The transatlantic bloc of states and the political economy of the Transatlantic Trade and Investment Partnership (TTIP)

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ABSTRACT

The world space is politically built, on the one hand, dominated by large, highly concentrated, capital, with finance standing at the apex and, on the other hand, fragmented along national lines. The contemporary political economy of globalisation is the product of uneven and combined development under the domination of developed countries, defined here as the 'hierarchical transatlantic bloc of states'. At its centre can be found the USA, supported by its long-standing political and military allies in Europe and Asia. The main objectives of the Transatlantic Trade and Investment Partnership (TTIP), analysed in this article, are to facilitate the expansion of its members' share of profits derived from labour and from the 'marketisation' of nature and the 'commons'; to organise competition between national ruling classes and different states of the transatlantic area at the international level; and to preserve their domination through the enforcement of international rules. The article concludes that, given the strong opposition from 'those from below' (including trade unions and non-governmental organisations) and the persistent divergences between the negotiating sides, the TTIP should be regarded not so much as a 'turnkey' project to be easily wrapped but as a work in progress by the USA and the European Union (EU), constituting an overarching forum that will cement the transatlantic bloc in order to promote the broad interests of the huge concentration of capital based on their territories.

Introduction

Apologists of 'globalisation' claim that it is an economic process resulting from, and meeting the needs of, the law of the market. Such claims, inter alia, neglect the role of the political forces that have pushed the globalisation agenda onward, among them the most powerful states in the world, and the international organisations they strongly influence. What is called globalisation is the result of two closely intertwined processes. The first of these processes is capital's compulsion to look for new sites of accumulation, a compulsion that takes a concrete form in the development of the large, industrial organisations, global in scale, that we call transnational corporations (TNCs). TNCs account for a significant share of the goods produced in the world and capture a significant share of the value produced. The second is the way that powerful states go on controlling the world space. In this space, cooperation, competition and rivalries are combined, between states and between TNCs. States and the TNCs that are based in these states use different means to defend and strengthen their positions, but their interests often converge. This article starts from the hypothesis that TNCs are not 'apatride' (nationality-free) organisations, with their 'footloose capital' moving freely around the world. The social relations which enable TNCs to thrive – namely the labour processes – are politically built and territorially bounded. For most TNCs, relations with their national governments remain key assets. The majority of world-leading governments and world-leading TNCs belong to the same countries.

The world economy is thus a politically built space; it is not a genuinely open space in which competition among TNCs is at arm's length. This politically constructed world economy is shaped by governments involved in asymmetrical relations with each other. The state form remains absolutely essential for the protection and expansion of capitalist relations. Far from dissolving into globalisation, as advocates of globalisation predicted, the number of states in the world has increased steadily over the past 30 years. In 2014, 193 states were members of the United Nations (UN), compared with 159 states in the early 1980s. Those who claim that we are close to the 'end of nation-states' should therefore add 'except in the membership of the international organisations'. This does not mean that all these states would pass the Weberian test of the 'monopoly of legitimate coercion' on their own territories. Still, what is essential is that they have a right to vote in international organisations, signifying that legitimacy has been conferred on them by the 'international community'. In other words, the dominant powers at the summit of the international and hierarchical system of states still need an agency, even one made up of dozens of 'failed states', to preserve the world economic and geopolitical order.

Thus, the world space is both dominated by large highly concentrated capital, with finance standing at the apex, and fragmented along national lines. And the contemporary political economy of globalisation is the product of uneven and combined development under the domination of developed countries, defined here as the 'hierarchical transatlantic bloc of states'. At the centre can be found the USA, supported by its long-standing political and military allies in Europe. In Asia, the bloc includes traditional US allies (such as Australia and New Zealand) and those countries (notably Japan, South Korea and Taiwan) that joined the 'Western' camp after World War I (Serfati, 2004). The transatlantic area is a geo-economic space which has been built over decades. Countries which make up the bloc have dominated international economic and political relations for centuries, a domination that has been buttressed by close bilateral links between some countries. In an era in which finance capital is dominant, the transatlantic area accounts for a very high share of world financial activities. North Atlantic Treaty Organization (NATO), a military alliance built on common values, is the most 'crystallised' form of the transatlantic bloc, and, since the collapse of the USSR, has transformed itself into a global security force, charged not only with protecting its member countries against their military enemies but also with responding to threats to common values, including the 'global commons'.

Over the past 70 years, the political solidity of the bloc has been shaken by internal crises, in particular when France left NATO's military command, a decision following de Gaulle's refusal to accept a total submission to US ruling. More recently (in 2002–2003), France and Germany undermined the solidity of the bloc when they refused to comply with Bush's war in Iraq. Nevertheless, the bloc is resilient, based on very deep-rooted and strong economic and financial links between its members.

The Transatlantic Trade and Investment Partnership (TTIP), the negotiations for which were launched in 2013, is a joint political project of the US administration and the European Commission on behalf of European Union (EU) member states. Its aim is to consolidate the world domination of the transatlantic bloc through the further integration of US and EU markets, an aim that is inseparable from attacks on social rights and lowering of environmental regulations.

This objective is challenging for a number of reasons. First, the USA and the EU have been at the epicentre of the global financial crisis, whose larger economic and social effects have yet to be felt. Second, their influence on the world economy is increasingly challenged by the most powerful emerging countries. Third, economic competition is not suppressed within the transatlantic bloc and has indeed been sharpened by the macroeconomic slowdown which has led to a situation of industrial overcapacity, which no country in the bloc (or China) can escape. As documented in this article, the TTIP negotiations cover a broad range of issues, some of which are ridden with significant disagreements between the USA and the EU.

The structure of this article is as follows. The first section proposes that the transatlantic hierarchical bloc currently dominates the geopolitical and economic world configuration. The second outlines the main factors driving the search for a TTIP. The third analyses the objectives of the TTIP, and the fourth discusses the major issues that contribute to the complexity not only of relations within the bloc but also those between governments and the firms that are based on their own national territories. A conclusion summarises the main findings.

The transatlantic bloc of states

For the past 200 years, the construction of the world space has resulted from two processes: a permanent need for capital accumulation and the associated requirement to find new sites of investment, and the geopolitical rivalry and competition between contending states. How economic and political international relations are organised and reproduced is a core question for political economy, and international political economy as an academic field has been built on tentative responses to this question, focusing on one central issue: the absence of an international state performing the functions of a national state at the world level. The concept of 'international regime', 'hegemonic stability' (said to be more or less stable) and, more recently, the imprecise notion of 'global governance' (simply defined as 'the way in which global affairs are managed') have been some of the theoretical explanations offered by the mainstream. Among Marxists, theories of imperialism have offered an alternative way to analyse how the world is structured (Serfati, forthcoming).

This article is based on the hypothesis that a hierarchical transatlantic bloc of states stands at the core of actual international relations. At its centre stands the USA, supported by its long-standing allies in Europe and Asia (Serfati, 2004). The transatlantic area (here 'transatlantic' is a close equivalent of 'occidental' or 'western'[1]) is a geo-economic space which has been built up over decades. Countries that make up the bloc have dominated international economic and political relations for centuries, a domination that has been buttressed by close bilateral links between particular countries (van der Pijl, 1984). It is not enough to observe that, in 2013, the USA and the EU each accounted for 23% of total world GDP and both together even more – 47.4% – of total world trade. In an era when finance capital dominates, the transatlantic area also accounts for a very high share of financial activities. As a share of worldwide volumes, the EU and US markets account for between 85% and 89% of derivatives activities (2012), 75% of international debt security markets (2014), 55% of banking assets (2012) and 55% of stock market capitalisation (2013).[2] The financial power of the USA and the EU is reflected in the wealth of the ruling class. In 2013, private wealth held by US and EU households accounted for 58% of all world wealth, Boston Consulting Group (BCG; 2014).

Finance capital is not the only way the US and EU economies are intertwined. Just the USA and the EU, the core of the transatlantic bloc, account for over 50% of world GDP, 56.7% of the inward stock of foreign direct investment (FDI) and 71% of outward stock of FDI (Hamilton & Quinlan, 2014), and the total of bilateral FDI flows is also around five times higher than the level of European-Chinese or EU-Latin America investment (Deutsch, 2013). The number of TNCs based in the USA and the EU is overwhelming, with 83 of the world's top 100 non-financial TNCs, ranked by foreign assets in 2013, based there (United Nations Conference on Trade and Development [UNCTAD], 2014b), and only seven TNCs based in emerging countries. In 2013, US and EU TNCs accounted for 70% of total world mergers and acquisitions. The story is similar in relation to technological capabilities: EU- and US-based companies account for 65% of the top R&D companies worldwide.[3] These figures are summarised in Table 1.

