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BERNHARD ZEILINGER

**Post-Doha Reorganisation of Global Trade
at the Expense of the Global South¹**

ABSTRACT This article addresses some of the most pressing issues related to the surge of Mega-Regional Trade Agreements (MRTAs). All of these are initiated by the main trading powers (the US and the EU) which, by means of MRTAs, attempt to reclaim the status of normative leadership with the scope of setting de facto common global standards. The article contributes to current debates on the emergence of NGFTAs. It highlights the strategic move of the initiators in the US and the EU of bypassing the WTO and using their trading and normative power to induce others to accept the norms and rules of the transatlantic trading system ('Acquis Transatlantic'). The analysis in this article gives insights into the strategy behind these MRTAs and the possible knock-on effects and consequences for the Global South. It focuses on the question of the implications for the developmental needs of these countries and how far the MRTA provisions contradict the UN Sustainable Development Goals (SDGs). This contribution concludes with an outlook on the impact on the multilateral global trade system and how the WTO will prevail against the initiatives of regional economic hubs.

KEYWORDS WTO, Singapore issues, TTIP, Global South, mega-regional trade agreements

1. Introduction

Manners (2002) claims that the United States (US) and their allies the European Union (EU) are the architects of the post-War global governance. All relevant international organisations (IOs) were initiated by

the Western coalition, dealing *inter alia* with the international financial order (for instance, the IMF, the World Trade Organisation), global trade (General Agreement on Tariffs and Trade), and collective security arrangements (the UN) (Müftüler-Bac/Cihangir 2012: 2; Krasner 2000).

All these institutions are the political offspring of the concept of multilateralism in the 20th century (Straubhaar 2014: 27), which aims to include countries within a global regime in order to increase the legitimacy of international rule-making. Multilateralism, therefore, was seen as an effective instrument to spread Western norms at low administration costs and with high legitimacy. Around 2000, Western regulatory hegemony was challenged by new coalitions of countries in the Global South. A power shift occurred, not least when China joined the WTO in 2001; it is currently waiting to be accorded the status of a market economy by December 2016, which would boost its exports enormously (especially in the field of steel exports). Apart from that, China was the initial founder of the Asian Infrastructure Investment Bank (AIIB), which was established in 2014, and can clearly be seen as an alternative and independent project to the IMF, World Bank and the Asian Development Bank.

The political and economic conditions that have enabled the US and the EU to act as global leaders and normative powers are fading. Their combined share of world GDP declined in nominal value from 52 per cent in 1990 (Müftüler-Bac/Cihangir 2012: 2) to 45 per cent in 2013 (World Bank 2013). Apart from that, the EU's external trade with the US halved from 22.3 per cent in 1990 to 11.5 per cent of the total value in 2013. In the meantime its trade with China grew tremendously. The EU's share of exports to China increased from 3 per cent in 1999 to 9.5 per cent in 2015. Imports from China constituted 7.1 per cent of total EU imports in 1999 and 20.3 per cent in 2015 (Eurostat 2016).

The main contenders against Western paternalism in global governance are foremost the BRICS countries – Brazil, Russia, India, China and South Africa. These countries represent a market with more than three billion people, which corresponds to about 40 per cent of the world population. With a global market share of approximately 25 per cent in 2014 and economic growth rates between 4 per cent and 7 per cent of their GDP, they clearly claim a say in regulating global trade (Bertelsmann Foundation 2016: 21ff.).

Goldin (2013) predicts a ‘power trade-off’ between the West and the BRICS: “[...] by 2050 half of the global market will be possessed by emerging powers, BRICS and others such as Mexico and Indonesia”. Nevertheless, as he underlines, “(t)his new power play has not yet materialized into a new power” (ibid.). A recent initiative to found their own New Development Bank (NDB) in 2012 underlines the BRICS’s claim of creating an alternative alliance to the Bretton Woods institutions. Apart from that, the Least Developed Countries (LDCs) have recently founded South-South coalitions like G20+, G90 or G33, and together aim to exert influence in accordance with their increasing role in global trade and the global value chain.

The conflict of interest between the traditional powers in the West and their contenders in the Global South was manifested in the negotiations of the Doha Development Agenda (DDA) from 2001 to 2008. Considering the resistance within the multilateral decision-making in the WTO, Western members faced increasing difficulties in gaining approval for their interests, expressed mainly by the so-called ‘Singapore issues’ (Khor 2003; Woolcok 2003).

This article argues that the US and the EU reacted to this reluctance by shifting the forum of negotiations on trade regulations away from a multilateral to a bilateral or plurilateral footing by implementing a series of New Generation Free Trade Agreements with third countries (Straubhaar 2014: 35). The subsequent section starts with an explanation of the rationale behind the core objectives of NGFTAs in creating a global trading system. In Section Three, the author outlines the possible consequences of new provisions in NGFTAs for the Global South and illustrates how these provisions may impede the development and industrialisation efforts in developing countries. The article concludes in Section Four with an outlook on how the coexistence between MRTAs and the WTO regulatory framework might shape future global trade.

2. US-EU muscle-flexing in the course of post-Doha

Bilateral and plurilateral agreements addressing the Global South have expanded as they have been proven to be largely efficient in exploiting

North-South power asymmetries (Sahakyan 2015). A re-bilateralisation of trade negotiations is clear proof of Western muscle-flexing as it makes use of the existing imbalances in bargaining power towards the so-called Global South (Cox 1998: 45). Countries of the Global South will be in an even weaker bargaining position as negotiations take place outside of the multi-lateral decision making process and, therefore, they will be forced to accept Western standards and rules in order to be granted access to their markets. Further, as will be further explained, bilateral trade agreements will drive a wedge between recently arising South-South coalitions, like BRICS, G20+, G90, and G33, and will exert strong pressures on countries to adopt these standards and rules once they are adopted in main economies.

