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Chair : COMPARATIVE HISTORY OF POLITICAL
SYSTEMS

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***In-depth analysis of the Transatlantic Trade and Investment
Partnership (TTIP) and its impact on the European
democracy.***

Summary

Research question: “**How could the TTIP negotiations put in evidence a lack of democracy in Europe?**”.

Hypotheses:

- **The economic issues have taken over the environmental and social ones. Which means that the political power is subordinate to the economic orthodoxy.**
- **The concerns about the TTIP from environmental and labour NGOs are well-founded.**
- **The multinationals and the uncontrolled globalisation that they praise are at the very heart of the problems of our times.**

This project aimed to highlight the defects of the European institutions with the help of an in-depth analysis of the TTIP.

We managed, thank to a constructivist approach, to show that historic and social factors have played an important role in shaping the different ideologies that have dominated through the 19th and 20th century. Indeed, in order to understand the concerns of our times, analysing the past is crucial. After that, we deemed necessary to analyse the European institutions and its functioning with regards to undertake a proper insight of the darker operating mode of lobbies. This has enabled us to understand that the economic orthodoxy has taken over the environmental and social concerns. Likewise, this issue is strongly related to the fact that democracy in the European institutions is at stake due to the many lobbies that are dictating the attitude that the European institutions should adopt.

Finally, with regard to understand these concerns in the best way possible we deemed wise to provide an analysis of the main concerns that have been subject to controversy within the Transatlantic Trade and Investment Partnership, but also within the Comprehensive Economic and Trade Agreement with Canada. Effectively, the latter having been ratified by all the parties and being very similar to the first.

Part one: Concepts, Methodology, and Historical Background

This part had for purpose to set the basic concepts that we used in order to answer to the research question, such as *democracy*, *ideology*, or *bureaucracy*. The two latter concepts have been very useful within the frame of this thesis because we selected a constructivist approach, more specifically the *paradigm of the transformation of the ideologies by the plays out of forces between actors* developed by Bruno Poncelet in order to answer to our research question. This led us to deal more in depth with other authors such as Karl Polanyi, Cornelius Castoriadis, and Susan Strange in order to put our words in a historical perspective.

Indeed, by using Polanyi's wordings, we deemed important to establish a strong historical background with the purpose to explain how the evolution of the ideologies could explain the changes of nowadays' world. At the end of the 19th century with the liberal creed, then during the first half of the 20th century with the social creed, and finally during the second half of the 20th century until now.

The author defends thus the thesis that the self-adjusting market is no more than an utopia, and it can be put in relation to one of our hypothesis: ***“Could the sole political economic orthodoxy be the solution to social and environmental issues?”***

As we could see it with Polanyi's argumentation, the institution of economy is unnatural and carry on it the germs of its degeneration. Effectively, by embedding society into the economic institutions and therefore relegating social problems at the second plan, the 19th century civilization provoked its own collapse. Although principles of liberalism could have worked at that time to please the population, one should not forget the context inherent to this time period; a context of war which made the population more inclined to allow an upper class to take some economic decision. In addition, we can underline that Europe was dominated by religious ideas, it was consequently necessary to build a political and moral philosophy in order to assure the autonomy of the individual to protect its freedom toward powers in place. But after a century applying such principles blindly, people had to restore their habitat and to that end it was necessary to abrogate the separation between economy and politics, by the mean of a growing implication of the State in the management of life conditions and means of existence.

Then Castoriadis helped us a lot to understand the great features of a *bureaucracy*, but also to highlight the true characteristics of a democracy by using the Marxist's revolutionary project. Concerning our subject, namely the way society shaped its institutions regarding different ideologies, one can say that the interest of such a distinction between imaginaries lies in its product, and it therefore explains us deeper the manner society has changed in order to get to the result we know. In other words, the reasons why a change of ideology operated lie in the characteristics of the previous ideological model. Moreover, Castoriadis **used the revolutionary project to highlight the true characteristics of a democracy**, and for him it is "a society able to auto institute itself explicitly, not once and for all, but continuously.". Which means that the question of the validity of law would be perpetually open and the individual would see the institutions that regulate his life as its own collective creations, always transformable. This is why the author thinks that the questions of individual and collective autonomy are so relevant. Hence the definition given in our theoretical frame stating that democracy should create its own means to auto regulate itself by allowing the debate and exchanges of opinions.

As for Strange, she permitted us to explain in which circumstances did liberalism operated its comeback under the designation of *neoliberalism*, by deregulating the basic rules that characterized an individual by creating a strong actor that was not correctly institutionalized: *Multinationals*. It is a fact that the phenomenon called *globalisation* played an important role in deregulating the rules of the market.

We could see through this part that ideologies played a crucial role in shaping the behaviour of the different actors of society. With the help of a great author such as Polanyi we managed to explain how the liberal creed came to life in order to create a civilization based on the maximisation of the capital. The point of the author is that there are two conceptions possible of the term *economy*. The first one is related to the fact that human behaviours are guide toward the maximisation of profit, which is basically the core of the liberal ideology. This assumption has been made significant with market's extension and, following Poncelet's wording, is related to the *quantitative* conception of economy which corresponds to the creed that the more we will make inflate the economic "cake", the more the economic spinoffs will be significant. However, history and nowadays' societies showed us quite accurately that this way of doing is just exacerbating inequalities by making the wealthiest richer and the weakest poorer.

The other conception, in contrast, put the accent on society in order to establish priorities. It consists thus in placing the economic aspects after social and environmental issues, for example. According to Poncelet, it is a *qualitative* approach which aims to escape from prioritising economic presupposed ideas, in order to build institutions that will not favour market's needs over people's well-being. It is by following this ideology that the Welfare State managed to develop itself. The economy and social welfare had to be reunited, not separated into two different spheres.

Part two: Analysis of the actors, agreements, the TTIP and its implications

In order to fully understand the TTIP and its implications on European democracy, it has been necessary to first undertake a rigorous analysis of the European institutions and the way the interacting between each other. As described on their web page, the institutional system of the European Union cannot be compared to any of its 28 member states. Indeed, there is no unique president, prime minister, or supranational government. Each institution has its own organisation, members, and works in collaboration with the other institutions of the Union.

There are seven institutions within the Union: The European Council, the Council of the European Union, the European Commission, the European Parliament, the Court of Justice, the Court of Auditors, and the European Central Bank (ECB).

These institutions are assisted by two consultative organs:

- The Economic and Social Committee (ESC) which represents the interests of the different categories of the European economic and social life (employers, workers, farmers, liberal professions, etc). The ESC must be consulted for topics such as social issues, public health, or the environment. It can also give opinion of its own initiative. There are 353 members coming from various member states, depending on the demographic weight of them.
- The Committee of the Regions which (CoR) whose main purpose is to ensure that the interests of the local and regional entities of the Member States of the European Union are well represented. In domains such as education or culture, its consultation is

mandatory, but, for the ESC, the institutions can consult it freely and its composition is also the same.

The European Union is following a process of constant *parliamentarisation*, even though the principle of separation of powers is not mentioned by the treaties. Following Brack and Costa, we could describe the institutional system of the EU as a quadripartite structure. On the one hand we find the executive branch of the power, composed by the European Council and the Commission which are, approximatively, playing the role of a collective head of the state (European Council), government and central administration (Commission). On the other hand, we can find the legislative branch, composed by the European Parliament and the Council which can be considered as the lower and upper house of a bicameral parliament.

But its function does not lie only on the sole interaction between the legislative and executive organs. Indeed, the institutions and control organs are also playing a vital role. In this respect, one can evoke the European Court of Justice (hereafter ECJ) or the Court of Auditors which are playing a more judiciary role.

Secondly, we deemed proper to to define its type with regard to other treaties that have been made in history. We began thus by explaining what bilateral treaties are by providing their origins, legal roots, and main characteristics. After that, we needed to explain the reasons that have led to a *multilateralisation* of agreements, which has open the door for a more specified subsection about the latters. We ended up with this section by giving a striking example of multilateral agreement: The *Multilateral Agreement of Investment (MAI)*.

Thirdly, the subject of the thesis being what it is, a section about this agreement was more than suitable. It would have created the largest free-trade area ever made by covering 45,5% of world's GDP, 800 millions of consumers and representing almost a third of all international exchanges. The agreement's main concern is to eliminate every obstacle to the development of international exchanges and also to liberalise the European construction as it has been initiated by the Single European Act or by the Lisbon Treaty. It aims thus mostly non tariff barriers such as health, environmental, or social standards that undermine commercial exchanges and investment. Besides the suppression of tariff and non tariff barriers the project also aims to the opening of public markets and the protection of intellectual property rights. These areas are each one covered by one of the sixteen sections of the negotiation mandate, that would transform in as much chapters if the treaty was realised. This treaty includes many chapter subject to controversy such as the *harmonization of*

production standards, special tribunals that will rule on disputes between states and investors, or the principles of *ratchet* and *negative list* on which the process of liberalisation of services bases itself. It is therefore necessary to explain why such a treaty is so unacceptable for the population. In a first time one can discuss the fact that the interests of multinational firms, which aim to unify standards on both sides of the Atlantic in order to develop on cheaper platforms such as Mexico, are not synchronized with the ones of States. Moreover, there are two paradoxes that are inherent to this first reason, the first one is based on the fact that the negotiations are launched while the European Union realised in 2012 a commercial surplus of 118 billion euro on the US which are seeing a future deal as a way to balance it by creating employments on their soil. The second paradox concerns the benefits of the deal (0,5 growing points) which are clearly misjudged. Indeed, as we could see it with the Single Market project of 1987 which was supposed to create six million employments in the horizon 1992 and instead destroyed three to four million the same year.

In a second time, we have to underline the fact that the negotiations are the target of an intense lobbying, we estimate the number of lobbyists in Brussels between 15 000 and 20 000. Furthermore, the European Monitoring for Trade established that amongst the 560 meetings of the European Commission with interest groups before the launching of negotiations, 92% represented companies' private interests. And among the 25 lobby groups which had the most contacts with the Directorate General for Trade of the European Commission (hereafter DG Trade) while TTIP's preparations, not a single one was representing labour unions, consumer, or environmental organizations. What is really interesting to see is how these stakeholders, which are defending the treaty, say that it will be beneficial for the general interest, while they are essentially defending big multinationals' interests. Within the top 25 of these lobby groups we can find *Business Europe* (which represents the confederation of European businesses), the *European Services Forum* (which represents services companies such as Deutsche Bank, Ernst & Young, or Microsoft), *Food and Drink Europe* (representing among other things Nestlé, Coca-Cola, or Unilever), or the American Chamber of Commerce which represents every American industrial lobbies, considered as the most powerful lobby in the world. They thus emphasize the positive impact of the TTIP on employment and especially on small and medium-sized firms, while organisations representing the latters are very suspicious about this treaty. We will tackle this concern more in details in this subsection.

