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Megaregional Trade Agreements: Challenges to Distributive Justice and Self-Determination?

This special issue on ‘Megaregional Trade Agreements: Challenges to Distributive Justice and Self-Determination?’ was initially motivated by a concrete interest in, and concern for, two specific megaregional projects – the Transatlantic Trade and Investment Partnership (TTIP) and the Trans-Pacific Partnership (TPP).¹ At the time of writing this introduction, the fate of both TTIP and TPP is shakier than seemed to be the case at the moment of planning this special issue (although not equally so); yet, the concerns raised by these two proposals are more relevant than ever.

Since the collapse of the Doha Round of the World Trade Organisation (WTO) in the Summer of 2008, megaregionals have been the primary instruments through which countries, and highly developed countries in particular, have tried to bring forward agendas of reciprocal market openness. Throughout the past year, megaregionals seem to have ground to a halt as well. This, however, has not been primarily caused by the success of the several campaigns for more democratic, transparent, and equitable forms of supranational trade governance. Instead, it is at least plausible to claim that the stall of megaregionals has been mainly, if not exclusively, the result of the resurgence of nationalist, populist, and arguably protectionist politics across the Global North (the election of Donald Trump as President of the United States being the chief but not exclusive example in this respect). To the extent that this is the case, the prospects of a transnational governance of trade that is both democratically accountable and conducive to a more equitable global development seem more remote than ever.

If this is true, understanding what, exactly, is morally problematic about megaregionals remains crucially important, and for two reasons at that. First, to the extent that they remain the more likely venues of trade governance to be revived, it is important to be keenly aware of their flaws. Second, if, as many argue, current populist and nationalist resurgences are largely a reaction of the

¹ This special issue largely, if not entirely, originates from a workshop on ‘Normative Reflections on TTIP’ (European University Institute, 22 June 2016) organized by *Global Justice: Theory Practice Rhetoric* in collaboration with the Max Weber Programme of the European University Institute and sponsored by Deutsche Forschungsgemeinschaft.

‘left-behind’ to decades of undemocratic, technocratic, non-transparent, and ultimately anti-egalitarian supranational governance, it is crucial to understand what exactly they were a reaction – an ill-informed reaction, but still a reaction – to.²

From a normative perspective, megaregionals have been the object of criticism for three broad sets of reasons. First, the very nature of a megaregional has come under critical scrutiny. Megaregionals are, by definition, less inclusive than instruments of global trade governance such as the WTO. In spite of all their well analysed flaws, WTO rounds had at least an aspiration to inclusiveness, accountability, and procedural fairness. Second, there seems to be something specific to the very way in which negotiations for megaregionals are carried out. According to their critics, megaregional negotiations have brought the secrecy, lack of transparency, and lack of democratic accountability which has arguably characterized much of supranational economic governance over the past few decades to a whole new level. There seems to be, not only a disregard for the active information and participation of democratic publics, but an active attempt to keep them in the dark – or so critics argue. Indeed, most public discussions on TTIP and TPP in particular have occurred in the immediate aftermaths of some prominent *leaks*.³ Third, and final, the very substantive contents of megaregionals seem to exhibit some particularly objectionable common trends. Megaregionals tend, for example, to further consolidate and indeed crystallise the already existing practice of investor-trade arbitration, which arguably gives powerful transnational corporations undue power to interfere with the legitimate policy choices of hosting countries. More widely, megaregionals have come under wide criticism for their emphasis on ‘non-tariff barriers,’ i.e. ‘barriers’ to trade constituted by different regulatory frameworks, health and safety and animal welfare standards, etc. As Joseph Stiglitz has famously summarized,

It’s not about trade [...]. It’s about regulations [...]. Regulations are important to us as citizens: they are important for health, education, the environment, even the management of the economy [...]. To me, this is at the heart of democracy [...]. What they want is stripping away regulations. Harmonizing down. They’re not saying, ‘okay

² See e.g. Matthew Goodwin and Rob Ford, ‘White face, blue collar, grey hair: the “left behind” voters only Ukip understands,’ *The Guardian* (5 March 2014), <<https://www.theguardian.com/commentisfree/2014/mar/05/left-behind-voters-only-ukip-understands>> (Accessed: 1 November 2017); and Timothy Garton Ash, ‘Only respect for the “left behind” can turn the populist tide,’ *The Guardian* (28 September 2017), <<https://www.theguardian.com/commentisfree/2017/sep/28/far-right-rightwing-nationalism-populist>> (Accessed: 1 November 2017).