The method of signing deals with countries one by one, bypassing the WTO (where, despite its faults, at least every country has a voice) intends to realise the economic and political power of the US and the EU in order to shape global trade. EU Trade Commissioner Cecilia Malmström emphasised the need for plurilateral and bilateral agreements in a speech in 2016: “If it’s a choice between making progress with a smaller number of partners or no progress at all, then we will choose to move forward – plurilaterally,” she said, adding that “the priority would then be plurilateral deals on a most-favoured nation basis” (Centre for Trade and Economic Integration 2016).

It is indeed neither incidental nor accidental that trade negotiations are increasingly taking place on a bi- and plurilateral basis. From 1958 to 1999, 75 regional trade agreements (RTAs) have been in force worldwide. And, although the WTO got founded in 1995 to facilitate multilateral trade agreements, since the deadlock of the DDA in 2001 to the present, negotiations on bi- and plurilateral agreements have increased in number and size threefold. Currently, more than 200 additional RTAs around the world are in force and more are to come, as several are still under negotiation (WTO 2016). The most crucial ones are mega regional trade agreements (MRTAs), such as the Trans-Pacific Partnership (TPP), Trans-Atlantic Trade and Investment Partnership (TTIP), Comprehensive Economic and Trade Agreement (CETA), and Trade in Services Agreements (TiSA). All of these see either the US or the EU as their initiator. With the help of these MRTAs, the US and the EU are reclaiming the normative leadership with the aim of setting *de facto* common global standards.

Although González (2014: 6) sees in MRTAs a “new pillar of trade governance, complementary to the multilateral trade system”, there is also the risk of a fragmentation of the global trading system into regional blocs, a fragmentation which would seriously undermine the WTO’s role in global trade governance. As Lawrence (2014: 42) emphasises, “the specific rules enacted in the mega-regional agreements will be crucial in determining whether they contribute to a global economy that is more fragmented or more integrated”.

MRTAs, like TTIP, TPP, or the Asian Regional Comprehensive Economic Partnership (RCEP), enforce certain rules and standards which will have a negative impact on the economies and trade balances of countries that are not part of the agreement. The above-mentioned MRTAs incorporate main hubs along global value chains representing more than two-third of world trade. These hubs are regional economic and political powers and tighten trading partners on the basis of RTAs. In the worst case, this could lead to a new bipolarisation between “hostile trading blocs” (Raza et al. 2014) of the ‘West’ (US-dominated) and the ‘South East’ (dominated by China and India).

MRTAs are preference trade agreements (PTAs) that facilitate trade between signatory countries based on the most-favoured nation principle. Thus, they discriminate against outsiders through several distorting effects. The WTO regulations on PTAs (article XXIV of GATT) however, involve only rules on tariff barriers but have no clear rules on non-tariff discrimination. As, distorting effects increase the adaptation pressure for outsiders to accept new trade rules in order to maintain access to these markets this lead to a number of revised trade agreements between MRTAs signatories and outsiders. These New Generation of Free Trade Agreements (NGFTAs) have in common the fact that they have taken up many of the ‘Singapore issues’ which have stalled at the WTO.

These ‘Singapore issues’, which were raised at the WTO Ministerial Meeting in Singapore in 1996, deal with the three main dimensions of transnational business needs, encompassing investment protection, liberalisation of the financial market, and market access in terms of competition law (anti-discrimination of foreign companies in regard to public procurement and state owned enterprises; Council of the EU 2013). These issues, on which the industrialised countries were unable to make headway with

the WTO and which were thwarted by opposition from developing countries, are the reference for MRTAs and subsequent NGFTAs. They therefore deserve a close look as regards their impact on national consumers, the environment, and social and workers' rights. This wide range of issues goes far beyond the WTO's core objective, namely to facilitate global trade. It would seriously affect the sovereignty of countries' policy making on economic issues. As countries of the Global South face a low bargaining leverage in negotiations outside the WTO, they might have to accept standards and rules that are against their interests and even contradict the United Nations Sustainable Development Goals, which succeeded the Millennium Development Goals in 2015, as well as the 'European Consensus on Development' (Council of the EU 2006).

3. New Generation Free Trade Agreements: Enable the breakthrough of the Singapore issues

The current reorganisation of the global trading system due to bilateral and plurilateral trade agreements is starting a new era of liberalising global trade. It can be categorised as the third wave of global trade liberalisation. The first wave started in the post-War period with the adoption of the General Agreement on Tariffs and Trade (GATT) in 1948. Seven negotiation rounds to follow concluded in 1995, with the entry into force of the General Agreement on Trade in Services (GATS).

The second wave was the institutionalisation of trade governance by the establishment of the WTO in 1995 and an even more ambitious neoliberal agenda. Other crucial steps which shaped the global trade regime were the so-called Washington Consensus, presented first in 1989, the North-Atlantic Free Trade Agreement (NAFTA) in 1994, and the completion of EU single market in 1993.

At the WTO Ministerial Conference in Singapore in 1996, the US, together with the EU, Japan and Korea put new issues on the agenda. These so-called 'Singapore issues' aimed to extend the scope of the liberalisation of global trade, resulting in an ever-increasing amalgamation of trade and economic policies and thus going beyond traditional trade matters (Gill/Cutler 2014). The 'Singapore issues' refer to four working

groups tasked with a set of key objectives for the improvement of global trade: investment (investment protection and liberalisation of financial markets), competition policy (anti-discrimination and regulatory coherence), transparent government procurement, and trade facilitation (WTO 1996). The Doha Ministerial Declaration provides identical mandates for investment, competition policy, transparency in government procurement, and trade facilitation (Paragraphs 20, 23, 26 and 27 of the Doha Ministerial Declaration, WTO 2001). After seven years, WTO negotiations failed to contribute to the implementation of these 'Singapore issues' as they were opposed by most LDCs. Apart from that, another attempt to agree on a Multilateral Agreement on Investment (MAI) within the OECD-members was also stalled in 1998 after three years of negotiation due to widespread criticism from civil society.

Nevertheless, the first three of these four 'Singapore issues' go beyond trade issues and thus exceed WTO competences. Hence, much of the controversy centred on whether issues that are not directly related to trade should be allowed to be negotiated as treaties in the WTO. In particular, countries from the Global South expressed their concern about adverse effects and emphasised the need for a national right to regulate in this regard in order to best meet national interests and the existing realities of the Global South.

