations and International Political Economy often assume that once cooperation and liberalisation is achieved and is underpinned by institutional structures, the costs of reversal are too high for state and non-state actors to support such a shift. While multilateral negotiations within the WTO framework have reached a stalemate, the backlash against trade policy in the European Union has not made the European Commission to change its approach via bilateral FTAs. Within this context, the article explores the newly resurfaced issues, falling under the broad category of non-tariff measures, and aims to understand three interrelated questions: what are NTMs for? Who decides what is justified? How are they negotiated? To achieve this, the article examines the ways NTMs are discussed and justified among key trade policy actors in the European Union, drawing on actor-centred constructivism (Saurugger 2013) and the modes of legitimisation and justification that are at work within economic processes (Davies 2014, 2015) to look at how agents interact in policy-making and how they engage with different ideas about trade. Through this, I look deeper into the question what NTMs are for in the first place – correcting a market failure, reacting to exogenous factors, or promoting a political agenda to inform the ways, in which they can be negotiated.

This paper makes a theoretical contribution to the inclusion/exclusion debate by exploring the linkages between modes of justification and types of interaction with different EU stakeholders.

Robert BOYER (Institut des Amériques)

Brexit: lessons for the viability of the European Union and the pursuit of globalization

Analyzing the processes that lead to the Brexit vote delivers a fresh understanding about of the current conflict between internationalization, social inclusion and the political demands of citizens. The UK was enjoying a remarkable macroeconomic performance, largely explained by its integration into EU and its international relations. The victory of Brexiters is the unintended consequence of the irruption of UKIP upon the agenda of the Conservative Party and it is an illustration of the misery of pre-electoral polls and the disconnection of the political elite from the rest of society. The distribution of the votes by education level, age, and localities brutally reveals a great social divide that had silently deepened with the internationalization of the British economy. The inflow of foreign workers is in a sense evidence for the economic success but it feeds the anger of the left behind who can express their rejection of the loss of national sovereignty, personified by Brussels regulations and the constraints imposed to British citizens.

The presentation shows how economic liberalization, social fragmentation and an anti-European political offer have coalesced into a major threat to the very principles of European integration and more generally to the compatibility of democracy with globalization. This analytical framework is then extended to other Member States, such as the Netherlands, Austria and France. Is it typically European or does it fit also for the US, where anti-globalization and anti- elite movements have defeated both Republicans and Democrats? Two key issues will then be investigated. First can different national interests agree upon a strategy for overcoming the triple perils of the EU: the dysfunctional institutional setting of the Euro-zone, the primacy of international finance over citizens' demands and the related imbalance between capital and labor, and the rise of xenophobia and nationalism in response to the inflow of political refugees and economic migrants? Second, is there a sustainable isolationist economic strategy that could appease the demands for more national sovereignty? The unclear negotiation strategy adopted by the British Prime Minister illustrates the perilous dilemma that all governments face.

Louise DALINGWATER (Université Sorbonne Nouvelle)

Public health services, trade and investment: inclusion or exclusion in Britain's post Brexit trade deals?

Public services have become tradable commodities, particularly in areas that represent a sizeable proportion of national economies, such as health and education. International trade in health services has the potential to represent a major source of growth in Europe and the US. An increasing number of health professionals are moving to other countries, whether on a temporary or permanent basis, to earn higher wages or to enjoy better working conditions. FDI from hospital operators and health insurance companies is on the rise. There is also a move to attract health consumers from other countries. Total exports of health-related travel expenditure and other health services amounted to around USD 6.9 billion in 2011. The International Passenger Survey reported that about 63000 UK citizens and permanent residents paid for treatment abroad in 2010. In addition, approximately 51000 foreigners travelled to the UK for medical care.

While some public health institutions have been instrumental in putting services trade and investment on the negotiating table¹, others are less likely to think of themselves as producers or potential exporters. The ideological arguments are varied because they often involve questions on the role of the market in providing services, essentially because there are great differences among countries in the definition of public services. Traditional notions of national interest are called into question when health services become tradable goods. This paper proposes to look at this debate from the sectoral interests of various stakeholders who argue the case for inclusion or exclusion of health services from trade deals. It will then apply this analysis to the particular case of the United Kingdom which is looking to strike trade deals with Europe and the US after the country's exit from the European Union.

¹ Healthcare UK (part of the UK department of health and UK trade and investment) is a very influential organization in Britain for example which proposed to "enhance the National Health Service through international engagement".

