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Introduction: The New EU FTAs as Contentious Market Regulation

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Abstract

EU trade policy is in flux. This reflects various developments, chief among them: the deepening of the global trade liberalization agenda, the EU’s own constitutional recasting of the Common Commercial Policy, and the politicization of trade. The purpose of this special issue is to analyse the new politics of trade in the EU, focusing on the EU FTAs with Korea, the US, Canada, and Japan. We propose to view the negotiations of these agreements through the lens of contentious market regulation. This approach takes the regulatory turn in trade seriously, and sheds light on its ramifications for the mobilization of new actors and the involvement of parliaments in the politics of trade. After tracing the development of the new EU FTAs and discussing the specificity of the EU’s approach to deepened liberalization, the article presents the framework of contentious market regulation and the individual contributions to the special issue.

Keywords

EU trade policy, contentious market regulation, TTIP, CETA, KOREU, EU-Japan FTA

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Introduction

The EU used to emphasize trade multilateralism, traditionally within the framework of the General Agreement on Tariffs and Trade (GATT) and then World Trade Organization (WTO). Today, it is busy negotiating free trade agreements (FTAs) on a global basis with many countries including both emerging economies and industrialized countries. The EU’s turn towards new trade bilateralism took place in the mid-2000s at a time when the WTO’s Doha Round experienced evident difficulties. Since then, the EU has in the space of a decade completed eight ‘new’ FTAs (with Canada, Central America, Columbia, Ecuador, Korea, Peru, Singapore and Vietnam). It subsequently engaged in negotiations with six additional countries (Japan, Malaysia, Thailand, United States, Burma and one on investments with China) while negotiations with India and ASEAN are on standby. Negotiations with MERCOSUR, on standby from 2004, were resumed in 2010.

As a result of this turn, a new generation of FTAs has materialized. Certainly, these agreements display obvious differences. Most obviously, while some cover a limited share of world trade, others are mega-regional agreements. The Transatlantic Trade and Investment Partnership (TTIP), which the EU started negotiating with the United States in 2013, covers about a third of the
world economy. If successful, it would be one of the emerging mega-regional agreements, together with the Regional Comprehensive Economic Partnership (RCEP) currently negotiated between China, the 10 members of the Association of South East Asian Nations (ASEAN), as well as India, Japan, South Korea, and New Zealand.\(^1\) Beyond obvious differences, however, the new EU FTAs share some key characteristics that make them ‘deep and comprehensive’. First, they cover a broad range of trade liberalization issues—from goods and services to investment, through intellectual property (comprehensiveness). Second, they aim not just at eliminating tariffs and quantitative restrictions, but, more ambitiously, integrating markets (depth). Third, they are often concluded bilaterally. These features help distinguish new FTAs from old EU FTAs, which are shallower and narrower in scope, mostly involve developing countries, and emphasize development issues.

Furthermore, although the turn to deep and comprehensive FTAs is a global phenomenon, the EU’s embrace of the new trade agenda is rooted in a particular historical and geopolitical context. The EU had negotiated many FTAs before the 2000s, but these ‘old FTAs’ had a strong emphasis on development issues, and, largely for historical and geopolitical reasons, they targeted countries in Europe, the Southern Mediterranean and African, Caribbean, and Pacific (ACP) area. In contrast, the ‘new’ EU FTAs have been explicitly ‘competitiveness-driven’ and aimed towards new geographic targets in North America, and South and East Asia (European Commission 2010). The

\(^1\) The RCEP negotiations were formally started at the ASEAN summit in Cambodia in 2012. The Transpacific Partnership (TPP), signed in 2013 by the United States and 11 countries bordering the Pacific Ocean, is another potential mega-regional agreement. The 11 countries are: Brunei, Chile, New Zealand, and Singapore (the original four starting in 2005) plus Australia, Peru, Vietnam, Malaysia, Mexico, Canada and Japan, which joined between 2008 and 2013. Japan was the latest country to join in 2013. The United States joined the negotiations in 2008 and signed the agreement in February 2016, under the Obama administration, only to pull out of it again in January 2017, under the newly-elected president Trump. As of June 2017, the fate of the TPP remained uncertain.
new EU FTAs are very much in line with the Lisbon Agenda on competitiveness and its off-shoot the Better Regulation agenda (which lies at the heart of the TTIP and other FTA initiatives aimed at ‘cutting red tape’).\(^2\) By the same token, the EU has evidently not been the only economic power to pursue new FTAs—the US allegedly initiated this trend—but, as a regional power having to reconcile a variety of national interests, the EU’s strategy has being less global in geographic coverage, and more ‘exhortatory’ (or less ‘functionalist’) in its operational approach than the US strategy (Horn et al. 2009, 28).

The purpose of this special issue is to analyse the new politics of trade, focusing more specifically on the EU. We argue that 21\(^{st}\)-century trade politics can be conceptualized as contentious market regulation, i.e., a politicized process shaped by the interaction between societal actors on the one hand, using a broad range of conventional and disruptive techniques, and trade regulators on the other hand, aiming at establishing sustained control over activities that are socially valued. While inspired by classical views on regulation (e.g., Selznick’s view of regulation as sustained control over activities that are socially valued; Majone 1994), we contribute to a new body of international and comparative political economy literature taking the regulatory turn in international trade seriously. Our argument builds on two key premises. First, trade liberalization today has moved well beyond the exchange of tariff concessions (Baldwin 2011; Young and Peterson 2014; Young 2015). One of the main drivers of change here is the integration of value chains. As transnational market integration picked up pace in the last decades, 21\(^{st}\)-century trade liberalization revolves less around exchanging tariff preferences and increasingly on writing rules and deepening disciplines for investment, services, and goods (non-tariff barriers).