As a consequence of growing opposition the multilateral approach became a less favourable means to assert Western objectives. In terms of world trade, multilateral unanimous decision-making impedes joint decisions due to the crucial gap between Western business interests and the demands of the Global South on the development of the WTO regulatory framework. Within the last 20 years, the WTO negotiation rounds have failed to reconcile the increasingly antagonistic interests and positions between industrialised countries and the Global South, with Brazil and India in the lead, especially on how to proceed with special and differential treatment for LDCs on the agriculture, competition and investment chapters.

The Doha Development Agenda (DDA) had marked a cornerstone in the WTO negotiations by incorporating agriculture matters into a comprehensive framework that includes issues such as industrial tariffs, services, anti-dumping and countervailing duty measures, and investor-

state-dispute-settlement (Hanrahan/Schnepf 2006: 20). Nevertheless, the US and the EU were not willing to agree on the abolition of trade barriers to facilitate market access for agricultural and manufactured goods, whereas developing countries were either reticent or downright opposed to negotiating ‘Singapore issues’ in the course of the Doha negotiation rounds (Pakpahan 2012). As WTO negotiations are under the principle of ‘single undertaking’, an agreement cannot be made as long as there is no consent to all points on the agenda.

With the WTO negotiations on the DDA stalled in 2008 after a seven year process, efforts to make progress on the ‘Singapore issues’ turned to plurilateral and bilateral agreements. Whereas the first three issues had no majority in the WTO, follow-up negotiations on the fourth aspect – ‘trade facilitation’ – succeeded in policy reforms, agreed in the Bali (2013) and Nairobi agreements (2015).

The third wave of global trade liberalisation is a reaction to the new Post-Doha realities as well as to the economic plunge since 2008. Consequently, the ‘West’ changed its strategy of proceeding on the ‘Singapore issues’ by fostering the transatlantic tie between the US and the EU and utilising their political and economic power to shape global trade to their interests by tackling them on a bilateral and plurilateral basis. When we debate the merits of the NGFTAs, we are not arguing about free trade. These NGFTAs aim to integrate emerging markets into a competitive neoliberal playing field by placing national regulations at stake (Gill 1998). NGFTAs are a new Pandora’s box which will boost Western mercantilist export industries and facilitate investments, but simultaneously keep protective measures in national key industries. In the wake of a stressed global economy and moderate economic growth, “neoliberal strategies are well and truly back in the spotlight” (De Ville/Siles-Brügge 2014). The EC report “Global Europe” in 2006 (European Commission 2010/612: 3) underlines that, “[C]hanges in the global economic order today are as significant for the world economy and international relations as the end of the Cold War”.

4. Major drivers of global trade re-organisation

Western countries in particular benefitted from facilitated global trade. The share of exports to developing economies increased from 26 per cent in 1995 to 39 per cent in 2014, while exports to developed economies dropped from 68 per cent in 1995 to 56 per cent in 2014 (WTO 2015:24). Nevertheless, a recently published report by the Bertelsmann Foundation (2016) shows that the global trade volume has been declining since 2007. As stated in the report, the global economy is growing at a rate of 3.2 per cent, whereas world trade growth is well behind at a rate of 2.5 per cent.

Options to increase trade by means of the current regulation are regarded as exhausted. Thus, new regulations, as claimed by the ‘Singapore issues’, are addressing main central aspects of possible globalisation gains by a further integration of global trade. This requires comprehensive measures which go beyond traditional trade matters; as Siles-Brügge (2014) phrases it: “Trade politics, thus, is no longer just about international trade; it is increasingly about how we regulate our economies domestically”. This includes mainly national competences on investment protection, public procurement, competition policy, a liberalised financial market, and regulatory coherence so as to avoid non-tariff barriers (NTBs).

The objective is to access emerging markets in order to gain from their promising economic growth. According to the International Monetary Fund (IMF), about 90 per cent of the future economic growth will be achieved outside the EU and one third of it in China (European Commission 2012). Emerging economies and developing countries in particular still have a huge potential for economic growth. Indeed, the former High Representative of the CFSP (1999-2009) and General Secretary of NATO (1995-1999), Javier Solana, underlined the need of a transatlantic alliance in response to the prognoses of the report “Global trends 2030: alternative worlds” by the US National Intelligence Council (2012):

[...] if current trends continue, Asia could soon surpass North America and Europe in global power. It will have a higher GDP, larger population, higher military spending, and more technological investment. In this geopolitical context, Europe and the US need each other more than ever, making greater transatlantic co-operation crucial (Solana 2013).

The main drivers of global trade are transnational corporations (TNCs). TNCs account for almost 80 per cent of global trade and half of it is controlled by only 100 of the largest TNCs (UNCTAD 2013: 22f.). Furthermore, it is important to take into consideration that more than one third of trade consists of intra-company trade (Council of Europe 2016). As described above, TNCs have a crucial interest in a growing liberalisation of global trade. 83 out of the world's top 100 non-financial TNCs, ranked by foreign assets in 2013, are based either in the US or the EU and account for 70 per cent of total world mergers and acquisitions (UNCTAD 2014). Apart from that US- and EU-based TNCs cover 65 per cent of the top R&D companies worldwide (Serfati 2015: 10). These TNCs, therefore, demand an integration of these emerging markets into a common global trade regime with safeguard clauses for investors to gain from their economic growth (Venhaus 2013: 59).

While transnational investors would benefit, a liberalisation as stated in the 'Singapore issues' will have serious constraints on governments in developing countries from implementing measures that support or encourage local enterprises. Cox (1998: 105) emphasises the exploitative manner of a liberalised global trade: "The centre demands market access for foreign direct investments in order to facilitate the exchange of trade in goods and services as well as the liberalisation of capital flow to enable the repatriation of profits". This outflow of national profits into low-tax countries might bear the risk of enabling tax evasion.

