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Finance Watch
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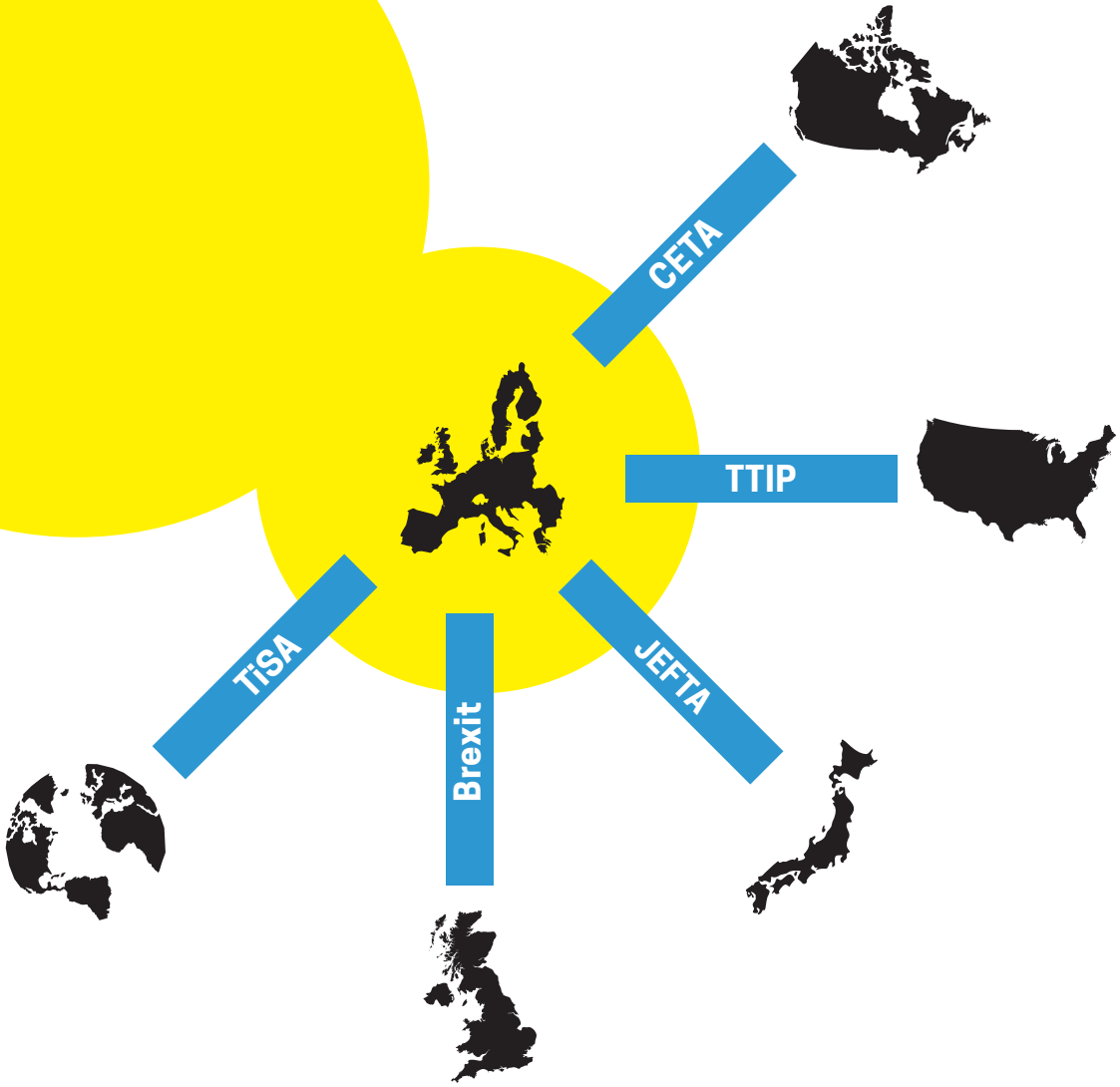
FINANCIAL REGULATION CHALLENGED BY EUROPEAN TRADE POLICY



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Finance Watch is an independently funded public interest association dedicated to making finance work for the good of society. Its mission is to strengthen the voice of society in the reform of financial regulation by conducting advocacy and presenting public interest arguments to lawmakers and the public.

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"Financial Regulation Challenged by European Trade Policy".
October 2018.

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Financial regulation and stability are directly affected by European trade policy and the proliferation of agreements negotiated with the world's major economies.

These so-called "new generation" trade agreements seek to increase exchanges between geographical regions whose economies are already well integrated. Therefore, they deal primarily with the liberalization of services and the elimination of non-tariff barriers, i.e., with discrepancies in protective rules and norms.

With the implementation of mechanisms for regulatory cooperation, these agreements are considered "living" documents, which means their content can be developed and expanded even after they have been formally adopted. Moreover, they contain measures for protecting investments and provide for the creation of mechanisms for settling disputes between states and investors, including investments in the financial sector. Meanwhile, the EU is involved in negotiations on the Trade in Services Agreement (TiSA), which consists of some fifty states willing to go beyond the 1994 General Agreement on Trade in Services (GATS) in opening service-sector markets.

The inclusion of financial services in trade negotiations seeks to stimulate growth and trade and to liberalize international capital movements, regardless of their origin and nature. Consequently, it could further enhance the financialization of our economies and increase the interconnections between major financial institutions, at the risk of significantly facilitating the spread of future crises. In practice, TiSA and the integration of financial services in these so-called "new generation" bilateral trade agreements risk reducing the ability of states to fight effectively against financial instability and to promote a financial system that would serve the economy's needs. In the name of promoting innovation, trade, and financial investment, these new agreements may contribute to protecting speculative and risky behaviour against the so-called "excesses" of prudential regulation, thus fuelling future crises.

This risk is inherent in the new agreements' very objective, which is to eliminate or reduce the scope of regulations that are perceived as trade barriers. In the financial realm, treating regulations as obstacles to the market's proper functioning goes against the lessons of the 2008 crisis.[1] In contrast to the trade in goods, trade in services raises

1 Finance Watch, 2014 and Peter V. Rajsingh, Stéphane Mage, 2016.

the question of determining the geographic area and jurisdiction to which an activity belongs. In the financial realm, the "service" implies creation and distribution of risks, and "regulations" refers to the effective ability of national regulators to control these risky activities of cross-border actors.

More specifically, several measures found in draft agreements could threaten existing rules pertaining to financial regulation — most importantly, these measures would condemn to failure any efforts to strengthen these regulations:

A liberalization enshrined in the negotiation method

The full extent of states' commitments in this realm is difficult to anticipate due to new negotiating methods. The liberalization of services using the method of the negative (or hybrid[2]) list is far more aggressive than in the past: all services that will not have been specifically listed as excluded from an agreement (including services that do not yet exist) would be, by default, open to competition. In the case of financial services, this could pose the problem of regulating future "innovative" services based on new technology, especially digital ones. In this realm, as in others, public services and particularly systems of social insurance are not yet sufficiently protected.

Increased risks of regulatory capture

This risk is inherent in the proposed mechanisms for regulatory cooperation, which may limit governments' leeway vis-à-vis the financial industry in defining public policy and thus encouraging deregulation.

Special jurisdictions for challenging new regulations

The introduction of mechanisms for settling disputes between investors and states will allow financial institutions to sue governments when they believe they have been harmed by new financial regulation policies. This situation could have a chilling effect on regulators and accelerate financial deregulation.

Restricting regulatory law

The legal documents studied in this note include numerous restrictions on regulation and could, for example, prohibit measures that seek to limit the size of banks or to regulate harmful activities such as high frequency trading, and complicate the struggle against money laundering and tax evasion.

Diffusion of financial innovations

Measures that are planned to favour the diffusion of new financial services could facilitate the proliferation of poorly controlled toxic products.