The grip of the transatlantic bloc over the world increased after World War II, for at least three reasons. First, there was a need to put an end to the barbarism, which had resulted from the long-standing inter-imperialist rivalries that had devastated not only Europe but also many other parts of the world. Then, there was the growing international status of the USA, which was increasingly able to make Western countries play by the rules it designed and enforced. Finally, huge new challenges were posed by

1 The political and economic meanings of these words are evident, since, despite their location, Japan, Australia, and so forth are usually considered as belonging to the 'Western' side, opposed during the Cold war to the USSR-dominated 'Eastern' world, with which China was generally associated.

2 Various sources: European Central Bank (ECB), International Monetary Fund (IMF), World Bank (WB), World Federation of Exchanges (WFE).

3 Source: Battelle.

the fact that over one-third of the world's population was living outside the 'free world' and therefore outside the capitalist world market.

Table 1: Share of the USA and EU in world economy

	% (last year available)
Production and trade	
World GDP	46 (2014)
World trade	47.4 (2013)
Financial markets	
Derivative markets	85–89 (2012)
International debt security markets (residence of users)	75 (2014)
World stock market capitalisation	55 (2012)
Bank assets	55 (2012)
Household wealth	58 (2013)
TNCs activities	
UNCTAD top 100 (based on foreign assets)	83
World business research-development spending	55.6 (2014)
Cross-border M&As	70 (2013)
Outward FDIs (stocks)	71 (2013)

Source: Author's analysis of data from BIS, BCG, Battelle, UNCTAD, WFE, and WTO.

Note: TNCs = transnational corporations; UNCTAD = United Nations Conference on Trade and Development; M&As = mergers and acquisitions; FDIs = foreign direct investments; BIS = Bank of International Settlements; BCG = Boston Consulting Group; WFE = World Federation of Exchanges; WTO = World Trade Organisation.

The creation of NATO, as a military alliance built on common values, can be seen as a 'crystallised' form of the transatlantic bloc, and it is this model that has led a number of leading policymakers to see the TTIP as a potential 'economic NATO' (as will be discussed below). After the collapse of the USSR, NATO was transformed into a collective security organisation with a global reach, not just in terms of its territorial scope but also in the large range of military and civilian, political and economic issues it now addresses. NATO is not only the overarching military alliance in the world, but it also tries to use the language of 'soft power'.[4] NATO spokespeople stress that 'the economic architecture of the modern world rests on assured access to the global commons', by which they mean international waters and airspace, outer space and cyberspace. NATO should, they say, be prepared to respond to the eventuality that 'serious upsets to the global commons exist, especially in the uncertain motives of the rising BRIC states and the fragility of the globalised economy' (Dowdal & Hasani, 2013). The targets are thus openly articulated.

The concept of a 'hierarchical transatlantic bloc of states' is based on a number of hypotheses.

First, globalisation is not 'dissolving' the most powerful states, as was fashionably speculated in the 1980s and 1990s by the so-called 'hyperglobalists' (Held, McGrew, Goldblatt & Perraton, 1999). Of course, it is the case that the configuration of their relations has changed over time. The inter-imperialist rivalry among developed

4 As recalled in the 2010 strategic concept, 'NATO member states form a unique community of values, committed to the principles of individual liberty, democracy, human rights and the rule of law'.

countries that resulted in the two world wars gave way to a 'peaceful' economic competition among transatlantic countries. Thus, the first part of the prognosis established by Kautsky that 'the result of the [first] World between the great imperialist powers may be a federation of the strongest, who renounce their arms race' (Kautsky, 1914) seems to have been realised, even though it took over three decades of subsequent barbarism for peaceful cooperation among developed countries to be firmly established after World War II. There is no need to add that, contrary to the second of Kautsky's hopes, the arms race has continued unabated over the past seven decades, fuelling further militarism. While wars directly waged between the most developed nations have ceased, so-called 'resource wars' have flourished. Although mainstream World Bank opinion regards these wars as reflecting the inability of the countries concerned to adhere to the rules of 'good governance', leading them to become 'marginalised', it has been argued elsewhere that 'resource wars' are both an outcome and a component of a highly uneven and combined process of economic globalisation and geopolitical rivalry (Aknin & Serfati, 2008).

Second, while transatlantic economic and military integration has deepened over recent decades, strengthening the domination of the transatlantic bloc at the world level, this cannot be equated with the coming of age of a transnational state reflecting the formation of an international 'transcapitalist' class and, beyond that, of a future transnational state (W.I. Robinson, 2004). The transnational state hypothesis is an attempt to address the sweeping changes that have taken place in the economic background over the past three decades. The approach put forward in this article is different. It is argued here that the fact that capitalism is flourishing all over the world does not mean that there is convergence in the mode of surplus value extraction; instead, its growth is accompanied by a highly uneven process in which different modes of production are combined. Against this background, the fragmentation of the world along nation-state lines cannot be seen as a vestige of the past bound to fade away with 'globalisation'. The situation is perhaps closer to that described by Trotsky, as one in which 'each country's specific features are not "merely supplementary to the general features" of capitalism, like warts on a face. In reality, the national peculiarities represent an original combination of the basic features of the world process' (Trotsky, 1930). The underlying political organisation of the world, in other words, goes on relying on the enduring existence of an international system of states.

This does not mean that all countries competing for a role at the world level (e.g. China or Russia) or the regional one (e.g. Iran or Brazil) are playing by the same rules as the transatlantic states. Put differently, while the ruling classes of the non-transatlantic area are interested in increasing their wealth and the value they can appropriate not only in their own countries but also at the world level, their strategies are not leading to the creation of a single transnational capitalist class. The social relations of production (and capital is a social relation) remain territorially bounded and politically built, and the pursuit of value creation and appropriation, which even the internationalised factions of capitalist class depend on, still rely on strong state involvement. The ambiguously named 'globalisation' of production does not mean that labour processes themselves are de-territorialised, any more than it can be said that the transnationalisation of corporations has turned capital and its owners into nationality-free 'apatrides'

(Serfati, 2013). But this does not mean that state institutions are not undergoing transformation. Some para-state institutions are emerging at the EU (i.e. community) level as a result of strong economic integration, widely supported by governmental policies, but even these institutions are connected to, and depend on, the inter-governmental body (the European Council), which remains the core component of the EU's institutional design. Furthermore, the seven-decade process of EU integration has been so specific that it would be disproportionate to extend it at the world level (Serfati, 2015).

Another approach that attempts to explain how economic and geopolitical forces combine at the world level assumes that the world is ruled by an 'informal empire', sometimes also termed the 'capitalist imperial state' (Panitch & Gindin, 2005; 2013): 'At the head of a global empire, the American state is more than the mere agent of the particular interests of American capital; it also assumes responsibilities for the making and management of global capitalism' (Panitch & Gindin, 2005). There is no doubt, as explained above, that the USA is the overarching country in the 'transatlantic bloc' and the most powerful country in the world. The country possesses a unique status, embedded in seven decades of international political and economic relations. Still, the USA is plagued by at least two problems.

The first problem is that, since it was at the epicentre of the financial crisis, it can hardly claim that it has successfully resolved the underlying contradiction of capitalist dynamics: the overaccumulation of industrial capabilities and decline in profitability (in the Marxist sense of the rate of profit). These difficulties are accompanied by strong imbalances in foreign accounts and a sharp deterioration of the labour market – both for workers and for the unemployed. The dominant posture of US imperialism allows it to pass the buck, unloading the consequences of its own economic crisis onto other countries, but only within limits which are delineated by the resistance of these other countries. The view that the USA rules other countries as its empire is challenged, but those arguing that 'Empire proved the last and most desperate form of US imperial mimesis' (Desai, 2013:273) see this as 'the reinstatement of the state's economic role' (Desai, 2013:276) leading to a multipolar world.

This brings us to the second criticism of the concept of 'empire' as an analytical category applicable to the USA. To determine whether it is an imperialist country as a *primus inter pares* or in a category of its own is a dead-end discussion. Whatever its status is, other imperialist states do not just fade away. They are still present within the transatlantic area, in particular the United Kingdom, France and Germany, not to speak of the non-transatlantic countries (China and Russia) which are also in contention and can hardly be said to be dependent upon the 'Empire'. States are the underlying political structures beneath the social relations on territories; they are bounded – though not closed to the penetration of foreign capital. States are involved in interactive negotiations with each other, and they form the underpinning foundations for the reproduction of uneven and combined development at the world level.

In short, the transatlantic bloc of states is the driving force at the world economic and geopolitical level. It has been developed as an institutional response to the economic and political challenge that the USA and EU had to address in the aftermath of World War II. Its dynamics embody both the tendency of capital to overcome national boundaries (evidenced by the intensity of financial and economic links among developed countries) and the persistence of the inter-state system, which so far has neither broken up nor been replaced by any other form of political organisation at the world level. However, the transatlantic bloc of states should not be conceived along an isomorphic analogy, as reproducing at the world level, or even at the transatlantic level, the role the state performs at the national level. Its three aims are to facilitate the increase of its members' share of profits drained from the labour process (or from the 'marketisation' of nature and 'commons'); to organise at the international level the competition between national ruling classes and different states of the transatlantic area; and to preserve their domination through the enforcement of international rules. The TTIP crystallises these three objectives.

