

Original citation:

De Ville, Ferdi and Siles-Brügge, Gabriel. (2016) Why TTIP is a game-changer and its critics have a point. *Journal of European Public Policy*.

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Publisher's statement:

"This is an Accepted Manuscript of an article published by Taylor & Francis in *Journal of European Public Policy* on 25/11/2016 available online:

<http://dx.doi.org/10.1080/13501763.2016.1254273>

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Why TTIP is a game-changer and its critics have a point

Ferdi De Ville and Gabriel Siles-Brügge

Accepted version of an article published in the *Journal of European Public Policy* (2016), DOI: 10.1080/13501763.2016.1254273.

Abstract

The heated scholarly and public debate on the Transatlantic Trade and Investment Partnership (TTIP) has centred predominantly on two questions. Firstly, is there something particularly special about TTIP, other than the fact that it involves the world's largest trading partners? And, secondly, is the concern about TTIP's deleterious effects justified? The starting point for our argument is that understanding an agreement like TTIP requires an emphasis on the socially constructed nature of reality. TTIP is ultimately novel in terms of the regulatory scope of its provisions and it is problematic because it subtly promotes the (socially constructed) interests of those who merely see regulation as inefficient 'red tape'.

Keywords

TTIP; trade policy; transatlantic relations; regulatory cooperation; investment protection; constructivism.

1. Introduction

It is by now generally acknowledged that the Transatlantic Trade and Investment Partnership (TTIP) negotiations between the European Union (EU) and the United States (US) have led to 'unprecedented debate' within Europe (Malmström 2015). This heated discussion of TTIP in public and scholarly circles has focused predominantly on two questions. Firstly, is there

something particularly special about TTIP, other than the obvious fact that it involves the world's largest trading partners? And, secondly, is the concern about TTIP's deleterious effects justified? The answers, as the contributions to this Debate Section will hopefully illustrate, often depend on one's theoretical stance. Those who see trade agreements as being chiefly about the exchange of market access concessions and, more recently, aligning regulation for the purposes of maximising efficiencies see it as a positive, but not necessarily that novel development (see the other contributions in this Section). Meanwhile, those who defend an interventionist role for the state in economic life are more likely to see TTIP as not being 'an ordinary trade deal' but rather 'about increasing corporate power and undermining the capacity of governments [...] to regulate legitimate areas of public policy' (Global Justice Now 2015: 1).

It follows that understanding an agreement like TTIP requires an emphasis on the socially constructed nature of reality. As Mark Blyth (2003: 695) memorably put it, 'structures do not come with an instruction sheet': in a fundamentally uncertain social world, actors need ideas to construct their interests rather than merely rationally deducing these from material factors. Thus, while tariff liberalisation may well be easy to execute, and one's interest in or opposition to the elimination of a particular duty (say on car imports) may to some extent be deducible from one's position in the material economy, the increasingly complex regulatory requirements included in trade agreements put a higher premium on interpretation. This is the core of our argument: *TTIP is novel in terms of the regulatory scope of its provisions and it is problematic because it subtly promotes the (socially constructed) interests of those who merely see regulation as inefficient 'red tape'.*

This contribution is structured as follows. In the second section, we show why TTIP is a game-changer, focusing in particular on the agreement's impact beyond ratification on EU and US regulatory decision-making. In the third section, we show why concerns about TTIP have merit, not because we necessarily agree with the normative underpinnings of all critiques, but because TTIP might restrict alternatives in the democratic process. We conclude by reflecting on what TTIP and the debate surrounding it might tell us about recent developments in trade policy and beyond.

2. Why TTIP is a game-changer

We argue that TTIP is a (potential) game-changer. In other words, it is different from previous (EU) trade agreements. Many might agree that TTIP is unique because of its size: it is the most important bilateral (or rather, mega-regional) trade agreement in terms of combined market size ever negotiated (e.g. Hamilton and Pelkmans 2015). It is, after all, a bilateral trade agreement between the two largest economies in the world, which also suggests that the negotiations are not as asymmetrical (Telò 2015: 34) as previous talks between the EU and developing (e.g. Economic Partnership Agreements), middle-income (e.g. EU-Mexico) or smaller industrialised countries (e.g. EU-Korea).