2 The hybrid method consists in using a positive list for opening services and a negative list for treatment modalities.

Limitations on the regulation of data localization and transfers

The agreements seek to restrict measures that governments impose on data localization for purposes of protection and to ensure that competent authorities can access the data and control it.

Incomplete safeguard clauses or "prudential carve-outs"

The texts studied below include "prudential carve-outs," stipulating that signatory countries can preserve the right to introduce any prudential measure they deem necessary. But the stated conditions for invoking these safeguards often limit their scope and give significant interpretive leeway to the arbiters called upon to settle disputes between states and investors.

As for measures allowing states to control capital movements, they are ringfenced by very strict conditions which limit their utilisation. In addition, the possibility of recourse to investment arbitration mechanisms in this domain further limits their scope.

INTRODUCTION

The European Commission pursues a highly proactive trade policy with numerous bilateral and multilateral negotiations. Its goal is to develop a series of trade and investment agreements with the major world economies: the United States, Canada, Japan and, in the medium term, Australia and New Zealand. Also, due to Brexit, negotiations will most probably open between the EU and the United Kingdom.

These so-called "new generation" agreements seek to increase trade between major global powers whose economies are already well integrated. Going far beyond the remaining tariff peaks and a few classic negotiation topics (government contracts, protection of intellectual property etc.), these agreements aim at opening service markets and eliminating "non-tariff trade barriers" – that is, discrepancies relating to rules and norms of protection.

As the new agreements include regulatory cooperation on current and future norms, they are seen as "living" documents: they create mechanisms for dialogue that will make it possible to deepen and expand their content even after their formal adoption. They contain, moreover, mechanisms for protecting investments and provide for the implementation of the highly controversial mechanism for settling disputes between investors and states.

In parallel, the European Union is involved in negotiations on the Trade in Services Agreement (TiSA) which brings together some fifty states who consider themselves "very good friends of services." This multilateral agreement seeks to circumvent existing logjams in the World Trade Organisation (WTO) to open service markets beyond what is provided for under the General Agreement of Trade and Services (GATS) of 1994.

The parameters of the financial services covered by these negotiations are very broad[3]

It includes:
— all banking services, including deposit-taking;
— insurance and reinsurance services;
— securities and derivatives trading, including OTC trading;
— pension fund management;
— fiduciary services and tax consulting;
— transfer services and financial data processing services;
— commercial banks;
— investment banks;
— speculative funds and capital investment funds;
— stock and commercial exchanges;
— and financial counselling of all kinds, including credit rating agencies.

These new agreements cover almost all financial services. At the international level, the estimated value of this market in 2014 was 13.1 trillion dollars, or 17% of global GDP.[4] Member states of the European Union are the primary importers and exporters of financial services and have a significant trade surplus with the rest of the world in this domain (36 billion euros in 2013).[5] Their inclusion in trade agreements has, consequently, been identified as one of the European Union's "offensive" interests.[6]

Considering the 2007-08 financial crisis, it nevertheless appears necessary to revisit the financial system's integration model and its ability to respond to the real economy's needs, whether in Europe or elsewhere in the world.

"The framework of financial market liberalization under the Financial Services Agreement of the WTO may restrict the ability of governments to change the regulatory structure in ways which support financial stability, economic growth, and the welfare of vulnerable consumers and investors."

Report of the UN Commission of Experts on Reforms of the International Monetary and Financial System

Over the past three decades, financial globalization has produced a highly interconnected but deeply unstable financial system. Its growth is illustrated by the amounts of assets and liabilities held by each country's financial institutions. In all developed

3 The financial services covered are the same as GATS. See, too, Myriam Vander Stichele, 2014.

4 Peter V. Rajsingh and Stéphane Mage, 2016.

5 European Parliament, 2016.

6 "Even the language that negotiators employ carries overtones of the mercantilism that dominated the trade policy of Pascal's seventeenth century, when commerce was treated as the economic adjunct to war: countries have offensive interests (i.e. the improved market access that they aim to achieve in the markets of their trading partners) and defensive interests (i.e. the protective barriers in their own markets that the affected industries demand be preserved)." Craig VanGrasstek, The History and Future of the World Trade Organization, 2013, p303. https://www.wto.org/english/res_e/booksp_e/historywto_e.pdf

countries, these figures rose sharply in recent years. In the Eurozone, for example, financial assets grew from 164% to 405% of GDP between 1999 and 2013. In the United States and Japan, these figures doubled over the same period. This global trend is only marginally due to the intensification of international trade flows; rather, financial deregulation in the 1980s and the suppression of capital movement controls played a decisive role. The same goes for other indicators of financial globalization such as assets under management — which is increasingly globalized but is also concentrated in a few global financial centres — or the internationalization of banking and insurance activities, measured through the growth of local debt held by the branches and subsidiaries of foreign financial institutions. It is this movement that current trade negotiations currently seek to pursue and deepen. The inclusion of financial services in the new agreements is meant to impose new discipline on state regulation at the national level and to promote capital movement and the supply of services at the international level, notably by encouraging the commercial presence of foreign suppliers (cf. mode 3 in the following chart).

Over the past three decades, financial globalization has produced a highly interconnected but instable financial system.

The four modes of supplying services identified in WTO negotiations relating to financial services

MODE	EXAMPLES
1 — Cross-border supply of services	A bank established in the EU accepts bank deposits from clients in a signatory country, such as Canada (CETA) or Japan (JEFTA) through online banking.
2 — Services consumed abroad	A French bank opens a bank account in Canada to manage current transactions in Canada.
3 — Commercial presence	A European bank establishes a subsidiary or a branch in Hong Kong.
4 — Presence of natural persons	A Mexican branch of a German bank is run by German citizens sent by corporate headquarters.

In the specific case of the financial sector, this objective can be questioned on two grounds. First, the economic benefits of the expansion of the financial sector and financial globalization are intensely debated.[7] An empirical 2015 study by the International Monetary Fund covering 149 countries between 1970 and 2010 concluded that finan-

7 Dani Rodrik and Arvind Subramanian, 2009

cial liberalization tends to increase inequality, whether because of unequal access to credit, increased vulnerability to external crises, or greater exposure to the risk of offshoring.[8] Given the hypertrophy of finance in our economy, it could well be counterproductive for the real economy to seek further increases in production and exchange in this domain. A study led by the Bank for International Settlements on 21 OECD economies from 1980 to 2009 has found that the development of the financial sector benefits growth up to a certain point, after which the trend reverses. The authors call it the "inverted U-shaped effect of financial development.[9]

Second, these alleged benefits must be weighed against potentially negative effects. The last thirty years of financial globalization has shown that the internationalization of finance increases systemic risks, as evidenced, for example, by the 1999 Asian crisis or the great global financial crisis of 2007-2008. Triggered by financial institutions of major international financial centres, the crisis from 2007-2008 spread across the globe and southern countries paid a particularly high price.[10] That crisis revealed the need to strengthen regulation and promote the stability of the financial system, and more generally to put finance back into the service of the economy and society. In its wake, new regulations proposed by the Financial Stability Committee and the Basel Committee for Banking Supervision focused on prudential rules that could avoid further public bailouts paid for by taxpayers: increased capital requirements, new risk measures based on asset types, preferential regulation for sources of stable financing, the imposition of some limits on the use of internal models, additional prudential regulations for “systemic” banks, and so on. The goal was to require banks to keep sufficient capital on their balance sheets in the event a new crisis occurred. These rules, which were announced in 2010 and revised in 2017, have yet to be fully implemented. Their implementation will be gradual and will, in some cases, extend until 2027.

In the opinion of many experts, these reforms go in the right direction but remain insufficient. Leverage has been reduced but all the structural problems remain: banks are becoming ever larger and ever more concentrated, proprietary trading is still more profitable than traditional lending operations, and existing accounting norms (IFRS and particularly “fair value” accounting) remain a constant source of volatility. At the same time, derivative markets remain very large, while loans to non-financial companies and to households only represent around 30% of major European banks’ balance sheets.