TTIP: acceleration of a long process

Transatlantic networks

Against a long-term background of close transatlantic economic and political links, the objective of moving in the direction of more institutional integration between the USA and European countries gained momentum in the 1990s. The trail was blazed by transatlantic business networks, a number of which were set up, of which only a few are discussed here.[5] One important example is the Transatlantic Policy Network (TPN), a political body launched in 1992, whose US and EU members represent world-leading corporations and business associations (such as the American Chambers of Commerce EU and the European Round Table of Industrialists [ERT]), American and European think tanks (e.g. The Brookings Institution, Council of Foreign Relations, Bruegel and the Centre for European Policy Studies), influential members of the European Parliament and the US Congress, and academics. As early as 1994, it recommended

> *building a strong, balanced XXIst century transatlantic partnership on four 'pillars' of common future interest: common bilateral economic interests, common multilateral economic interests, common multilateral political interests, common defence and security interests. (TPN, 2015)*

The inclusion of defence and security matters shows a clear recognition that, in the aftermath of the collapse of the USSR and its satellite regimes, 'globalisation' would integrate economic and political issues in a combined process, leading to a form of globalisation described as 'PDF' (standing for Peace, Democracy and Free Market), the holy trinity of optimistic expectations of that time.

The British-American Business Council (BABC) claims to be the largest transatlantic business network, with 21 chapters and 2,000 member companies based in major business centres throughout North America and the United Kingdom. Among other activities, the BABC actively engages with governments on a broad range of policy issues to ensure that their actions take account of BABC members' views and interests (BABC, 2015).

In recent years, the rate at which transatlantic businesses have joined forces has accelerated. On 1 January 2013, the Trans-Atlantic Business Council (TABC) was created as a result of a merger between TransAtlantic Business Dialogue (TABD)

5 Other influential networks are Business Coalition for Transatlantic Trade (BCTT) and The Center for Transatlantic Relations.

and the European-American Business Council (EABC). It represents over 70 TNCs headquartered in the USA and EU with a claimed combined workforce of 5.6 million employees (TABC, 2015). Finally, in 2013, an *ad hoc* TTIP business network was established, with the objective of harmonising proposals that might come from different, and in some cases opposed, perspectives. The Business Alliance for TTIP represents the leading business associations active on the both sides of the Atlantic.[6] Their website proclaims that 'The business organisations united under the umbrella of the Alliance contribute innovative solutions to reach a comprehensive TTIP agreement' (Transatlanticbusiness.org, 2014).

On the inter-governmental side, the declaration on US-EU relations adopted in December 1990, which decided 'to endow their relationship with long-term perspectives', marked a landmark at the time when the USSR was close to collapse. Subsequently, the US-EU government-led New Transatlantic Agenda[7] (1995) declared that 'Without detracting from our cooperation in multilateral fora, we will create a New Transatlantic Marketplace by progressively reducing or eliminating barriers that hinder the flow of goods, services and capital between us.' This objective was slow to materialise, nonetheless, because of the strong expectations placed by the US and EU in the World Trade Organisation (WTO, which came into force in 1995) as an instrument for opening up global markets. Following the launch of an EU-US Initiative to 'Enhance Transatlantic Economic Integration and Growth', agreed in Washington (20 June 2005), in 2007 a further significant step forward was made when, on 30 April, EU and US leaders signed the 'Framework for Advancing Transatlantic Economic Integration between the United States of America and the European Union'.[8] The basic objective of this agreement was 'in light of our shared commitment to removing barriers to transatlantic commerce; to rationalising, reforming, and, where appropriate, reducing regulations to empower the private sector'. This turning point reflected a change in EU policy away from a multilateral framework towards preferential trade agreements (European Commission, 2006).

In 2011, a High Level Working Group (HLWG) on Jobs and Growth was tasked jointly by the US and the EU to carry out a scoping exercise to identify the measures and sectors that could strengthen and optimise the transatlantic economy in order to create new jobs and economic growth. In July 2013, it was agreed by both sides to open official negotiations.

Why was this precise moment chosen for such a long-awaited objective to become a formal reality? Both the macroeconomic context and the rise of protectionist measures form part of the explanation.

Deepening of the economic crisis in the core economies

On the economic side, the gravity of the deterioration of the world economy can be followed in the discourse of mainstream economists. In December 2007, after the

6 Namely, Eurochambres, BusinessEurope, American Chamber of Commerce to the European Union (AmCham EU), AmChams in Europe (ACE), European Services Forum (ESF), US Chamber of Commerce, Trans-Atlantic Business Council (TABC), Transatlantic Policy Network (TPN), European Association of Craft, Small and Medium-Sized Enterprises (UEAPME) and European Round Table of Industrialists (ERT).

7 Available at http://eeas.europa.eu/us/docs/new_transatlantic_agenda_en.pdf

8 Available at http://eeas.europa.eu/us/docs/framework_trans_economic_integration07_en.pdf

financial crisis had already burst, the Organisation for Economic Co-operation and Development (OECD, 2007) *Economic Outlook* considered that 'the effect of financial turmoil on total activity stemming from the sector itself is likely to be small. Only some segments of the sector are expected to be affected' (25). Such confidence was based on the fact that the financial sector proper accounted for only about 10% of value added in the OECD. Seven years after these infamous predictions, the OECD had learned some lessons and was more cautious (OECD, 2014). In 2008, when the financial crisis was at its peak, M. Trichet, one of the most authoritative European policymakers and an orthodox guru, was sure that 'We are not in a situation that characterises deflation. If I look at some facts and figures, I don't see yet any trace of deflation or negative inflation' (Milliken & Donovan, 2008). Since that date, such discourses have become increasingly pessimistic. Those who previously spoke about 'deflation' (a codename for depression) have now started using the phrase 'secular stagnation' (Teulings & Baldwin, 2014). Even the International Monetary Fund (IMF) has adopted this vocabulary.[9] It should nevertheless be noted that, while Krugman and other authors regard over-saving and monetary policy as the main contributors to secular stagnation (Teulings & Baldwin, 2014), Alvin Hansen (1939), who coined the term 'secular stagnation' to address the poor post-New Deal economic situation, look to 'fundamentals' (namely the rate of profit) as the driving force for secular stagnation.[10] Macroeconomic situations differ between the EU – trapped in a downward economic spiral – and the USA, which has the benefits of economic advantages (including the privilege of owning the world currency, the magnitude of its financial markets, etc.) and geopolitical ones. However, it would be still misleading to think of the USA being 'out of the crisis'.

Indeed, it appears that investment, the engine of economic growth, has still not reached its pre-2008 levels. This is not only an issue for EU, or even developed country economies. As a leading credit rating agency puts it, 'emerging market capex [capital expenditure] appears to be facing a case of serious indigestion' (Standard & Poor's Rating Services, 2014:13). Confirming that economic meltdown is a global problem, they estimate that the capital expenditures of the top world 2000 TNCs fell in real terms by 1% in 2013, would be flat in 2014, and were expected to fall by –3% in 2015 and –2% in 2016. The factual reality of declining growth may be unchallengeable, but opinions differ as to its causes, which can be seen as resulting from insufficient profitability, as some Marxists argue (Carchedi & Roberts, 2013), or a level of aggregate demand that is too low, as proposed by Keynesians. At the world level, this situation is all too visible in many industries in the form of manufacturing overcapacities. This is not just obvious in basic industries, such as the steel industry (where, not insignificantly, 50% of production is located in China) and the cement industry, but also in industries manufacturing durables, such as automotives and construction. Against this economic background, TTIP is aimed at furthering the attack against labour and lowering environmental constraints, both of which are seen as costs for capital.

9 'Secular stagnation' is used four times in the preparatory document to G-20 Finance Ministers and Central Bank Governors Meeting 20–21 September 2014 IMF, 'Global Prospects and Policy Challenges', 20–21 September 2014, Cairns, Australia.

10 See 'I am increasingly impressed with the analysis made by Wicksell who stressed the prospective rate of profit on new investment as the active, dominant, and controlling factor, and who viewed the rate of interest as a passive factor, lagging behind the profit rate' (Hansen, 1939).