Ferdi DEVILLE (Ghent University) & Marie MUSCH (Ghent University)

The EU and EGA negotiations: A missed opportunity for a trade and climate win-win?

In recent years, free trade agreements (FTAs) have come under heavy criticism. Contestation has been especially intense within the European Union (EU), mostly *vis-à-vis* two transatlantic trade agreements: the Transatlantic Trade and Investment Partnership (TTIP) with the US and the Comprehensive Economic and Trade Agreement (CETA). This protest is mainly driven by the concern of civil society organisations (CSOs) that trade agreements endanger other policy objectives they continuously promote. One of these is the fight against climate change. In the same period that FTAs became increasingly contested, however, trade negotiations were being held that had the explicit goal of contributing to environmental protection and mitigating climate change: the Environmental Goods Agreement (EGA).

EU trade officials had hoped to end the difficult year 2016 on a positive note, by successfully concluding the EGA. This would give some impetus to the international trading system and allegedly provide win-win solutions for both the climate and trade sphere. It would have allowed trade policy-makers to rebut the often-heard criticism that EU trade policy is in conflict with EU climate objectives. Yet, a final push to reach an agreement failed in the beginning of December.

This paper will zoom in on the role the EU has played in the Environmental Goods Agreement (EGA) negotiations. First, we will situate the EGA in the broader context of the international trade-and-climate nexus. We will then describe the evolution of the EGA negotiations focusing especially on the position of the EU, in order to subsequently conceptualize and explain this stance. To conclude, we will discuss the implications of our findings for EU policies in the trade-climate nexus more generally. The paper is based on desk research of primary documents and a significant number of interviews with EU and member states' trade and climate policy officials, as well as stakeholders.

Alvaro ARTIGAS PEREIRA (Sciences Po Paris)

Trade negotiations and the future of national energy markets: distributional impacts, sustainability concerns and the inclusiveness challenge

Energy services have become a growing part of international trade but are not well represented in global trade agreements. How to bring energy services more fully into the GATS agreements disciplines, was a commitment to continue services of trade liberalization after the Uruguay round. In most countries, domestic regulations impeded gains that could arise from open and nondiscriminatory trade in energy-related services, with detrimental effects for economic growth, innovation and supply of cleaner energies. However, the regulatory regime governing energy markets in both industrial and developing countries has experienced significant change since the mid-1980s. Regulatory frameworks that seek to encourage competition and private sector ownership and investment have increasingly replaced heavy market controls and government ownership. One of the most pervasive changes has taken place in ownership patterns. Major privatizations have occurred across energy sectors and have involved firms in industrial as well as developing countries. This process that has been going on over the last two decades has evolved along a new regulatory regime for energy, leading to a reduction in price controls and import restrictions, allowing buyers and sellers to improve their access to energy by shopping around for convenient deals on upstream supply. Overall, the degree to which trade in energy services grows, hinges significantly on progress in eliminating restrictions on market access and other domestic regulatory barriers. Expanding international trade in energy services has the potential to yield significant economic benefits in lower prices, greater innovation and cleaner and more efficient energy supply. Which are the barriers that are at work today in South America, hampering energy services providers, and to what extent trade negotiation agreements can facilitate services across borders? If we compare energy markets in the European Union, we can see the easy access to neighboring energy markets isn't devoid of complexity and are subjected to increasingly complex negotiations that reveal the limits of integration dynamics and the persistence's of VOC (Varieties of Capitalism) arrangements. This paper

will explore these dynamics in the Latin American context trying to understand the interrelated impact of WTO general frameworks, Cross-regional trade deals like the TPP and regional schemes of integration like the Pacific Alliance, by looking at the transformation of these markets and their provisions on South American countries energy integration in the Pacific Shore.

Susan AARONSON (George Washington University)

The turn to trade agreements to regulate the Internet

This chapter examines how governments use trade agreements and policies to address cross-border Internet issues. The author notes that there is an imbalance between US enthusiasm to create a system of trade rules to govern cross-border information flows and the responses of its major trade partners. She shows that while trade agreements are a logical venue to govern cross-border information flows, trade agreements might not be the best place to address these issues unless policymakers also include language to enhance human welfare, internet operability, and the rule of law. The chapter begins by explaining the importance of information flows to the Internet and Internet governance. Then it discusses the debates over various trade agreements, concentrating on where the US and its trade partners have failed to find common ground. I note however, that the incoming Trump Administration has shown little enthusiasm for trade liberalization or for encouraging digital trade.

Sylvain ZINI (Université du Québec à Montréal - UQAM)

Labor provisions in Canadian and American trade policies: Toward a North American convergence?