Second, as this ‘deeper’ trade liberalization agenda challenges entrenched domestic norms of public policy and law-making and regulatory institutions and processes, we expect a new range of

\(^2\) We thank JEI reviewer 2 for pointing this out to us.
actors to mobilize in trade policy, alongside the traditional state executives and special economic interest groups. Most prominent among them are citizen groups and parliamentary actors. Thus, unlike the old generation of trade agreements, which was the domaine réservé of executive actors and economic lobby groups, new-generation trade agreements have become more broadly politicized and contested. Deep integration entails deep political contestation.

This point is amply illustrated by recent developments in Europe and the US. Europe has long been seen as a fulcrum of anti-trade sentiments. Large-scale and sustained public campaigns have forced EU trade regulators to readjust their positions and develop more inclusive consultations during the TTIP negotiations. However, the US 2016 presidential elections showed that anti-trade sentiments are not a European specialty and, under the presidency of Donald Trump, will durably shape US politics. Candidate Trump promised to terminate the TPP negotiations and President Trump did just that on 23 January 2017. Trump’s bleak vision of globalization casts serious doubts on the future of TTIP.3

These developments, including the election of Trump, force students of trade policy to take a deeper look at domestic politics. Exactly how these forces shape the strategies and outcomes of deepened liberalization remains to be better understood: this is the objective of this special issue. In this special issue, we develop a political economy perspective on the new trade bilateralism and explore its insights in light of contemporary EU FTAs. The contributions gathered in this special issue pay special analytic attention to the industrial and parliamentary dimensions of new trade bilateralism, including feedback from ordinary citizens through the mobilization of civil society Non-Governmental Organizations (NGOs). In the remaining part of this introduction, we provide an

3 One of the highlights of Trump’s bleak inauguration speech was a reference to America’s ‘rusted out factories scattered like tombstones across the landscapes of our nation’; Trump promise the end of ‘many decades [during which] we’ve enriched foreign industry at the expense of American industry’ (Trump’s inauguration speech, 20 January 2017).
overview of the new EU FTAs, discuss the general framework of contentious market regulation, and present the contributions to this special issue.

21st-century trade liberalization: The changing international and EU trade agendas

Trade liberalization has been in flux for some time between a largely ‘negative integration’ approach during the post-World War II decades and an increasingly ‘positive integration’ approach in the post-Cold World War period. As Brülhart and Matthews (2007, 964) put it, ‘the scope for further negative integration, in the sense of reduction of tariff and non-tariff trade barriers, is approaching exhaustion, but in its place, there will be greater emphasis on positive integration … requiring governments to adapt domestic policies and institutions so as to ensure that the scope for expanded trade is not frustrated by differences in regulation, market institutions, technical standards and taxes’. The push from negative integration to positive integration in trade liberalization can be analysed as a shift from exchange of at-the-border tariff concessions to efforts to bring into alignment beyond-the-border regulatory regimes. Historically, regulatory issues became a key focus of international trade negotiations with the establishment of the WTO, even though some attempts had been made in the 1970s (the Tokyo Round of GATT 1973-79) to develop international codes on non-tariff barriers (NTB) (Winham 1986; Grieco 1990; Winham 1992).

It is often said that the WTO is not well equipped to deal with positive integration. This reflects the political realities that the WTO is confronted with, not just the agenda of the new organization. As a matter of fact, the establishment of the WTO in 1994 coincided with a considerable expansion and deepening of the liberalization agenda—a push towards positive integration (Narlikar 2005; WTO 1995; Jackson 1998; Hoekman and Kostecki 2001). Agenda expansion took two main forms. First, the domain of application of trade liberalization principles was extended to the area of services and intellectual property, besides the traditional area of goods.
Multilateral trade liberalization was no longer just or mostly about the free mobility of goods, but also about the free provision of services, protection of investments, and protection of intellectual property. In these new areas, liberalizing trade overwhelmingly involves positive trade integration—for example the adaptation of national standards, regulations, policies, and sometimes even of institutions—that is domestic political reform. Second, within the traditional area of trade in goods, the focus also moved from eliminating ‘at-the-border’ barriers to trade (tariffs, quantitative restrictions, and price controls) to tackling ‘behind-the-border’ barriers, mainly regulatory barriers. Regulatory barriers encompass both technical regulations and standards. The difference between the two is that technical regulations are mandatory rules developed by public authorities (basically legislation to be complied with), they are also often referenced in EU law and WTO law; while standards are non-mandatory rules developed by private bodies and typically enforced through conformity assessment procedures (El-Agraa 2011).