In a third time, one should not forget the fact that the negotiations were led in secret by the different groups of interest which makes them opaque. As example we can cite a "Freedom of

information request which Corporate Europe Observatory (hereafter CEO) sent in April 2013, to get an overview of the Commission's contacts with industry, in the context of the preparation for the EU-US trade talks. The most recent documents arrived 14 months after the request was filed (while EU law requires a response within 15 working days). Many of the meeting reports that were released are heavily censored. The Commission has either "whitened" or "blackened" the parts it wants to keep from public scrutiny. In some cases, like a meeting with lobbyists from *Fertilizers Europe*, every single word has been removed from the document.". One can prove it with releases, as said before a long time after the requests were sent, that were heavily censored. Following *Corporate Europe's* wording, "European Commissioner De Gucht in December 2013 in a letter published in The Guardian argued that "there is nothing secret about this EU trade deal" and that "our negotiations over the Transatlantic Trade and Investment Partnership are fully open to scrutiny". This is blatantly untrue. Not only is the text of the EU's negotiating position secret, the public is even denied access to sentences in meeting reports that refer to the EU negotiation position. This is especially problematic as these are minutes from meetings with industry lobbyists who were clearly given information about the EU's negotiating position in the TTIP talks, unlike the public. Sharing information about the EU's negotiating position with industry while refusing civil society access to that same information is unacceptable discrimination.". Abolishing this opacity "[...] would be a crucial step towards securing citizen's right to know who influences the EU-US negotiations".

In a fourth time, one must not forget the Investor-State Dispute Settlement (hereafter ISDS) which raises multiple questions about states' sovereignty. Although, its supporters advocate that this mechanism is essential in a context of globalisation, it encounters a significant opposition in Europe, where many NGOs of civil society are criticising the agreement. The latter stress the fact that the deal will restrict states' normative power in setting up public policies. In other words, these arbitration tribunals may call into question some democratic decisions taken by states on the private law's domain. But we will not linger over this for the moment as an entire subsection will be dedicated to the mechanism.

Finally, we have to highlight that the US have always had some disagreements with the EU, for example linked to agriculture with the *Beef Hormone Dispute*, and as said before these issues are really touching the normal citizen. That is the reason why these concerns provoked a growing conscientiousness about the possible effects linked to the agreement, NGOs and all parts of the civil society had to react.

We will therefore enter into further details in order to demonstrate all these concerns by using a study led by the National Centre of Development Cooperation in Belgium (Hereafter NCDC) permitted to highlight in a very accurate way the main chapters subject to controversy of the TTIP. It provides useful numbers and statements given by many authors and institutions in order to allow us to have an objective view about the subject.

Fourthly, an important concern was about lobbies which act under different different purposes, but in the framework of this thesis we will analyse in details how their economic expert assessments can affect the political decision within the EU. Effectively, lobbies are playing an important role in the political integration of the EU by bringing together different actors in order to harmonize fields such as domestic taxation rules, or technical standards. We can note these fields coincide precisely with one of the most controversial subject of the TTIP, namely the one about *harmonization of standards* (also called *regulatory cooperation*).

Fifthly, and ultimately, we undertook an analysis of CETA, between Canada and the European Union, which has been, as well as TTIP, considered as “mixed”. First, because both treaties encompass so many competences that it is unimaginable that it would affect only Community matters. Second, because EU Member States already threatened the EU Commission with refusing the CETA, would it be presented as not mixed. We now know that this treaty has been said mixed, which means that one national (or even regional in the case of Belgium) parliament on its own could decide not to ratify the agreement and disrupt its implementation over the whole geographical scope. We could see such case with the Walloon parliament which refused the treaty. However, according to Poncelet, we could see that the parliament endured heavy diplomatic and economic pressure from the other European Member States that is had no choice but to sign it. Now we only have to wait and see our blueprints coming true.

Conclusion

To conclude this thesis, we can first say that the ideologies have played a crucial role in shaping the relations between the different social classes. With the help of the classical authors we could demonstrate, within our constructivist frame, that the historic and social

issues affected heavily the way the 19th and 20th centuries went through these ideological transformations. Although some authors are sustaining that an ideological transformation never really happened and that liberalism only made concessions to survive, in our opinion it is only a matter of point of view. We can either choose to regard a glass as either half full or half empty. In the first acceptance, in order to stay coherent with the thesis, we affirm therefore that the concessions made by the ruling class were a consequence of social struggles, which produced the first social rights and the spreading of the *Welfare State*. However, some new parameters came into play such as the phenomenon of *globalisation* and all the consequences of it (*offshoring, tax evasion, multinational companies*, etc.). This marked a return of liberalism in its new form: *neoliberalism* which has totally changed power's distribution, from States to international organisations and private entities. Of course all this without operating a judicious change of institutions.

In a second time, by operating a rigorous analysis of the European institutions, and the trade agreements, we managed to demonstrate that democracy is at risk. Indeed, as we showed it in the first part of the work, the European institution's operating mode is very questionable. Putting aside the fact that the EU is fundamentally undemocratic due to the non-compliance with the principle of the division of powers, one can say that some of the basic characteristics that make a democracy are not fully respected. The legislative and executive branches, by their cooperation with lobbies have contributed to distil power in the hand of private groups or multinationals. The latter are able to influence the law thanks to their ability to transform every question into an economic one. In this regard, the *expert committees* are the only ones which are able to undertake a correct preparatory work in the eyes of the European institutions. It will be consequently much more difficult to permit the exchange of opinion between the different social classes as the supremacy of one of them has been empirically proved. Effectively, the section on lobbies has highlighted that if a private interest has more economic weight than a common one, the former will almost always prevail, depending on the lobbies' strength.

Finally, the sections on the TTIP and CETA analysis provided us a useful understanding of these concerns.

Now, regarding our hypotheses.

- The economic issues have taken over the environmental and social ones. Which means that the political power is subordinate to the economic orthodoxy.

We could not agree more with it, thanks to the functioning of the European institutions and its narrow relation with lobbies, we could demonstrate that the social and environmental

questions were not, or almost not, taken into account due to the weakness of the lobbies defending them.

- The concerns about the TTIP from environmental and labour NGOs are well-founded. It goes without saying that if the TTIP (which is frozen for the moment) is one day concluded, we will assist to the weakening of States' sovereignty. Indeed, through the different mechanisms that it praises such as the further liberalisation of services, the ISDS, or the harmonization, this agreement will contribute to ruin environment and to dig social inequalities. We will for sure assist to the concretisation of these fears with the application of CETA.

- The multinational companies and the uncontrolled globalisation that they praise are at the very heart of the problems of our times.

This is a fact that economy has taken over the social and environmental ones. A plausible explanation lies in the powerful actors that constitutes multinational companies. They managed through the last 30-40 years to penetrate the decision-making process. The example of the EU is a striking concretisation as the economic leverages became more and more significant to a point that States have to respect their demands otherwise the formers will *offshore*. This induces the issue that they became so powerful that even do not have to pay any taxes.

Finally, we will conclude this project by answering to our research question, namely: **“How the TTIP negotiations can bring to light a democratic deficit in the European institutions?”**.

Thanks to our hypothesis, the answer will be quick. First of all, we can say that the European institutions, although they are structured in a way that could permit dialogue between different classes, are only listening to the expert committees in order to undertake their reforms, to the detriment of social and environmental issues. Secondly, and we will finish with this, the TTIP negotiations are led by people that have not been elected democratically, and who are obeying to their own interest instead of the common interest.

An interesting path for further research would be to find out solutions in order to avoid multinational companies and their tax evasion strategies.

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Introduction

This project originated from a strong will to understand why in spite of all these economic reforms, austerity programs, in short, liberal provisions, European countries are still fighting with unfavourable unemployment curves, also always deeper budget deficits and social inequalities. Notwithstanding these facts, the ruling class continues to apply the liberal principles.

The Transatlantic Trade and Investment Partnership (hereafter TTIP) between the United States and Europe caused a lot of ink to flow. Indeed, the issue has been very controversial and it gave birth to a lot of disagreements between the ruling class and the other levels of society. In this regard, the European Union (hereafter EU) played an essential role because of its quasi-absolute competences in international trade. Being already accused of a lack of democracy, this issue only made things worse, citizens are feeling more and more distant toward this European ruling class which mainly consists in *bureaucrats* and *experts*. This point will represent an important subject in our thesis since these experts are mostly reasoning in economical terms to the detriment of environmental and social concerns.

We have therefore chosen a research question that would gather both these preoccupations: **“How could the TTIP negotiations put in evidence a lack of democracy in Europe?”**.

In order to answer to this question, we decided to formulate three hypotheses:

- The economic issues have taken over the environmental and social ones. Which means that the political power is subordinate to the economic orthodoxy.
- The concerns about the TTIP from environmental and labour NGOs are well-founded.
- The multinationals and the uncontrolled globalisation that they praise are at the very heart of the problems of our times.

For the purpose of back up those hypotheses, we will operate in two times. The first part of the project will consist in a historic background in order to show which ideologies have regulated the 19th century up to the present day. With this in mind, we will have recourse to different classical authors such as Karl Polanyi, Max Weber, Cornelius Castoriadis, and Susan Strange. But also to contemporary authors like Bruno Poncelet, or François Ewald. Together they will show us how the ruling elites managed to keep control of society through ideological transformations.

The second part of the thesis will be much less theoretical. Although the two first sections will be dedicated, at the beginning, to the way the EU and trade agreements are functioning, and at the end of each of these sections we will analyse the concerns that they generated. After that we will get into the substance of the matter with an in-depth analysis of the TTIP and its implications on modern society.

We will end up with an accurate conclusion by answering to the research question and confirm the hypotheses.

Part one: Concepts, Methodology, and Historical Background

1. Theoretical frame

1.1. What do we hear by democracy?

First of all, in order to answer the research question, we need to define a crucial element of it: *democracy*. As stated by Bruno Poncelet, a democracy defines itself, primarily, by an ideal of political equality toward law. Indeed, the citizen holds the right to participate in political life, to be respected in his physical and moral integrity, and most importantly, to establish relationships the way he pleases. But two questions arise from this part of the definition¹:

- Who can be considered as a citizen enjoying political rights?
- How to concretely realise this principle of equality?

Through history every civilization has known its own criteria, this is why political citizenship is a shifting concept, that moves depending on the collective beliefs of a society, but also on basis of *internal power relationship*².

Furthermore, one should not forget the importance of the fundamental liberties such as the right to life, the right of privacy, or freedom of expression; defended by a *democratic power* that will fight any type of discrimination and avoid any intrusion in people's privacy³. These principles involve another one, essential for democratic life, namely the *separation of powers*. Indeed, the democratic power will need to organize itself to counter and avoid any abuses of power, which means that no social group (defined as people united by blood (families), common objectives (work), common feelings (militant group) or common interests (leisure group))⁴, is authorized to accumulate all the powers in its hand, **the very aim of a democracy being to discuss publicly any divergence of view or opinion. Hence the obligation for the power to set up institutions and procedures that will allow any social group to debate and integrate their opinions within the decision process**⁵. In the Occident, these aspirations were concretised by a parliamentary democratic system based on three distinct powers: the legislative power (Parliament); the executive (government); the judiciary (courts). Each branch independent towards the two others have to be incarnated by different social groups⁶, the more they will be close, or alike, the more difficult it will be to organise and perpetrate the

¹ PONCELET B., « Europe une biographie non autorisée : de la « Paix Américaine » à la « Civilisation Poubelle » », *éditions Aden*, Bruxelles, Mars 2014.