However, we diverge from others in our claim that TTIP is also qualitatively different. The novelty for us lies in the domestic politics surrounding the agreement and, ultimately, in how it is conceived to alter the state-market relationship, notably through wide-ranging and deep commitments on regulatory cooperation and investment protection.

Regulatory cooperation

Regulatory cooperation is one of the four ‘pillars’ around which the TTIP is currently organised, the others being market access (e.g. tariff-elimination and the liberalisation of services, investment and public procurement markets), rules (on investment protection or ‘sustainable development’) and an institutional pillar (European Commission 2016c). Crucially, the regulatory pillar has been widely recognised, not least by the negotiating parties themselves, as the most important part of the agreement. According to an impact assessment of TTIP, contracted by the European Commission before the launch of the negotiations, two thirds of the expected economic gains of the agreement are due to come from eliminating regulatory differences (CEPR 2013: 47).

The pillar contains chapters on technical barriers to trade (TBT); food safety and animal and plant health (SPS), and nine sectoral annexes. Chapters on TBT and SPS are common in trade agreements that have been negotiated after the establishment of the WTO in 1995 and generally reiterate or modestly build on the obligations of the existing multilateral framework for such issues. In sectoral regulatory annexes, the objective is to eliminate existing regulatory differences between the EU and the US to the extent possible. Here, TTIP does offer considerably more coverage than previous agreements: the EU-Korea FTA (KOREU) only included four sector-specific annexes and the EU-Canada FTA (CETA) just one.

But most crucially, TTIP aims to be innovative in including provisions on cooperation between both parties (a chapter on ‘regulatory cooperation’, confusingly named in the same manner as the pillar as a whole) as well as on domestic procedural disciplines in the development of new regulations (a chapter on so-called ‘good regulatory practices’ or GRPs). While CETA and KOREU also contain chapters on, respectively, regulatory cooperation and

transparency, these chapters are short and contain largely shallow, voluntary provisions (using noncommittal formulations such as ‘endeavour to’ or ‘may’).

Provisions on cooperation between both parties on future regulations and domestic procedural disciplines on the development of new regulations were initially to be included in a single horizontal chapter. The ambition in terms of the scope and depth of this chapter was clear from the start. With regard to scope, the initial position paper of the Commission stated that ‘the TTIP regulatory provisions would apply to regulation defined in a broad sense, i.e. *covering all measures of general application, including both legislation and implementing acts, regardless of the level at which they are adopted and of the body which adopts them*’. As for depth, the Commission’s ‘*ultimate goal would be a more integrated transatlantic market where goods produced and services originating in one party could be marketed in the other without adaptations or requirements*’ (European Commission 2013a: 2-3, emphasis added).

The Commission’s aim was thus the establishment of a ‘transatlantic market’ ruled by the principle of mutual recognition. The substantial elements foreseen that would help realise this objective were an effective bilateral cooperation mechanism, where the parties would keep each other informed on forthcoming regulatory initiatives; an improved feedback mechanism allowing each party to comment on proposed regulations emanating from the other side of the Atlantic; cooperation in collecting and exchange of evidence and data; strengthening the assessment of impacts of proposed regulations on trade and investment flows and an ‘inbuilt agenda’ allowing the parties to move towards greater regulatory convergence after the entry into force of TTIP, making it a ‘dynamic, “living” agreement’. Institutionally, a body with regulatory competences was foreseen that could, inter alia, consider amendments to sectoral

annexes and the addition of new ones, including via a ‘simplified mechanism not entailing domestic ratification procedures’ (European Commission 2013a: 3-5).