Depuis le début des années 1990, la libéralisation des échanges commerciaux, couplée à de nouvelles régulations économiques internationales favorable aux entreprises (investissement, propriété intellectuelle) laissait à penser que les travailleurs étaient les laissés-pour-compte de la mondialisation. Dans ce contexte, plusieurs pays ont poussé à la mise en place de clauses sociales dans leur politique commerciale, à l'échelle unilatérale, bilatérale, régionale comme multilatérale. Ces initiatives visaient à offrir la garantie du respect des normes du travail en contrepartie de l'ouverture aux échanges commerciaux. Dans le cadre de ce travail, nous établirons une approche institutionnelle et comparative des différentes modalités d'inclusion des groupes de défense des intérêts des travailleurs (syndicats et ONG) dans la définition et la mise en œuvre des clauses sociales aux États-Unis et au Canada. Nous chercherons à démontrer que les différences institutionnelles majeurs des systèmes politiques canadiens et américains induisent une modalité de participation fort différente tant dans les modalités de négociation que celle de suivi des accords commerciaux. En somme, les parties prenantes sont beaucoup plus présentes dans le cadre du modèle américain que dans le modèle canadien qui repose sur un mécanisme du haut vers le bas (top-down). En conséquence, même avec des marges de manœuvre limitées, les syndicats et ONG américains disposent d'un plus grand nombre d'outils à leur disposition pour influencer la stratégie américaine.

Jan ORBIE (Ghent University), Jamal SHAHIN (University of Amsterdam) & Lotte DRIEGHE (Ghent University)

Enhancing legitimacy and effectiveness through the inclusion of civil society in regional and global trade and Internet governance

This paper addresses the growing tendency to promote inclusion of multiple voices in global governance institutions. It seeks to develop a framework for understanding and explaining how civil society are involved in policymaking in global public goods at both the global and regional levels. Preliminary reflections on how regional and global governance institutions attempt to enhance effectiveness and legitimacy by increasing the number and diversity of actors engaged in the policymaking process are presented. The analysis focuses in particular on the engagement with civil society actors (including both profit and not-for-profit organizations) in international trade and internet governance institutions.

We set out several questions in our paper. First, we wish to understand what logics promote the inclusion of civil society in global and regional governance. Essentially, we ask the question: What is the

rationale for international organisations to engage with civil society? Second, we aim to explain the mechanisms that are used to execute this opening up of institutions to multiple voices. Our question is thus: How do international organisations engage with civil society? We intend to build on current research, which has tended to focus on the role of global civil society (e.g. Scholte, Corry, Amoores and Langley, Steffek). We see a gap between this literature — which describes and analyses the legitimacy, accountability (etc.) of these movements — and the literature that critically examines the impact of multistakeholderism on the instruments of policy. Our third and final question is thus, does civil society engagement lead to more effective and legitimate policymaking at the regional and global level?

There appears to be an emergent trend in regionalising global discussions in what we term a 'cascaded' form of global governance. As a large (and quite unmanageable) number of actors from below, across and beyond the state start to participate in negotiations that were traditionally managed solely by states, alternative representations of how the world should be ordered are emerging.

The initial investigations which fuelled this research project have shown that there are critically important questions to be asked about the nature of civil society engagement in global and regional policy discussions. We have seen that 'multistakeholderism' is used as a process to attempt to legitimise international policy frameworks, and yet this legitimacy is questionable. We attempt to develop a framework to enable us to systematically and comparatively address questions of legitimacy and effectiveness in various global policy fields.

We shall use cases from regional and global instances of trade and internet governance institutions to refine the framework. In the trade area, selected cases are the WTO public forum and EU RTAs with Korea, Central America and Peru-Colombia, in the internet area the Internet Governance Forum (IGF) and regional IGFs. The intersection between trade and internet governance policies are striking. We are particularly interested in how the European Union promotes multistakeholderism at both the global and regional levels.

Jean-Baptiste VELUT (Université Sorbonne Nouvelle)

Stakeholder consultation in impact assessments: from theory to practice

This paper examines the modalities and logic of stakeholder consultation in ex-ante studies and impact assessments undertaken as part of TTIP and/or other trade agreements negotiated by the United States and the European Union. To do so, it will compare the practices of US trade advisory committees on the one hand, and the EU Commission's DG Trade on the other, focusing on three main aspects: 1) stakeholder selection; 2) information access and transparency and 3) management of dissenting views. The objective is to reflect on the limits of current ex-ante studies and impact assessments in terms of inclusion and legitimacy and to identify best practices within the framework of TTIP negotiations and beyond that would help trade negotiators regain legitimacy to address the current political backlash against trade and globalization. My analysis will rely on desk research of EU and US primary sources, as well as a series of interviews with government officials (USTR, DG Trade) and civil society actors, including members of US trade advisory committees and European NGOs and external experts.