² *Ibid.* pp. 30-31.

³ *Ibid.* p. 33.

⁴ LAKEHAL M., « Dictionnaire de science politique », *L'Harmattan*, Paris, p. 197.

⁵ *Ibid.* p. 35.

⁶ PONCELET B., *op. cit.*, pp. 37-38.

separation of powers. But the principle also needs protection because otherwise it would be too easy to bypass it. For example, one can cite media plurality, intellectuals independent from the power in place (universities) or independence and sovereignty that is the main feature of Nation States.

To summarise what we hear by *democracy*, we can therefore say that three great founding principles such as political equality, basic freedoms and the separation of powers are needed. By assuring these, it is much easier for a State to solve conflicts within society by the way of institutional processes that will make possible exchanges of opinions in the best ways. This will permits afterward to equilibrate the power balance and value conflicts between the different social classes and to establish their legitimacy⁷.

1.2. A constructivist approach

In order to understand in-depth all aspects of the Transatlantic Treaty on Investment and Partnership (TTIP), we have chosen to adopt a constructivist approach in it's analysis, more specifically the *paradigm of the transformation of the ideologies by the correlation of plays out forces between actors*, as developed by Bruno Poncelet. Indeed, since the purpose of this work is to understand how such treaties manifested, we need to undertake an analysis of the different ideologies that have determined the different political, economic, and social approaches.

But what do we mean by “*ideologies*”? We will first start with a broad definition provided by Liebman, which states that ideology is a system of ideas and values covering a very vast field, from theories and doctrines to mentality features. The whole expression, in a way more or less true or distorted, is a social reality, but also interests, rejections and hopes that this reality implies or produces⁸. Within this definition, we need to underline the importance of “*social reality*”. Effectively, the concept of ideology can be understood according to different features. In sociology, the “*ideology*” is a set of representations of the world that make an individual or a group, for this reason we assign a triple role to it: the social cohesion, the legitimacy of conducts and behaviours, and the justification of aspirations⁹. But in its initial meaning, as developed by the philosopher Antoine Destutt de Tracy in 1796, ideology is described as the “*science of ideas*”, which makes it a political doctrine to what political

⁷ *Ibid.*, p. 49.

⁸ LIEBMAN M., « Introduction aux doctrines politiques contemporaines : Conflits idéologiques et conflits sociaux au XXème siècle », *Presses Universitaires de Bruxelles*, édition 1983-84.

⁹ LAKEHAL M., *op.cit.*, p. 209.

scientists and sociologists are opposed to, arguing that ideology and doctrine are two separated worlds although reflecting the same social reality. We will thus retain the first interpretation.

Additionally, according to Pierre Bonafé and Michel Cartry¹⁰, the notion vary from an author to another, but almost all of them include the fact that it is the entirety of the “non material factors” that influence the decision making, being private (the individual) or public (the State). Therefore, we can give an approximate definition: a *political ideology* is the culmination of ideas, representations and of beliefs, peculiar to a determined social group, related to the structure and to the organisation of the present and future of the global society to which it is part of¹¹. Having this definition in mind, it will be much easier to develop our reasoning, first in a historic and theoretical way. Secondly in a more political and practical framework.

1.3. Substantivism

In addition to the first paradigm, we will also use the *substantivism* as defined by Karl Polanyi in “The Great Transformation”. He opposes particularly two interpretations of the term “economy”, the first relates to what is namely linked to *liberalism* and the logic of *rational choice*. The second, in opposition with the first, refers to the study of the *human choices* that allow them to live in their social and cultural environment. Indeed, with the aim of explaining the influence that economy has on policy making at the European level (and more broadly on every capitalist country), we will have to dedicate a part of the work on the evolution of the ideologies that will allow us to understand more easily the whys and wherefores of the TTIP, by associating these theoretical frames.

1.4. Transformation of the ideologies by the correlation of plays out forces between actors

During our interview with Bruno Poncelet, who is an economist specialized in trade agreements and an anthropologist, we realised that his view about economy was very similar

¹⁰ BONNAFE P., CARTRY M., « Les idéologies politiques des pays en voie de développement », In: *Revue française de science politique*, 12^e année, n°2, 1962, pp. 417-425. URL : http://www.persee.fr/doc/rfsp_0035-2950_1962_num_12_2_403378

¹¹ *Ibidem*.

to the one of Polanyi, namely that no matter which civilization, no matter which time period, we will always have three main components: values on the basis of the market; the rules of the game; and institutions. With Polanyi, we will see that during the liberal period before the end of World War II, the main value was *gold*, the rules were the *interdiction of syndicates* or the *almost lack of social laws*, and the main institution was the *self-regulating market* (see below, Section 3). Then we moved toward the *Welfare State*, which will be described more in-depth in the third section, which changed the rule of the game by including social issues within the frame of economy. Finally, we saw a backlash of liberalism under the shape of *neoliberalism* which, we will see, is no more than a modern liberalism.

1.5. Cornelius Castoriadis

This author, through the variety of its writings, will help us to understand how could a bureaucracy could manifest. Max Weber with the help of its concept of *ideal-type model of bureaucracy* will define the main characteristics of it, while we will see then if they match with our contemporary *European bureaucracy*. Additionally, by using Castoriadis' concept of *imaginaries* and *social-historic*, we will analyse how an ideological transformation could operate during the 19th and 20th centuries. In this regard, the author uses many concepts of Marxism in order to support its arguments.

1.6. Susan Strange

Ultimately, we will use Susan Strange's wording in order to show, with the new discipline that she created, namely political economy, the classical theories are not taking into account the emergence of a new powerful actor: Multinationals. Indeed, this has to be put in relation with the Weber's statement that liberalism and after neoliberalism put the *individual* in the centre of the preoccupations. However, and Poncelet joins also Strange on that point, multinational companies are still considered as *individuals*, instead of considering them as powerful political actors¹². By using the phenomenon of *globalisation* at their advantage multinational companies are finding always better ways in order not to pay taxes and to gain

¹² See Annex, "Interview with Bruno Poncelet, economist specialized in free trade agreements, and anthropologist", 8th of August 2017, p. 12.

always more and more. Poncelet called this *legislative shopping*¹³, a practice that consists in *offshoring* a firm wherever the laws are advantageous.

2. The birth of liberal ideology

2.1. Introduction

In order to contextualise the subject, we will need to undertake an analysis of the different steps that led to an evolution of ideologies through the 19th and 20th centuries and therefore through a historical transformation. On this point, Polanyi “gives a penetrating analysis of a particular historical transformation in which the supersession of one economic system by another played the decisive role.”¹⁴ He starts his analysis from 19th century during which the civilization was regulated by four institutions: the balance-of-power, the international gold standard, the liberal state and the self-regulating market. For him it is the latter that was the fount and matrix of the system. Indeed, “The gold standard was merely an attempt to extend the domestic market system to the international field; the balance-of-power system was a superstructure erected upon and, partly, worked through the gold standard; the liberal state was itself a creation of the self-regulating market. The key to the institutional system of the nineteenth century lay in the laws governing the market.”¹⁵

There were many factors that permitted these institutions to last during the century, but one of the most important was an inherent characteristic of it, namely a hundred years of peace. This miraculous performance, was the result of the balance-of-power, but not only. In fact, after 1815 and the backwash of the French Revolution, people realised that they preferred peace to liberty. Furthermore, we have to underline that the balance-of-power mechanism depended highly on the peace interest following on from the industrial revolution and the necessity “in establishing peaceful business as a universal interest.”¹⁶ In the same way as the balance-of-power is linked to peace issues, the international order needed to be made up of liberal states, dedicated to economic performances. As demonstrated above, the self-regulated market was the source of these systems and *haute finance* was its instrument. Since finance and

¹³ *Ibid.* p. 8.

¹⁴ MACLEVER R. M., introduction to POLANYI K., « The great transformation : the political and economic origins of our time », *Beacon Press*, Boston, Eleventh printing, November 1971, x.

¹⁵ POLANYI K., « The great transformation : the political and economic origins of our time », *Beacon Press*, Boston, Eleventh printing, November 1971, p. 3.

¹⁶ *Ibid.* p. 7.

diplomacy were and are still nowadays deeply connected, the former “functioned as a permanent agency of the most elastic kind. Independent of single governments, even of the most powerful, it was in touch with all; independent of the central banks, even of the Bank of England, it was closely connected with them.”¹⁷. We can thus insist on the fact that international finance helped to maintain the general peace in a context where war was a legitimate mean to defend its interests.

2.2. Cooperation between Private and Public sectors

But how could some people be both independents from governments and in touch with them to affect the latter’s decisions? As a family the Rothschild’s “embodied the abstract *principle of internationalism*; their loyalty to a firm, the credit of which had become the only supranational link between political government and industrial effort in a swiftly growing economy.”¹⁸. So at this time both economic political powers were linked to the point that it was hard to distinguish them because both their objectives were linked: *haute finance*’s purpose was gain, and to do so it was necessary to keep in tune with governments whose objectives were power and conquest. We can therefore understand more precisely why “the metaphysical extraterritoriality of a Jewish bankers’ dynasty provided an almost perfect solution.”¹⁹. By acting in the *private sector*, it has been able to bridge the gap between the economic and political organisation of this period of time. Trade became hence strictly linked with an international monetary system which was itself dependent toward peace.

By means of this family, the British Empire has been able to spread their main principles, namely gold standard and constitutionalism, in small countries that gave birth to the *Pax Britannica*. Instead of using strength for its own ends, a small pressure in the international monetary network prevailed²⁰.

¹⁷ *Ibid.* p. 10.

¹⁸ *Ibidem.*

¹⁹ *Ibidem.*

²⁰ *Ibid.* p. 14.

2.3. Society and self regulating market

The central problem that Polanyi is treating in his work concerns human society's subordination to the logic of market which erodes progressively the political will. To apprehend it he places the market economy of the 19th century in a historic perspective by using the results of anthropological research on ancient and primitive economies. Following A. Bugra, the key point of his interpretative model of societies and economic systems is that the principles in question, which are defining several types of human behaviours, can truly guide the economic activity only by referring to the corresponding institutional models²¹.

Economy is an instituted process and can be correctly analysed only by taking into full account the institutional models that give to the human behaviour its meaning and social signification. It is the main reason why Polanyi distinguishes himself from the liberal economic way of thinking for which bartering, exchanging or trucking are considered as universal principles which guide the economic activity through personal interest in every society, no matter the time period or place considered.

As an example we can allude to the “*symmetricality*” peculiar to the tribe or village, which pre-exist to its economical function, in the same way that the State, characterized by “centrality” or domestic life, is organized in a way that allows it to reach auto sufficiency. In reverse, the market configuration creates a particular economic institution that has no other implication or social object. Following Polanyi, “Ultimately, this is why the control of the economic system by the market is of overwhelming consequence to the whole organization of society: it means no less than the running of society is adjunct to the market. Instead of the economy being embedded in social relations, social relations are embedded in the economic system. The vital importance of the economic factor to the existence of society precludes any other result. For once the economic system is organized in separate institutions, based on specific motives and conferring a special status, society must be shaped in such a manner as to allow that system to function according to its own laws. This is the meaning of the familiar assertion that a market economy can function only in a market society.”²².