This proposed horizontal chapter has since been divided into two chapters, on regulatory cooperation and GRPs. But while the Commission has toned down the language a bit in some areas (e.g. by eliminating the reference to a ‘simplified mechanism’), most of these elements are still included in the most recent EU textual proposals (European Commission 2016a,b). Some of the language on GRPs has even been strengthened at the insistence of US negotiators, such as a new requirement to ‘promote periodic *retrospective* evaluations of regulatory frameworks’ (European Commission 2016a: 5, emphasis added).¹

Investment protection

Also setting TTIP apart from previous (EU) trade agreements are its proposed provisions on investment protection. Since acquiring the competence for negotiations on Foreign Direct Investment (FDI) in the 2009 Treaty of Lisbon, the EU has negotiated such provisions in bilateral trade agreements with Singapore and Canada. Building on the model used in the bilateral investment treaties (BITs) of its Member States, it has included substantial investment protection provisions (notably on indirect expropriation and fair and equitable treatment) as well as an investor-to-state dispute settlement (ISDS) mechanism for enforcement. These typically allow foreign investors to seek redress for perceived violations of their rights in independent tribunals (usually composed of three arbitrators) which issue binding rulings on compensation (see De Brabandere 2016).

Investment protection provisions and an ISDS mechanism in bilateral treaties are thus nothing new as such: at the time of writing, the global number of treaties including

investment provisions stood at 3316 (UNCTAD 2016). Of these, EU Member States have concluded about 1400 bilateral investment treaties before the Lisbon Treaty (European Commission 2013b). Moreover, nine (Central and Eastern European) EU Member States already have a BIT in place with the US.² For all these reasons, proponents of TTIP argue that they fail to see what all the fuss regarding investment protection in TTIP is about, as such agreements have been part of the landscape for many years (see, for example, Eliasson and García-Duran).

But this is where the size of the EU-US investment relationship does come in to make inclusion of investment protection a potential game-changer. Van Harten (2014: 29) has shown that ISDS provisions covered around 15-20 per cent of US FDI flows in 2012. He argues this would increase by an extra 50-60 per cent with TTIP. Hence, '[w]e are at a major turning point in the potential expansion and locking-in of ISDS as a supreme decision-making body for the world' (Van Harten 2015: 2). Terminating TTIP is clearly more challenging than doing so for individual BITs (IGO *et al.* 2015: 3-4). In this vein, and in response to the criticism of ISDS that has emerged in the public debate around TTIP, the Commission has proposed a new mechanism for investment arbitration called the Investment Court System (ICS) which is seen as a stepping-stone towards a multilateral investment court, further institutionalising investment protection and arbitration globally (European Commission 2015).

The novel domestic politics of TTIP

Finally, we argue that TTIP is qualitatively different in terms of the domestic politics it has unleashed, admittedly mainly on the EU side.³ Although there has been cross-country variation even here, this does not take away from the fact that an unprecedented number of

organisations have become active on TTIP.⁴ These, moreover, have often come from sectors that had not been very active on trade agreements before, such as public health NGOs (e.g. EPHA 2016) or local authorities (e.g. CEMR 2015). Meanwhile, organisations that had to some extent been active in trade policy prior to TTIP are dedicating more attention to the issue and are generally adopting more critical positions than in the past. The best examples include consumer organisations (BEUC 2016) and trade unions, even from traditionally export-oriented and free trade-supportive sectors such as the German automotive industry (IG Metall 2014). These organisations have mobilised over concerns regarding the consequences of regulatory cooperation and investment protection, the elements that make TTIP qualitatively different and more ambitious than previous trade negotiations. These fears have not been completely allayed by the transparency initiatives of the Commission. In contrast, what we have hardly witnessed (so far) is conflict between economic interest groups, which have generally supported the negotiations. Only recently, and arguably in response to societal mobilisation, have we observed some disagreements between the European Commission and the Member States, for example over the scope of application of the horizontal regulatory provisions.⁵