Apart from that, Foreign Direct Investments (FDIs) are the determining factor for globalisation. EU member states are already part of almost half of the total number of international investment treaties (BITs) – which account for roughly to 1,400 out of 3,000 – that are currently in force worldwide (European Commission 2015a: 1). Provisions of current BITs are part of NGFTAs, and therefore supposed to be part of future trade agreements. With China, the EU's third largest trading partner, the EU introduced an institutionalised dialogue within the Asia-Europe Meeting (ASEM) and has been in negotiations about an investment agreement since 2013.

Thus, for most TNCs, relations with their national governments remain a key asset in order to reorganise the global trading regime into a neoliberal playing field (Gill 2003). This logic follows the explanatory

approach of Antonio Gramsci, who stated that the process of globalisation is initiated by the economic centre in accordance with economic and political elites (Cox 1998: 112).

TNCs, located in the US and the EU, articulate their interests within the Trans-Atlantic Business Council (TABC) to lobby for their interests. The TABC was set up after the merger between Trans-Atlantic Business Dialogue (TABD) and European-American Business Council (EABC) in 2013, the same year in which the US and the EU started their negotiations on TTIP and TiSA. The TABC serves as the official means of dialogue between American and European business leaders and U.S. cabinet secretaries and EU commissioners.

5. Implications for the Global South

Currently, numerous NGFTAs between Western countries and the Global South are under negotiation. These aim to implement new provisions in revised trade agreements already in place. Most of these issues were already addressed with the ‘Singapore issues’ in 1995 and are integral provisions of these NGFTAs. We might call them the new Pandora’s box which might extend neoliberal economic policies into thriving emerging markets. An integration of third countries into this trans-Atlantic shaped global trade regime would mean an integration into a competitive level playing field with less restriction for TNCs to do business in their countries. This implies that TNCs from the EU and the US would benefit from improved market access into third markets through the abolition of non-tariff barriers (NTBs), transparent and non-discriminatory public procurement, effective investment protection, and liberalised FDI flow.

The following section deals with this transformation to an ever more integrated global trade regime, which has a crucial impact on national policymaking, far beyond traditional trade matters. To be more precise, the section gives examples of possible impacts of trade distortion effects by MRTAs on developing countries and sheds light on how the US and the EU are going to implement a global trading system according to their norms and rules and at the expense of the Global South. The main focus lies on the adaptation pressure for the Global South due to serious trade distorting

effects which lead them to accept certain provisions of revised trade agreements. This section concludes by discussing the provisions of these NGFTAs in terms of developmental needs, referring particularly to the SDGs. Major criticism relates to the forced de-regulation of certain safeguard clauses, the privatisation of crucial public services and land acquisition, as well as the extension of the protection of FDIs. Furthermore, NGFTAs clearly jeopardise national regulatory autonomy and add a series of layers beyond traditional trade issues dealt within the WTO, with even more far-reaching inroads into the independence and sovereignty of states than the WTO.

5.1 How interdependencies impede diversification needs

The emergence of MRTAs affects the Global South at various levels and with varying intensity. Whereas countries from Asia and Latin America are to some extent affiliated with MRTAs, none of the African countries are part of any MRTAs. However, given the low level of intra-African trade at around 10 per cent (compared to 30 per cent for ASEAN countries), Africa is highly dependent on exports to countries with MRTAs (Dadush 2014: 33). This weak intra-African trade is partly driven by the lack of complementarities between the regional economies, but also by the prevalence of high barriers to trade: the cost and complexity of conducting business across borders severely restricts the ability to form regional value chains. A recent initiative by the EU underlines the need to integrate regional economic communities such as the SADC, EAC, or the COMESA Tripartite-talks (Zamfir 2015).

Their economies are traditionally export-driven and lack significant industrialisation. Their main export goods are raw materials (i.a. diamond, gold, copper, iron ore, crude oil and rare earth elements), agricultural products and textiles (Putzhammer et al. 2016: 12). As for Sub-Saharan Africa, the EU remains its largest trading partner. However, its share of total trade halved between 1989 and 2011 from 50 per cent to 25 per cent (Dadush 2014: 30). In 2011, the US accounted for 12 per cent while China had become sub-Saharan Africa's biggest bilateral trading partner with 15 per cent of the region's total trade.

Although Sub-Saharan Africa accounts only for 3 per cent of world trade and less than 3 per cent of global FDI flows, with extractive industry drawing the lion's share (UNCTAD 2016; Dadush 2014: 32), its econo-

mies have consistently grown faster than other regions of the world. That is why main trading hubs try to benefit from African economic growth and potentials through getting access to their markets. Currently, China is pursuing access to African markets through huge investments in African infrastructure and mining facilities (Putzhammer et al. 2016: 24). China aims to double its trade volume within five years to reach USD 400 billion by 2020 per annum.

The USA and the EU however, extended their preference schemes for African countries in order to encourage their trade relations. The USA enacted the trade act, “African Growth and Opportunities Act” (AGOA) in 2000, and the EU introduced the “Everything but Arms” (EBA) initiative in 2001. This latter is part of the EU’s Generalised System of Preferences (GSP) and has fallen under the reciprocal Economic Partnership Agreement (EPA) since 2008. These agreements provide ‘positive discrimination’; that is, immediate duty-free and quota-free access for exports from signatory countries to the EU single market. Further, they do not yet address a number of highly sensitive trade issues such as services, investment, intellectual property and public procurement.

The new EU trade strategy “Trade for All”, published in October 2015, is intended to focus on further economic collaboration with Asian, Caribbean and Pacific (ACP) countries. Part of the new strategy is, *inter alia*, to update already existing agreements with countries of the Global South as well as with Australia and New Zealand (European Commission 2015a). These NGFTAs tend to be ahead on numerous issues discussed within the WTO framework, and have contributed to diverting talks away from traditional Doha matters, which are particularly essential to many developing countries (Mevel 2016: 4). Significant gains from NGFTAs will not come from tariff reduction, but rather from the elimination of non-tariff barriers (NTBs) and the alignment of regulations that act as barriers to trade, investment and public procurement (González 2014: 7).