Furthermore, it is not the existence of markets that constitutes the exceptional nature of the 19th century's civilization, but the fact that market economy appeared for the first time in human history. “Where markets were most highly developed, as under the mercantile system,

²¹ BUGRA A., “Karl Polanyi et la séparation institutionnelle entre politique et économie”, Review of *Raisons politiques*, 2005/4 (#20), pp. 37-56, URL: <https://www.cairn.info/revue-raisons-politiques-2005-4-page-37.htm>

²² POLANYI K., op. cit., p. 57.

they thrive under the control of a centralized administration which fostered autarchy both in the households of the peasantry and in respect to national life. Regulation and markets in effect, grew up together. The self-regulating market was unknown; indeed, the emergence of the idea of self-regulation was a complete reversal of the trend of development. It is in the light of these facts that the extraordinary assumptions underlying a market economy can alone be fully comprehended.”²³.

According to Bugra, Polanyi underlines two assumptions of the market economy. The first one concerns the human behaviour, and considers that human behaviours are guided toward the maximisation of the material individual interest. Unfounded historically, this assumption became a reality with the extension of the market economy during the 19th century. Within this new configuration, every human ends became secondary in relation with the quest of profit²⁴.

If we follow Polanyi’s wording: “No less a thinker than Adam Smith suggested that the division of labour in society was dependent upon the existence of markets, or, as he put it, upon man’s “propensity to barter, truck and exchange one thing for another.” This phrase was later to yield the concept of the *Economic Man*. In retrospect it can be said that no misreading of the past ever proved more prophetic of the future.”²⁵.

Regarding the second presupposed, which is also strongly related to the market economy’s context, it sustains that “nothing must be allowed to inhibit the formation of markets nor must income be permitted to be formed otherwise than through sales. Neither must there be any interference with the adjustment of price to changed market conditions – whether the prices are those of goods, labour, land, or money. Hence there must not only be markets for all elements of industry, but no measure or policy must be countenanced that would influence the action of these markets.”²⁶. The manner the author formulates it is the basis on which the self-regulating market operate and underlines the most important aspect of the institutional model of the market economy, namely the ***representation of the work, the land and of money as merchandises***. The description of such elements as goods, while none is directly produced to be sold, is entirely fictional, but this fiction allows the organisation of work market, land market and money market, which makes it an essential component of market society²⁷.

²³ *Ibid.* p. 68.

²⁴ BUGRA A., op. cit., p. 41.

²⁵ POLANYI K., op. cit., p. 43.

²⁶ *Ibid.* p. 69.

²⁷ BUGRA A., op. cit., p. 43.

2.4. Incompatibility?

It is the final step of its reasoning that lead us to the idea of incompatibility between market economy and human society: “To allow the market mechanism to be sole director of the fate of human beings and their natural environment indeed, even of the amount and use for purchasing power, would result in the demolition of society. For the alleged commodity “labour power” cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity. In disposing of a man’s labour power, the system would, incidentally, dispose of the physical, psychological, and moral entity “man” attached to that tag. [...] Nature would be reduced to its elements, neighbourhoods and landscapes defiled, rivers polluted, military safety jeopardized, the power to produce food and raw materials destroyed. Finally, the market administration of purchasing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to business as floods and droughts in primitive society.”²⁸.

According to Polanyi, we could indeed observe such disasters in Europe during the transition between the market regulated period of the mercantilist system and the one of the self-regulated market. The next paragraph illustrates perfectly that this system was, and still is, worldwide. Effectively, “That system developed in leaps and bounds; it engulfed space and time, and by creating bank money it produced a dynamic hitherto unknown. By the time it reached its maximum extent, around 1914, every part of the globe, all its inhabitants and yet unborn generations, physical persons as well as huge fictitious bodies called corporation, were comprised in it. A new way of life spread over the planet with a claim to universality unparalleled since the age when Christianity started out on its career, only this time the movement was on a purely material level.”²⁹.

2.5. Counter powers

But yet, this claim to universality encountered an opposition globally. Actually, the danger of destruction presented by the merchant fiction and that was threatening human society caused auto protectionist reactions. In accordance with Polanyi’s thesis, “For a century the dynamics of modern society was governed by a double movement: the market expanded continuously

²⁸ POLANYI K., op. cit., p. 73.

²⁹ *Ibid.* p. 130.

but this movement was met by a countermovement checking the expansion in definite directions. Vital though such a countermovement was for the protection of society, in the last analysis it was incompatible with the self-regulation of the market, and thus with the market system itself.”³⁰.

In the knowledge that it is the very nature of the market economy that caused the counter movements, it is all natural that a production system organized around the exchange principle could not resist to these disruptive strains. Market’s resistance spread its influence on a destructive mode which drove to the collapse of a civilisation where society became a simple appendix of the market³¹. According to the author, “Nineteenth century civilization was not destroyed by the external or internal attack of barbarians; its vitality was not sapped by the devastations of WWI nor by the revolt of a socialist proletariat or a fascist lower middle class. Its failure was not the outcome of some alleged laws of economics such as that of the falling rate of profit or of under consumption or overproduction. It disintegrated as the result of an entirely different set of causes: the measures which society adopted in order not to be, in its turn, annihilated by the action of the self-regulating market. Apart from exceptional circumstances such as existed in North America in the age of the open frontier, the conflict between the market and the elementary requirements of an organized social life provided the century with its dynamics and produced the typical strains and stresses which ultimately destroyed that society. External was merely hastened its destruction.”³². But one must be careful not to interpret Polanyi’s words on the inevitability of counter movements as a justification for all the attempts to reintegrate economy in the society. History showed us that they are not all acceptable.

2.6. Link with the present thesis

The author defends thus the thesis that the self-adjusting market is no more than an utopia, and it can be put in relation to one of our hypothesis: “***Could the sole political economic orthodoxy be the solution to social and environmental issues?***”

As we could see it with Polanyi’s argumentation, the institution of economy is unnatural and carry on it the germs of its degeneration. Effectively, by embedding society into the economic institutions and therefore relegating social problems at the second plan, the 19th century

³⁰ *Ibidem*.

³¹ BUGRA A., op. cit., p. 46.

³² POLANYI K., op. cit., p. 249.

civilization provoked its own collapse. Although principles of liberalism could have worked at that time to please the population, one should not forget the context inherent to this time period; a context of war which made the population more inclined to allow an upper class to take some economic decision. In addition, we can underline that Europe was dominated by religious ideas, it was consequently necessary to build a political and moral philosophy in order to assure the autonomy of the individual to protect its freedom toward powers in place³³. But after a century applying such principles blindly, people had to restore their habitat and to that end it was necessary to abrogate the separation between economy and politics, by the mean of a growing implication of the State in the management of life conditions and means of existence. The research for common wealth gave birth to a new social trend called Welfare State³⁴ which we are going to analyse in the next section.

3. The birth of social democracy

3.1. The liberal limit

Liberalism fixed the juridical criteria very high or very low following the point of view that we adopt. Indeed, among all natural rights liberalism only sanctions legally the obligation not to inflict damages to third parties (also the one to fulfil its contractual engagements). A right to assistance would be therefore contradictory³⁵.

To justify such a way of thinking the liberal scholars developed a double set of arguments. The first one consists in denouncing the perverse effects of charity, the latter does not heal poverty, it maintains it. In other words, they emphasize the inefficacy of charity programs, “give poor people rights and you will have poor people”³⁶. But this argument does not pull out the reason of liberal limit to the extent that it is stated at *posteriori*.

They thus developed another set of arguments, more positive, which articulates itself as follows:

³³ CORM G., « Le nouveau gouvernement du monde : Idéologies, structures, contre-pouvoirs », *La découverte*, Paris, 2010, p. 27.

³⁴ BUGRA A., op. cit., p. 50.

³⁵ EWALD F., « Histoire de l'Etat Providence : les origines de la solidarité », *Librairie Générale française*, Paris, January 1996, p. 23. (*Personal Translatio*).

³⁶ *Ibid.* p. 24.

“As far as duties of charity are of a moral nature, it would be a mistake to make them compulsory. As a matter of fact, morality leaves out constraint, we cannot force to virtue and devotion”³⁷.

3.1.1. The juridical logic: Contractual rights

If we refer to the contract scheme, society has no duty toward the poor person who does not provide its resources to society. This argument is in a way complementary of the later, which emphasized the moral side of the problem, this one develops the juridical logic. There are only contractual rights because law supposes equivalent exchanges. The poor who reclaims without giving situates himself below the field of law and his complain does not refer to any obligation³⁸. But as the first set of argument, this one takes advantage of a limit that has already been traced, namely the separation between moral and legal obligations.

3.1.2. The tax payer analogy

The present argument develops a law politic by stating that the manner in which liberal political economy sees the relations of equality and inequality drives it to see social inequalities as a politically positive fact and to accord a structural function to its relation toward charity³⁹. According to Duchâtel, charity is the most powerful mediator, it re-establishes harmony by unifying rich and poor people and changes a revolting relation of superiority in a tutelage relation of protection. Consequently, it is a relation that cannot be legalised without being destroyed. Indeed, the rich that sees charity as a charge will do all he can to reduce its weight, in the same way as the taxpayer do it with taxes, he becomes cruel, mean and harsh⁴⁰. Instead of being an instrument of pacification it becomes a factor of hostility and feed antisocial passions.

³⁷ *Ibidem*.

³⁸ *Ibid.* p. 25

³⁹ *Ibidem*.

⁴⁰ DUCHÂTEL M. T., “Considérations d’économie politique sur la bienfaisance ou De la charité dans ses rapports avec l’état moral et le bien-être des classes inférieures de la société”, *Guiraudet et Jouaust*, 2nd edition, Paris, 1836, p. 187.

3.1.3. The very essence of charity: Brotherhood

Developed by F. Bastiat, this argument approaches the very heart of liberal rationality: by adopting a pure theoretical view, law's mission is to certify and to enforce reciprocal rights' limits and not making men's happiness. The point is that we know justice's limits, they are obvious and immutable, but regarding brotherhood the limit is infinity, it consists in sacrifice, to work for somebody else unconditionally, something that cannot be put into rules because they precisely have no rules, no measures. Considering that brotherhood obligations do not contain in themselves the principle of their own definition, these rights depend highly on the legislator's whim. It implies a reversal of the relations between law and politic. It would thus place law under the subordination of politics⁴¹.

To summarise these arguments, it is because we have the possibility to distinguish two orders of social obligations (moral on the one hand and positive on the other hand), to delimit their respective realms that it is possible to live freely in society. Therefore, the real liberal problem of law lies in which criteria will permit to decide which obligations can be subject to a collective constraint⁴².