TTIP thus represents a challenge for the literature on EU trade policy, which very often adopts either a principal-agent or an interest group perspective (Dür and Zimmermann 2007; De Bièvre and Poletti 2014). The focus is thus on the question, respectively, of whether EU trade policy is primarily driven by the European Commission or the Member States or by interest group politics. The latter often draw (as De Bièvre and Poletti highlight in this Section) on political economy models of trade policymaking and international regulatory cooperation to emphasise competition between exporters, import-competing industries or (more recently) importers (Alt *et al.* 1996; Bütte and Mattli 2011), which has, however, been

relatively absent in this case. A considerable part of the literature has, furthermore, neglected the role of NGOs, with some arguing explicitly that NGOs have little or no influence on EU trade policy (Dür and De Bièvre 2007). While others have recognised the impact of the ‘new trade agenda’ on domestic trade politics and the activation of new actors (Young and Peterson 2006), they have not analysed the exact origins of their concerns. Other authors have taken a more positive view of the impact of NGOs on international economic agreements, albeit focusing on very issue-specific deals, e.g. the Multilateral Agreement on Investment (Walter 2001) or the Anti-Counterfeiting Trade Agreement (Dür and Matteo 2014), which did not see the (so far) sustained cross-cutting mobilisation that has characterised the TTIP negotiations.

We argue that with TTIP normative, values-based concerns (instead of purely economic or material motivations) and the role of NGOs will have to feature more prominently in future studies of EU trade politics. Recently, Young (2016) has also argued that the politics of TTIP are different from those of earlier trade negotiations, with a confluence in transatlantic business interests and with the opposition predominantly coming from less traditional, civil society actors. While he also recognises that ‘[t]he breadth and depth of TTIP’s ambition has raised the stakes for civic interest groups beyond those narrowly opposed to globalization’ (Young 2016: 364), we complement this perspective in two ways. In this section we have explained in more detail how TTIP’s proposed regulatory and investment protection provisions render its ambition broader and deeper than that of previous trade agreements. In the following section, we will be considering how justified the critics’ concerns about these are, an issue Young does not directly touch upon.

3. Why concerns about TTIP have merit

Much of the debate on TTIP has been over the fear that it will result in lower levels of social, environmental, health and consumer protection in the EU (e.g. Global Justice Now 2015; BEUC 2016; EPHA 2016). A similar fear is voiced with regards to investment protection and ISDS clauses: they empower firms to challenge public decision-making and may thus have a similar ‘chilling effect’, dissuading governments from taking regulatory action (Eberhardt 2016). Finally, there is a widespread perception belief that ‘[t]he continuing lack of transparency in the TTIP negotiations remains a major obstacle to the legitimacy of any future deal’ (Hilary 2016: 10). But what are we to make of these concerns? In contrast to the other authors in this Section we find that, some exaggeration aside, there are grounds to be concerned, as the agreement subtly shifts the terms of societal debate regarding regulation, presenting this as the mere elimination of inefficiencies or ‘red tape’.

Regulatory chill: horizontal regulatory provisions and investment protection

Turning to the first issue, what are we to make of the claim that TTIP will have a negative impact on regulatory standards? Our argument is that the agreement could inhibit regulators, primarily by exposing them to subtle pressures within a policymaking environment that increasingly privileges the elimination of trade barriers over other policy objectives. This is the central function of the provisions rendering TTIP a ‘living agreement’ (the proposed provisions on regulatory cooperation provisions and GRPs). Consider, for example, a situation in which the Commission is contemplating a new regulation for pesticides. Under the EU’s proposed regulatory cooperation provisions it would have to provide ‘opportunities for cooperation and information exchange, at the earliest possible stage’ to the US (European Commission 2016b: 5). Under the EU’s proposed provisions on GRPs it would have to provide early warning of its intention to regulate in the area, provide an opportunity for stakeholders to comment and conduct an impact assessment that took into consideration the

‘impact on international trade or investment’ (European Commission 2016a: 4). The danger, as critics have warned, is that this leads to ‘paralysis by analysis’ in the regulatory process (EPHA *et al.* 2016) – mirroring similar initiatives in the EU (the Better Regulation Agenda of reducing ‘red tape’ for business) and the US system of ‘notice and comment’ (see De Ville and Siles-Brügge 2016). It provides critics of increased regulation (e.g. the pesticide industry in our example, or DG Trade officials concerned with the impact on transatlantic economic relations) with opportunities and arguments to object to the interest that (pesticides) regulators might have in taking a particular action. There is a real-life parallel to this example: the European Commission has been accused of watering down its proposal for a new regulation on pesticides and endocrine disrupting chemicals in response to industry and US pressure during the TTIP talks (Horel 2015).