5.2 Constitutionalising mercantilist trade policies via mega regional trade agreements

For the time being, two main MRTAs are in the making which deserve a closer look, due to their impact on global trade: the Trans-Pacific Partnership (TPP) between the US and 11 countries including the Pacific Rim,

Japan, Australia, Canada, Mexico and Malaysia; and the Trans-Atlantic Trade and Investment Partnership (TTIP) between the US and the EU. Both agreements are remarkable endeavours. TPP is creating an integrated trading system representing 40 per cent of global GDP and 26 per cent of global trade. TTIP would represent a common market with more than 850 million consumers accounting for 45 per cent of world GDP and 44 per cent of global trade in goods and services (WTO 2014; Freytag et al. 2014). According to the US Secretary of Commerce, Penny Pritzker (2014), together both agreements will amount to more than 60 per cent of global GDP. Furthermore, a study by Hamilton/Quinlan (2014) points out that the transatlantic bloc accounts for 56.7 per cent of the inward stock of foreign direct investment (FDI) and 71 per cent of the outward stock.

Additionally, the US and the EU are proponents of negotiations with 23 countries – called ‘Really Good Friends’ (European Commission 2013c) – on the Trade in Services Agreement (TiSA), which aims to liberalise about 70 per cent of the global service economy (in areas such as banking, healthcare and transport; Nawaguna/Hughes 2014). TiSA should succeed the General Agreement on Trade in Services (GATS), which was adopted in 1995.

It is noteworthy that both MRTAs and TiSA are mainly driven by the US. While the TPP was already finalised in 2015 and awaits its ratification, the negotiations on TiSA and TTIP started in 2013 and are still far from being finalised. Twelve negotiation rounds on TTIP have already taken place since July 2013. Many obstacles are still on the agenda – e.g. investor-state-dispute-settlement (ISDS), social standards, public procurement, financial services, and judicial culture on product authorisation – obstacles which do not allow for serious prognosis on the finalisation of the agreement. Consequently, the pressure on the EU is increasing as the US has concluded its TPP and already created facts by setting certain standards on the global stage.

Thus, the EU sees itself forced to act pro-actively and to succeed in implementing inherent objectives in the nascent trade regime based on BITs and RTAs with trading partners. An aspect highlighted by EU Trade Commissioner Cecilia Malmström in an interview in May 2015 was the following: “How can we bring the opening agreed bilaterally back to the multilateral system? How can we make sure that the whole web of bilateral

deals is properly implemented? And how do we make sure that we don't lose out when others negotiate free trade deals?" (EurActiv.com 2015).

The TPP and TTIP intend to reshape world trade rules for the 21st century. However, the negotiations exclude some 160 countries, which are home to over 80 per cent of the world's population. Thus, how the excluded countries respond to the rise of the mega-regionals is an important question, as they face an imminent trade distortion (González 2014: 8). The author interprets the strategy of the US and the EU as setting a clear message to the emerging markets in the Global South. Thus, TTIP will be the transatlantic consensus ('Acquis Transatlantic') for setting *de facto* common global standards (Hamilton/Blockmans 2015). Former EU Trade Commissioner De Gucht (2010-2014) emphasised the importance of such an agreement:

"A future deal between the world's two most important economic powers will be a game-changer. Together, we will form the largest free trade zone in the world. This deal will set the standard – not only for our future bilateral trade and investment but also for the development of global rules" (European Commission 2013b).

However, these 'global' standards will not be negotiated in the multilateral forum of the WTO, where Southern countries have a voice, albeit severely restricted. Rather, they are decided behind closed doors between the EU and the US. As phrased by Falk/Unmüßig (2014 online): "Even if some developing countries were to join the new global order afterwards, they could not be 'rule setters' but would rather have to meekly toe the line". The strategic approach is to make the global trading system a competitive neoliberal playing field by bypassing the multilateral WTO-system and displaying its own superiority in bilateral and non-reciprocal negotiations on future trade agreements (Cox 1998: 45).

5.3 Trade distortion:

The bargaining leverage for revisions of trade agreements

The welfare gains for the MRTAs signatories – the US and the EU – are due to the fact that tariffs abolition and preferential cuts of non-tariff barriers will shuffle effective preference margins. The impact of MRTAs

on third countries remains fairly uncertain and will depend on how far-reaching the terms of the ratified MRTAs will be. It is obvious that a proliferation of preferential trade agreements (PTAs) will disproportionately affect small trading nations. However, countries of the Global South that currently maintain a high trade volume due to trade preferences in place with one or both of them, will lose preferential margins through the trade diverting effects (Straubhaar 2014: 34).

The leverage to bring third countries to adhere to US-EU rules refers to *de jure* and *de facto* discriminatory effects through trade diversion on their exports because of an ever more integrated market between the US and the EU (Akmann et al. 2015). A high level of regulatory coherence between the two largest consumer markets will set the standard for global trade practices and put pressure on others to follow suit. The higher the discrimination effects on excluded countries are, the higher is the leverage to accept US-EU rules in future trade negotiations. Based on the 'principle of conditionality', the US and the EU are setting the conditions accordingly to grant preferential market access for countries of the Global South. Countries of the Global South will have to trade with the US and the EU on their terms, or not at all. Moreover, as will be argued in the following chapter, most of these new rules contradict development needs.

Several studies (Felbermayr et al. 2013; Felbermayr/Aichele 2015; Faruqi et al. 2015) on the impact of the TTIP show that the expected welfare gains are not only exaggerated, but that they also come, to the extent they are realised, largely at the expense of countries not included in the agreement. It should be noted that this discrimination against outsiders does not violate the 'most-favoured-nation' principle of the WTO system. Article XXIV of the GATT states in this regard that exceptions are possible, if a trade agreement as such facilitates trade on average. This means, that countries are allowed to sign agreements on the abolition of tariff and non-tariff measures as long as tariffs against third countries are not raised.

Trade distortion results from a decline in the competitiveness of the Global South due to two reasons. First of all, the study by Felbermayr et al. (2013) indicates huge losses for many countries with PTAs in place, especially in West Africa and South Asia. Their preferences will be super-imposed by an abolition of almost all tariffs and a significant number of non-tariff measures. The risk of trade diversion for specific goods will be higher when they face complementary sources in one of the signatory countries.