3.2. The liberal diagram (analogy with Bentham and the Panopticon, a way for society to auto regulate itself)

As we could see, the liberal position of law condemns it to ignore a right to assistance. This philosophy is strongly related to the general principle of responsibility which defines freedom as an interdiction to report on someone else its own mistakes. It passes therefore by a relationship between man and nature as what happens to someone should be counted as a sanction. The failures that I suffer can only be reported on my behaviour, even if there are some circumstances or a hard economic context. In the end it is my *fault* if I did not take these elements in consideration, and that is precisely what makes the liberal way of thinking so rational, by considering every mistake as a fault⁴³. Furthermore, the liberal idea of harmony is that morality is playing a role both with law and economy, they thus reinforce each other reciprocally by using the principle of fault to assure harmony.

⁴¹ BASTIAT F., « Justice et fraternité », *Œuvres économiques*, Paris, 1983, p. 114.

⁴² EWALD F., op. cit., p. 29.

⁴³ *Ibid.* p. 33.

Responsibility provides thus the rule to judge poverty by stating that the causes of poverty lie in the moral dispositions, the willingness: poverty is a behaviour⁴⁴.

But people cannot be liable for what does not depend on their willingness, and poor people are much more dependent on external factors such as their salary and the many causes of unemployment that treat them: “A host of endlessly acting causes tends, in effect, to create these accidents by sicknesses, injuries, bad weather seasons, wars, political agitations, suspensions of work.”⁴⁵.

To this argument, liberals oppose *the foresight principle* which is correlative to freedom. It is because poor people are living one day at time that they are poor, this principle explains consequently what makes fortune inequalities.

Of course there are some accidents toward which people could not be held responsible such as natural disasters, and as an answer liberals invoke charity. But it could not take a legal nor administrative form precisely for all the reasons we mentioned earlier, poverty problem should stop being a religious problem to become a social one and it was therefore necessary for governments to heal it with an appropriate *assistance program*⁴⁶.

3.3. A new assistance system

Following J. Le Goff, the birth of social democracy should be thought regarding three levels of analysis distinct but at the same time strongly linked.

- The global representation of society level or the imaginary of integration made on the basis of interdependence relationship *de facto* in an organic unity that take the place of a liberal imaginary centred on the individual.
- The collective action level that gives a meaning to the social as configuration space of new types of relationships between large actors associated to a new type of governability.

⁴⁴ *Ibid.* p. 35.

⁴⁵ DE GERANDO J. M., « Traité de bienfaisance publique », *Librairies Jules Renouard et cie*, Paris, 1839. (Personal translation : Une foule de causes incessamment agissantes tendent, en effet, à occasionner ces accidents par les maladies, les blessures, les intempéries des saisons, les guerres, les agitations politiques, les suspensions du travail).

⁴⁶ EWALD F., *op. cit.*, p. 44.

- The level of regulations by fixating the rules of the game between actors themselves and between these actors and the State⁴⁷.

The very centre of this way of thinking lies in the *concept of individual* specific to liberalism and with the purpose to solve the liberal state crisis, the question was to articulate, in a balanced way, the individual and the collective. In a world in constant change, the liberal socialism found a crucial place. Indeed, by allowing the recognition of the social reality, the opportunity to give birth to a genuine social law that would regulate the fields of work (professional structuration, collective contracts, etc.) and the ones of protection by the way of social insurance and so on. The political sociology found naturally its place in the *concept of solidarity*⁴⁸.

In “L’idée d’une solidarité en tant que programme économique”⁴⁹ (“Idea of solidarity as an economic program”), Gides defends for the first time the idea that a social program can lead to an economic progress linked to a social reconstruction. This would be done in the shape of a quasi-contract retroactively consented. By this mean, a new born will contract the day of his birth some obligations toward the human association. He will therefore be indebted for the benefits that he enjoys from society, and symmetrically, society will be indebted to the individual and will have to satisfy his social justice aspirations. The state will thus be forced to provide laws that organise public services with the aim to allow a citizen to find jobs, to be instructed and to be paid when he runs out of resources due to an unforeseen event⁵⁰. This is precisely the definition of the Welfare State.

As Barasch said, “It is by substituting duty to charity that solidarity emphasized the legal status of the social question [...]. It is by a collective reorganisation of law that he wants to solve the social question.”⁵¹.

“If poor people have the right to say to society, *make me live*, the latter has the duty to answer: *give me your labour force*.”⁵².

⁴⁷ LE GOFF J., “Du Silence à la Parole; Une Histoire du Droit du Travail, des Années 1830 à nos Jours”, *Presses Universitaires de Rennes*, 2004, p. 253.

⁴⁸ FOUILLEE A., « La démocratie politique et sociale en France », *Félix Alcan*, Paris, 1910, p. 13.

⁴⁹ GIDE C., « L’idée d’une solidarité en tant que programme économique », Review of *Revue internationale de sociologie*, by René Worms, *Editions Giard & Brière*, Paris, 1893.

⁵⁰ LE GOFF J., op. cit., p.257.

⁵¹ BARASCH M., « Le socialisme juridique », (Phd. Diss.) *Presses Universitaires de France*, Paris, 1923, p. 14.

⁵² LA ROCHEFOUCAULD-LIANCOURT F. A. F., « Premier rapport du comité de mendicité », *Imprimerie Nationale*, Paris, 1790, p. 1.

3.4. The calculation of probabilities and the “average man”

It is through the application of probabilities to society's government that the political parties had to reformulate their electoral programs⁵³. Indeed, by applying calculations of probability Adolphe Quételet, a Belgian statistician, managed to bring the individual and the collective closer⁵⁴. In order to understand the individual one must first learn about the community to which he belongs, because the man is a being utterly social and we can consequently understand its purpose with regard to his societal behaviour⁵⁵. That is precisely what Quetelet tried to make us understand, by elaborating, thanks to the application of probabilities to statistics, the abstract concept of *average man*, he provided a measure unit that State could take as reference in order to establish its social laws.

4. The theory of the “imaginary institution of society

4.1. A reinterpretation of the concept of bureaucracy

According to N. Poirier, Castoriadis did not think that the USSR could have been considered as a degenerated labour State, as Trotsky thought, but as a new type of regime founded on the total domination of the director class. Indeed, the legal transformation of propriety right had only played at a superficial level and independently of the nationalisation of the means of production and the economy planning, Russia was still a capitalist state founded on effective exploitation relations carried to its paroxysm⁵⁶. To paraphrase the author, the Russian bureaucracy was not an exceptional transitory formation but “well and truly a dominant class imposing an absolute power on every aspects of social life, and not only in the narrow political sphere.”⁵⁷.

Max Weber was the first to put in evidence the ideal-type model of bureaucracy as an accomplished form of “legal-rational” domination. Effectively, “The purest type of legal domination is the one with the mean of bureaucratic administrative direction. Only the leader

⁵³ EWALD F., op. cit., p. 105.

⁵⁴ *Ibid.* p. 110.

⁵⁵ QUETELET A., « Recherche sur le penchant au crime dans les différents âges », *Nouveaux Mémoires de l'Académie Royale des sciences et des belles-lettres*, Bruxelles, 1832, p. 4.

⁵⁶ POIRIER N., “Cornelius Castoriadis. L'imaginaire radical”, in *Revue du MAUSS*, 2003/1 (n°21), *La Découverte*, pp. 384. URL : <https://www.cairn.info/revue-du-mauss-2003-1-page-383.htm>

⁵⁷ CASTORIADIS C., « La société bureaucratique », *Christian Bourgois*, 1990, p. 24.

of the group that occupy the position of power holder either in virtue of an appropriation, an election or of a designed successor. But his attributions of power holder themselves constitute legal “competences”. The whole administrative executive is composed of *individual* civil servants (collegiality).”⁵⁸. Castoriadis uses the same idea, however, he shows that Russian bureaucracy cannot assimilate into a political regime, but constitute instead a form of total oppression spreading to every aspects of social life. The author wanted to formulate a socialist revolutionary project that did not reduce only to a radical transformation of the production relations, but that would concern the whole of economic, political, and social life⁵⁹. Henceforth, the labour movement’s end had to be the auto management of all social activities and not only of the production.

“A socialist revolution cannot only limit itself to the elimination of the bosses and the “private” property of the means of production; it should also get rid of bureaucracy [...] – In other words, abolish the division between directors and subordinates. Positively expressed, this is no more than *worker’s management* of production, namely the total power applied on production et on all the social activities by autonomous organs of worker’s collectivity.”⁶⁰.

4.2. A criticism of Marxism

Cornelius Castoriadis elaborated since 1964 the concept of *imaginary* which could allow an understanding of History that would not be operated since the reductive schemes of the causal determinism, but precisely founded on the principle of *non causality*. Indeed, it would be impossible to relate the history of societies from a *necessary cause-effect relation*, and this only because of the nature of History interpreted as an *auto creation*. It is at this moment that the *non-causal* appears, as a new type of behaviour, the institution of a new social rule. Something that one can not be predicted from the present situation. It does not mean, of course, that History is created from nothing, but it is instead a non-motivated creation, a primary position of significations from which societies can give to themselves their world and organise it as a singular social reality⁶¹. It is thus only from the concept of *imaginary*, in the meaning that we have just seen, that it becomes possible to think society and history as native

⁵⁸ WEBER M., « Economie et société. L’organisation et les puissances de la société dans leur rapport à l’économie », Tome 1, *University of California Press*, 1922, p. 323.

⁵⁹ POIRIER N., op. cit., p. 385.

⁶⁰ CASTORIADIS C., op. cit., p. 27.

⁶¹ CASTORIADIS C., « L’institution imaginaire de la société », *Editions du Seuil*, cinquième édition revue et corrigée, Paris, 1975, p. 8.

poles of creation. This imaginary should be considered under two distinct aspects: the *instituting imaginary*, and the *instituted imaginary*. The former should be understood as the work of a collective of human, creators of new significations that disrupt the existing historic shapes; and the former not as the creative work in itself (“instituting”) but as its product, in other words the whole of institutions that embody and give a certain reality to these significations, being material (tools, techniques, instruments of power, etc.) or immaterial (language, norms, rules, etc.).

The author will therefore call *social-historic* the undetermined field of application in which men create, by modifying them constantly, the institutions that structure their collective being. Hence his conception of History as union and tension between the *instituting and instituted imaginaries*: none society can exist without explicit institution of power (“instituted imaginary”), but must (in the meaning of an ontological necessity) allow the possibility of its *auto-alteration* (“instituting imaginary”), and that it is recognized as it is (case of autonomous societies), or denied (case of heteronomic societies)⁶².

4.3. Link with the present thesis

Concerning our subject, namely the way society shaped its institutions regarding different ideologies, one can say that the interest of such a distinction between imaginaries lies in its product, and it therefore explains us deeper the manner society has changed in order to get to the result we know. In other words, the reasons why a change of ideology operated lie in the characteristics of the previous ideological model. Moreover, Castoriadis **used the revolutionary project to highlight the true characteristics of a democracy**, and for him it is “a society able to auto institute itself explicitly, not once and for all, but continuously.”⁶³. Which means that the question of the validity of law would be perpetually open and the individual would see the institutions that regulate his life as its own collective creations, always transformable. This is why the author thinks that the questions of individual and collective autonomy are so relevant⁶⁴. Hence the definition given in our theoretical frame stating that democracy should create its own means to auto regulate itself by allowing the debate and exchanges of opinions.