In the field of regulation, much remains thus to be done. Even more worrying, there is a danger that regulations adopted after 2008 could be reversed. While many analysts warn of a new financial crisis, the trend is once again towards deregulation and European trade policy continues to promote trade liberalization in this domain through the preparation of numerous agreements.

8 Davide Furceri and Prakash Loungani, 2015

9 Stephen G Cechetti and Enisse Kharroubi, Reassessing the impact of finance on growth, BIS Working Papers n°381. https://www.bis.org/publ/work381.pdf

10 This has occurred notably due to the decrease in global demand that followed the bursting of the financial bubble. Cf. Justin Yifu Lin, 2008.

> ***"For banking issues, based on everything we've seen, TTIP is the place where we are going to be worried... Any effort to put financial services into TTIP along the lines of what's been proposed — that would be a mistake."***
>
> Simon Johnson, former chief economist, IMF[11]

Of course, the promotion of international financial stability is included in the current negotiation mandates of trade agreements, but it does not rise to the level of a priority. **Even when the focus is on regulatory cooperation, the primary mission assigned to negotiators remains facilitating trade and investment flows.**

> ***"Some of the most commercially significant barriers to trade in financial services are regulatory in nature."***
>
> European Parliament report[12]

It seems indeed beneficial to harmonize financial rules on international level, but it would be best to seek a maximum degree of protection, and it is paradoxical to assign this task to trade negotiators. This was actually the position of the United States. American negotiators deemed that financial regulation was not an appropriate topic for trade negotiation and strongly opposed the European Union (notably the United Kingdom and France), for whom the issue was a clear priority.[13] To achieve their goals, the EU negotiators even refused for a while to formulate their offer for opening financial services in the TTIP and TiSA negotiations, so long as discussions on regulatory cooperation in this domain made no progress.

11 Zach Carter, "Why Goldman Sachs Likes Obama's Trade Agenda," http://www.huffingtonpost.com/entry/goldman-sachs-obama-trade-deal_us_57461685e4b03ede4413c33f

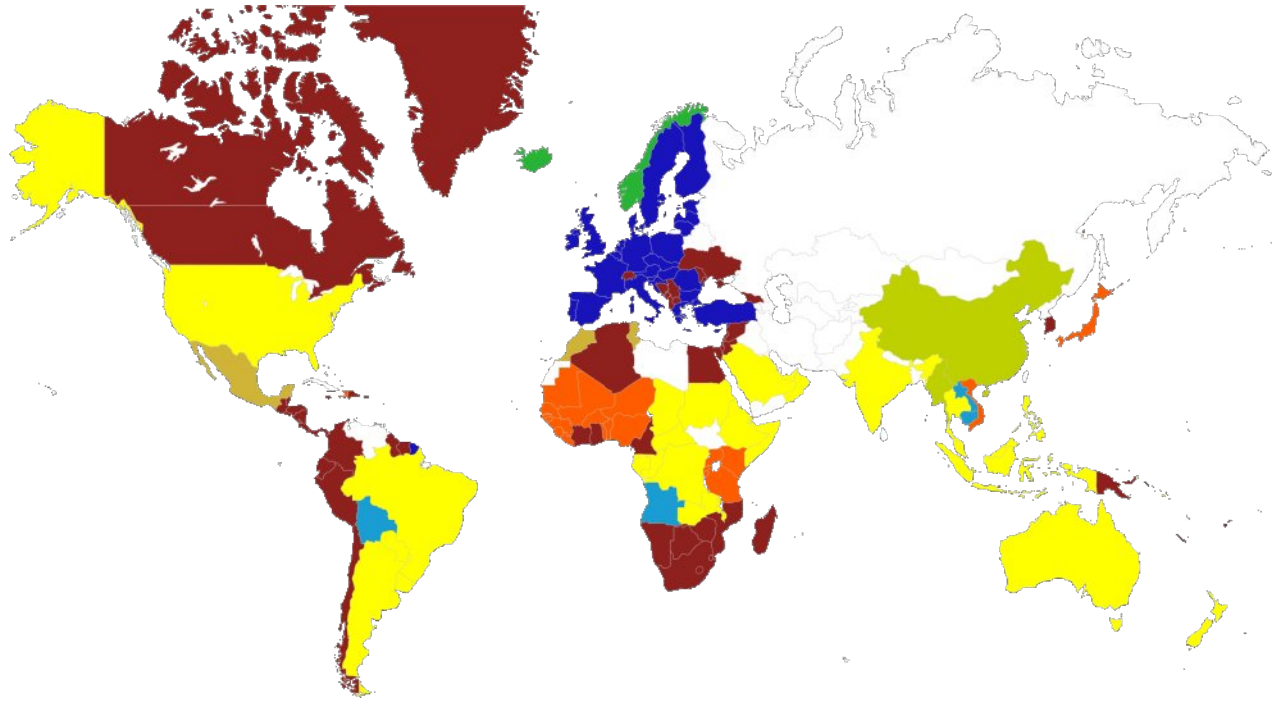
12 European Parliament, 2014.

13 Solidar, Global Progressive Forum, Renner Institute, Fondation Jean Jaurès, Policy Network et FEPS, 2016 and European Parliament, 2016.

1 "MEGA" TRADE AGREEMENTS UNDER PREPARATION

The European Union is currently negotiating more than thirty trade and investment agreements with over sixty countries. Among its trade partners concerned by these negotiations, several are major world economic powers. This note considers in turn several key measures in the "financial services" chapter of the main projects under preparation.

The state of EU Trade[14]



- EU & Customs Union (Andorra, Monaco, San Marino, Turkey)
- European Economic Area (Norway, Iceland, Liechstenstein)
- Applied preferential trade agreement (FTA, EPA, DCFTA)
- Preferential agreement awaiting application
- Pending negotiation for a preferential trade agreement
- Potential preferential trade partner
- Pending negotiations for a stand-alone investment agreement
- Preferential agreement in the process of modernisation

CETA (COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT - EU/CANADA)

This agreement was finalized in September 2014 and updated in February 2016 to incorporate parts of the EU proposal for reforming the mechanism for settling disputes between states and investors.[15] Presented by the European Commission as a model for other negotiations, CETA was adopted by the European Council and Parliament and provisionally entered into effect on September 21, 2017, without awaiting ratification by individual member states.

The text includes a chapter on financial services (chapter 13), the content of which risks reducing the leeway available to states for future financial regulation (cf. part 2). Whereas some safeguards have been created, these clauses were clearly introduced at

14 European Commission, "Overview of FTA and other Trade Negotiations," http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_118238.pdf.
The last version of the document (updated July 2018) issued by the Commission does not take into account the opening of negotiations for a comprehensive trade agreement with Australia and New Zealand respectively on 18 and 21 July 2018. We have corrected this mistake on the above map.

15 « Mécanisme de règlement des différends entre investisseurs et Etats. La proposition de la Commission européenne pour le TTIP ne comble pas les failles du dispositif » (an analytical note by 34 civil society organizations).

the request of Canadian rather than European negotiators, as they are not found in the proposals formulated by the EU in other ongoing negotiations. This fact only heightens concerns about the content of other trade agreements.

TTIP (TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP)

Negotiations between the US and the EU were launched in 2013. In spite of fifteen successive rounds of negotiations, the parties did not reach an agreement during the Obama administration. Negotiations have now been suspended after the 2016 elections, waiting for the new Trump administration to clarify its position.

A thorough analysis is difficult due to the negotiation's opaqueness. Only the EU's proposals are publicly available. The American position is known only through a few confidential documents leaked and published by Greenpeace in May 2016. The EU notably proposed to include financial services in regulatory cooperation. Financial actors, particularly in France, the UK, and the US, actively support this demand, as well as the creation of a mechanism for settling disputes that would include financial services.