Rise of protectionism and withdrawal within national frontiers

The economic recession looming in most parts of the world has stiffened the competition not only between large TNCs but also between countries, as demonstrated by the failure of WTO negotiations after 13 years (in the 'Doha cycle') and the multiplication of the number of bilateral agreements between countries over recent years: plain evidence of the rise of protectionism. This rise of protectionism cannot be compared to what happened after the 1930 crisis, when trade wars formed part of the build-up to World War II. Trade and capital integration continued after the 2008 recession, but the fact that the latter is not over in developed countries (e.g. the EU) and that its effects are now felt in emerging countries (e.g. Brazil) helps to explain the rise of protectionist measures. According to recent reports, G-20 members put in place no fewer than 112 new trade-restrictive measures during the period mid-November 2013 to mid-May 2014, adding to the 1,185 trade-restrictive measures that had been recorded since October 2008.[11]

Several explanations are offered for the weakening of the multilateralist framework offered by the WTO. The former head of the WTO states that the 'diplomatic approach based on compromise has become excessive complex, with too many players and too many conflicting interests involved' (Lamy, 2014:14). Others blame emerging countries for their excessively high requirements, while still others point to the willingness of the most powerful countries to undermine negotiations that weaken their grip on international trade. Among the last category, one of the most vocal critics among mainstream economics is Jagdish Bhagwati, who suspects that the USA is the main culprit in the current turmoil in international trade (Bhagwati, 2011). Whatever the explanation, it is clear that the USA and the EU took stock both of the WTO impasse and of the growth in protectionism when they decided to reinforce their close economic and political partnership through an official pact. European Commissioner for Trade, Karel De Gucht, has been quite clear about the leading role of the transatlantic area in the reworking of international trade rules.[12]

The TTIP is also aimed at diminishing transatlantic frictions on a series of issues, which are discussed below.

The content and objectives of TTIP

When discussing the objectives and the content of the TTIP,[13] it is important to take into account not only the common objectives of the participants (large TNCs and

11 Organisation for Economic Co-operation and Development (OECD), United Nations Conference on Trade and Development (UNCTAD), World Trade Organisation (WTO), Reports on G-20 Trade and Investment Measures (mid-November 2013 to mid-May 2014), 16 June 2014.

12 See his speech: 'A European Perspective on Transatlantic Free Trade' 'The core of its negotiating agenda is blocked, largely because of differences of view between developed powers like the US and the rising stars ... An EU-US partnership can act as a policy laboratory for the new trade rules we need – on issues like regulatory barriers, competition policy, localization requirements, raw materials and energy', European Conference at Harvard Kennedy School: 'Europe 2.0: Taking the Next Step/Cambridge/USA', 2 March 2013.

13 Even the name used in the negotiations is itself imprecise. It is sometimes (and mainly in the USA) called the 'Trans-Atlantic Free Trade Agreement' (TAFTA). However, in the EU, its reference to investment is made explicit in the term 'Transatlantic Trade and Investment Partnership' (TTIP). Indeed, it is apparent that the negotiations do not just address investment issues but also deep changes that are expected in state-investor relationships, for instance, in investor-state dispute settlement (ISDS), currently governed by bilateral treaties.

public institutions) but also the disagreements among them. Since the beginning of the negotiations it has been evident that not all participants share a similar view. This caveat is needed to avoid a narrative based on a 'masters of the world' conspiracy. It may well be the case that the secrecy and opacity surrounding the discussions is designed to keep at bay hostile reactions that are likely to come from citizens and workers who will be adversely affected by the outcomes. However, another reason for this (rightly criticised) secrecy is that governments and TNCs are themselves split on some critical issues.

Even though their disagreements are expressed within a broad framework accepted by them all, on both sides of the Atlantic – a consensus that existing social and environmental standards should be lowered – there appear to be considerable differences in the details. In short, while they are erecting a united front against demands coming 'from below', governments and leading TNCs from the USA and the EU are still struggling to overcome significant divergences among themselves that could undermine their competitiveness against TNCs based in other countries.

Geopolitical objectives

Far from leading to some convergence at the world level that would buttress the development of a transnational capitalist class, the objective of TTIP is to cement the geopolitical and economic domination of the transatlantic bloc, as well as the ruling classes of the transatlantic area. The intermingling of these components of domination was clearly articulated by the US ambassador to the EU when he said that 'There are critical geostrategic reasons to get this deal done, and every day I am reminded of the global context of why we are negotiating TTIP' (Euractiv, 2014).

The near-collapse of the WTO's Doha cycle and the weakening of a multilateral framework for trade negotiations gave the USA and the EU a real opportunity to take initiatives aimed at further reordering the world according to their interests. Against this background, the Trans-Pacific Partnership (TPP), which began with Brunei, Chile, New Zealand and Singapore, and is now expanding to encompass, besides Peru, most Asian-Pacific industrial countries, including Australia, with the notable exception of China, is a US initiative connected to TTIP. 'Pivoting to Asia' never meant, for the US administration, the marginalisation of its deep-rooted relationship with the EU, as some commentators are keen to claim (Bauer, Erixon, Ferracane & Makiyama, 2014). It is precisely the purpose of the TPP for the USA, and of the TTIP for the USA and the EU, to further strengthen their links, ease the extension of the world power of the TNCs based on their territories and contribute to the implementation of standards that are detrimental to workers and to the environment. It is the privilege of the USA to be a driving force in both treaties and thus to have bargaining power in both sets of negotiations.

As for the TTIP, given the sheer size of their economies, the US and EU governments are convinced that they can set the rules of the game that will have to be followed, willingly or not, by other countries. This objective is not only articulated by the EU negotiator (as noted above); it is also repeated frequently by US and EU businesses that success in the elaboration of common rules and standards for the transatlantic area will leave no room for manoeuvre for other countries. As the EU

Trade Commissioner puts it, ‘TTIP will help us continue to be strong players in discussions on setting global rules’ (Malmström, 2015).

There is no contradiction between getting a ‘closed’ US-EU agreement and the objective of setting global rules that can be imposed onto other countries. Such a formulation describes the mix of economic and geopolitical drivers existing at the world level more accurately than the claim that the USA and the EU act on behalf of ‘global capitalism’. The latter is a rather ambiguous expression. Does it mean that capitalist social relations (the antagonism between capital and labour; private ownership of the means of production) have reached a world scale as Marx (1858)[14] anticipated? Such a conclusion is not necessarily incompatible with the coexistence of different states and forms of production. Capitalism's conquest of the world proceeds along an uneven path of combined development, which in itself assumes the existence of differences between countries (as ‘containers’ of social relations) and capital in competition. This is a scenario in which the world arena has not become ‘flat’, and there is no global domination by a single transnational capital class. This can, indeed, be demonstrated by the way that the USA and EU aim at using the TTIP as a leverage in this competition.

Although it is presented as aiming at promoting free trade, TTIP is in reality a private bargain between the USA and the EU, brought about without transparency. This picture is confirmed by several experts on transatlantic relationships who have expressed the worry that, because it does not have an ‘open architecture’, TTIP could be interpreted by other countries a ‘West against the rest initiative’ (Hamilton, 2014:XVIII). As Stiglitz (2013) observed, ‘the goal is a managed trade regime – managed, that is, to serve the special interests that have long dominated trade policy in the West’.

There is no doubt that China is the main target. Diminishing the Chinese influence in Asian trade is one of the goals of TPP. TPP provisions (labour and environmental standards, intellectual property rights, reform of state-owned enterprises) are significant obstacles to China's participation, despite former US Secretary of State Hillary Clinton's statement that Washington ‘welcome[s] the interest of any nation willing to meet the 21st century standards of the TPP – including China’ (Ten Kate & Adam, 2012). With TPP and TTIP, the USA is advancing on two fronts and intends to play the two trading blocs off against one another with a view to securing maximum concessions from both sets of negotiating parties (Bendini, 2014:16). The USA still needs the EU, as much as the other way round, to promote ‘global standard of free market enterprise’ and, more realistically, to resist the growing competition not only from China but also from other emerging countries, in particular Brazil and India. TTIP would oblige them to discipline their trade policies and accept rules shaped by the transatlantic alliance.

There is a discussion among policymakers and mainstream think tanks on the ways in which TTIP can be regarded as an ‘economic NATO’. This term has been used explicitly by NATO's Secretary General (Rasmussen, 2013), in line with Clinton's view that hard and soft power work together (*The Nation*, 2012).[15] This is also the position

14 ‘The tendency to create the world market is directly given in the concept of capital itself’ (Marx, 1858).

15 See ‘Emerging powers are putting their economies at the centre of their foreign policies. And they're gaining clout less because of the size of their armies than because of their GDP ... So to maintain our strategic leadership in the region, the U.S. is also strengthening our economic leadership’, quoted in The Nation (2012).

of the EU negotiator, who claims that TTIP 'is about the weight of the western, free world in world economic and political affairs' (Emmott, 2013). Again, there is a strong convergence of views with business as evidenced by TPN's (1998) assertion that 'the old inviolable cold-war boundary between our hard security interests and our many other common interests is breaking down' (13).

It is clear that the crude US 'unilateralism' which thrived under the G. W. Bush government in the early 2000s has gone. Does this mean that the current influence of 'liberal internationalism' on the US administration's thinking will be agreed by non-transatlantic countries? Nothing could be less sure, because this policy could be seen as reinforcing the enduring view that occidental values, both economic (free markets) and political (democracy as it functions in the Western countries), are universal in their sway. Among economists, even the staunchest supporters of the development of bilateral or regional agreements warn against undermining the WTO's central authority and sidestepping it through regional trade pacts, a process that could mimic what happened when the 19th-century Great Powers carried out 'exercises in economic muscle' [which] ultimately led to 'humanity's greatest follies – two world wars' (Baldwin, 2014). Among experts in international relations, there is a fear that the more ambitious and exclusive the 'club' constituted by the Atlantic democracies, the higher the barriers to entry, and the less likely it is that emerging powers will either want or be able to play by Western rules. In this sense, TTIP could exacerbate divisions between the West and rising states (Kupchan, 2014).