The proposed provisions on regulatory cooperation are thus hardly an unbiased ‘policy laboratory’ in which EU and US regulators meet to rationally deliberate on ‘good/best regulatory practices’ (Wiener and Alemanno 2015). As a form of ‘soft law’, they are intended to influence the discursive context in which regulation is forged by favouring certain voices (e.g. transnational business groups) and considerations (minimising the impact of regulation on international trade and investment) (Gerstetter 2014). While the Commission has rowed back on its initial ambition for a provision that would allow for regulatory annexes of TTIP to be amended *without* the need for subsequent domestic ratification (European Commission 2013a), which would have more directly usurped the power of legislators, the effect is still to alter the *agenda-setting* context. Eliasson and García-Duran might thus be right to criticise those who simply fear TTIP because of Eurocentric chauvinism, while De Bièvre and Poletti have a point where they identify constraints on the ability of the Commission to water down standards, especially (we would argue) when it comes to high-profile issues such as hormone-

treated beef or chlorinated chickens. The problem with TTIP's horizontal regulatory provisions, however, is that they can restrict future regulation *on either side of the Atlantic* if this runs counter to the logic of maximising trade and investment without the publicity of lifting a politicised ban on the import of particular foodstuffs. The effect is thus also not one of the EU and US jointly setting high standards for the global economy, as the other authors in this Section argue (see also Pauwelyn 2015). It is rather to depoliticise regulatory politics, empowering those who see ambitious levels of protection against socioeconomic and environmental risks as irksome NTBs requiring elimination.

A similar impact might be expected from TTIP's provisions for investment protection. One of the central lines of argument in the emerging political science literature on investment treaty arbitration is that standards of investment protection have been interpreted increasingly broadly by arbitrators with a rational interest in doing so (it is, after all, in their interest to maximise their case load when their income is dependent on it). The consequence is that investment protection provisions have increasingly interfered with government decisions, and not just in developing countries (Dupont and Schultz 2016). Writing about the province of Ontario in Canada, Van Harten and Scott find clear evidence of regulatory chill: the presence of investment protection clauses 'has led to internal vetting of proposed decisions in government', where 'some officials [notably those from the Trade Ministry] have a greater role in the vetting process than others do' (Van Harten and Scott 2016: 116). Tienhaara (2011) provides an overview of several other cases of 'regulatory chill' in not just developing countries, but notably also (again) in Canada, where an existing ISDS case (or the mere threat of bringing a claim) led to several regulatory changes.

The issue is thus not so much tribunals overturning government decisions as some critics have claimed (e.g. Monbiot 2013), but rather the *subtle* ways in which the presence of such provisions affects agenda-setting. The US and EU Member States already provide considerable protections for foreign investors – so our argument is not that TTIP will lead to a surge in claims by US-based firms, as indeed some of the TTIP critics targeted by Eliasson and García-Duran’s charge of anti-Americanism might argue. Indeed, the proposed provisions (both the EU proposal and the US model BIT) arguably provide less ‘protection’ to investors than NAFTA’s notorious Chapter 11. But, even if TTIP’s investment provisions do not significantly increase the protection afforded to international investors, there are still ‘particular ways in which an EU-US investment treaty would still grant US investors legal rights that they would not otherwise have in particular member states’ and vice-versa (otherwise, why insist on such provisions in the first place?). This ‘may impose non-trivial costs, in the form of litigation expenses and reduced policy space’ (Poulsen *et al.* 2015: 28, 1).