Among the rules that French financial institutions identified as trade barriers in the United States one finds, for example, obligations resulting from the FATCA law against tax fraud,[16] collateral requirements for reinsurers, and other disagreements relating to prudential rules.

> ***"I wanted to underscore how important it is for the financial services industry to get robust commitments on the ISDS in the agreement — including [...] the full range of fair treatment (MST, NT, MFN) provisions."***
>
> Faryar Shirzad, Managing Director, Goldman Sachs,
> to former United States Trade Representative Michael Froman[17]

16 This law, which was adopted in 2010, requires financial institutions throughout the world to transmit information to American authorities concerning assets held by American citizens overseas. This extremely voluntarist law played a decisive role in advancing the international community's commitment to the automatic exchange of tax information. See, for example, http://www.klgates.com/files/Publication/1b4f7e9d-180a-4d43-acf9-18fd9fc3f973/Presentation/PublicationAttachment/bcf17ac9-3776-4091-9a08-382db0b390ae/Andres-Gil-Alert-6-28-FINAL_2_.pdf

17 Zach Carter, "Why Goldman Sachs Likes Obama's Trade Agenda," http://www.huffingtonpost.com/entry/goldman-sachs-obama-trade-deal_us_57461685e4b03ede4413c33f

Other financial sector demands, as identified by Public Citizen[18] :

— According to SIFMA (the US Securities Industry and Financial Markets Association), which notably includes AIG, Citigroup, JP Morgan, Bank of America, and Goldman Sachs, governments should, through the TTIP, "agree to exempt financial services firms of the other party from certain aspects of its regulatory regime with respect to certain transactions, such as those with sophisticated investors."

— The Association of German banks announced that it had "quite a number of … concerns regarding the on-going implementation of the Dodd-Frank Act (DFA) by relevant US authorities." This association is notably critical of the Volcker rule, which it sees as "much too extraterritorially burdensome for non-US banks."

— The European Services Forum declared that TTIP should prevent American regulators from strengthening rules on foreign banks deemed "too big to fail," except when the home government designates them as such: "we think that it should not be possible for a company operating globally to be designated as a systemically important financial institution (SIFI) in a foreign jurisdiction but not in its domiciliary jurisdiction."

— According to Insurance Europe, TTIP should be used to eliminate certain guarantee requirements that exist in several American states: "Insurance Europe would like to see equal treatment for financially secure well-regulated reinsurers regardless of their place of domicile with statutory collateral requirements removed."

Despite Europe's insistence, the US was for a long time reluctant to include financial matters in regulatory cooperation. Former treasury secretary Jack Lew declared himself opposed to it on several occasions: "normally in a trade agreement, the pressure is to lower standards on things like [financial regulation or environmental regulation or labour rules]". The United States will "not allow these agreements to serve as an opportunity to water down domestic financial regulatory standards" or "dilute the impact of the steps that we've taken to safeguard the US Economy."[19] The detailed report of Round XII of the negotiations, which took place in February 2016 and were made public by Greenpeace, confirms this difference of views. It also shows that the US and the EU have different approaches to defining the financial actors covered by financial market chapters. The United States' proposal only covers financial institutions that are regulated and supervised, while the EU proposal encompasses all categories of suppliers of financial services. Should negotiations resume, the American position could evolve, however, given the new Trump administration's proclivity for financial deregulation.

18 Public Citizen, TAFTA : Bankers' Backdoor Plan to Roll Back Wall Street Reform

19 CEO, 2015

JEFTA (JAPAN-EU FREE TRADE AGREEMENT)

The trade agreement with Japan is, to date, the most important ever negotiated by the EU. Launched in March 2013, JEFTA negotiations were particularly discreet. The negotiation mandate, adopted in 2012, remained confidential until September 2017. When Japanese Prime Minister Shinzo Abe visited Brussels in mid-March 2017, information on the agreement's content leaked for the first time to several European newspapers, revealing that the negotiations had reached an advanced stage. Many other negotiation documents were published by Greenpeace in June 2017, as the nineteenth round of negotiations was underway. A Euro-Japanese summit was held on July 6, 2017 to announce a political agreement, and the negotiations' conclusion was officially declared on December 8, 2017. On July 17, 2018, the agreement was officialy signed and the EU hopes it will be ratified by the European Parliament by the end of the year. The investment component, initially in the text, has been taken out and will be addressed in a separate agreement. This strategy allows the Commission to present JEFTA as a non-mixed agreement, to avoid the twofold process of having it ratified by the EU as well as by member states. As for the sensitive question of digital data, a revision clause stipulates that it will be dealt with at a later stage.

POST-BREXIT EU-UK AGREEMENT[20]

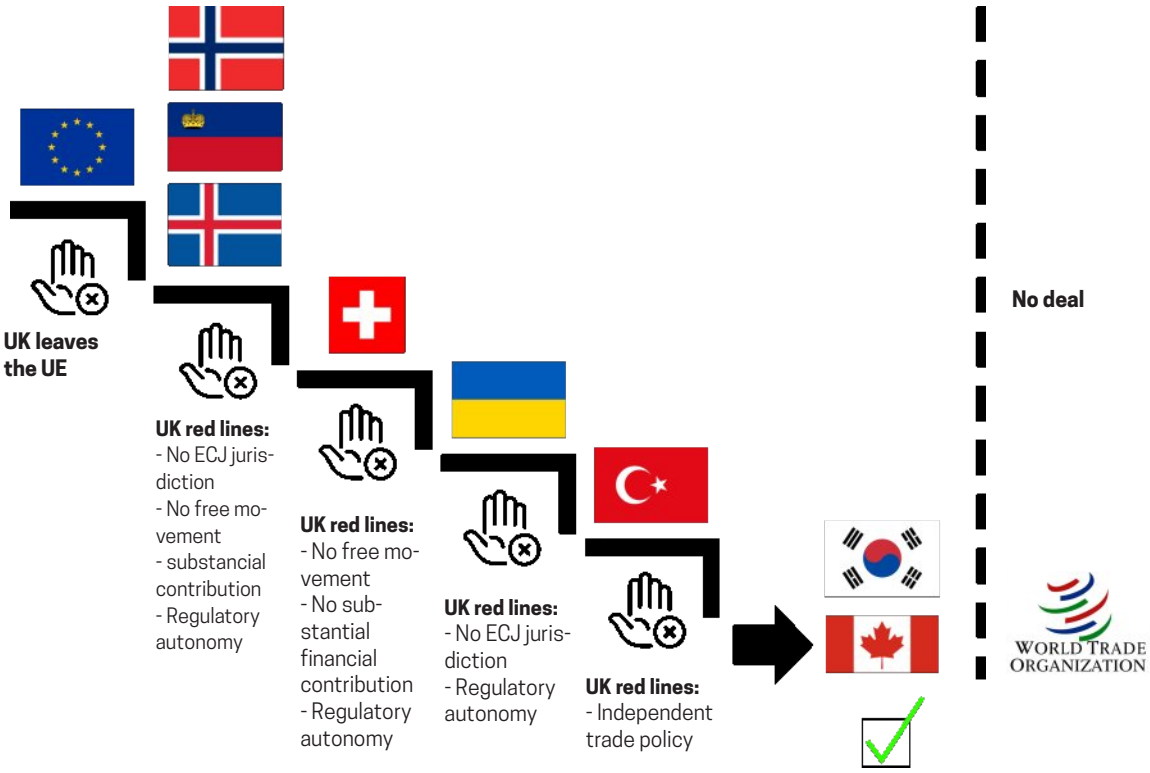
Following negotiations on the United Kingdom's withdrawal from the European Union, discussions on future trade relations between the two entities can now begin. The EU approved the guidelines at the European Summit of March 22-23, 2018 to negotiate the terms of the agreement that should take effect following the United Kingdom's formal departure in March 2019 and the anticipated transition period. The stakes are high: the financial sector represents 11% of British GDP and 3.4% of all jobs. More than half of European bank investments occur in the United Kingdom and 25% of the revenue generated by the UK's financial industry is tied to activities serving European clients. To prevent market fragmentation and to preserve the City's role as an international financial centre, financial industries and the British government would like to keep access to the single market through a "financial passport" and the principle of mutual recognition. The "passport" offers financial institutions established in the common market freedom of establishment and to provide services on the basis of a single authorization by a competent home country authority. There are nine kinds of "passports" covering a wide array of financial services, depending on the regulations involved. Nearly 360,000 "passports" appear to have been issued to around 13,500 companies (including 800 companies based in the 27 member states that use "entrance" passports to operate in the UK and 5,500 companies based in the UK in order to conduct business in other member countries of the European economic space).