In the end, political realities, not a narrow or outdated rulebook, defeated the WTO process. The failure of the WTO’s Doha Round is generally viewed as one of the background factors pushing the EU towards bilateralism (Woolcock 2010; Buonanno and Nugent 2013; Woolcock 2015). As Winham (2009, 27) argues, ‘the problem appears to go beyond the negotiating position of individual countries’ and reflect, more fundamentally ‘the interaction [between developed and developing countries] in the negotiating process itself’. The round, which started in 2001, after the abortion of the Millennium Round in Seattle in 1999, quickly ran into difficulties as a result of the clashing WTO institutional and political realities. The lack of agreement at the Cancún mid-term Ministerial Conference in 2003 was a major set-back. At issue were disagreements on three of so-called Singapore issues (government procurement, investments, competition policy), as well as on agriculture and differential treatment of developing countries (Fergusson 2011). Developing

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4 We thank JEI reviewer 2 for pointing this out to us.
countries had established the G20 platform, which served to channel their interests. In 2004, the contentious Singapore issues were taken off the Doha Round.\textsuperscript{5} The same year, EU Trade Commissioner Peter Mandelson (2004-2008) took office with a vision for a global European trade policy encompassing a more active use of bilateral trade agreements. The new policy, outlined in a key 2006 Commission document entitled \textit{Global Europe}, explicitly linked the use of FTAs to the pursuit of trade liberalization in Singapore issues and other new trade issues:

Free Trade Agreements (FTAs), if approached with care, can build on WTO and other international rules going further and faster in promoting openness and integration, by tackling issues which are not ready for multilateral discussion and by preparing the ground for the next level of multilateral liberalisation. \textit{Many key issues, including investment, public procurement, competition, other regulatory issues and IPR [intellectual property rights] enforcement, which remain outside the WTO at this time can be addressed through FTAs}. (European Commission 2006, p.10; our emphasis).

In 2009, emerging new economic powers—Brazil, Russia, India, China, and South-Africa formed the BRICS group with a view to influencing the international economic system. About the same time, the new EU Trade Commission Karel De Gucht confirmed the EU’s new trade policy in yet another key Commission publication called \textit{Trade, Growth and World Affairs} (European Commission 2010). At that point, the EU had already completed FTA negotiations with Korea, Peru, Columbia, and Central America and it was negotiating with the Gulf countries, India, Canada, and Singapore (European Commission 2010, p.10) (Table 1).

\textsuperscript{5} In 2013, however, WTO members reached in Bali an agreement on the fourth Singapore issue, trade facilitation.
Table 1

The next steps were East Asia (Malaysia, Vietnam), and especially, due their size and potential, the US, China, Russia, Japan, India, and Brazil (European Commission 2010, p.11). Against the background of a rapidly developing global financial crisis and the EU’s not-so-successful Lisbon Strategy (later replaced by the Europe 2020 strategy), ‘competitiveness-driven’ FTAs were seen—and continue to be so today—as a means to create jobs and growth, a major political preoccupation.

Originating in the growing gap between the WTO’s ambitions and the political realities, the EU FTAs considered in this special issue are all a mix of WTO+ provisions, i.e., provisions upgrading the WTO provisions, and WTO-X or WTO-extra provisions, i.e., provisions in areas that are ‘qualitatively new’ or ‘related to a policy instrument that has not previously been regulated by the WTO’ (Horn et al. 2009, 13). As mentioned above, the EU was evidently not the only to embark on this new course, but its strategy differed significantly from the US in that EU FTAs contain a much larger number of WTO-X provisions, even though a good number of them lack legal enforceability. Some see it as a sign of ‘legal inflation’ which may ‘reflect a lack of consensus among the member states about the ultimate purpose of the PTAs’ (Horn et al. 2009, 7). However, many of the WTO-X provisions in EU FTAs relate to the environment, labour standards, cooperation and training. Since there is agreement on these elements among EU member states, the lack of enforceability could also reflect third party opposition to inclusion of these elements.

The focus of the chapters in this special issue is on FTAs with industrialized countries, i.e. countries with relatively pluralistic societies. This may create some similarities in the political

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6 Thus, provisions aiming at, e.g., liberalizing public procurement and services are WTO+ provisions, while provisions aiming at, e.g., harmonizing competition law, developing environmental standards or providing dispute settlement mechanisms in the field of investment are WTO-X (Horn et al. 2009)
7 We thank JEI reviewer 1 for pointing this out to us.
processes, but we also expect differences because of different societal structures and political cultures. One difference is institutional on the EU side: The FTA with South Korea was negotiated before the entry into force of the Lisbon Treaty, which, among other things, empowered the European Parliament in trade policy.

State-of-the-art: The ‘regulatory turn’ scholarship

The main premise underpinning this special issue is that the more EU FTAs focus on behind-the-border issues, the more politicized trade politics becomes. To substantiate and develop this premise, we draw on recent efforts at exploring the turn to rule making. These works straddle the traditional disciplinary divides in the social sciences, showing the value of pursuing a political-economy approach to contemporary trade policy issues. At the same time, they highlight the need to open the black box of domestic politics.