⁶² *Ibid.* p. 385.

⁶³ CASTORIADIS C., « La société bureaucratique », *Christian Bourgois*, 1990, p. 51.

⁶⁴ POIRIER N., op. cit., p. 385.

4.4. The birth of a new social class

It follows on from this reasoning a heavy criticism of the capitalism analyses of Marx and after Schumpeter - since the beginning of the 19th century until about 1880 – as an economic regime of free concurrence founded on the private appropriation of the means of production and developing itself in the frame of Nation States. Under the push of technical progress requiring capital investments ever more important, the competitive capitalism of the 19th century was going to reshape itself under the form of a monopolistic capitalism based on the rationalisation of production whose organisation and direction was supposed to be the prerogative of the State and no more only to private individuals. The entrepreneur of the first days of capitalism would progressively disappear to allow a new leading class to take control of the world, the *bureaucracy*, made of directors, technicians, engineers, and multinational administrators.

In other terms, the antagonism capitalists/proletarians that had structured the bourgeois society during the previous century was not adequate anymore to report on the new division inherent to this new form of regime. The concept of “bureaucratic capitalism” developed by Castoriadis, allowed instead a rigorous analysis of the cleavage director/subordinate as a basis of the bureaucratic production. The introduction of this new notion had for purpose to bring out the common characteristics of the dominant political and economical regime in Europe after the Second World War, being “socialists” (eastern countries) or “liberals” (western countries). Because the socialist bloc had in the end accomplished the same objectives: the industry nationalisation, the external trade monopolisation, in other words the complete nationalisation of the economy and the politic⁶⁵. Which means that the seizure of power by the State, the production’s nationalisation, and the abolition of the private propriety as ends to the labour movement are absurd because these purposes had already been realised by the USSR (and almost in China), and drove to an increased enslavement of the working class⁶⁶.

4.5. Modern Capitalism’s nature

With this in mind, Poirier explains us that we should not think that Castoriadis did not admit any difference between East and West. In fact, even if we could not deny the bureaucratic

⁶⁵ CASTORIADIS C., « L’institution imaginaire de la société », *Editions du Seuil*, cinquième édition revue et corrigée, Paris, 1975, pp. 111-123.

⁶⁶ POIRIER N., op. cit., p. 386.

nature of both the regimes, their integration level was not the same. On the one hand we had a total bureaucratic capitalist regime (Russia) and on the other hand a divided bureaucratic capitalist regime (Western industrialized countries). Whereas Russia had realised the “ideal” of a totalitarian bureaucratic state, the European capitalist countries (also in the US) had still means of political action allowing them to develop some resistance to the growing bureaucratisation process.

“Deprived of political and union right; [...] submitted to a permanent police control, [...] harassed by the pervasive voice of an official misleading propaganda, the Russian working class is submitted to an oppression and totalitarian undertaking [...]. An unseen situation in the “classical” capitalist countries, where the working class could tear off civic, political and union rights very soon and could explicitly and openly contest the existing social order.”⁶⁷.

Nevertheless, such possibilities were relative to the nature of the political regimes of the Western European countries, that Castoriadis qualified later of “liberal oligarchies”: during the last 100 years, social struggles forced capitalism to make some compromises with the working class, and they had been possible with the increase of buying power, the limitation relative to unemployment, time work reduction, the increase of public expenditure and the creation of redistribution and assistance mechanisms. Therefore, it is only with such a perspective that we can understand according to which modalities the purposes of labour movement could coincide from the beginning of the sixties with the specific objectives of bureaucratic capitalism, because the existence of a mass of salaried citizen-consumers benefiting of a decent income and working condition does not constitute a threat for the system, but a condition of its survival and proper functioning⁶⁸.

5. The return of Liberalism: Neoliberalism

5.1. A definition of Neoliberalism

Following Audier, the concept of neoliberalism had for a long time had an ambiguous meaning through the 20th century. Indeed, even if it was often associated with *ultra liberalism* during the nineties, it could yet mean the contrary during the sixties. That is how during the sixties and the great socioeconomic programs of the Kennedy era one could talk in

⁶⁷ CASTORIADIS C., « Domaines de l'Homme. Les carrefours du labyrinthe. », *Seuil*, 1999, p. 180.

⁶⁸ POIRIER N., op. cit., p. 387.

France of “neoliberalism” to designate the position of the American “*liberals*”, namely the left embodied by the democrats. Furthermore, the most prominent economic figures of the interventionist democrats, such as Galbraith, were introduced to the French public as a shining example of Neoliberalism⁶⁹. Thus, being liberal in Galbraith’s way was not accepting the doctrine of “Laissez-faire, laissez-passé”, but dares to recognize that State’s intervention is sometimes necessary in order to equilibrate social imbalances.

5.2. Liberal assumptions

According to J.-M. Vincent, Max Weber underlined the common assumption and the anthropological plinth of liberalism: *the individual*. The State, after having been the master of the individual has to place itself at the service of the individual. In the political field, liberalism is a part of the *natural right doctrine*, in other words the transition between the nature status to the civil one establishes itself on the basis of a voluntary work coming from free individuals⁷⁰. Regarding the economic field, it places itself in the ethical doctrines as elaborated by famous authors such as Spinoza who sustains that the general interest is the product of the sum of particular interests. From then, classical authors such as Adam Smith, Ricardo or Locke deepened this theory by saying that individual’s egoism is the engine of economy. The natural order is thus economic because social links allow the automatic regulation of the economic activity. To assure individual action’s freedom, liberals have hence to defend economic freedom, via fundamental freedom. Economic liberalism’s objectives were therefore to liberalise market, to offer broad freedom to individuals with the aim to encourage free enterprise⁷¹.

G. Corm summarise the neoliberal principles in eight points:

- The human being as a reasoning creature acts always in the economic sphere both in an egoist and rational way in order to maximise its well-being.
- The addition of these individual behaviours assure the greatest well-being of society.
- The State has therefore to leave the field to the individual egoism and its economic initiatives in order to maximise the collective social well-being.

⁶⁹ AUDIER S., « Néo-libéralisme(s) : Une archéologie intellectuelle », éditions Grasset & Fasquelle, Paris, 2012, p. 59.

⁷⁰ VINCENT J.-M., « Aux sources de la pensée de Max Weber », in *L’homme et la société revue internationale de recherches et de synthèses sociologiques*, vol. 6 n°1, 1967, pp. 55, URL : http://www.persee.fr/doc/homso_0018-4306_1967_num_6_1_1065

⁷¹ LeMondePolitique.fr, « Libéralisme économique », 2010, URL : <http://www.lemondepolitique.fr/cours/introduction-economie/pensee-economique/liberalisme-economique.html>

- It should thus not interfere in the economic sphere otherwise it will take the risk to reduce the collective well-being.
- The market only can play the role of arbitrator between the individual interests by the free offer and demand of goods, products, services, and any financial or property assets.
- The self-regulated market, as its name indicates it, does not need any exterior intervention from the State or inspection bodies because each time excesses are perpetrated or unbalances appear, it autocorrects itself which makes it the best regulator of its activities, without any need of control.
- Market speculations contribute to make markets equal and homogenous by suppressing distortions that loom in a short lap of time. It is therefore a beneficial force of regulation.
- The principles of market's liberalisation have to be applied inside borders but also in the economic and financial relations created between actors of different national markets. This is why world must become a free unique market, where every economic actors and their private interests could grow without any constraint. Therefore protectionism is absolute evil and should be forbidden⁷².

As we can see it, many of the neoliberal assumptions can be related to the liberalist ones, such as the market auto-regulation or the actor's interests. Nonetheless, operating in a very different time-period, the conditions of its application and, as said upper, the fact that such an ideology could have worked a century ago does not mean that it can function nowadays.

5.3. The model of a hegemon

5.3.1. Soft power in various forms

Since the 1960s, a decade after the two World Wars, the United States came out as the western hegemon and with it their economic philosophy. Championed by Friedrich Hayek or Milton Friedman, they recycled classical economic author's ideas to elaborate their theories, as seen upper. But the point is that they forgot to take into account the historical contexts in which these theories took shape for the first time; they reduced thus the individual figure to a *homo economicus* which sole objective is interest.

⁷² CORM G., op.cit., p. 31.

But one must not forget that the implementation of such a philosophy has been possible thanks to the spread of science in the implementation of American foreign policy in the first two decades after the World War II. Indeed, in other time periods, in other civilizations, science has been used to consolidate power at home by spreading it abroad. But in the case of the integration of Western Europe into an American-led Atlantic alliance, the Empire has been constructed on the basis of consensual relationship instead of coercive⁷³. Following J. Krige, “The construction of the American empire was above all a response to the Cold War geopolitical world order, with its division into two rival world systems. Each hegemon built its own empire by its own means, using its domestic economic, political, and ideological systems as a blue-print and point of reference for how others in its sphere of influence should structure their social worlds.”⁷⁴. In effect, he was inspired by Gaddis that emphasized the fact that it is when the US realised, with the collapse of the United Nations, that the Cold War would not be managed in their own terms that they started to build a remarkably efficient instrument of *soft power*, a term initially developed by liberal IR theorist Joseph Nye in writings such as “*Soft Power: The means to success in Worlds politics*” (PublicAffairs, 2004) or “*Soft power and American Foreign Policy*” (Political Science Quarterly, 2004). The types of soft power discussed by this author includes among other things the iconicity of brands such as Coca-Cola or Nike, the wide consumption of media outlets like CNN, or the popularity of Hollywood.

Gaddis illustrated its words as following: “It was clear that cooperation to build a new order among the nations that had vanquished the old one was not going to be possible. There followed the lost remarkable polarization of politics in modern history. It was as if a gigantic magnet had somehow come into existence, compelling most states, often even movements and individuals within states, to align themselves along fields of force thrown out either from Washington or Moscow. Remaining uncommitted, in a post-war international system that seemed so compulsively to require commitment, would be no easy matter.”⁷⁵.

These authors show us clearly that the post-war system has been strongly influenced by the spread of science into the organization of the United States’ foreign policy, which had at its turn influenced the economy and even some aspect of European Law. Thus, the Americans materialized their hegemony in the form of soft power, attracting other states by an irresistible

⁷³ KRIGE J., « American Hegemony and the Postwar Reconstruction of Science in Europe », *The MIT Press*, Cambridge, Massachusetts – London, England, 2006, p. 253.

⁷⁴ *Ibidem*.

⁷⁵ GADDIS J. L., « We now know : rethinking Cold War History », *Oxford University Press*, Oxford, 1997, p. 26.

seduction process. In those terms, the North Atlantic Treaty Organization was an overwhelming achievement that has been possible only thanks to the projection of the state abroad.