20 Kavaljit Sing, 2018.

Several options remain on the table pertaining to future trade relations between the United Kingdom and the European Union: a tailor-made trade agreement; the United Kingdom's entry into the European economic space; and recourse to equivalency systems for third countries or the general WTO/GATS framework for trade in services. For now, the red lines drawn by the United Kingdom (independence in relation to European jurisdictions, the refusal of free circulation of people, commercial sovereignty, and no financial contribution) limit the choice to a free trade agreement or, absent an agreement, a return to WTO rules.

Before he resigned, the former State Secretary for Brexit David Davis proposed a "CETA +++" type trade agreement which would include additional commitments relating to market access for financial services. But as Mr. Barnier has emphasized, this type of agreement does not yet exist. And the existence of "most favoured nation" clauses in EU agreements with Canada and South Korea could limit the EU's leeway in this realm, irrespective of political will.

UK and the EU after Brexit. Which relationship?[21]



The graph displays the different scenarios envisioned for the future relationship between the UK and the EU. The further to the left, the closer the future relationship would be. E.g. : One option for the UK after Brexit could be to join the European Economic Area, which comprises the EU, Norway, Iceland and Liechtenstein. However, at this stage of the negotiations, this option is not possible as the UK does not want to fall under the jurisdiction of the European Court of Justice, to allow free movement and requires regulatory autonomy (UK redlines).

21 Slide presented by Michel Barnier, European Commission Chief negotiator, to the Heads of States and Government at the European Council, 15 December 2017.
https://ec.europa.eu/commission/sites/beta-political/files/slide_presented_by_barnier_at_euco_15-12-2017.pdf

TiSA (TRADE IN SERVICES AGREEMENT)

These negotiations, which opened in March 2013 and are still underway between 23 WTO and European Union members, seek to circumvent the opposition of developing countries to further liberalize trade in services. Whereas negotiations aimed at enlarging and deepening GATS (the General Agreement on Trade in Services, which was negotiated by the WTO in the 1990s), were stagnating, the proponents of a new agreement met in 2012, forming a group that described itself as "very good friends of services." The goal was to define restrictive and irreversible rules for services that could one day be multilateralized.[22]

The countries currently participating in these negotiations are Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Taiwan, Turkey, the European Union and the United States.[23] Seven of these countries[24] have no trade agreement with the EU and/or are not signatories of the "Understanding on Commitments in Financial Services."

Examples of demands by the financial sector[25]:

— Insurance Europe: "The TISA should introduce language aiming to reduce the scope of the carve-out…"; "With respect to market access, the TISA should eliminate: Localisation requirements, including the obligation to establish a commercial presence in a specific legal form."; "In addition, the TISA should set up a transparent investor-state resolution mechanism."[26]

— US Securities Industry and Financial Markets Association: "The competitiveness of financial services firms depends on their ability to innovate, often rapidly in order to meet the special needs of customers by developing and offering new products and services… Each Party should ensure that regulators allow private firms to meet these needs, while maintaining appropriate prudential supervision."[27]

— American Chamber of Commerce: countries "must ensure that enterprises and individuals can move and maintain information and data across borders in a reliable and secure manner… Governments should ensure that the pursuit of legitimate objectives — such as law enforcement, cyber-security or consumer protection — does not ultimately restrict digital trade."[28]

22 Scott Sinclair, 2017.

23 Singapore withdrew before the official opening of the negotiations, Uruguay and Paraguay withdrew after September 2015, notably in response to protests on the part of their citizens. In 2013, China announced its interest in the negotiations, but the United States in particular has opposed them.

24 Namely: Australia, Chile, Hong Kong, New Zealand, Taiwan, Turkey, and the United States.

25 Jane Kelsey, 2017.

26 Insurance Europe position on the Trade in International Services Agreement, June 2013 https://www.insuranceeurope.eu/sites/default/files/attachments/Position%20on%20the%20Trade%20in%20International%20Services%20Agreement%20%28TiSA%29.pdf

27 Securities Industry and Financial Markets Association Submission to USTR on International Services Agreements, 2013 https://www.regulations.gov/document?D=USTR-2013-0001-0032

28 US Chamber comments on International Services Agreements for United State Trade Representative, March 2013 https://www.regulations.gov/document?D=USTR-2013-0001-0018

TiSA was also conceived as a living agreement, since only nine of the twenty annexes under discussion (including the one on financial services) are likely to be included in the initial agreement. The others will be the subject of later negotiations. In the case of TiSA, opaqueness is once again the name of the game. Documents relating to negotiations are thought to remain secret for a period of "five years from entry into force of the TiSA agreement or, if no agreement enters into force, five years from the close of the negotiations."[29] For this reason, the European Commission has published little information about it and it is on Wikileaks and the website bilaterals.org that most available information has been made accessible. The stated goal was, moreover, to reach a conclusion before the end of 2016, but negotiations faltered on several points, notably the question of data protection. The parties are now waiting to learn more about the position of the new American administration.

29 See the annex on financial services released by Wikileaks.

2 HEIGHTENED RISKS FOR FINANCIAL STABILITY

It is difficult to predict what the effects might be of including more and more profoundly financial services in the new trade agreements. It seems clear however that several measures in current draft agreements could jeopardize existing rules relating to financial regulation and, most importantly, condemn any attempt to strengthen these rules.

A LARGELY UNCONTROLLED LIBERALIZATION ENSHRINED IN THE NEGOTIATION METHOD

The first major break between GATS and the agreements currently under preparation concerns the method used to liberalize services. In the WTO framework, the method of the so-called positive list was used, which meant that only sectors that were explicitly listed would be liberalized. The method of negative lists now used is far more intrusive, as it is based on the "list-it or lose-it approach": everything is liberalized except sectors for which countries formulate explicit reservations.

The EU used this method for the first time in the case of CETA (both for defining its market access commitments and for defining how nations will handle foreign operators). It is also the approach used in JEFTA, into which the EU and its member states introduced a few derogations. As a note published by BNP Paribas emphasizes, "this approach is risky as governments are in fact taking commitments in sectors that do not yet exist."[30] In this way, states renounce any regulation of future online services based on new applications or algorithms not yet developed, for instance, in the realm of insurance or agricultural derivatives.

As for negotiations on services, TiSA and the transatlantic partnership between the United States and the European Union have adopted a hybrid method: a positive list for commitments relating to market access and a negative list for national treatment.

Furthermore, these agreements sometimes contain "standstill" clauses and, frequently, "rachet" clauses which lock in the parties' commitments. Standstill clauses forbid the subsequent introduction of rules that are more restrictive than the signed agreement. And rachet clauses render irreversible the subsequent lifting of any measure considered to be a "trade barrier."

UNPROTECTED PUBLIC SERVICES

Public services are not protected as such by these agreements, due to a lack of adequate definitions. The existing carve-out pertains, as in the case of GATS, to "services supplied in the exercise of governmental authority" and applies only to services that are not a) supplied on a commercial basis and b) are not in competition with one or several service supplies. This "very limited exception," as the Commission itself puts it,[31] only applies to services such as the police, the judicial system, prisons, military and border security, and some legal systems of social security. Other services that are considered public services, as education, health, waste disposal or transportation could be considered as not covered by this exclusion if they are not sufficiently protected by the annexes on services.