Within economics, Baldwin has articulated the most forceful argument in favour of adopting a ‘regulatory economics’ perspective (Baldwin 2011). Baldwin traced the turn to regulatory trade liberalization to the information and communication technology (ICT) revolution, the impact of which he likens to the steam revolution. By facilitating information sharing and transnational coordination of a broad range of production- and management-related activities, the ICT revolution has underpinned the economic re-bundling of production-related activities around a ‘trade-investment-service nexus’ (Baldwin 2011 and 2016). Accordingly, ‘the heart of 21st century trade is an intertwining of: 1) trade in goods, 2) international investment in production facilities, training, technology and long-term business relationships, and 3) the use of infrastructure services to coordinate the dispersed production’ (Baldwin 2011, 5). Re-bundling has taken place through different paths, for example through outward processing trade and the globalization of supply

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8 The ICT revolution refers to the development of cheap and reliable telecommunications and computing technology (computing, email, and internet) in the mid-1980s.
chains (Baldwin 2011, 6-7; Manger 2009, WTO 2013). With this restructuring taking place not just in North America, Asia, and Europe, but also on a cross-continental scale, much trade has become intra-industry and even sometimes intra-firm trade. Putting national labels on modern industrial products is becoming very difficult, if not impossible. Therefore, the agenda of 21st-century trade is less about ‘exchange of market access’ than ‘foreign factories in exchange for domestic reforms’; it is about ‘helping foreign companies connect production facilities internationally, and do business locally’ (Baldwin 2011, 28). The attention of global trade regulators has thus shifted away from border issues to cross-border and behind-the-border issues such as freedom of establishment of services, government procurement, competition policy, investment protection and technical barriers to trade (TBTs).

Baldwin cautions us that developing a theory of regulatory economics is a difficult task. While negotiating tariff reductions revolves around a simple logic of exchange of market access, writing the rules of 21st-century trade cannot be captured by a simple, let alone single, logic (Baldwin 2011). The set of regulatory obstacles to trade is very different from industry to industry, generating widely different demands for rule-writing. This also means that ‘the winners and losers from 21st century RTAs [regional trade agreements] invoke a much richer set of players’ (Ibid, 28). Provided the winners and losers are identified, Baldwin proposes to capture the political dynamics of 21st-century trade liberalization through a mechanism of feedback loop, which he calls the ‘juggernaut effect.’ Time is a key dimension: as reforms are introduced, liberalisation strengthens pro-trade political economy forces, which in turn nurture further liberalisation in its wake. ‘In short, this „juggernaut“ feedback mechanism asserts that reciprocal liberalisation tends to reshape the political economy landscape inside each nation in a way that makes future liberalisation more likely’ (Baldwin 2011, 28).
Within political science, a growing literature has drawn attention to the political difficulties of regulatory cooperation, busting the myth of regulatory cooperation as a largely technical, and politically uncontroversial exercise. As Young and Peterson (2014, 159) put it, in practice ‘international standard setting, whether multilateral or bilateral, takes the form of contestation among rival regulatory solutions, with one tending to prevail in the end’ (Young and Peterson 2014, p. 159). This process ‘… is rarely about reaching a compromise among different regulatory models and approaches (…) but instead about battles for preeminence of one approach or solution over another’ (Büthe and Mattli 2011, p. 11-12). From a rationalist perspective, politicization is rule-induced and can be understood as the reflection of the redistributive implications of the shift from tariff liberalization to regulatory liberalization (Young 2015). The political dynamic of traditional trade agreements was simple: domestic import-competing firms were expected to oppose tariff liberalization while export-oriented firms were expected to support it. Citizen groups were not expected to mobilize to influence trade politics. By contrast, in 21st-century trade politics, these groups now potentially face costs from regulatory cooperation which may materialize ‘in the form of less safe or more environmentally harmful products’; given the commitment to ambitious, deep bilateral trade agreements, the stakes have become so high as to dwarf the transaction costs attached to collective action. Thus, citizen groups are now expected to mobilize against liberalization; and the literature provides ample evidence that they have started to do so (Young and Peterson 2014).

The pattern of politicization is expected to reflect the specific form of regulatory cooperation. Policy-makers might choose to cooperate through aligning national regulatory frameworks. This is the logic of approximation; it is illustrated in the harmonization of regulations. Even though the different sides involved in harmonization are likely to give and take, harmonization leads to one side generally prevailing over the other. This approach is generally viewed as the best way to reconcile the pursuit of domestic policy objectives and deepened trade liberalization (Koenig-
Archibugi 2010). Therefore, it is expected to generate less mobilization from citizen groups than other forms of regulatory cooperation. At the same time, this approach is expected to generate resistance from not only import-competing firms (traditionally opposed to trade liberalization) but also from the export-oriented firms, which must adopt the rules and standards of the other side and thus incur potentially tremendous costs.

Alternatively, policy-makers might choose to cooperate through defining equivalence between national measures, standards, or conformity assessments. This is the logic of equivalence. It is illustrated by the mutual recognition of standards, or mutual recognition of agreements (Alemanno 2014; Young and Peterson 2014). Mutual Recognition Agreements (MRAs) focus on the results of conformity assessment procedures and presupposes the equivalence between the respective regulatory standards. In other words, ‘governments agree to recognize the results of each other's testing, inspections, or other procedures’ and this typology of agreements ‘enable
Conformity Assessment Bodies (CABs) nominated by one Party to certify products for access to the other Party’s market, according to the other Party’s technical legislation’ (Alemanno 2014, p. 32).9

This approach is often viewed as a ‘threat’ for citizen groups, especially those of the EU, which generally displays higher standard levels than other parts of the world (Pelkmans 2015). Therefore, it is expected to generate more mobilization from citizen groups than harmonization, a fortiori in the EU. At the same time, this approach is expected to generate less resistance from export-oriented firms, given that it is more flexible for them and it does not entail any conversion to new sets of requirements.