The trade in complementary goods will be diverted in favour of the TTIP signatories due to a loss of competitiveness of outsiders (Felbermayer et al. 2013: 28). This implies that an erosion of preferences for exports from the Global South in a small set of specific complementary product categories (textiles, clothing and footwear, and specific agricultural products such as fish, bananas and sugar) will have important negative consequences for these countries (Primo Braga 2015: 78). Examples are the expected decline of the Mexican garment industry in favour of Italian manufacturing, or the US citrus fruit exports to the EU at the expense of exports from South Africa, Egypt and Morocco (Falk/Unmüßig 2014).

Secondly, the harmonisation of rules and standards and thus the abolition of NTBs are the cornerstone of these MRTAs (European Commission 2013a). Studies revealed that almost 80 per cent of the possible gains of a TTIP refer to the removal of NTBs (Centre for Economic Policy Research 2013: VII; De Ville/Siles-Brügge 2014: 14). Experts estimate that, with the current TTIP, about 25-30 per cent of NTBs could be eliminated (Raza et al. 2014: VIII). Even today, exporting countries from the Global South face serious compliance costs due to non-tariff barriers and required product standards in the US and the EU. These compliance costs will increase and thus reduce the competitiveness of outsiders. Import restrictions may increase as a result of new regulations or regulatory arrangements that impact the market access of the Global South. These would not be presented as import restrictions, but they would behave like them (Akman et al. 2015). However, they might cause higher adaptation costs for foreign companies and might even overlook the difference in the administrative, financial and human resources between the developed countries and the developing countries. Thus, developing countries should be granted financial and administrative assistance for capacity-building to comply with new rules and standards (see WTO Enhanced Integrated Framework for Trade-Related Technical Assistance to LDCs).

The trade-distortion effects of MRTAs have been predicted to leave a myriad of third countries worse off. The Bertelsmann Foundation published a study on the impact of TTIP on countries in the Global South under a tariff-only scenario. The study estimates a reduction in per capita income for countries of the Global South as follows:

Sub-Sahara Africa	Guinea (-7.4 per cent); Sudan (-4.1 per cent); Cote d'Ivoire (-6.4 per cent); Ghana (-4.1 per cent); Senegal (-4.4 per cent); Ethiopia (-3.3 per cent); Namibia (-4.4 per cent); Uganda (-2.2 per cent); Madagascar (-4.4 per cent)
Maghreb	Algeria (-2.4 per cent); Egypt (-1.7 per cent); Tunisia (-2.3 per cent); Morocco (-1.6 per cent)
South-East Asia	Bangladesh (-3.3 per cent); Nepal (-2.3 per cent); India (-2.5 per cent)
Pacific	Papua-New Guinea (-3.1 per cent); Philippines (-2.8 per cent)
Central America	Guatemala (-2.2 per cent); Peru (-1.5 per cent)

Table 1: Trade distortion effect in the case of entry into force of TTIP (tariff-only scenario)

Source: Felbermayr et al. 2013: 28

Countries that have PTAs with both the EU and the US (i.e. Israel, Jordan and Morocco) will be penalised the most by a substantial trade diversion effect. Turkey, however, is a special case as it has been in a Customs Union with the EU since 1996 and, therefore, will be affected by the TTIP more adversely than other countries. In the case of TTIP, US products would enter the Turkish market freely without duties, while Turkey would continue to face duties and other limitations in the US market (Kirisci 2013). Kirisci (2013) estimates a decline of 2.5 per cent real per capita income for Turkey. This would be a \$20bn loss of income, based on Turkey's GDP in 2012, an amount roughly equivalent to the current Turkish trade with the US (ibid.: 11).

As for the NAFTA area, Mexico would lose, in the worst case, a total of 7.2 per cent. Canada would also be affected, by a decline of 9.5 per cent and, thus, currently is going to ratify the Comprehensive Economic and Trade Agreement (CETA) in order to mitigate feasible negative impacts (Felbermayr et al. 2013: 30). The highest declines in the trade flows would be seen between the US and China. US-China trade flows in both directions would be expected to decline by about one third (Straubhaar 2013).

Remarkable also is the decline in Germany-China trade flow of 13 per cent (Felbermayr et al. 2013: 14).

In conclusion, trade distortion effects of MRTAs are predicted to leave a myriad of third countries worse off. They will be compelled to seek regulatory alignment and revise existing trade agreements in order to mitigate trade distortion (Baldwin/Low 2009). Thus, the TTIP looks poised to become a benchmark for beyond the border liberalisation for the rest of the world.

5.4 Contradictions in the development of the Global South

As already discussed in previous chapters, the US and the EU aim to realize the 'Singapore issues' on a bilateral or plurilateral basis, as countries of the Global South refused to implement these issues into the WTO legal framework. The main provisions of MRTAs pose a risk for the development and industrialisation efforts in countries of the Global South and, thus, conflict with the UN Sustainable Development Goals (SDGs), as well as the 'European Consensus on Development' (Council of the European Union 2006/C 46/01).

The main developmental objectives (United Nations 2015) are at stake in negotiations on NGFTAs. The following aspects would be affected: firstly, the demand to strengthen the multilateral trade system under the WTO. All WTO member states have signed an appropriate declaration in the course of the negotiations on the DDA (par. 17.10). Secondly, the SDGs include the goal of doubling the share of global exports from LDC by 2020 (par. 17.11), with a gross domestic product growth of at least 7 per cent per annum (par. 8.1). Thirdly, they aim to build resilient infrastructure, promote inclusive and sustainable industrialisation, and foster innovation in order to increase economic productivity through diversification and technological upgrading, including a focus on high-value added and labour-intensive sectors (Goal 9). Fourthly, it is claimed that they provide a good framework for entrepreneurship and small- and medium-sized enterprises (par. 8.3). Fifthly, they are seen as crucial in order to provide access to financial services and affordable loans in developing countries (par. 9.3). And, sixthly, the SDGs demand the protection of labour rights and safe and secure working environments for all workers (par. 8.8).