5.3.2. The Marshall Plan

After the WWII, Europe was left worn out and needed help in order not to succumb to communism. Effectively, the latter had gained in popularity due to resistance movement during war and was eager to exploit poverty and despair to consolidate its control of the Old Continent. This is why President Truman's secretary of state, George C. Marshall presented its plan, officially the European Recovery Program (ERP). It was an important step in the domination of the US on the Western Europe, short-term aid being pointless, an important program of restructuration was essential. From 1947 to 1952 the United States provided thus a \$13 billion in assistance for a variety of measures proposed by representatives of Western European states and implemented in consultation with U.S. administrators. Following Krige's wording, "The overall aim of the plan was to stimulate Western European economic recovery and, ultimately, political unity by creating an (economic) "United States of Europe". Increased productivity achieved by adopting American mass production and management techniques and stimulated by mass consumption would bring about general prosperity; class strife and the danger of authoritarian regimes would give way to social harmony and stable liberal democracies."⁷⁶.

As suggested in the section 6.3.1., we can see that the United States managed to impose to the European countries a certain economic orthodoxy, by using science, its economic leverages, and the threat of communism. In effect, it was the only way to ensure a complete cooperation in a context of Cold War.

⁷⁶ KRIGE J., op. cit. p. 15.

6. An alternative way of thinking

6.1. Founding principles

Susan Strange was at the origin of a new discipline which was in contradiction, at that time, with the orthodox way of thinking the economy. Indeed, by opposing the thesis of the decline of the United States' hegemony, Strange stated that the latter acted in an irresponsible way in governing the worldwide financial system, reducing thus the American International Political Economy as a “second rate political approach of the international economic relations”⁷⁷.

Following Tooze's developments, we can underline three main principles that will help us to interpret her works.

First, “*The power is at the heart of economy*” and it can be exerted in many different ways, in particular within the structures rather than in direct relations with the entities. Hence the structural power highlights the relevance of the authority and in order to reach a better understanding of the structural power we will first have to analyse the authority, but we will need to do it in specific historical circumstances because **there is no universal mechanism of generalisation** that could help us to understand it.

Secondly, “*The separation of politics and economy*”, with their own disciplines makes almost impossible an effective analysis of political economy. By adopting the principles of rationality in economic sciences as well as in political sciences, the attempt to gain in theoretical precision and in scientific legitimacy has been done to the detriment of realism.

Finally, the “*Stato-centrism*” inherent to the conventional international political economy is reductive and takes us away from the real understanding of the human condition. Furthermore, it does not take into account the *diverse entities that exert an economic and political power on the institutions*, neither the whole questions and sectors that lead genuinely the politic. The firms are the most obvious example of entities non recognized by the stato-centrist theories of international relations. With the same reasoning, we could say that the conventional political sciences ignore the vital questions of finance, credit and technology.

Within those principles, we can say that the most important concern is about the separation between politics and economy. The latter being totally uncontrollable due to the lack of

⁷⁷ TOOZE R., “Susan strange et l'économie politique internationale”, review of *L'Economie Politique, Altern. Économiques*, 2001/2 (#10), p. 103, URL: <http://www.cairn.info/revue-l-economie-politique-2001-2-page-101.htm>

realism inherent to both the disciplines. Moreover, by putting this into the right context, namely a post-war period during which a state (the United States) was imposing its hegemony, we can say that the work of many American academics played an important role in shaping the dominant way of thinking these disciplines. And that is precisely from this way of thinking that Susan Strange managed to come out to interpret the reality in a non conventional approach that has been spread greatly nowadays.

Basically, it is her interest for power and the possibility that it could be exerted by other entities than the state that is the guiding principle of her work, and by sustaining such reasoning she underlines that neither the international economy, nor the international relations are able to understand correctly the worldwide political economy. The former by its lack of comprehension of power and its obsession on the abstract theory, and the latter by its obsession on the state and on the military power. It is only by bringing together both the disciplines by cross-checking them with other study fields such as history or business that we will reach a better understanding⁷⁸.

6.2. A criticism of Susan Strange

With a view to defend more efficiently her ideas, it would be useful to make an analysis of the different criticisms that her detractors formulate against her thesis.

The first criticism that could come in mind is from an epistemological nature. Indeed, by rejecting the academic jargon in order to touch a larger audience thanks to the efficiency and simplicity of the expression, she opened a lot of flaws which often presented some contradictions. In the same vein, she could be interpreted as being an empiricist because her conceptual schemes are exposed as they are deriving directly from reality, guided by strong moral convictions, without using theory or cognitive processes. In short, these two elements follow on from her reluctance to start theoretical debates and made her vulnerable to academic attacks⁷⁹.

The second criticism ensue from the large context of her approach. In effect, by stating that the research of general theories is vain and by employing an orthodox empiricism, she should have realised that her own work necessitated a deeper contact with history and philosophy.

⁷⁸ *Ibidem*.

⁷⁹ PALAN R., "Susan Strange, 1923-1998: A Great International Relations Theorist", *Review of International Political Economy*, vol. 6, n°2, 1999, pp. 121-132. URL: <http://www.tandfonline.com/doi/pdf/10.1080/096922999347254>

The fact that she realised it late in her life makes difficult, or almost impossible, for her analysis to lead to a veritable radical ontology of the international political economy⁸⁰.

6.3. Globalisation

We will need in a first time to define what we hear about globalisation, for this purpose the business dictionary offers us the following definition: "The worldwide movement toward economic, financial, trade, and communication integration. Globalisation implies the open of local and nationalistic perspectives to a broader outlook of an interconnected and interdependent world with free transfer of capitals, goods and services across national frontiers. However, it does not include unhindered movement of labour, and as suggested by some economists, may hurt smaller or fragile economies if applied indiscriminately."⁸¹.

Although this phenomenon is strongly related to economy, it goes without saying that there are also a political and social dimensions. What we can already pick up in the previous definition is the fact that although the opening of nationalistic economies to a broader outlook could help developing world's economic, one should not forget that if such thing is done without taking in consideration the specificities of national economies regarding foreign ones, it will lead to a disequilibrium that will reinforce strong economies and weaken small ones.

Regarding Woods's works about globalisation, there are two different dimensions, which are in our opinion opposed to each other, to take into account in order to operate an accurate analysis of the phenomenon.

6.3.1. The market-centred perspective

This approach emphasizes the triumph of global markets and the erosion of state sovereignty. It suggests the idea that technological progress has led to an expansion of capitalism unprecedented in history which allows multinational enterprises to allocate resources more efficiently worldwide since the capital will move where it is best rewarded⁸². This could seem rather positive, "[...] the price mechanism will ensure a more efficient organization of production across the globe and a more efficient distribution of goods and services."⁸³.

⁸⁰ *Ibidem*.

⁸¹ The Business Dictionnary. URL : <http://www.businessdictionary.com/definition/globalization.html>

⁸² WOODS N., « Editorial introduction. Globalisation : Definition, debates ... », *Oxford Development Studies*, February 1998, Vol. 26 Issue 1, p. 6.

⁸³ *Ibidem*.

However, as we mentioned earlier, technological advances were so quick that the international institutions did not develop adequately, and since they are emanations of States it is needless to say that the latter have also missed the boat. We can prove it quite easily by showing the losers of globalisation such as the low skilled workers who are victims of unemployment due to delocalisation which is commonly defined as the “downsizing or closure of plants and/or companies, which is related to a transfer of activities to a foreign country (outward relocation). At the same time it implies that some countries gain new activities that were formerly located abroad, by expansion of existing establishments or greenfield investment (inward relocation).”⁸⁴.

6.3.2. The state-centred perspective

This view adopts the idea that some elements of globalisation reinforce the role of the state instead of weakening it. Effectively, authors such as Hirst & Thompson sustain that “increasing integration into world trade markets has historically been undertaken alongside an increasingly welfarist state. Governments have used policies to “buffer” their citizens from the dislocation and vulnerabilities of world markets. In this way, welfare states have permitted global integration (in trade), by averting a political reaction against the global economy, such as that which occurred in the 1930s. This two-level process of globalization and welfarism has been called embedded liberalism.”⁸⁵. It is Ruggie in 1982 who initiated for the first time this concept in answer to “[...] the prevailing idea that the post-war international economic order was *orthodox liberal* in character”⁸⁶, for him it is rather a political commitment to his theory. The latter aims to explain the effects of trade liberalization on social protection in advanced economies. Although there are data showing that “recent growth in international capital markets has constrained governments choices”⁸⁷, state-centred theorists believe that states’ responses to market’s fluctuations are less dependent to it than common belief indicates it.

⁸⁴ GWOSDZ K., DOMANSKI B., “Social consequence of delocalisation in labour intensive industries: the experience of old and new members of the EU”, in LABRIANIDIS Loïs, « The moving frontier: the changing geography of production in labour », *Ashgate*, Hampshire, 2008, p. 101.

⁸⁵ WOODS N., op. cit., p. 6.

⁸⁶ LANG T. F. A., “Reconstructing embedded liberalism: John Gerard Ruggie and Constructivist Approaches to the study of the International Trade Regime”, in RUGGIE John Gerard, “Embedding Global Markets: An enduring challenge”, *Ashgate*, Harvard University, 2008, p. 13.

⁸⁷ WOODS N., op. cit., p. 6.

Furthermore, the state-centred perspective contributed to the common belief that governments exaggerate globalization's constraints "either by governments wanting a scapegoat, or by adviser wishing to push a particular policy."⁸⁸

Yet, these beliefs are mainly unfounded when we have a look to the power that international organisations have on states' destiny. Organisms such as the World Trade Organisation have a heavy influence on States' decision-making.

Moreover, following Strange's development, there are two major treats that jeopardise civilisation. The first one, and the worst one following the author, is from an environmental nature. But as a matter of consistency with the present thesis and also because this is a long term problem, we will concentrate on the second one which is of a political and economic nature. Indeed, "[...] if confidence in the financial system were to collapse, causing credit to shrink and world economic growth to slow to zero, that is a much more immediate threat."⁸⁹. We will analyse this in the 7th section called *Global Finance and Market*.

6.4. An unfinished democracy

As Pierre Rosanvallon sustains it, one can say that democracy as we now it has been able for a while to answer to people's needs. But there is what he calls "L'illusion mondialiste"⁹⁰, or *globalist illusion*, which implies that there is nothing new to add to the democratic idea and that the only problem lies in how to transpose the democratic principles to the new global world. The project is thus to reproduce the principles of the representative democracy to a global scale (European or worldwide). There were multiple initiatives and propositions that suggested the birth of a new planetary democracy and citizenship. As examples we can name the implementation of a second chamber in the United Nations where firms and syndicates would discuss about the stakes and shapes of globalisation.

However, according to Pauly, "Once we acknowledge the growth of cross-border competition, the state-centric model looks increasingly inadequate, if not wholly misleading. The more widely circulated currencies come to be used across, not just within, political frontiers, the more pivotal becomes the independent role of market forces in global monetary governance. Market agents too exercise power, and they increasingly rival government as

⁸⁸ *Ibidem*.

⁸⁹ STRANGE S., « Mad Money : when markets outgrow governments », *the University of Michigan Press*, 1998, p. 2.