While originally most scholars assumed that regulatory cooperation would take the form harmonization, in reality ‘few FTAs envisage or realize technical harmonization (even NAFTA,

9 “They provide for the mutual recognition between trading partners of mandatory test results and certificates for certain industrial products. Under bilateral MRAs, each country agrees to accept product inspection, testing, or certification results performed by the other country” (Alemanno 2014, p. 32).
next to none)’ (Pelkmans 2015, 9). Standards can become more harmonized in the context of cooperation with the International Standardisation Organization (ISO) and The International Electro-technical Commission (IEC) with a view to arranging for “simultaneous standard development” (Pelkmans 2015, 10), as the EU already regularly does. However, harmonization is a cumbersome process and for the time being, equivalence have gained prominence as the privileged instrument capable of bringing the greatest substantive results in the short term while harmonization is viewed as falling short of addressing intrinsic negative trade effects (Alemanno 2014). Given the predominance of the logic of equivalence, Young concludes that the politics of 21st-century trade will mainly consist of a contestation between two types of coalitions: on the one hand, a transnational coalition of businesses and trade-unions lobbying in favour of regulatory liberalization as they expect it to take place flexibly and save jobs; on the other hand, a transnational—though primarily EU-centred—coalition of citizen groups lobbying against regulatory liberalization which they expect to lower European regulatory standards and restrict the right to regulate. By an ironic twist of fate, 21st-century trade politics resembles early 20th-century trade politics (Young 2015).

In sum, social scientists from a variety of disciplines agree that the shift from tariff-exchange to rule making potentially deeply affects the politics of trade and they have started conceptualizing the political implications of this shift. However, we have yet to fully understand and explore the processes of politicization accompanying the shift towards positive trade integration. Economists, for example, did not foresee the mobilization of NGOs, which had become a very important ingredient in the TTIP negotiations by 2015. While political scientists did, they have tended to treat new types of social mobilization in isolation from the institutional context of EU trade policy-making and have produced only prima facie evidence in support of their argument. Taking the scholarship on the ‘regulatory turn’ one step further, this special issue opens the ‘black box’ of institutions, exploring how institutions mediate and refract the positions, resources, and potentially
even preferences of groups in society and eventually the ability of negotiating parties to press the interest at the international level.

**Beyond the state-of-the-art: EU FTAs as contentious market regulation**

In this special issue, we argue that contemporary trade liberalization can be viewed as *contentious market regulation*. By this, we acknowledge, in line with the ‘regulatory turn’ scholarship, that the shift from tariff exchange to rule making potentially deeply affects the politics of trade. However, the difficulties faced by the TTIP negotiations in Europe, with huge civil society group demonstrations – and now the election victory by Trump – are compelling reminders that the transition to regulatory trade liberalization is not a simple, functional, and irreversible process. Creating single markets is a politically contentious endeavor (Egan 2015). Deep integration entails deep political contestation. Critically, contestation includes elements of both old and new trade politics, and meshes together regulatory, redistributive, and, perhaps most fundamentally, legitimacy issues.

This is very well illustrated by the contemporary turbulences in Western democracies. Trump’s electorate included many, who felt that they had not benefited from globalization in general, and the North American Free Trade Agreement (NAFTA) in particular. Many of those who had lost jobs to Mexico and China voted against free trade, as Trump cleverly exploited their dissatisfaction. This should remind us that, as the economic theory of trade has it, free trade has winners and losers. It is therefore important that the losers are compensated, which can include unemployment benefits and retraining for other jobs. This has not happened in the United States. Even though we must resist simple distinctions between the EU and the US\(^\text{10}\), Europe’s welfare states are often more generous, giving citizenries more extensive unemployment benefits and

\(^{10}\) Retraining and redistribution schemes are limited in quite a few Member States and the European Globalisation Fund is also quite limited. We thank JEI reviewer 1 for pointing this out to us.
opportunities for retraining—and yet, contestation has raged on this side of the Atlantic, too. As far-right wing candidate to the 2017 French presidential elections Marine Le Pen put it recently, ‘these days, everyone is proposing the National Front’s solutions. We recorded a nice ideological victory when I heard [Arnaud] Montebourg [a former Socialist economy minister] pleading for “made in France,” which is one of the major pillars of the National Front’ (Foreign Affairs 2016).

Redistributive and legitimacy issues are partly what makes it so difficult today to convince voters on both sides of the Atlantic of the benefits of agreements like TTIP. Who are the winners and losers in hard economic terms? How legitimate are the new FTAs in the wider public? In other words, the institutions making trade policy face new challenges, forcing them to change policies, possibly abandoning some.

In line with this double premise, this special issue analyses the new politics of trade liberalization by focusing on the intermeshed processes of rulemaking (including regulatory cooperation) in largely expert, technical fora, and political contestation among broad segments of European and American citizenries and respective political representative institutions.

We trace the shift to rule making in material as well as ideational terms. Part of what makes the new EU FTAs so difficult is that the parties to the negotiations start from very different and often institutionally-engrained positions, which we refer to as the variance in the regulatory acquis.