These goals raise four main demands for trade agreements. How do they affect the competitiveness of LDCs economies and their share in GVCs? What implications occur for their sovereign regulatory competence? How do they contribute to a sustainable economic growth? And, how do MRTAs shape the multilateral trade regime of the WTO?

The section above has elaborated on the negative impact of MRTAs on the export rate of third countries by an ever more integrated trade regime between the US and the EU. Exports from the Global South, however, risk a decline because of serious trade distortion effects. The problem mainly occurs, because LDCs from Africa in particular lack the possibility of mitigating the potential negative impact. On the one hand, they are quite dependent on the US and EU markets and lack opportunities to diversify their exports, due to traditional trade relations based on former colonialisation. On the other hand, several complementary goods will be substituted by exports from signatories to MRTAs. That brings us to another important aspect. As a result of their dependency, their bargaining power is quite weak. Hence, it is doubtful that countries of the Global South would be able to negotiate a fair deal in order to revise their trade agreements, thus restoring market access for their export goods. Alternative trade relations are not in place to outweigh the possible losses. However, closer South-South trade would have huge potential (Mevel 2016: 5).

Currently, countries of the Global South rely on their exports to the US and the EU. Thus, in the case of bilateral NGFTAs, they would be forced to accept previously rejected 'Singapore issues' through the backdoor. That means that they would have to accept new clauses which would interfere with their right of sovereign regulatory competence. These clauses address the opening of public procurement to foreign companies, guarantees for the protection of investments in their country as well as the liberalisation of financial services.

At first, signatories of NGFTAs are asked to grant market access by implementing anti-discrimination measures like the most favoured nation (MFN) principle and the national treatment for companies from foreign countries. This requires policy reforms in regard to national competition policy, public procurement and the service sector. The vital role of the state in nurturing, subsidising and encouraging local firms, as well as protecting them from the 'free' and full force of the world market for the time it takes

for the local capacity to build up, is questioned (SDG par. 8.3). Attempts to build up competitive local enterprises and create local jobs will be put under pressure through the import of goods and services, as foreign enterprises will enter domestic markets and would displace local enterprises them according to their higher competitiveness. Therefore, developing countries must have the flexibility and the 'right to regulate' in order to choose economic and competition policy that is deemed to be more suitable to their development needs.

Secondly, subsequent aspects address the possible incorporation of core principles of non-discrimination referring in this instance to transparency and the national treatment of foreign enterprises in public procurement of goods and services. At present, developing countries are allowed to exempt public procurement from market access rules and are not members of the respective WTO agreement on public procurement. If NFGTAs include a public procurement chapter, governments would not be allowed to give preferences to local enterprises for supply of goods and services. The effects on developing countries would be severe. Public procurement in particular is a major macroeconomic instrument with which to counter economic downturn and/or to support local enterprises and job creation.

The third aspect contain far-reaching inroads into the regulatory sovereignty of states, an aspect which impedes any legislation in the public interest as long as it discriminates against foreign goods, services, or investments (Cox 1998: 110f.; Gill 1998). Whereas nation states claim to have the right to regulate whenever it is needed to serve people's interest and act for the common good, NGFTAs clearly challenge this approach (Raza et al. 2014).

The signatories would have to harmonise certain standards and rules, for instance aiming to reduce NTBs through "regulatory compatibility and a rules basket aimed at ironing out differences in investment and business climates" (González 2014: 6). The importance of regulatory sovereignty was also highlighted in the Doha Ministerial Declaration: "Any framework should reflect in a balanced manner the interests of home and host countries and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest."

Moreover, this will cause a de-regulative spillover on regulatory policies, whereby more issues will be transformed into negotiable matters and thereby limit the national 'right to regulate' (Gill 1998: 5). Cuts are definitely on the cards, and are set to come in the form of attacks on public interest legislation and curbs on the power of elected representatives. Instead of securing the regulatory sovereignty of states to serve the common good, advances in health and environmental protection, social rights and consumer standards are at stake.

Fourthly, and one of the most crucial aspects concerning the regulatory sovereignty, relates to investment protection. The Global South has successfully prevented treating investment on the same footing as the trade of goods in the WTO system. However, investment is one of the crucial issues included in NGFTAs. They entail that the MFN principle and the national treatment would be applied to investment. These two principles were initially created in the context of trade in goods and they are seen as inappropriate when applied to investment. The controversies involve, on the one hand, widespread acquisition rights for foreign enterprises with interlocking patterns of mining rights, land acquisition and ownership. It is feared that a liberalisation of investment regulation would lead to a widespread selling of public property and to market distortion due to mergers and acquisitions creating oligopolistic markets; both threaten the competitiveness of local firms in developing countries.

On the other hand, the NGFTAs include strong clauses on investment protection. In particular, the investor state dispute settlement (ISDS) chapter is recognised as problematic, given the experience of related arbitrations conducted at private and opaque ISDS tribunals. Previous cases have demonstrated that the regulatory function of many states and their ability to legislate in the public interest have been put at risk when foreign investors get the right to enter countries without restrictions by being granted 'national treatment' and MFN status. Investment protection is mainly thought to prevent the expropriation of private property, but has a tendency to weaken the position of government *vis-à-vis* foreign investors due to their low administrative capability to run certain tribunals, and would thus open the field for corruption. The most obvious risk would come from anticipatory obedience in their policy-making in order to avoid possible lawsuits. This might affect areas of labour rights, health or envi-

ronmental matters that would have an impact on any future earnings of an investor. In such cases, the investors will seek compensation for the losses which they have sustained by policy reforms and governments decisions.

Finally, a central goal is the opening of national financial services to foreign banks and the facilitation of capital transfer. This could also help to facilitate FDI flows and access to loans, and therefore boost national economies, as claimed in par. 9.3 of the SDGs. On the other hand, the facilitation of capital flow could also allow TNCs to repatriate profits to their country of origin as well as potentially easing irregular tax evasions. Another risk relates to the liberalisation of the sales of financial products.