Jeremy MALCOLM (Electronic Frontier Foundation)

Contested meanings of inclusiveness, accountability and transparency in trade policymaking

Inclusiveness, accountability and transparency carry different meanings in the context of different public policy processes, and for different stakeholder groups engaged in those processes. In particular, civil society has had a substantial role in conceptualising these meanings in Internet governance policy spaces, but a much reduced role in their explication in trade policymaking. It will be argued that greater support for trade policymaking could arise from a project to reconcile civil society's expectations of the inclusiveness, accountability and transparency of trade negotiations with the political realities of the trade negotiator, while at the same time enhancing negotiators' appreciation of the metrics that civil society stakeholders will use in measuring the inclusiveness, accountability and transparency of trade negotiations, especially those that relate to the Internet. As a case study, the author will present three recent initiatives in this area by his civil society organisation, the Electronic Frontier Foundation. The first is the Open Digital Trade Network, a loose "civil society-plus" coalition that has drawn on Internet

governance process norms to develop a set of recommendations for the procedural reform of trade negotiations that deal with Internet public policy issues. The second is the Internet Governance Forum's Dynamic Coalition on Trade and the Internet, which endeavours to reintegrate the mainly civil society-based coalition of the first project with a broader set of stakeholders including trade policymakers. The third is the Shadow Regulation project, which generalises the work of the first two projects in order to enable their application to a range of other related global policy processes and phases of trade policy development, other than trade negotiations. By assessing the successes and failures of these projects, an appreciation will be gained of the extent to which public discontent with global trade agreements, and the inability of governments to adequately address this discontent, can be explained as a disagreement over the meanings of key concepts of inclusiveness, accountability and transparency.

Rodolphe ROBIN (Université de Rennes 2)

Inclusive approach to the EU-Mercosur association agreement

As part of its policy towards international integration, the European Commission has not been able to conclude many association agreements with the rest of the world, despite the fact that the European Union has made that instrument a strategic priority as from 1994 on. Mexico and Chile were the first countries in the Western Hemisphere to accept this type of commitment with the EC in 2000 and again in 2005. With Mexico and Chile, negotiations were eventually quite swift compared to the case of Mercosur/EC negotiations, since eighteen years after the launch of the project between the two blocs, no overall consensus has been finalized.

The assessments, which have accompanied the Mercosur/EC negotiations since 1999, have enabled a long list of elements, which help to understand the complexity of the project. Among those three are fundamental: the agricultural axis; the absence of consultation carried out among populations (International Conference of the Institut Des Amériques, 2011); the absence of consultation of economic stakeholders (Robin, 2011: <http://www.theses.fr/2011REN20033>). Today, the possible success of negotiations rests on the ability of states to innovate in these negotiations concerning these three issues. At the same time, the framework of these negotiations (Mercosur/EC cooperation agreement, 1995) makes it clear that higher education institutions have a role to play - indeed a leading role.

This paper will present a series of university initiatives set up from 2012 concerning students in the International Trade Master Programme (Master ALPI, Rennes 2), institutional stakeholders tasked with helping enterprises on the international stage (Bretagne Commerce International) and small and medium sized companies waiting for the conclusion of an agreement between the EC and Mercosur, etc. An ad-hoc line of research was defined so as to ensure that these actions remain coherent in the long term: « Langues Étrangères Appliquées aux Relations Internationales » (E.A. ERIMIT). Including members of civil society in this line of research has allowed us to observe that those same members are waiting for an Association Agreement, or, at minimum, an agreement allowing them to develop their activities. Civil society has responded favourably to requests from universities, thus confirming its wish to participate in the negotiations. Those actions have allowed methodological concepts favouring the link between the two regions to be validated. Those actions have given rise among players to better knowledge of the problematics rendering those negotiations difficult, thereby giving rise to recommendations from them. The optimism that political decision-makers show is often remarkable. Nevertheless the negotiation teams are in deadlock and it is indispensable for university research to play its role of support.

The Mercosur/EC association project was defined in the 90s and, consequently, a final signature to the association would not bring solutions to all sectors of the modern economy (start-ups, digital economy, etc.). Nevertheless, it would be a base to be updated, as was the case with Mexico in 2015.