This acquis can be viewed as the stock of regulatory rights and obligations binding the political and business operators in the negotiating parties. This regulatory acquis has an ideational and a material dimension. We capture the ideational dimension of the regulatory acquis with the concept of regulatory frames. Regulatory frames convey both the key problems addressed by regulators and the normative justifications for regulatory intervention. Regulatory frames are often observable at the level of sectors, since they relate to specific policy problems, and they may be more or less explicitly articulated by elites. The critical point about regulatory frames, however, is that they are
not just elite constructions but discourses potentially shaping societal preferences. Looking at the regulatory frame of the negotiators, we ask: are there clashing regulatory ideas between EU and third country? In which sectors or chapters do these clashes arise? To what extent do these frames shape broad societal preferences? The material dimension, on the other hand, refers to the organizational capabilities translating these frames into realities. International influence, as it is well established, is not just about relative market size as realist political economists argue, but as much about the domestic institutional capacity to deal with regulations. Looking at the regulatory capacities of the negotiating parties, we ask: is there a gap in the regulatory capacity of the EU and its counterparts in the FTA negotiations? In which sectors or chapters are these gaps more pronounced? To whose benefit are they? By way of illustration, in financial service regulation, for instance, the United States may have developed a domestic capacity before the EU and thus have a first-mover advantage in the regulatory negotiations between the two. On the other hand, US regulatory organizations tend overall to be more fragmented than EU organizations, which were built-up as part of the internal market programme. This may give the EU some advantages and leverage in some policy areas. Likewise, the work presented in this special issue is attentive not only to industry structure and market size of the EU and the partner countries, but the domestic (regulatory) capacity they have built up.

It is not difficult to see why the shift to rule making can be fraught with deep political contestation. Besides the problem of compensating the losers of the transition to deep integration, rulemaking and regulatory cooperation are connected with debates about societal preferences and with inter-institutional competition that are much more far-reaching than in the traditional politics of tariff exchange. We see political contestation as a two-step sequence involving social mobilization and parliamentary assertion. The actual order in which these steps unfold is ultimately a matter of empirical investigation. What matters, from a conceptual perspective, is that: first,
broader segments of the citizenries—not just narrow economic interests are mobilizing in response to the changing agenda of trade; and second, they increasingly strike a chord with parliamentary institutions. Parliaments are both ‘policy-makers’ and ‘interpreters’ (Olsen 1983): as policy-makers, they are involved in shaping the redistributive outcomes of the new trade agenda; as interpreters, they are involved in shaping the political reality of the negotiations by invoking standards of accountability and legitimacy (interpreter role). In both these roles as ‘policy-makers’ and ‘interpreters’, parliaments are likely to serve as the fulcrum of political mobilization by specific constituencies, citizen groups, and organized interests, thereby contributing significantly to the politicization of 21st-century trade policy in general, and EU FTAs in particular. Likewise, in both these roles, parliaments may furthermore act in concert with parliamentary actors in the negotiating countries to pursue substantive outcomes (policy-maker role) as well as define norms of parliamentary involvement and political legitimacy in EU FTAs. The ‘old’ trade agenda did not facilitate parliamentary engagement given its focus on at-the-border issues. By contrast, the new trade agenda provides fertile soil for parliamentary engagement given its focus on beyond-the-border issues and the ensuing intermeshing of domestic and international issues. Indeed, the new EU FTAs may impinge upon the decision-making capacity of parliaments, thereby generating parliamentary efforts to maintain or enhance their position (maintenance of institutional standing); and second, trade deals may prompt more or less intense concerns among citizen groups, which parliamentary actors will have an incentive to respond to (political representation) or even mobilize if it supports their own quest for institutional assertion (development of policy entrepreneurship).

Our framework bridges the ‘regulatory turn’ trade scholarship and newer historical institutionalist approaches to the study of international political economy. We support, for example, Farrell and Newman’s argument that FTAs can be viewed as instances of ‘international market regulation’ (Farrell and Newman 2010, 610). The advantage of such a point of departure, in our
view, is that it directs our attention to both the interaction of domestic regulatory capacities and the
feedback loops linking together regulatory authorities and societal groups. A key insight from this
perspective is that ‘actors approach institutions, but institutions also help to shape the advocacy
process and actors’ ultimate preferences for a multilateral approach’ (Sell 2010, 766). However, this
approach tends to treat parliaments and legislatures as epiphenomenal actors in international market
regulation based on the premise that ‘it is increasingly the case that powerful actors compete to set
the rules of international market regulation and they do this without the formal consent of national
legislatures’ (Farrell and Newman 2010, 611). Furthermore, it argues that accounts of legislative-
executive relations in international market regulation are limited to providing important but
basically static insights into the international repercussions of domestic constitutional rules (Farrell
and Newman 2010, 611). From this perspective, our contribution is to bring in a more political
understanding of market regulation as an essentially contentious process in which both societal
actors and parliamentary institutions engage. Indeed, we argue that parliamentary actors are not
only an important piece in the puzzle of international market regulation, but they are indispensable
to understand the dynamics of international market regulation. We must study their role not in a
static constitutional analysis of the rule set, but in a dynamic analysis of parliamentary assertion in
the new politics of trade.