Taken together with the horizontal regulatory provisions – and contrary to the view of the other authors in this Section – the effect is thus likely to be to inhibit those actors in decision-making who may take actions with a potentially negative effect for big investors: if say, as an official in the Environmental Ministry, you were contemplating a ban on fracking, the potential for an ISDS claim is something your colleagues from the Economy or Trade Ministry would likely be keen to raise. It certainly provides a useful excuse for inaction, to file under the generalised concern with maintaining ‘global competitiveness’ that governments are often wont to invoke (Hay and Rosamond 2002). And while the Commission has recently proposed a reform of the system (the so-called ICS; see European Commission 2015), this retains at its core the problematic essence of investment treaty

arbitration: standards of protection that can be interpreted broadly; no water-tight exemption for state regulatory action in the public interest and case-by-case payment and appointment of arbitrators chosen from a roster of experts in international economic law (Van Harten 2015), reproducing the narrow ‘epistemic community’ of existing investment treaty arbitrators (Salacuse 2010: 465-6). We can thus expect these individuals to reproduce the (rational and socialisation) biases of the existing investment treaty arbitration system (see Schultz and Dupont 2016), even if this system were converted into a multilateral court as the Commission hopes to do.

Transparency and democratic legitimacy

What of the claim then that the TTIP negotiations lack transparency and therefore also democratic legitimacy? Again there is considerable merit to such an argument. To understand why, we must begin by examining how trade policymakers and scholars have traditionally conceptualised trade negotiations and then turn to explaining why TTIP does not quite fit this mould.

The starting point here has generally been the view that trade liberalisation is desirable, but that it faces important political obstacles for realisation. Given the high costs of organising politically (the ‘logic of collective action’, see Olson 1965) the interest in trade protection, being concentrated in those sectors negatively affected by trade liberalisation, would thus usually trump the more diffuse, general interest in a liberal trade policy, as represented, for example, by consumers. One way of overcoming this was said to be the delegation of trade policymaking from political figures to more technical bodies, such as by the EU’s Member States to the supranational European Commission in the Treaty of Rome. Through such ‘collusive delegation’ states were said to be insulating themselves from protectionist

pressures to deliver the ‘public good’ of trade liberalisation (Meunier 2005). A second way of altering the balance of interests was to introduce ‘reciprocity’ to trade talks, which helped to ‘concentrate’ the benefits of trade liberalisation on certain exporters (Gilligan 1997). Given this dominant understanding of trade policymaking, it is not surprising that in the case of TTIP negotiators began by arguing that secrecy is a necessary ‘rule of the game’. Given the need to craft ‘reciprocal’ agreements, the argument was that it made sense to keep provisional agreements with negative distributive effects for certain domestic groups secret until a package deal was reached which might swing a sufficient majority in favour of ratifying the agreement.

However, TTIP is not a traditional trade agreement. Young (2016: 346) explains the relatively uniform pro-TTIP alignment of transatlantic businesses on the grounds that this negotiation is more about ‘realising efficiency gains’ in global value chains and intra-firm trade ‘than securing market access’. While we would not label these as neutral ‘efficiency gains’ but as deeply normative questions about the role of regulation in society, the logic is clearly distinct from the distributive nature of tariff or other market access negotiations. Policymakers’ initial defence of secrecy was therefore inconsistent with their (simultaneous) claim that TTIP was not about exchanging concessions but about seeking cooperative solutions to regulatory coordination problems. Indeed, in time, negotiators have come to realise the incongruity of their position. This has led to several ‘transparency initiatives’ on the EU side, which have seen the declassification of the EU negotiating mandate; negotiating documents released to more MEPs and several EU negotiating proposals being published on the Commission website. As consolidated documents (the key negotiating texts including both EU and US proposals, including areas of [dis]agreement) are still not made public (at the insistence of the US), other than through the likes of the Greenpeace ‘TTIP Leaks’, one can

still rightly criticise the secrecy of the talks and argue that trade negotiators' impulse for 'Green Room'-type discussions has yet to be decisively broken.

Given that legislators in the EU (the Council and the EP) and the US (Congress) will essentially be voting on a *fait accompli*,⁶ which has not been subjected to full scrutiny during its negotiation, this raises significant questions. Moreover, the effect of the horizontal regulatory provisions (and arguably also of investment protection) is to change the regulatory environment beyond TTIP's ratification. Whatever subtle, but potentially significant impacts this may have is unknowable at this stage and thus not the subject of a vote on ratification. The whole purpose of such provisions may well be to avoid the need to subject the wider TTIP agenda to democratic scrutiny in the first place.