In summary, an increasing integration of the Global South into the global trading regime could result in crucial positive effects on its development and sustainable welfare. First of all, an increase of FDIs and possible technology and productivity transfer could boost economies in the Global South. However on the contrary, it would also increase the dependency from TNCs. It is feared that the countries of the Global South would be used as cheap suppliers, whereas the added value would be generated still in the industrialist countries as well as profits from business in these countries could be deducted at their headquarters or in low-tax countries.

When we take a closer look at the ‘Singapore issues’, which are the basis for the NGFTAs, several demands of the SDGs seem to be under risk. Countries of the Global South need waivers, and special and differential treatment under international FTAs, which give them widespread flexibility in their policy-making to improve the competitiveness of their economy and build up a sustainable economic growth. This would also require protective measures and state intervention at first hand.

6. Conclusions

This article argues that the scope and depth of the TTIP, which is currently under negotiation, sets a precedent in the global trading system. The multilateral framework on which the WTO is based has lost its significance. The main trading powers, namely the USA and the EU, turned their back on the WTO and revived bilateralism as the instrument to organise their trade relations on their interests. By using their economic

and political power, these trading powers try to codify rules and standards suitable best to their interests, which set the basis for ‘quasi multi-lateral rules’ (European Commission 2015b: 28). The negotiating parties, namely the USA and the EU, are following a two-track strategy. First, they are strengthening the Trans-Atlantic tie by building the greatest possible consensus on regulatory coherence and the opening of markets (‘Acquis Transatlantic’). Secondly, they use their common trade power in bilateral negotiations to enforce those rules.

Most MRTAS, as the TTIP and the TPP, rapidly change the global trading system and aim to restore the predominance of the West. As for TTIP, this trade agreement would be effective for about 44 per cent of the global trade in goods and services and, thus, clearly shape the current global trade (WTO 2014). Defraigne (2014) emphasises against this background that “TTIP was supposed to kick-start the growth of the European economy, improve European business competitiveness, and institutionalise dominance of EU and US standards over the BRICS countries and particularly China”. Even if TTIP does not get ratified in the near future, the negotiations between the US and the EU already give a clear sign to outsiders that whenever a transatlantic consensus might be reached, it would have severe impacts on their economies.

What was thought to be a power play against the emerging powers, organised as BRICS, could end to the detriment of LDCs in the Global South. As soon as the MRTAs are in force, outsiders will have to adapt to the rules and standards applied by signatories if they want to restore access to these markets. These rules and standards refer to the so-called ‘Singapore issues’ and mainly attempt to enforce a third wave of global trade liberalisation. As widely discussed, the Global South clearly expressed their refusal to tackle these issues as trade issues within the WTO.

Currently we face a new situation. These rejected issues, which did not gain approval at the multilateral forum at the WTO, are now subject to NGFTAs. That means an implementation of critical regulations through the backdoor and against the interest of the Global South. This article outlined the possible consequences for the Global South and how these provisions might bear the risk of harming the economic development of the Global South and thus possibly contradicting the UN SDGs. The implementation of these so-called ‘Singapore-Issues’ would diminish the regu-

latory sovereignty of LDCs and would forbid them from playing the role of nurturing, subsidising, and encouraging local firms and thus protecting local markets from more competitive foreign companies. In any case, it has to be guaranteed that the Global South enjoys preferential treatment as long as they need support to succeed in their developmental needs.

Against the background of the negotiations on MRTAs, the 159 WTO-members could take pride in the progress they made at their follow-up Ministerial Conference in Bali (2013) and Nairobi (2015). They agreed on the so-called ‘Bali package’, with its three pillars of trade facilitation, agriculture and cotton, and development issues. The ‘Bali package’ concerns a number of areas where LDCs had both offensive and defensive interests. The adopted working programme on the ‘Bali package’ infused new life into the stalled Doha Development Round and may help to salvage the multilateral trading system within the WTO. However, all signatories of the Bali Declaration reaffirmed their “commitment to the WTO as the pre-eminent global forum for trade” (par. 1.9).

The WTO currently is the only relevant forum which represents the Global South as best as possible. The deadlock of the DDA was an obvious warning shot for the limited sense of consensus due to divergent interests between the West and the Global South. It remains to be seen how the implementation of MRTAs will proceed and how far they push the implementation of the ‘Singapore issues’. However, the author notices a clear political will to maintain the centrality of the WTO and use MRTAs as complementary agreements to the WTO. Notably, EU Trade Commissioner Cecilia Malmström emphasised that the EU’s WTO strategy would be on setting new rules, and less on market access, though the latter remains important: “We should focus our immediate attention on where the WTO can provide the biggest value. And that is rulemaking, especially in the new areas where no global rules exist yet” (Centre for Trade and Economic Integration 2016).

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ABSTRACT Dieser Beitrag stellt die Auswirkungen von überregionalen Handelsabkommen auf die Entwicklung des Globalen Südens in den Mittelpunkt seiner Analyse. Der Autor sieht in diesen neuen Abkommen den Versuch, Regeln, die im Rahmen der WTO nicht zu einem Abschluss gebracht werden konnten, über bilaterale Verhandlungen zur Umsetzung zu verhelfen und die Vormachtstellung der USA und der EU gegenüber den Schwellenländern und im Speziellen den Ländern des Globalen Südens abzusichern. Durch einen weitestgehenden Konsens zwischen den beiden Handelsmächten USA und EU werden Normen und Standards („Acquis Transatlantic“) für 44 Prozent des globalen Handels geschaffen. Der Anpassungsdruck für Nicht-Vertragspartner ist aufgrund der handelsumlenkenden Effekte sehr groß und würde dazu führen, dass viele der verhandelten Normen und Standards von ihnen übernommen werden müssten, um den Zugang zu diesen Märkten nicht zu verlieren. Die Analyse im Beitrag zeigt mögliche Konsequenzen für Länder des Globalen Südens, die die Entwicklungsziele der UN erreichen möchten, auf. Abschließend werden mögliche Folgen dieser Reorganisation des globalen Handelssystems und eine mögliche Neuausrichtung der WTO innerhalb der geänderten Rahmenbedingungen diskutiert.

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