The Special Issue contributions

The remainder of this special issue is comprised of eight articles, examining various dimensions and
cases of the EU’s new trade politics. Four articles investigate horizontal dimensions of the new EU
trade politics, respectively: the industrial dimension and the transnational integration of value chain;
foreign direct investment; civil society mobilization; and parliamentary assertion. Four additional
articles are devoted to vertical (structured-focused) analyses of the new EU FTAs, respectively:
KOREU; CETA; TTIP; and EU-Japan. The conclusion draws out the implications of these
contributions for 21st-century trade politics. These articles flesh out the notion of 21st-century trade
liberalization as contentious market regulation; they make several important points.
First, it becomes very clear that the set of regulatory obstacles to trade (encapsulated by the
economic notion of ‘trading costs’) is very different from industry to industry, and that this, in turn,
generates widely different business demands for rule-writing and regulatory cooperation (Pelkmans
this volume). Equally important, while the ‘deep and comprehensive’ EU FTAs reflect profound
structural changes in the global economy, specifically the rise of transnational value chains, they are
driven by a mix of regulatory and redistributive logic: aiming both at responding to the changing
functional needs of transnational business and ‘(re)balancing market access’ (Pelkmans this
volume).
Second, the articles shed light into the changing political dynamics of trade liberalization,
specifically pointing to the increasing role of civil society actors and parliamentarians. As the
regulatory agenda unfolds, and politically-sensitive ‘behind-the-border’ issues become the focus of
deep bilateral trade agreements, the need for political participation intensifies unless an opinion gap
between elite and popular opinion undermines the legitimacy of EU trade policy (Buonanno this
volume). Trade policy-making, which was the traditionally the preserve of trans-governmental
elites, becomes a messier process characterized by the spectacular assertion of civil society
organizations and parliaments (Roederer-Rynning and Kallestrup). Buonanno (this volume) shows
how the material (capacities) and ideational (frames) components of regulatory governance can
have a life of their own. Certainly, the new contentiousness of trade certainly reflects a combination
of new issues on the agenda and regulatory differences, she notes. Not least, it also reflects EU
(Commission) rhetoric entertaining popular ‘[mis?] perceptions of EU regulatory superiority’.
Roederer-Rynning and Kallestrup (this volume) claim that national parliaments are asserting
themselves in the politics of trade across Europe, as a reflection of intertwined changes in the global trade agenda and in the EU constitutional balancing acts underpinning trade policy-making. National parliaments have forged a role for themselves, which was not foreseen in the Lisbon Treaty: occasionally weighing in in the policy-making process (e.g., ISDS controversy); and, perhaps as importantly, (re)interpreting the political nature of the new EU FTAs as mixed agreements.

Third, the structured-focused studies of EU FTAs give us more fine-grained comparative insights into contentious market regulation. Park (this volume) argues that in Korea, where the government traditionally has controlled FTA negotiations, the political dynamics of KOREU displayed growing levels of involvement of business and civil society organizations over time. Politicization reflected both the growing complexity of agreements and learning from previous Korean FTAs, as societal actors wished to avoid repeating the errors of the past. The Korean parliament asserted itself most clearly as a policy-maker keen on compensating losing economic interests. Like Park, Hübner and his colleagues (this volume) draw our attention to the importance of learning, at the core of the transition to deep and comprehensive trade liberalization. CETA is a case of lessons learned the hard way. While the Commission, guided by previous failed attempts, was right in insisting on the inclusion of Canadian sub-national units, it ‘had to learn’ to do so at home as ‘regulatory practices cannot be seen as purely technical norms but need to be negotiated with civil society organizations as well as with national governments of all levels’; failing to do so, it ‘overesti[m]ed its power – seen through the unprecedented civil society uprising in Europe against FTAs’. Suzuki (this volume) shows how the EU-Japan FTA signals a new ‘active and challenging’ phase in Japanese trade politics by testing Japanese regulatory frames and regulatory capacity in such sensitive areas as agriculture and public procurement of railway infrastructure. While the potential target of widespread public contestation, these negotiations have proceeded forward ‘by muting oppositions’,
under the strong leadership of Prime Minister Abe. In the EU, these negotiations have likewise been conspicuous by the absence of public debate, and it is not clear why this is the case. Dominguez (this volume) analyses the contentious politics of the EU-US negotiations of the TTIP. He focuses on three cases that were particularly contentious, namely public procurement, investment protection and the automotive sector. These negotiations saw strong mobilization of legislative bodies and civil society organizations on both sides of the Atlantic, but especially in Europe.

Finally, as Meunier and Morin (2015) remind us, and several articles in this volume amply illustrate, ‘no trade agreement is an island.’ From a political perspective, government decisions on trade change the initial configuration of liberalization forces and their input into the trade policy-making system. From an institutional-legal perspective, each trade agreements are part and parcel of larger ‘trade and investment complexes’ (Meunier and Morin 2015). In their contribution to this special issue, Meunier and Morin (this volume) take us to one of the ‘hearts’ of the new politics of trade by dissecting the new ‘European approach’ to investment. Europeans have taken center stage in this area, with EU institutions revamped in Lisbon, targeted by massive protests, and now embarking on a reform of the ISDS. Meunier and Morin argue that core ‘concerns over the sovereign right to regulate’ drive the new contentiousness of European investment policy, ‘in a new context where investment can now come from any country, including emerging economies’ (emphasis added). Given the density of the existing legal complex on investment, the European approach will lead to incremental change at best.