4. Conclusion

We have argued that TTIP is substantially a qualitatively different trade agreement (a 'game-changer') and that critics' concerns about the agreement have merit. What sets TTIP apart from earlier trade negotiations is the breadth and depth of its ambitions with regard to regulatory cooperation and the effect that its investment protection provisions will have in terms of expanding and locking-in investment treaty arbitration globally. It is the combination of these two substantial features of TTIP that has led to the mobilisation of an unprecedented number and diverse group of civil society organisations. Every NGO whose mission it is to campaign for stricter regulation in a given area can reasonably fear that TTIP will negatively affect the political playing field it will have to compete on in the future. While claims that TTIP will lead to a massive deregulation dynamic are certainly exaggerated, the concern about 'regulatory chill' cannot simply be dismissed. If, after TTIP, regulatory proposals will, *ex ante*, have to be more strictly justified internally with regard to their trade

and investment effects (under the provisions on GRPs) as well as externally (under mandatory regulatory cooperation provisions) and can subsequently also be challenged before an investment tribunal, it is not unreasonable to worry that this will benefit those who prefer more business-friendly, light-touch regulation over other normative visions of the role of regulation and state intervention in society. The contestation of TTIP might thus also be thought of in Polanyian terms as a societal move against market ‘disembedding’ (Polanyi 1944).

TTIP shows the need to take civil society organisations and their normative concerns regarding trade policy seriously. If we limit our analysis to economic motivations and actors, it is very difficult to understand the current trade policy debates on both sides of the Atlantic, and the trouble that TTIP has run into. Clearly, actors in trade policy (which increasingly also means voters) do not simply make a rational calculation of their economic interest in a particular trade policy (which are also very difficult to know *a priori*), but also take into account the potential or perceived effects of agreements on other public policy objectives as well as on the autonomy of their national (or local level of) government. These normative understandings of the consequences of economic integration are not objectively knowledgeable but are socially constructed. The central purpose of TTIP, after all, is to shape the discursive environment in which regulations are crafted and to (subtly) privilege one normative vision over another. There is also a wider applicability for such constructivist insights given the on-going backlash against aspects of neoliberal globalisation. If anything, the result of the UK’s EU referendum showed how identity politics and the slogan of ‘taking back control’ were an effective means of getting millions to vote for a policy that was dismissed by the overwhelming majority of economic (and other) experts.

Notes

¹ Interviews with NGO representatives and European Commission officials, Brussels, February 2016.

² Bulgaria, Croatia, Czech Republic, Poland, Romania, Slovakia, Estonia, Latvia and Lithuania.

³ While we cannot address this question at length here, we would argue that it is difficult to explain the degree of domestic contestation of TTIP other than by emphasising the salience of different understandings about the effects of TTIP on the regulatory environment (what we could call ‘normative trade conflict’), an issue we elaborate on below (see also Young 2016; De Ville and Siles-Brügge 2016).

⁴ Two examples of evidence on this are the increased number of attendees at civil society meetings (Gheyle 2016) and the record (for a trade-related consultation) number of replies to the public consultation on ISDS (almost 150,000).

⁵ As the Commission itself has repeatedly highlighted (e.g. Rosário 2015), its mandate for the negotiations has been unanimously approved by the Member States. There was, in fact, very little discussion, apart from the very specific issue of audiovisual services, a traditional sensitive topic in France. This was therefore excluded from the scope of the talks.

⁶ Neither the Council nor the EP has the power to amend trade agreements, while under existing US Trade Promotion Authority (colloquially known as ‘fast-track’) trade agreements are only subject to an up-or-down vote in Congress.

Acknowledgements

We would like to thank the other contributors, the anonymous referees as well as the attendees of our panel on TTIP at the 'EU in International Affairs Conference' 2016 in Brussels for their very helpful comments on earlier drafts.

Funding

The research behind this article has benefitted from funding from the UK Economic and Social Research Council.

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