Negotiations relating to financial services raise, for example, the question of systems of social protection. In CETA, for instance, the clause excluding systems of social protection is only partial (article 2). The carve-out is valid only if a party "allows activities or services … to be conducted by its financial institutions in competition with a public entity …" (article 13.2.5.b).[32] In the JEFTA draft (article 1) and in Europe's proposal for

30 Catherine Stephan, 2015.

31 European Commission, Directorate General for Trade, "Commission Proposal for the Modernisation of the Treatment of Public Services in EU Trade Agreements," October 26, 2011, p. 2.

32 Etienne Lebeau, 2015.

the TTIP (article 34), the anticipated carve-out for social security and retirement systems also fails to cover activities in which competition with private financial actors already occurs.

INCREASING REGULATORY CAPTURE

Regulatory cooperation seeks to ensure that all existing and future legislation of participating countries is consistent with the treaty and will have no negative impact on trade. In CETA, as in JEFTA, countries are committed, for every new regulatory measure proposed, to publish a draft measure in advance and to submit it to the partner country — as well as to concerned parties, in the case of CETA — for commentary (article 11). These measures create new opportunities for the financial sector's lobbying activities.

A "Financial Services Committee" will be created, under the aegis of a "CETA Joint Committee" (annex 13-C). In this context, "The Parties undertake to focus the discussion on issues with cross-border impact, such as crossborder trade in securities (including the possibility of taking further commitments on portfolio management), the respective frameworks for covered bonds and for collateral requirements in reinsurance, and to discuss issues related to the operation of branches." For JEFTA, discussions will take place through a "financial regulatory forum." And the parties commit to "give due consideration to the impacts of that initiative on market operators and the jurisdiction of the other Party" and to examine requests written by the other party. JEFTA declares, moreover, the principle of parties' mutual trust in one another's rules and supervision.

As for regulatory cooperation on financial services in TTIP, the EU also proposed the creation of specific bodies with a joint financial regulation forum bringing together regulators, supervisors, and other competent authorities (article 38). Furthermore, it recommends a mechanism for providing early information to the other party and mutual recognition of rules when possible. If this method results in American institutions operating on European soil but applying American prudential rules and vice-versa, the crucial question will be to determine how to organize supervision of these kinds of foreign activities.

Of course, one finds new equivalent institutional mechanisms for regulatory cooperation in TiSA, but several components mentioned above can be found in the draft agreement and go much further than GATS. Measures relating to transparency (article X-15) in the annex on financial services stipulate that states must make authorizations in a "reasonable, objective, and impartial" manner. Rules for the mutual recognition of prudential measures (article X-18) could also mean in practical terms that foreign companies could be exempt from local prudential rules if the regulations in their home country were determined "equivalent." If, moreover, the general addendum on transparency were to apply to financial services, this would mean that states were committing to respecting prior notification rules and the right to comment on all regulatory projects (with a commitment to take the comments received into consideration).

All these measures on regulatory cooperation are particularly worrisome in that existing conditions are inadequate to ensure transparency and effective democratic supervision over the activities of these specialized work groups that will be responsible for deepening and broadening the content of these agreements after they have entered into effect. Particularly once the agreements have been ratified and the public is no longer paying attention, the inequity between the attention given to particular interests as opposed to the general interest could only worsen.

Foreign companies could be exempt from local prudential rules if the regulations in their home country were determined "equivalent.

FINANCIAL REGULATIONS SUBJECT TO INVESTMENT ARBITRATION

Mechanisms for settling disputes between investors and states and the rules for protecting investments undoubtedly constitute one of the most problematic aspects of trade negotiations. Their application to the financial sector in agreements negotiated between major economic regions marks a new and decisive step. It would allow financial institutions to attack new financial regulations on the grounds that they threaten profits anticipated by investors. Such pursuits rely on controversial standards and rules of protection, in particular “fair and equitable treatment” and the fuzzy concepts of “indirect expropriation” and the “legitimate expectations” of investors, which have made it possible to threaten or condemn states for democratically approved measures serving the general interest.

In CETA (article 13.20 and 21), one clause stipulates that the Financial Services Committee (or CETA Joint Committee) will be asked to filter claims to weed out those directed against “reasonable measures for prudential reasons.” Even so, if the committee is not able to determine a claim’s appropriateness (i.e., whether the prudential carve-out is valid in a particular case), an arbitration tribunal will have to decide. Absent an agreement between European and Canadian regulators, legislation in the realm of financial regulation could then very well be attacked.

The United States had also planned for this first time to subject financial services to a mechanism for settling disputes between investors and states in the context of the Trans-Pacific Partnership negotiated with eleven other states.[33] Consequently, this option seems not to have been excluded from the TTIP.

In the case of JEFTA, a mechanism for settling disputes between states was anticipated, but the component concerning disputes between states and investors will ultimately be dealt with later, in a separate agreement. Unlike with CETA, the working papers that have been leaked show that for now, no mechanism for filtering grievances from the financial sector, however imperfect it might be, has been envisaged.

TiSA does not contain a mechanism for settling disputes between investors and states. One cannot, however, rule out that its content will one day be invoked by an investor in a lawsuit pursued on the grounds that an agreement to protect investments has generated a “legitimate expectation.”[34] It should be noted that these excessive rights are

33 Public Citizen, 2015.

34 Jane Kelsey, 2017.

not balanced by any duty for investors regarding the impacts of their activities on society and on the environment and their responsability in that respect.

REFRAIN FROM REGULATING: NEW STATE COMMITMENTS

Rules for market access

Market access clauses seek to limit the ability of states to intervene through regulation. In CETA, as in JEFTA and TiSA, market access clauses introduced in financial services chapters prohibit future public policies from seeking to limit the size of banks' balance sheets or the share of their capital held by foreign investors (article 13.6 of CETA, chapter 8 article 2 of JEFTA, and article I-3 of TiSA). These rules could prevent renationalization initiatives along the lines of those practiced in several European countries at the time of the financial crisis or the diversification of bank models. They may also block reforms aimed at limiting financial positions in agricultural derivatives, which might be necessary to fight against speculation in this sector. These articles also prohibit any measures that would "restrict or prescribe specific types of juridical entities or joint ventures by means of which financial institutions can engage in economic activity." This could prevent the banning of certain kinds of financial vehicle, such as special purpose vehicles, or make it more difficult to regulate actors operating along the financial system's margins (digital platforms, "peer to peer" loans, and so on).[35] Such a renunciation could, moreover, have tax and accountability implications.

Yet it is nevertheless important to note that article 13.6 of CETA, in contrast to JEFTA, mentions the right of the parties to require institutions to offer their financial services through juridically distinct entities. The possibility to split banking activities seems thus preserved in CETA's framework, if written appropriately. Yet this will not be the case for JEFTA. The EU simply included a derogation that could authorize it to require financial institutions operating on its soil to adopt a specific juridical form. This rule does not, however, apply to branches and, most importantly, it allows no differentiated treatment between local and foreign investors. The proposal seeking to group together foreign entities under a single EU holding structure could thus directly contradict JEFTA.[36]

Market access clauses introduced in financial services chapters prohibit future public policies from seeking to limit the size of banks' balance sheets or the share of their capital held by foreign investors.

The general article that the EU proposed for the TTIP (article 3-2; the specificities for financial services yet to be discussed) could also prohibit limiting the size of banks or run counter to reforms that result in limiting their positions in certain products. A confidential document from the European Union[37] made public in 2014 generated considerable apprehension, moreover, particularly a clause in which parties commit to "avoid introducing rules affecting market operators and the jurisdiction of the other Party, unless there are overriding prudential reasons to introduce such rules, in conformity with Art. 52 (prudential carve-out)."