Not levelling the playing field

As is often noted, the level of tariff duties on bilateral trade flows averages 2.2% in the USA and 3.3% in the EU, in *ad valorem* equivalent terms. This small difference, according to some experts, should mean that this is not an area of major contention. This view seems realistic to some extent but is also somewhat optimistic because in agriculture, a sector which is highly politically sensitive, the average rate applied by the EU to US products is 12.8%, whereas the average rate applied to EU products by the USA is only 6.6%. There is a strong focus on the discussions of existing non-tariff measures (NTMs) related to border measures (customs, etc.) and 'behind-the-border barriers' (as they are known in the international trade jargon) such as norms and regulatory measures.

The level playing field is an ideal type generated within mainstream economics, which exists nowhere except in economics textbooks. Markets are indeed political institutions to the extent that firms strive to use power (or 'non-market' tools) to get a competitive edge and that inter-firm competition on capitalist markets leads to self-destructive effects requiring some form of regulation (generally government-led, even if implemented by autonomous regulatory agencies). In the contemporary context, the domination of highly concentrated capital means that inter-firm competition is oligopolistic. This means that, as evidenced by scholars of industrial economics over many years, it relies on mutual recognition among the large incumbent firms. Because most global industries have been dominated by oligopolies for many decades, a need has arisen for some kind of organisation of the competition between them. This is generally conducted through business networks (ERT, TPN, TABD, etc.) that are *internal* to the oligopoly; it is also carried out *externally* through consulting companies, one of whose basic functions is to establish benchmarks by which firms can compare themselves with each other, since price is not the main 'signal' on oligopolistic markets.[16]

The 'organised competition' regime that prevails in oligopolistic markets calls for the setting up of rules and standards that involve not only the firms themselves but also public institutions. This is all the more needed now that new firms from emerging countries are entering global oligopolies, challenging the rules by which American and European firms have been playing for decades.

Against this background, rules and standards remain an essential tool in the hands of national governments, confirming the divisions in the world economy along national lines. TTIP focuses strongly on regulations and the procedures for the development of related standards. As openly stated by the governments and large companies involved in the negotiations, the goal in many, if not most, industrial sectors is not to set up uniform standards in the USA and the EU, which would be very difficult, given the lack of consensus. Rather it is to arrive at a degree of convergence that is acceptable to all parties. As observed by the US Trade Representative (USTR),

> *there is no 'one size fits all' to good regulatory practice. The relationship between the Executive and Congress in the United States is different than the relationships among the Commission, the Council and the European Parliament, not to mention the Member States.*[17]

Confirming the cautious governmental approach, a European business coalition claims,

> *The potential benefits of regulatory cooperation will vary from sector to sector, since harmonisation of legal provisions or mutual recognition will be possible only when standards or licensing procedures are comparable in terms of the level of protection and effectiveness. (Business Europe, 2014:5)*

Such views are both less ambitious and more realistic than some of the headline statements. There are a wide variety of differences and divergences among the participants in the negotiations, as well as vocal opposition on many issues by non-governmental organisations (NGOs), trade unions and other stakeholders, including some regulators.[18] Behind each sectoral agreement, discussed on a case-by-case basis, stand a range of coalitions of business and governments involved in discrete, and sometimes extremely hostile, tugs of war with each other. In addition to the asymmetrical balance of power between the USA and the EU, the US negotiating hand

16 The role of auditing and benchmarking the firms by consulting companies automatically breeds collusion and corruption, as evidenced in the Enron case (November 2001) and in the generous rating of heavily indebted and close-to-collapse financial companies and financial product innovation before the 2007 crisis. Nothing has changed in post-crisis years, as revealed by the International Consortium of Investigative Journalists (ICIJ) in their study of the *Luxleak* scheme, where the 'big four' audit companies are involved. The House of Commons in its January 2015 report states, 'We consider that the evidence that PwC provided to us in January 2013 was misleading', House of Commons Committee of Public Accounts, 'Tax avoidance: the role of large accountancy firms: follow-up', 38th Report of Session 2014–15, 28 January 2015, p. 5.

17 Remarks by US Trade Representative Michael Froman on the USA, the European Union, and the TTIP, 30 September 2013.

18 Some analysts have noted the 'tension between TTIP negotiators seeking to maximise trade and sanitary and phytosanitary (SPS) regulators with statutory duties to protect human, plant and animal health', see Institute for Agriculture and Trade Policy (IATP; 2014).

is stronger on most issues because the European position is not homogeneous, being split along national dividing lines.

An important feature of the TTIP is that, while it seeks to achieve considerable advances in pro-business (and therefore anti-labour) measures, these benefits are planned to be restricted to US and EU firms. This confirms that, however 'global' they may appear, US and EU TNCs do not ignore the fundamental role of their domestic markets, which have an increasingly transatlantic dimension. American and European TNCs expect that TTIP will provide them with a competitive edge over non-transatlantic TNCs (including TNCs based in Japan and other developed countries). It would nevertheless be wrong to regard US and EU TNCs as agreeing on all issues. The framework offered by the transatlantic bloc does not eliminate competition or government support, including protectionist (mainly non-tariff) measures. The route to a transatlantic agreement is paved with enduring divergences and competition internal to the US-EU area.

Lowering social and environmental standards

While US and EU interests differ on a number of points, they also converge in many others. One common goal of all parties to the negotiations is to use TTIP leverage to lower social and environmental standards. A capitalist common front to counteract workers' demand is anything but new.[19] The US and EU governments and businesses are currently joining forces to amplify their attacks against labour and their appropriation of environmental resources, attacks which they are already carrying out separately. Adopting a Panglossian view on the benefits of free trade, the European Commission (2013) claims that 'The greater the extent of liberalisation proposed in the various policy options, the greater are the estimated welfare gains' (50). Critics of these claims have pointed out that the underlying cost-benefit methodologies are flawed, because they omit the costs of sectoral reallocation of the production factors (labour and capital) and overstate the benefits, according to EU-commissioned studies. The pro-TTIP analyses ignore the macroeconomic adjustment costs, the social costs of regulatory change and compensation payments under investor-to-state-arbitration, which could be significant (Raza et al., 2014). In terms of growth, it is realistic to expect the increase by 2027 to be a modest 0.21% of GDP. That is roughly equal to a normal month's growth (Baker, 2013), in other words, insignificant.

Investigations of the consequences of North American Free Trade Agreement (NAFTA) give some support to pessimistic prophecies that TTIP will have severe negative impacts on labour. The optimistic forecasts bore little resemblance to the actual outcomes. One Clinton Administration advisor, for instance, claimed that NAFTA would generate an 'export boom to Mexico' that would create 200,000 jobs in two years and a million jobs in five years. In fact, NAFTA directly cost the USA a net loss of 700,000 jobs. The surplus with Mexico turned into a chronic deficit. And the economic dislocation in Mexico increased the flow of undocumented workers into the USA (Faux, 2014).

19 See Marx's observation that 'Capitalists form a veritable freemason society vis-à-vis the whole working class, while there is little love lost between them in competition among themselves', Capital Vol. III Part II Chapter 10.

Another factor affecting labour is that the USA, unlike the EU, has not ratified a number of core International Labour Organization (ILO) Conventions, including the conventions on freedom of association and collective bargaining. Trade unions ask for the parties to commit to the ratification and full and effective implementation of the eight core conventions of the ILO and of core international environmental agreements (ETUC/AFL-CIO Declaration of Joint Principles, 2014). The British trade union, GMB, expressed a view that is widely shared by trade unions when it said that TTIP is a 'very real risk of our hard-won European employment and social rights being levelled down to often much lower American standards' (Parliament.UK, 2013:26).

Investor-state dispute settlement (ISDS): weakening state capabilities

The introduction of an ISDS mechanism in the TTIP has been widely analysed and publicised, in particular by its opponents. The controversy did not stop with trade unions and NGOs; even some EU governments have expressed concern on this controversial issue. The attention attracted by this clause is quite legitimate, as its existence and rising use by large TNCs supply glaring evidence of the increasing power held by corporations, especially in areas long seen as reserved to governments, as legitimate representatives of their populations.

ISDS has had a sweeping success. First introduced in bilateral investment treaties (BITs) in the early 1950s, ISDS clauses figured in 93.5% of 1,660 International Investment Agreements (IIAs) analysed in an OECD study (Pohl, Mashigo & Nohen, 2012). By the end of 2013, the total number of known treaty-based cases had reached 568 (UNCTAD, 2014a). As of the end of 2013, the overwhelming majority (85%) of ISDS claims had been brought by investors from developed countries (13% were from developing countries and 2% from transition countries). Arbitrations have been initiated most frequently by claimants from the EU (53% of all known disputes) and the USA (22%). Among the EU member states, claimants most frequently come from the Netherlands (20% of EU disputes), the United Kingdom (14%), Germany (13%) and France (10%). Apart from the EU, the USA was a major claimant (20%), followed by Canada (5%; UNCTAD, 2014a).