³ A good source on these is <<https://trade-leaks.org/>> (Accessed: 1 November 2017).

let's harmonize standards on intellectual property to make access to generic medicines more accessible for everybody, that will lower the price, and that will improve health care.' That's not what they're talking about.⁴

By focusing on non-tariff barriers, megaregionals arguably constitute a threat both to social justice and to democracy. They constitute a threat to the former, because lowering regulatory standards (what Stiglitz calls 'harmonizing down') is almost universally in the interest of investors and to the detriment of the poor and the vulnerable. They constitute a threat to the latter because they arguably hollow out domestic democratic politics. As Rodrik suggests, if you want to have states and deep economic integration, you need to give up democracy, for all states are allowed to do is to follow the same rules and thus smoothen integration.⁵ Domestic democratic politics requires diversity.

The contributions to this special issue jointly offer a simultaneously wide and in-depth analysis of these three areas of concern. Risse and Brandi focus on the first two, namely 1) the problematic nature of megaregionals qua megaregionals, largely independently of their specific content; and 2) the non-inclusive nature of megaregional negotiations. Risse analyses the topic from a *global justice* viewpoint – and from his own 'grounds of justice' view perspective in particular – making a case for trade multilateralism of the kind that is represented, however imperfectly, by the WTO. To the extent that multilateralism is hindered by megaregionals, megaregionals are pro tanto unjust regardless of their content. Brandi focuses, instead, on the potential for international *domination* offered by megaregionals, again before we even start scrutinizing their content. Through megaregionals, she argues, powerful states can dominate both weaker participants as well as excluded parties. The former are deprived from the procedurally fairer (if still highly imperfect) mechanisms which the WTO offers. The latter largely have to adjust to the outcome of megaregionals in order to retain some access to the participating markets (especially in terms of regulations) without having had a say in the shaping of the relevant rules. Dietsch focuses on the impact of megaregionals on social and distributive justice in particular. His paper offers a rich taxonomy of the way in which investor protection mechanisms (which are arguably the 'signature dish' of megaregionals) can affect employment on the one hand and the distributive conflict between labour and capital on the other. Finally, Banai focuses on the effect of megaregional agreements on democratic self-determination. By

4 Global Economic Dynamics (GED) Project interview with Joseph Stiglitz (10 October 2015), <<https://www.youtube.com/watch?v=sIfO5HRRjQg>> (Accessed: 1 November 2017).

5 Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York: Norton & Co., 2011).

focusing on investor-state arbitration in particular, she asks: if a state freely commits to a system of investor-state arbitration, is it not inconsistent to claim that such mechanisms are a threat to its freedom qua self-determination? Banai argues that this is not the case, and that we do not need to recur to controversial positive conceptions of freedom to make this point – investor-state arbitration is a threat to what Rawls calls the ‘fair value’ of freedom, even if we retain an orthodoxically negative conception of freedom.

The issue also includes a review of *TTIP: The Truth about the Transatlantic Trade and Investment Partnership* by Ferdi De Ville and Gabriel Siles-Brügge, and the winning essay of the first edition of Jonathan Trejo-Mathys Memorial Essay Prize, awarded to Katherine B. Howard for her essay ‘The “Right to Have Rights” 65 Years Later: Justice Beyond Humanitarianism, Politics Beyond Sovereignty.’ The selection committee unanimously agreed that the essay significantly advances scholarship in many domains, including the political theory of statelessness, refugees and, of course, Hannah Arendt and her interlocutors.

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