35 Etienne Lebeau, 2015.

36 Etienne Lebeau, 2015.

37 European Commission, Regulatory Co-operation on Financial Regulation in TTIP (To be included to the EU proposal for services and investment chapter, Section VI – Financial services), 5 March 2014, http://corporateeurope.org/sites/default/files/attachments/regulatory_coop_fs_-_ec_prop_march_2014-2_0.pdf

In the previous version of TiSA's annex on financial services, an article also planned to limit non-discriminatory measures having negative effects on suppliers of financial services of other parties, even when they respect the agreement's measures (article X. 14). This idea, which was already present in the EU's initial offer, no longer appears, at least for now, in available documents. As for the addendum on state companies, it authorizes renationalization initiatives of the kind practiced during the financial crisis only as an emergency and provisional measure.

Performance requirements

Once the CETA comes into effect, parties will have three years to reach an understanding on performance criteria specific to the financial sector. Once this period has elapsed without an agreement being reached, the highly restrictive measures in the general investment chapter (article 8.5) will apply by default. This could prevent the introduction of requirements of local content, such as requiring that a certain percentage of loans be made to local clients, either individuals or businesses.

THE DIFFUSION OF FINANCIAL INNOVATIONS

Rather than reining in the proliferation of new and uncontrolled financial products, the agreements under preparation go beyond GATS in encouraging the distribution of new financial services created in partner countries.[38] In the EU proposal for TTIP and in the JEFTA, opening markets for these services is even explicitly required. As emphasized by Etienne Lebeau of the Belgian Centrale nationale des employés, "JEFTA results in a reversal of the burden of proof. Banks do not have to prove that their produces are useful and harmless; it is governments that must justify themselves if they decide to prohibit certain products."

With CETA, the leeway given to states when it comes to accepting or rejecting new financial services seems a little broader, insofar as authorization must be given in the same conditions that apply to "its own financial institutions, in like situations, … under its law, on request or notification to the relevant regulator, if required." However, in CETA as in the EU's TTIP proposal, if one party subjects this distribution to authorization, it must commit to granting it "within a reasonable period of time" and to deny it only for prudential reasons. Europe's proposal in the TTIP negotiations could, moreover, pertain to all new financial services proposed by non-regulated and non-supervised suppliers (article 32). In TiSA, the measures under consideration go a step further: "Each Party shall permit financial service suppliers of any other Party established in its territory to supply any new financial service that the Party would permit its own like financial service supplier to supply without adopting a law or modifying and existing law" (article X 9).

These restrictions on the regulation of financial innovation will undoubtedly reduce the ability of states to protect consumers and manage risks.

38 Etienne Lebeau, 2017.

AN INCOMPLETE SAFEGUARD CLAUSE

In response to legitimate concerns raised by the public, the European Commission invokes the introduction of a safeguard clause relating to prudent norms inspired by GATS. The CETA version of this clause (article 13.16, "Prudential carve-out") is slightly better than the standard clause, for it states that some measures can be taken to safeguard not only the protection of investors and depositors and the stability of the financial system as a whole, but also the security and integrity of an individual financial institution. But is it enough of a safeguard? The final paragraph could limit many other financial regulation initiatives. Indeed, it stipulates: "Subject to Articles 13.3 [National Treatment] and 13.4 [Most-favoured-nation treatment], a Party may, for prudential reasons, prohibit a particular financial service or activity. Such a prohibition shall not apply to all financial services or to a complete financial services sub-sector, such as banking." Furthermore, annex 13-B (point 8.d) i) specifies that to qualify for inclusion under the prudential carve-out, a measure must not be "so severe in light of its purpose that it is manifestly disproportionate to the attainment of its objective." This proportionality test lends itself to broad interpretation and significant contestation.

In Europe's TTIP proposal and in the draft JEFTA and TiSA proposal, the scope of the safeguard clause that applies specifically to prudential measures is practically identical to the one found in GATS. It does not apply to measures seeking to preserve the security and integrity of a particular operator, but only to those preserving the stability of the financial system in general. In the first two rounds of negotiation, the EU proposed that an important limit be added: "measures shall not be more burdensome than necessary to achieve their aim," thus opening a breach in the clause itself. Fortunately, the Japanese were not convinced.

As a report of the European Parliament makes clear,[39] TiSA negotiations offer the possibility of clarifying and strengthening the existing GATS clause by incorporating a few of the small improvements found in recent agreements reached by the EU and the US. Even so, at this stage, the draft safeguard clause constitutes, rather, a "step backward". The financial services annex published by Wikileaks in May 2016 indicates that the EU is opposed to a more protective safeguard clause, which would allow states to intervene to preserve the integrity and stability of individual financial institutions. This point now only appears, in the final draft available, in a footnote. Once again, an anti-evasion clause limits the clause's scope, and perhaps even cancels it out.

In this domain, consequently, all "self-cancelling" terminology – in other words, language that automatically limits a protection clause's scope – should be eliminated. The agreement should fully recognize the right of states to take measures they deem necessary for stabilizing the financial system without being limited by any other regulations than those defined by domestic law and multilateral financial rules (the IMF, and so on).

39 European Parliament, 2016.

LIMITS ON RULES RELATING TO DATA LOCALIZATION AND TRANSFER

The supervision of financial data is a crucial issue for regulators in every country, and the mobility of such data generates new risks that must be taken into account. As the Peterson Institute notes: "When an international financial conglomerate fails, each government might rush to seize what it can to make sure that its constituents get paid. Under the circumstances, it is not surprising to see governments worry about their ability to prevent or resolve crises, react to abuses in finance or data privacy—or, on a more sinister note, police their people—when firms can instantly whisk assets and data out of their reach."[40]

The freedom to hold and transfer data, however, is among the key demands made in current negotiations by the financial sector and e-commerce industries. And new restrictions agreed by governments in this domain seem dangerous, particularly since they are not accompanied by increased commitments to the protection of privacy, and the ways in which competent authorities will have access to this data remains unclear.

CETA's chapter on financial services indicates that the parties authorize information transfers, at the same time as it notes the importance of preserving "adequate safeguards to protect privacy, in particular with regard to the transfer of personal information." In JEFTA, the language is even less protective, and simply reaffirms the rights of parties to protect personal information as long as this right is not used to circumvent commitments relating to data transfers and processing.

For their part, American financial actors were not satisfied with clauses related to the localization of data included in the Trans-Pacific agreement. Seeking a way out of this impasse, the US government, in May 2016, presented a new proposal, which it sought to incorporate into TiSA, TTIP, and the bilateral investment agreement with China. This proposal seeks to "preven[t] a Party from requiring companies to use or locate computing facilities in its territory when the Party's financial regulators have access to information stored abroad." Similarly, "a Party may not prevent the cross-border transfer of information for the conduct of business …" The current annex to the financial services chapter of TiSA is written in that spirit. And while governments are authorized to have regulations protecting privacy, they are not required to do so.

OUTDATED PROTECTION CLAUSES ON CAPITAL CONTROLS

As Harvard academic Dani Rodrik notes, "Paradoxically, capital account liberalization became a norm in trade agreements just as professional opinion among economists was becoming more sceptical about the wisdom of free capital flows."[41] Even international organizations like the IMF have changed their approach and recognize now that capital control measures can be useful when other tools for settling macroeconomic or financial imbalances are not available. But this trend has not caught up with trade policy and trade negotiations. Just like GATS in the 1990s, trade agreements under preparation continue to limit governments' leeway in this domain.

40 Anna Gelpern, "Financial Services," in Peterson Institute for International Economics, *Assessing the Trans Pacific Partnership*, PIIE Briefing 16-1, February 2016.