The justification for the introduction of ISDS was that investors were badly protected in countries with weak judicial and regulatory systems. Thus, they could turn to international tribunals set up to arbitrate litigations between investors and governments. Some of the grounds for challenges to government measures by investors in recent years have included changes related to investment incentive schemes, cancellation or alleged breaches of contracts by States, alleged direct or *de facto* expropriation, revocation of licences or permits and regulation of energy tariffs.

The introduction of an ISDS clause into the TTIP is welcomed with enthusiasm by US and EU big business. The need for such a clause is at first sight surprising, since both regions have robust domestic judicial systems and the number of claims initiated so far from one region to the other has been limited. But there are several reasons why businesses are lobbying for it.

First, it is viewed as a way to weaken the political power of governments, in particular their ability to make decisions based on economic, social or cultural motives that could hurt firms. The introduction of the clause would mark a new advance in the 30-year process that has seen private interests increasingly encroaching on the public sphere, in a progressive commodification of economic and social life and privatisation of those goods once considered as public (or common), such as intellectual property rights in genes and seeds or the transfer of defence activities to private contractors.

Second, in relation to the geopolitical objectives mentioned above, TTIP provides an opportunity to create a 'gold standard' ISDS provision that can serve as a precedent in future negotiations (Parliament.UK, 2013:90). A similar view is shared by US business representatives. A letter to the *Financial Times*, signed jointly by Peter M. Robinson, CEO of the US Council for International Business, Karsten Dybvad, CEO of the Confederation of Danish Industry and Urban Bäckström, Director General of the Confederation of Swedish Enterprise Robinson, stated that

> *[a] modern ISDS agreement ... could become the template for future investment agreements with our other major trading partners in Asia, South America and Africa, where ISDS agreements are an essential safeguard for investors against arbitrary politics. (P.M. Robinson, Dybvad & Bäckström, 2014)*

Some commentators add other countries to the list of emerging countries targeted, asserting that one reason that the USA places such a strong focus on ISDS is 'not because of countries like Britain and France, but because of the wider EU membership (and the new member states in particular)' (Parliament.UK, 2013:91). This claim, by British peer Lord Goldsmith, is confirmed by UNCTAD data showing that in intra-EU cases filed at the end of 2013, two-thirds involved the 'old core' of EU countries as claimants and new entrant countries as defenders (UNCTAD, 2014a).[20] If anything, this confirms that EU integration is a highly uneven and combined process.

Third, the 'ISDS business' is a very lucrative activity which has flourished in recent years (Olivet & Eberhardt, 2012).

The US and EU Business enthusiasm for ISDS contrasts strongly with opposition from trade unions and NGOs, which is well documented in studies warning of the dangers of ISDS.[21] ISDS clauses present in Free Trade Agreements (FTAs) are said to contain loopholes and vaguely worded formulations of major provisions, so enabling abuses (e.g. 'nationality shopping' by companies which create subsidiaries abroad specifically to take advantage of FTAs; European Parliament Research Service, 2014). A more fundamental overarching criticism relates to the risk that it will extend the global ideology of privatisation of justice and further weaken democratic state institutions. The right to carry out sovereign policy, including nationalisation of core assets, and

20 To give just one example, in the Slovak Republic after extensively liberalised process on the health insurance market in 2004, a new government sought in late 2006 to reverse this liberalisation; the effect of the reversal was to restrict the extent to which insurance companies could repatriate or retain their profits. A number of separate claims were brought by the insurers or parent companies. In at least one case (involving the Dutch insurer Achme), the Luxembourg court ordered local banks to freeze the €29.5m-worth of assets of the Slovak Republic (UNCTAD, 2014a).

21 See, for instance, the European Trade Union Confederation's public consultation on modalities for investment protection and ISDS in TTIP at http://www.etuc.org/sites/www.etuc.org/files/press-release/files/etuc_public_consultation_on_modalities_for_investment_protection_and_isd.pdf.

social,[22] health[23] and environmental[24] legislation. Other criticisms point to imprecise notions of terms such as 'nationalisation' and 'fair treatment'.

An expert in ISDS and international investment arbitrations lists a long catalogue of failings, concluding that ISDS is a system that is 'seriously flawed and needs a complete overhaul' (Kahale, 2014). UNCTAD, which carefully monitors litigations brought before ISDS and other investor-state tribunals, also warns against the dangers of such arbitration.

To understand the diversity of attitudes among governments, it is instructive to study the position of the US and EU governments. As already noted, the US government is strongly in favour of the inclusion of an ISDS clause, reflecting the common view of business. This is not surprising, given the strong tendency of US business to engage in litigation.[25] In the words of a report by the London School of Economics,

> *Generally, American investors tend to be the most litigious in the world … Americans often sue or threaten suits as a strategic device to obtain some sort of amicable settlement (e.g., a money payment, a new contract, an agreement by the other side to abandon its claim). (Poulsen, Bonnitcha & Yackee, 2013:21)*

An EU-US investment chapter would still probably '*by design* confer greater rights on US investors than their European counterparts', including under UK law (Poulsen, Bonnitcha & Yackee, 2013:29). This posture is at odds with US resistance to the inclusion of finance-related issues in the TTIP. The UK government also promotes the inclusion of an investor-state mechanism in the TTIP. Despite some fears that a handful of the numerous US firms operating in the United Kingdom might sue its government in rare cases, the UK government considers that the inclusion of an investor-state dispute resolution mechanism would diminish undesirable governmental involvement and help to promote a business-friendly institutional set-up.

In Germany, both businesses and government are more circumspect. The Bundesverband der Deutschen Industrie e.V. (BDI), the German business association, released an ambiguous report, including both clarifications on 'misconceptions about IIAs and ISDS', on the one hand, and implicit endorsement of some proposals formulated by UNCTAD to improve the quality of the mechanism, on the other (BDI, 2014). This position reflects dissenting views within German business between large internationalised TNCs (in particular, in the automotive and chemical industries) favourable to the ISDS mechanism and the small and medium-sized enterprises

22 The French large utility Veolia is currently using ISDS mechanisms to sue the government of Egypt for increasing the minimum wage, UNISON, 'The transatlantic trade and investment partnership', Unison Briefing, UNISON, May 2014.

23 Large tobacco transnational corporation (TNC), Philip Morris, based in Switzerland, is demanding US$2 billion from Uruguay over health warnings on cigarette packets, despite the bilateral investment treaty (BIT) between Switzerland and Uruguay unequivocally states in its Article 2 that public health measures cannot be challenged by investors as an indirect expropriation of their investments, see 'Position of REDES – Friends of the Earth Uruguay on the Recent ICSID Decision', Montevideo, 10 July 2013.

24 Swedish energy company Vattenfall is suing Germany, under the Energy Charter Treaty over its decision to phase out nuclear energy.

25 The situation in Congress is more nuanced. According to an American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) representative, 'approximately one-third of members are sympathetic to their concerns, one-third strongly in favour of ISDS provisions, and one-third in the "mushy middle"' (Parliament.UK, 2013:84).

(SMEs) who are worried that it will increase power asymmetries in favour of large corporations, enabling them to circumvent existing national laws and state jurisdiction (Bundesverband mittelständische Wirtschaft [BVMW], n.d.). The German government was apparently initially opposed to an ISDS clause. In France too, the government was initially hostile to the inclusion of an ISDS cause, while French big business, represented in European business networks, was in favour (Hiault & Robert, 2014). Interestingly, in the thick fog surrounding the negotiations, both the French and German governments are said to have backed down and are now prepared to accept an amended ISDS clause, the main challenge for them being the 'need to mitigate the domestic fallout' (Sparding, 2014).

The main conclusions to be drawn from the discussion on ISDS are as follows. First, large TNCs loudly support what appears to them to be a further consolidation of their leverage against any governmental measures that would in their view obstruct 'fair and equitable treatment' and 'legitimate expectations'. They are confident that, with the ISDS mechanism, either they will have the ear of the tribunals or that governments, worried about their international reputations, will back down. Second, the more the governments are persuaded that ISDS will provide their domestic firms with a competitive edge, the stronger their support for this clause becomes. Third, US and all EU governments converge on the idea that TTIP should be a template for future agreements. Setting 'values', norms and regulatory standards for the rest of the world is clearly an underlying objective of TTIP. This consensus should pave the way, if not to an ISDS mechanism similar to the one proposed by the USA since 2012,[26] at least to the adoption of a clause that will make further intrusions into the system of public judiciary courts. Moreover, faced with mounting opposition coming 'from below' and hesitations among governments, pro-ISDS advocates are showing their muscle, if not resorting to blackmail.[27]

A long way off: from minor to major disagreement

Different configurations

Although the TTIP is clearly designed to set in place a more favourable economic environment for US and EU business, this does not mean that a deal will be easy to negotiate. The opposition of NGOs, trade unions and some political parties on the left is a first obstacle, as evidenced by the way that the European Commission has been obliged to break with its former policy of secrecy, once presented as a precondition for the negotiations to be successful. A second difficulty is that neither American nor European TNCs, nor their governments can be seen as a unified front. Their disagreements have already led to the expected deadline, originally set at the end of 2014, being postponed, and the treaty is not expected to be signed, at best, before late 2017 or 2018, according to the EU Commissioner for Trade.[28] Several ways out of the

26 On 20 April 2012, Washington unveiled a new model BIT (BDI, 2014).

27 See the remarks by Fredrik Erixon, economist with a European influential think tank (ECIPE): 'If ISDS is discharged from TTIP, I am afraid that is the end of TTIP', in EurActiv, 'TTIP and the Arbitration Clause', Special report, 8–12 December 2014.