In sum, as Young (this volume) concludes, contentious market regulation ‘is acting as a check on the EU’s “deep trade agenda”’; and to understand political change and assess the prospects of 21st-century trade liberalization, we will have to pay more systematic attention to the balance between the efficiency and the legitimacy of trade policy, and how this balance is affected by rising varieties of populisms on the one hand, and the ever-closer entanglements of FTAs on the other.
References


Table 1: The EU’s ‘new’ FTAs: The State-of-Affairs, June 2017

<table>
<thead>
<tr>
<th>Country/region</th>
<th>Start of negotiations</th>
<th>Agreement/Signature</th>
<th>In force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>Negotiating mandate April 2009, start of negotiations October 2009</td>
<td>Political agreement 18 October 2013, end of negotiations 26 September 2014, Signature 30 October 2016</td>
<td>The European Parliament gave its consent on 5 February 2017. The agreement will be applied provisionally after Canada adopts the necessary legislative acts.</td>
</tr>
<tr>
<td>Central America</td>
<td>2007</td>
<td>Approved by EP 11 December 2012</td>
<td>1 August 2013 for Honduras, Nicaragua and Panama, 1 October 2013 for Costa Rica and El Salvador, and 1 December 2013 for Guatemala</td>
</tr>
<tr>
<td>Columbia</td>
<td>2007</td>
<td>2010</td>
<td>Provisionally 1 March 2013</td>
</tr>
<tr>
<td>Chile</td>
<td>2000</td>
<td>2002</td>
<td>Provisionally February 2003, fully 2005</td>
</tr>
<tr>
<td>Ecuador</td>
<td>January 2014</td>
<td>July 2014</td>
<td>Not yet</td>
</tr>
<tr>
<td>Country</td>
<td>Year</td>
<td>Date</td>
<td>Status</td>
</tr>
<tr>
<td>-------------</td>
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<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Korea</td>
<td>2007</td>
<td>6 October 2010</td>
<td>Provisionally in force from 1 July 2011 with a few exceptions. Since 13 December 2015 fully in force after being ratified by Korea, the EU, and EU’s member states (mixed agreement).</td>
</tr>
<tr>
<td>Mexico</td>
<td>1995</td>
<td>8 December 1997</td>
<td>Trade in goods1 July 2000 and remaining parts 2001</td>
</tr>
<tr>
<td>Peru</td>
<td>2007</td>
<td>2010</td>
<td>Provisionally 1 March 2013</td>
</tr>
<tr>
<td>Singapore</td>
<td>March 2010</td>
<td>Initialled 20 September 2013, completed 17 October 2014</td>
<td>Not yet Commission decided on 10 July 2015 to request CJEU Opinion on competence question. The CJEU issued its opinion on 16 May 2017, concluding that it is a mixed agreement. Two aspects of the agreement, namely non-direct investment (portfolio investment) and investor-state dispute settlement, are not included in the EU’s exclusive</td>
</tr>
</tbody>
</table>
The preliminary text of the agreement was published on 1 February 2016.

**MAIN FTAs CURRENTLY NEGOTIATED**

<table>
<thead>
<tr>
<th>Country/region</th>
<th>Start of negotiations</th>
<th>Current status</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASEAN</td>
<td>July 2007</td>
<td>On hold since March 2009. EU decides to pursue bilateral agreements with ASEAN countries.</td>
</tr>
<tr>
<td>China (Bilateral Investment Agreement (BIA), to replace 26 existing bilateral investment treaties (BITs) with member states)</td>
<td>Council mandate 18 October 2013, negotiations since 21 November 2013</td>
<td>Ongoing, 9th round (12-15 January 2016) agreed on ‘ambitious and comprehensive scope of the agreement’ Next round likely to take place in July 2017</td>
</tr>
<tr>
<td>India</td>
<td>June 2007</td>
<td>12 rounds so far, but <em>de facto</em></td>
</tr>
<tr>
<td>Country</td>
<td>Status</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------------------</td>
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</tr>
<tr>
<td>Japan</td>
<td>Ongoing, but slow moving</td>
<td>Talks are ongoing, but slow moving. Negotiations started April 2013. The 17th round took place in September 2016. The 18th round took place in April 2017.</td>
</tr>
<tr>
<td>Malaysia</td>
<td>Ongoing, but slow moving</td>
<td>Talks are ongoing, but slow moving. Negotiations started in October 2010.</td>
</tr>
<tr>
<td>Thailand</td>
<td>Ongoing, but slow moving</td>
<td>Negotiations started in March 2013. Negotiations are ongoing but slow moving.</td>
</tr>
<tr>
<td>United States of America</td>
<td>On hold awaiting the new US administration’s decision whether to continue</td>
<td>Negotiations started in July 2013. Negotiations are on hold awaiting the new US administration’s decision whether to continue.</td>
</tr>
<tr>
<td>Myanmar/Burma (Investment Protection Agreement)</td>
<td>Ongoing, three rounds so far, but no dates for next round</td>
<td>Negotiations started in March 2014. Three rounds so far, but no dates for the next round.</td>
</tr>
</tbody>
</table>
Sources: European Commission 2017 and various internet sites. This overview purposely leaves out the EU FTAs with partners from Europe, Southern Mediterranean and the ACP countries, which are not ‘new’, competitiveness-driven FTAs.