41 Dani Rodrik, 2018.

Measures intended to allow states to restore controls on capital movement to preserve financial stability remain largely inadequate as well. Various draft agreements provide only for temporary or reactive recourse to such policies, which is not enough to guarantee genuine financial stability. On the positive side, it is worth noting that in CETA, temporary safeguard measures relating to capital movement and international payments (article 28.4) mention, as possible triggering causes, capital movements that "cause or threaten to cause serious difficulties for the operation of the economic and monetary union of the European Union." Cast more broadly, this cause could expand the range of possible actions available to governments, notably in the realm of prevention of future crises. But the agreement also imposes strict time limits for such a policy, which means the regulator might have little use for it in practice.

CONCLUSION

The promotion of financial services in current "mega-trade agreements" seems to directly contradict the policy objective pursued by many states since the global financial crisis: to make finance once again serve the economy. This trend will most probably contribute to the emergence or the spread of new financial crises, and weaken states' ability to adopt regulations that fight financial instability and promote the ecological transition of our economies. A thorough examination of key measures of CETA, TTIP, TiSA, and JEFTA confirms these fears. And Brexit negotiations could raise similar problems if CETA serves as a model.

In sum, these agreements seek to pursue liberalization and deregulation of financial services, using new tools whose impacts remain uncertain. By increasing volumes of trade in financial services on a world scale, these agreements automatically lead to greater interconnection between financial institutions. Rules adopted in the aftermath of the 2007-08 financial crisis are often presented as trade barriers that should be restricted or simply suppressed – this is the main argument used when states consent to limiting their own ability to intervene in this domain. Moreover, the mechanisms for regulatory cooperation and the settlement of dispute between investors and states that have been proposed in these agreements will undoubtedly strengthen the financial industry's ability to defend their interests against regulators.

RECOMMENDATIONS

1. ENSURE TRANSPARENCY AND EFFECTIVE DEMOCRATIC CONTROL OVER TRADE POLICY

The European Union's trade policy is facing an unprecedented crisis of legitimacy. Citizens' mistrust is fuelled by opaque negotiation procedures and the lack of balance between the weight given to private interests as opposed to groups representing the public interest. Only a transparent, fair and democratic process can ensure that future agreements will serve the public good and, consequently, receive broad support.[42]

2. LEAVE OUT FINANCIAL REGULATION FROM TRADE NEGOTIATIONS

Given the specific nature of financial services, the underlying basis of which is risk,[43] they cannot be treated like any other service. A trade and investment agreement does not provide an appropriate framework for harmonization of financial regulations. The strengthening of regulations and cooperation in supervision must be pursued through the many existing international bodies (for example, the Financial Stability Board, the Basel Committee, and the International Organization of Securities Commissions) and bilateral organizations (such as the EU-US Financial Markets Regulatory Dialogue) that are explicitly charged with this mandate, and not through trade agreements whose primary goal is to increase production and exchange.

3. LEAVE OUT INVESTOR-STATE DISPUTE SETTLEMENT (ISDS) MECHANISMS

In a note published in November 2015, the European Association of Judges issued an unfavourable opinion on the investor-state dispute settlement mechanism, including the revised EU proposal: "All member states of the European Union are, by definition and in reality, democratic states under the Rule of Law with well-functioning judiciaries that has (sic) competence according to national law."[44] If this mechanism is not abandoned, the rules for protecting investors should, at the very least, be profoundly

42 See the civil society proposals for democratizing European trade and investment policy: https://www.veblen-institute.org/IMG/pdf/doc_de_position_democratisation_vf_290118.pdf and http://s2bnetwork.org/civil-society-statement-eu-trade-investment-policy-democracy/

43 Peter V. Rajsingh and Stephane Mage, 2016.

44 Statement from the European Association of Judges (EAJ) on the proposal from the European Commission on a new investment court system, Paris, November 9th, 2015 http://www.iaj-uim.org/iuw/wp-content/uploads/2015/11/EAJ-report-TIPP-Court-october.pdf

modified and refocused solely on cases of direct expropriation and discrimination. These measures should not, moreover, cover portfolio investments, and all investments in the financial sector should be excluded.

4. ABANDON THE METHOD OF OPENING SERVICES THROUGH "NEGATIVE LISTS"

Return to negotiations based on "positive" lists to allow for comprehensive control of the liberalization of services, particularly financial ones.

5. ADOPT A BROADER DEFINITION OF PUBLIC SERVICES AND SANCTIFY SOCIAL PROTECTION SYSTEMS

According to the work of the Vienna Chamber of Labour and the EPSU, a clause that protects public services should stipulate: "This agreement (this chapter) does not apply to public services and to measures regulating, providing or financing public services. Public services are activities which are subject to special regulatory regimes or special obligations imposed on services or service suppliers by the competent national, regional or local authority in the general interest. Special regulatory regimes or special obligations include, but are not limited to, universal service or universal access obligations, mandatory contracting schemes, fixed prices or price caps, the limitation of the number or services or service suppliers through monopolies, exclusive service suppliers including concessions, quotas, economic needs tests or other quantitative or qualitative restrictions and regulations aiming at high level of quality, safety and affordability as well as equal treatment of users."[45]

6. PRESERVE THE ABILITY OF STATES TO REGULATE

Especially by eliminating material norms in investment chapters (notably those relating to market access and performance requirements) when they prove incompatible with the recommendations of financial regulators or scholarly research (for instance, the issue of being "too big to fail") or when they are capable of eliciting expansive interpretations from arbitration tribunals.

45 Statement from the European association of judges (EAJ) on the proposal from the European Commission on a new investment court system, Paris, November 9th, 2015
http://www.iaj-uim.org/iuw/wp-content/uploads/2015/11/EAJ-report-TIPP-Court-october.pdf

46 Markus Krajewski, 2016

7. ALLOW GOVERNEMENTS TO ESTABLISH EFFECTIVE CONTROLS OF CAPITAL MOVEMENTS

Clauses in trade agreements must allow for non-time limited controls that are also proactive, i.e., actionable before a financial crisis occurs. It will replace current – and largely insufficient – temporary safeguards relating to capital movements and payments, and restrictions in the event of serious difficulties tied to balance of payments and external financial circumstances. These safeguards offer no more than a temporary, reactive solution – one that is clearly unable to ensure the financial system's stability.

8. MAKE TRADE AND INVESTMENT AGREEMENTS REVERSIBLE

States must have the right to review completely – or partially – ratified trade and investment agreements, based on regular impact studies on sustainable development and human rights.

TEXTS USED

AECG ou CETA

The final text of CETA is published on the website of the European Council: http://data.consilium.europa.eu/doc/document/ST-10973-2016-INIT/fr/pdf

TTIP (or PTCI)

The June 2015 EU proposal on financial services for the TTIP (section VI, pp 37-44): http://trade.ec.europa.eu/doclib/docs/2015/july/tradoc_153669.pdf;

European Commission, Regulatory Co-operation on Financial Regulation in TTIP (to be included to the EU proposal for services and investment chapter, Section VI – Financial services), March 5, 2014:
http://corporateeurope.org/sites/default/files/attachments/regulatory_coop_fs_-_ec_prop_march_2014-2_0.pdf and

Detailed account of Round XII of negotiations, from February 2016, published by Greenpeace: https://ttip-leaks.org/ (document 16)

TiSA

July 2013 EU proposal on financial services for TiSA:
http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152688.pdf

September 2015 annex on financial services, revealed by Wikileaks in May 2016:
https://wikileaks.org/tisa/financial/09-2015/page-1.html and

November 2016 annex on financial services, revealed by Bilaterals.org
https://www.bilaterals.org/IMG/pdf/financial_services.pdf

November 2016 annex on transparency, revealed by bilaterals.org :
https://www.bilaterals.org/IMG/pdf/transparency.pdf

JEFTA

Document on JEFTA published online by Greenpeace in May 2016, dating from January 2017: https://trade-leaks.org/jefta-leaks/financial-services/

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