28 'Cecilia Malmström: EU-US free trade agreement will be delayed', *Radio Sweden*, 29 March 2015, http://sverigesradio.se/sida/artikel.aspx?programid=2054&artikel=6129038.

impasse have been proposed. One is to move ahead by diverting the negotiations in the direction of 'flexible agreements'. Another is to maintain a forum where TNCs from both sides of the Atlantic will continue their discussions in an attempt to bring their positions closer. A further idea is to sign agreements on non-controversial issues and keep on discussing the more intractable ones. It seems likely that the sectoral diversity of the situation could lead to a range of different outcomes, with some issues, for example, maritime services or energy, remaining unsettled or 'scaled down' (Office of the US Trade Representative, 2014).

These deep divisions have their origins in the basic workings of capitalism and are twofold. First, as already observed, economic competition has been stiffened by the still unfolding consequences of the financial crisis in the US and EU economies, with a long recession plaguing the EU area. At the world level, overcapacity or underutilisation of industrial capacities is rife. Second, in the countries involved in the TTIP negotiations, states retain a strong hold over how the negotiations proceed, meaning that economic competition operates against a governmental-influenced institutional framework. The very fact that such an inter-governmental agreement is needed to enable economic competition to proceed confirms the overarching role of the international system of states, and within it, the role of the transatlantic bloc of states.

The overlap of economic competition and state rivalry brings complexity and uncertainty to the TTIP negotiations. On some issues, US and EU business agree. In such cases, governments (the US Federal Government and the European Commission on behalf of the member states) generally support the consensus. Nevertheless, a number of uncertain issues still remain. When US and EU business develop positions that are internally homogeneous but divergent from each other (i.e. when there are distinctive US and EU business positions), the negotiators support their own side. In both cases, this means that governments are reflecting the 'general interest' not of their own citizens, since it is clear that citizens' and workers' rights are often threatened by the TTIP, but of large internationalised sections of business. From a Marxist perspective, this presents a classic case of governments acting as the representatives of the ruling class and promoting the material interests of the strongest section of the exploiters.

This situation, where a national state and the capitalists based within it converge in their position, is not the only one that exists, despite the claims of those who follow a 'functionalist' and strictly deterministic reading of Marx's remarks on the state. An alternative possibility is that business could be 'internally' split (i.e. within the USA or within the EU), with the consequence that the government might be adopting a view reflecting the interest of some specific sections of business rather than all of them. Furthermore, the state is not a passive instrument reflecting the different factions of capitalist sectors and trying to find a compromise between them. States require legitimacy; that is, they must become institutions that hold all the social classes together through the containment of class struggles within generally peaceful limits. This model of the state has been built up over a long period, which has enhanced its organisational autonomy vis-à-vis social classes, or what, using a more mainstream approach, is called 'civil society'.

Another complicating factor can be illustrated by the example of the financial sector discussed in more detail below. Here, it is possible that, while the US industry disagrees with the US government position, this government position might converge with EU proposals (or vice versa). The final difficulty is that, while the European Commission is legally the only negotiator for all the EU member states, it has to take into account both internal divergences within national segments of European business and differences between national governments.

This produces a convoluted set of discussions, which accounts not only for the secrecy but also for the complexity of the negotiations. There is no space available here to discuss the full range of these, so the next section highlights just two contentious issues: public procurement and financial sector.[29]

Controversial issues at governmental level

The core role of public procurement

Unsurprisingly, public procurement is the most sensitive issue of all on the TTIP agenda, confirming the core role of government in the economy. According to some sources, public procurement forms a significant part of national economies, contributing in the range of 10%–25% of GDP. In the EU, the public purchase of goods and services has been estimated to account for 16% of GDP (European Commission, 2014). In 2013, the US Federal Government spent around US$571 billion in purchases – two-thirds of which was accounted for by the Department of Defence – out of a federal budget amounting to US$3.9 trillion in 2013 (Edwards, 2014).

Even before the TTIP negotiations started, it was made clear that defence procurement would be excluded, as demanded by some countries, notably the USA and France. For most other public purchases, the HLWG's (2013) final report recommended that TTIP improve access to government procurement opportunities at all levels of government. In principle, this should be uncontentious, given that both the USA and the EU are parties to the WTO Agreement on Government Procurement (GPA), a multilateral agreement that sets forth legally binding rules and obligations governing procurement, and both are already signed up to a commitment based on the 30 May 1995 US-EU Exchange of Letters on government procurement.

Still, the devil is not only in the detail; there remain significant points of friction between the two parties. The dominant European view is that the US government has created major obstacles that impede foreign companies from gaining access to the US public market. According to some French sources, 85% of European public procurement contracts are open, *de facto* or *de jure*, to bids from American companies, whereas European companies are allowed to bid for only 32% of public procurement contracts in the USA (French Digital Council, 2014). One of these obstacles is the Buy American Act (41 U.S.C. 8301ff), which commits public bodies to a preference for

29 Other controversial issues are agriculture, SPS (those surrounding food safety and animal and plant health), intellectual property (in particular, the protection of geographical indications [GIs]). Agriculture is a particularly contested issue, with overlapping of levels of customs rights and non-tariff barriers (NTB) measures. For both sides, these are major economic, social and environmental issues. This could explain why, according to the non-governmental organisation (NGO) Corporate European Observatory, agribusiness-related lobby groups by far outnumber all other sectors, see 'TTIP: A lose-lose deal for food and farming', Corporate European Observatory, 8 July 2014.

American goods in government purchases and requires 23% of public procurement tenders to be concluded with SMEs. This provision rules out any real possibility for EU SMEs to tender because they need to be established on the US market or to have a relevant US partner in order to bid (Bendini, 2014). Other laws also express the US protectionist attitude, such as the Berry Amendment (10 U.S.C. 2533a) that restricts government purchases of certain items to US businesses for security reasons. Another major issue is that the largest share of public procurement is at the state level or below, on which the federal negotiators have no leverage. Agreement to be subject to government procurement commitments is voluntary for US states, and as US involvement in FTAs has increased in recent years, so the number of states that have opted into government procurement agreements has declined (Akhtar & Jones, 2014).

The US representatives dismiss the claims that public markets in the EU are more open. Their argument is that statistics on government purchases of goods and services are not precise, sub-national markets are strongly closed (except in the electricity sector) and US firms point to concerns ranging from a lack of transparency in contract awards to EU bias in government contract awards (Akhtar & Jones, 2014). The US trade representative also states that an EU directive on procurement of utilities covering purchases in the water, energy, urban transport and postal services discriminates against bids with less than 50% EU content that are not covered by an international or reciprocal bilateral agreement (Akhtar & Jones, 2014).

Do what I say, not what I do

The openness of the procurement market is the focus of a major tug of war between the USA and the EU, demonstrating a striking difference between the transatlantic partners and their position in relation to other countries. In the rest of the world, the USA and the EU have successfully convinced a number of other countries to open their markets in the terms of the BITs and FTAs they have agreed with them. A US trade negotiator with 25 years experience is surprisingly candid when he contrasts the straightforward negotiations on procurement in TPP and other FTAs, and the 'complex' and 'contentious' TTIP negotiations (Grier, 2014).

The financial sector

The other major contentious issue in the negotiations is the financial sector. Chief Negotiator Ignacio Garcia-Bercero confirmed the seriousness of disagreements here, speaking of 'a "potential clash" between the two regulatory regimes' (Parliament. UK, 2013:36). This is surprising for at least two reasons. First, we have been told at length that financial markets could be used as an archetype of all-out deregulation, with a progressive disengagement by governments. In reality, the 2007 financial meltdown provided an extreme example of the extent to which public policy, including major financial support and restructuring of the industry, is essential if the financial industry is to go on prospering. Although its public pronouncements are in favour of globalisation, the lowering of 'technical barriers' to trade and other neoliberal tropes, this industry remains in practice heavily dependent on national markets and governments. The IMF estimates of implicit government subsidies given to the largest banks in 2012 are highest in the Eurozone (up to US$300 billion), followed by Japan and the United Kingdom (up to US$110 billion each) and somewhat lower in the USA because of tightened regulations (up to US$70 billion; IMF, 2014). Second, and in line with their attitude to public procurement discussed above, US and EU governments, fully supported by the industry, have been – and continue to be – keen to lecture emerging countries about their reluctance to open their markets to foreign competitors. As observed by a European parliament report, financial services have emerged as a key sector in these negotiations. The EU has sought, and in many cases obtained, considerable concessions in the sector which go beyond those agreed multilaterally in the WTO. These concessions include not only additional sector commitments for market access and national treatment, but importantly also new and enhanced rules governing financial regulation (Lang, 2014). As far as the USA is concerned, NAFTA, which came into force on 1 January 1994, opened Canada's and Mexico's financial markets to US industry. Subsequently, the FTA signed with Korea (the 'KORUS' FTA) went a step further in the liberalisation of measures that limit the number of financial institutions and the total value of their transactions and assets (Johnson & Schott, 2013). For its part, the EU has been criticised for dropping its long established policy of special and differential treatment for developing countries (a WTO recommendation) by substituting a 'full reciprocity' clause in place of reciprocity more generously understood as a 'broad balance of benefits' (as in the General Agreement on Tariffs and Trade [GATT]/WTO practice). Thus, the EU is 'undermining multilateralism' (Sargentini, 2013:90), and its Commissioner on Trade has often been accused of using bullying tactics with developing countries (Borderlex, 2014).

Things are very different when it comes to the relations between the two colossi themselves, which between them dominate the world financial system. In principle, the USA and the EU have agreed to implement the broad principles of transparency, regulatory measures and market access. In the real world, things are more complicated. In reality, and despite their strong interconnections in terms of flows of financial capital, the US and EU finance industries remain divided on a number of issues. From the very beginning, the discussions on the finance sector were wobbly. The US chief negotiator, Michael Froman, suggested that 'Unlike the other sectors in TTIP, there are multiple existing forums focused on the coordination of financial services regulation, including a bilateral forum' (Donnan, 2014), speaking of the G-20 and international standard setting bodies.[30] The US administration's main concern is that the strong regulatory requirements passed under the Dodd-Frank law are at risk of being lowered within an EU-US agreement. Measures already taken or committed to in the USA and considered as setting a better regulatory framework than in the EU include the recent proposed increase in the leverage ratio – from the 3% minimum under Basel III to 6% for insured banks and 5% for bank holding companies (Board of Governors of the Federal Reserve System, 2014) and the Volcker Rule, limiting proprietary trading by big banks.

30 Although, according to some key European observers, 'The office of the United States Trade Representative, [is] deemed privately sympathetic' to the EU proposals (Parliament.UK, 2013:39).

The European Commission, for its part, claims that a number of reforms adopted in the USA have in practice created further obstacles to the presence of EU financial firms. The European Commissioner for Internal Market and Services, Michel Barnier, made it clear that the EU would not approve any agreement that does not eliminate 'discrimination' against foreign institutions through US regulatory practices (13 July 2013). These practices include the Volcker Rule, claimed to have detrimental effects on market liquidity, making it harder to raise capital and creating registration difficulties for EU firms.[31] Furthermore, the US legislation imposes extraterritoriality of US rules onto non-US banks.[32] UK business representatives are even more angry with the US regulation, stating that 'the number of Barriers to market access and national treatment for financial and related professional services are too numerous to be itemised in this submission. We attach an illustrative list at Annex 2' (Parliament.UK, 2013).

Not surprisingly, the UK government and business are pushing strongly for financial issues to be included in the TTIP. The UK financial industry is by far the most dominant in Europe, accounting for 74% of its trade in interest rate over-the-counter (OTC) derivatives, 78% of its foreign exchange trading and 85% of its hedge fund assets, 57% of private equity funds, 54% of insurance premiums and half of fund management assets (TheCityUK, 2013:5). While benefiting from this strong position tied to its EU membership, the United Kingdom 'has zealously safeguarded the UK's financial sector from attempts to extend EU regulation' (Mix, 2013). The United Kingdom's trade surplus in financial services is considerable, amounting to £46.3 billion in 2012, of which £15.2 billion surplus came from the USA and £14.5 billion from the EU (TheCityUK, 2013:6). Not surprisingly, an overwhelming 84% of the business community surveyed by TheCityUK indicated that they wanted the United Kingdom to remain a member of the EU (TheCityUK, 2013:3). Meanwhile, there is a strong integration of finance capital between the City of London and Wall Street.

Elsewhere in Europe, the French government has stated that financial services are 'clearly an offensive interest for them', while the German government is 'quite cautious' about financial services (Parliament.UK, 2013:40). The German banking industry has even shown that it intends to challenge US provisions against banks in the TTIP, designed to prevent a situation in which banks are 'too big to fail'. They criticise 'US regulators [for] applying standards to our banks that are extraterritorial, duplicative or discriminating' (Association of German Banks, 2012). And while the US administration was reluctant to address financial issues in TTIP, European negotiators spent much of 2014 lobbying the USA to include cooperation on financial regulation in the TTIP draft (Donnan, 2013). The EU lobby found strong support among influential Members of Congress and the US financial industry, a fact openly welcomed by the representatives of UK financial capital (Parliament.UK, 2013:38). Some members have called on the

31 European Banking Federation, Letter to Board of Governors of the Federal Reserve System, 13 February 2012.

32 According to the European Banking Federation, the 'Super 23A' 'requirement, as proposed in the Volcker Rule, would impose a worldwide prohibition against any non-U.S. bank lending to or otherwise transacting with any hedge funds or private-equity funds it sponsors, manages or advises, even when such funds bear no relation to the U.S. This requirement is unduly broad and extraterritorial in reach', European Banking Federation, Letter to Board of Governors of the Federal Reserve System.

administration to address regulatory discrepancies between the US and EU financial systems in the negotiations, stating that

> *confusion caused by inconsistent and conflicting regulations has already spilled over into the broader economy, reducing investment, creating higher compliance costs, lowering employment, and hindering economic growth. (Akhtar & Jones, 2014:15)*

Other Members of the US Congress and stakeholders, along with many trade unions and NGOs, have expressed concern that the inclusion of financial services regulatory issues in the negotiations could lower financial regulatory standards, such as reducing the consumer protections included in the Dodd-Frank Wall.

Indeed, some segments of US business, especially in the information and communications technology (ICT) sector, for whom a US-EU agreement would be largely beneficial, have also spoken out strongly on this issue. For instance, Director of Trade and Competition Policy, Intel Corporation, speaking on behalf of the Coalition of Services Industries and the Business Coalition for Transatlantic Trade said,

> *Temptations to prematurely carve out sectors, including financial service, entirely from the regulatory cooperation component should be resisted. Doing so only undermines the pledged mutual commitment to develop a comprehensive and ambitious agreement. (US Congress, House Committee on Ways and Means, Subcommittee on Trade, 2013)*

On the European side, pressures from business aim first at easing the access of EU financial companies to the US market, second at weakening the more severe rules established for non-US banks and third at concluding an agreement that would enable market players to do business across the Atlantic under the laws that apply in their own jurisdictions. In other words, TTIP would not be leveraged in Europe to increase regulatory pressures on banks and non-bank institutions. It is also likely that EU negotiators are using the TTIP negotiations on the financial sector as an instrument for possible trade-offs in other sectors. Here, the USA's strong stand on financial issues could provide an excuse for European negotiators to harden their positions on other issues.

Conclusion

The arguments in this article have been built on three main hypotheses

First, the political economy of globalisation is an outcome of the interactive dynamics between the strategies of TNCs and the policies of the most powerful governments. Neither of these is a homogeneous entity: TNCs are not 'nationality free' and states are not more or less passive instruments in their hands. States are representatives of 'capital in general', that is, protectors of the social relations of production and reproduction, a role which is not reducible to defending the larger internationalised and higher concentrated segments of capital.

Second, TTIP has been designed with three objectives: 'policing' and trying to mitigate the competition between US and EU firms, in a context of 'long recession' and increasing economic and geopolitical competition from a handful of emerging countries; creating a united US-EU front both to enhance attacks against workers (whether in or out of work) and to facilitate the looting of natural resources; and setting the rules and standards for the 'rest of the world', targeting, in particular, the rising economies which are in direct contention with them.

Third, this agenda is necessarily complex to implement, with internal tensions among both corporate and government actors. The conflict cannot be reduced to a simple contest between TNCs and 'those from below', although trade unions and NGOs are right to emphasise that the TTIP negotiations are designed to accommodate the demands of TNCs (and not those of citizens and workers). The TTIP is not a 'turnkey' project to be easily wrapped up because the negotiations require a difficult reconciliation of a range of different interests and perspectives within the transatlantic bloc, in addition to dealing with the mounting opposition from trade unions and NGOs. The TTIP should therefore be seen less as a done deal and more as a work in progress by the USA and the EU, constituting an overarching forum that will cement the transatlantic bloc in order to promote the broad interests of the huge concentration of capital based on their territories.

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