⁹⁰ ROSANVALLON P., « La démocratie inachevée : histoire de la souveraineté du peuple en France », *Gallimard*, 2000, p. 403.

direct determinants of currency outcomes. The strategic interaction between public and private sectors, not between states alone, becomes the primary focus of authority in monetary affairs.”⁹¹. The author joins thus Strange by affirming that the classical theories are not taking into account an important reality: Multinational companies.

This analysis also implies that the political authority model of the United States has been extended worldwide thanks to the expansion of global finance⁹². The point Strange, and then Cohen, underlined by sustaining such thesis is that the system of governance is deliberately complicated, the formal power is divided and the hegemon tries to promote an underlying sense of legitimacy through a “flawed but functioning representative democracy”⁹³. All these elements render decision-making almost impossible.

When decisions are taken through them to privatize gains and socialize losses, are those decisions acquiesced in rallying points for revolt? It could be that when such acquiescence occurs, it depends in the perception on the part of citizens that though a loser today, seems to justify decision most obviously and consistently taken in American national markets whenever systemic catastrophe has loomed even since 1929. When the crisis point arrives in ever more open, ever more deregulated markets, the state steps back in. Indeed, it is when crisis occurs that the true nature of political authority shows itself.

7. Global finance and markets

According to Asso, most of “the classical economists’ support for perfect capital mobility was much more conditional and critical than their “realistic” support for free trade. Undoubtedly, as many authors have already argued, many classical economists simply assumed the argument away, having built their “free trade rule” on the premise that productive factors had a natural” tendency to remain completely immobile between countries.”⁹⁴.

He continues by saying that for “the nineteenth century classical economist a regime of perfect financial globalization often failed to pass a cost-benefit test for reasons which the reader may find recurrent in contemporary literature and are even beginning to creep into the

⁹¹ COHEN B. J., « The geography of money », *Cornell University Press*, 1998, pp. 167-168.

⁹² PAULY L. W., « Private power and public authority », in « Markets and Authorities : Global Finance and Human Choice », ed. LORENTZEN J. et al., *Edward Elgar Publishing*, Massachusetts, 2002, pp. 138-152.

⁹³ *Ibid.* p. 141.

⁹⁴ ASSO P. F., “The “Home bias” approach in the history of Economic thought: issues on financial globalization from Adam Smith to John Maynard Keynes”, in “Markets and Authorities: Global finance and human choice”, ed. LORENTZEN J. et al., *Edward Elgar Publishing*, Massachusetts, 2002, p. 24.

official reports of international institutions. Increased uncertainty, lack of information, hazardous speculation, destruction of capitals, losses from overtrading and contagion, more destructive wars and political conflicts, were among the negative externalities which were often associated with the international spread of financial integration.”⁹⁵.

Asso’s wordings guide us towards a more specified area, namely multinational firms and states development strategies. It goes without saying that for Susan Strange, “The most prominent non-state authority [...] are multinational firms “In Rival States, Rival Firms”, co-authored with John Stopford, she argued that structural changes in the world economy have influenced the way states and multinational firms behave, and how they relate to each other (1991). First, where states used to compete for power over more territory, they now compete for the means to create wealth within their territory. Second, the emergence of corporate networks provides incentives for governments to promote location-specific advantages to attract wealth-generating investments. Third, small poor countries face increased barriers to entry in industries most subject to global competition. Only investment in skills can help them out of the impasse. Fourth, taken together these changes add two new dimensions to traditional inter-state diplomacy: state-firm and firm-firm relationships. Fifth, the increased complexity of relationships has increased the complexities of the agendas to manage both for governments and firms. Sixth, the net total of these shifts is that the volatility of change increases, and that outcomes of the new diplomacy diverge.”⁹⁶.

To resume theses ideas, one can say that the authors’ principal concerns are about the birth of a decentralised power in the hands of undemocratic bodies such as multinational firms. Indeed, the latter obeying to the market’s laws, they are therefore uncontrollable and the law is not developed in an appropriate manner that could permit the state to fight on equal terms. We will therefore analyse in detail the mechanisms that have been built in order to privatize power in the hands of multinationals in the next part of the project.

8. Conclusion Part one

We could see through this part that ideologies played a crucial role in shaping the behaviour of the different actors of society. With the help of a great author such as Polanyi we managed

⁹⁵ *Ibid.* p. 25.

⁹⁶ LORENTZEN J., introduction to “Markets and Authorities: Global Finance and Human Choice”, by LORENTZEN Jochen et al., *Edward Elgar Publishing*, Massachussetts, 2002, p. 6.

to explain how the liberal creed came to life in order to create a civilization based on the maximisation of the capital. The point of the author is that there are two conceptions possible of the term *economy*. The first one is related to the fact that human behaviours are guide toward the maximisation of profit, which is basically the core of the liberal ideology. This assumption has been made significant with market's extension and, following Poncelet's wording, is related to the *quantitative* conception of economy which corresponds to the creed that the more we will make inflate the economic "cake", the more the economic spinoffs will be significant⁹⁷. However, history and nowadays' societies showed us quite accurately that this way of doing is just exacerbating inequalities by making the wealthiest richer and the weakest poorer.

The other conception, in contrast, put the accent on society in order to establish priorities. It consists thus in placing the economic aspects after social and environmental issues, for example. According to Poncelet, it is a *qualitative* approach which aims to escape from prioritising economic presupposed ideas, in order to build institutions that will not favour market's needs over people's well-being. It is by following this ideology that the Welfare State managed to develop itself. The economy and social welfare had to be reunited, not separated into two different spheres.

⁹⁷ Annexe, « Interview with Bruno Poncelet, economist specialized in free trade agreements », August 2017, p. 2.

**Part Two : Analysis of the actors, agreements, the TTIP and its
implications**

1. The European institutions

In order to reach a better understanding of the implications of the TTIP on the European democracy, it is necessary to start this part with a rigorous analysis of the European institutions.

1.1. Introduction

As described on their web page, the institutional system of the European Union cannot be compared to any of its 28 member states. Indeed, there is no unique president, prime minister, or supranational government. Each institution has its own organisation, members, and works in collaboration with the other institutions of the Union.

There are seven institutions within the Union: The European Council, the Council of the European Union, the European Commission, the European Parliament, the Court of Justice, the Court of Auditors, and the European Central Bank (ECB).

These institutions are assisted by two consultative organs:

- The Economic and Social Committee (ESC) which represents the interests of the different categories of the European economic and social life (employers, workers, farmers, liberal professions, etc). The ESC must be consulted for topics such as social issues, public health, or the environment. It can also give opinion of its own initiative. There are 353 members coming from various member states, depending on the demographic weight of them.
- The Committee of the Regions which (CoR) whose main purpose is to ensure that the interests of the local and regional entities of the Member States of the European Union are well represented. In domains such as education or culture, its consultation is mandatory, but, for the ESC, the institutions can consult it freely and its composition is also the same⁹⁸.

The European Union is following a process of constant *parliamentarisation*, even though the principle of separation of powers is not mentioned by the treaties. Following Brack and Costa, we could describe the institutional system of the EU as a quadripartite structure. On the one hand we find the executive branch of the power, composed by the European Council and the

⁹⁸ Web page of the European Union, URL: <http://www.strasbourg-europe.eu/explications-detaillees-sur-les-institutions-de-l-union-europeenne,3214,fr.html?DisablePublicationWorkflow=1>

Commission which are, approximatively, playing the role of a collective head of the state (European Council), government and central administration (Commission). On the other hand, we can find the legislative branch, composed by the European Parliament and the Council which can be considered as the lower and upper house of a bicameral parliament⁹⁹.

But its function does not lie only on the sole interaction between the legislative and executive organs. Indeed, the institutions and control organs are also playing a vital role. In this respect, one can evoke the European Court of Justice (hereafter ECJ) or the Court of Auditors which are playing a more judiciary role¹⁰⁰.

Having analysed the major European institutions following the tripartite division of powers (points 2.2.; 2.3. and 2.4), we will examine, within the framework of the present thesis, their democratic legitimacy (point 2.5).

1.2. The executive power

1.2.1. The European Council

a) Its composition

The European Council is composed by its permanent president, heads of the State or the governments of member States, the president of the Commission, and the High Representative for Foreign Affairs and Security Policies. Moreover, the Council is assisted by the ministers of Foreign Affairs and by a member of the Commission depending on the subject of the treaty. Since 1991, the ministers for Economic Affairs and for Finances are invited when questions about the Economic and Monetary Union are planned. Also, the institution is helped by the Secretary-General of the Council, the Secretary-General of the Commission, officials of the Secretary-General of the Council, and by interpreters. The officials and diplomats have been voluntarily kept apart in order not to paralyse the Council with their conflicts. However, although they are not authorized to access to the meeting room, the Permanent Representative Committee (hereafter PERECO) and the Council's group work can elect a *liaison officer* that will communicate directly with the head of the State, the *antici*¹⁰¹.

⁹⁹ BRACK N., COSTA O., "Le fonctionnement de l'Union Européenne", *Editions de l'université de Bruxelles*, 2014, p. 93.

¹⁰⁰ *Ibidem*.

¹⁰¹ *Ibid.*, p. 98-99.

b) Its role

The European Council was institutionalised by the Treaty on European Union (hereafter TEU) in 1986, before its existence, it was not explicitly formalised in any treaty. The Treaty of Lisbon set up the possibility to elect its permanent president by itself, to propose to the Parliament the name of the president of the Commission, to name the High Representative for Foreign Affairs and Security Policy (hereafter HRFASP), to establish the system of rotation of States to the Council's presidency and to decide for the transition from the unanimous vote to the qualified majority vote at the Council¹⁰².

As we said in the introduction, the European Council could be compared to a “collective head of the state”¹⁰³ of the Union. It constitutes an institution of impulsion and arbitrage. The treaty of Lisbon disposes that it provides the UE: “[...]with necessary impetus for its development and shall define the general political directions and priorities thereof.”¹⁰⁴. Furthermore, the president has a function of representation which makes him the “face of Europe in politics”¹⁰⁵.

Its role, according to Bulmer and Wessels, is to invoke the principal questions and concerns that are coming against the Union, such as the reform of the treaties, the enlargement of the EU, or the opening of new political enterprises. It is also necessary to say that it plays a very important role as an arbitrator by being an appeal body to unlock sensitive files that are paralysing the Council of Ministers. We can therefore say that it has become the institution that has the most political authority in the EU¹⁰⁶.

1.2.2. The European Commission

The European Commission, established in 1958 following the Treaty of Rome (1957) is the most original and also controversial institution of the European Union¹⁰⁷.

¹⁰² DONY M., « Après la réforme de Lisbonne, les nouveaux traités européens », *Edition de l'Université de Bruxelles*, 2008, p. XIX.

¹⁰³ BRACK N., COSTA O., op. cit., p. 96.

¹⁰⁴ Article 15 TUE.

¹⁰⁵ BRACK N., COSTA O., op. cit., p. 98.

¹⁰⁶ BULMER S., WESSELS W., « The European Council : Decision-making in European Politics », *Macmillan*, London, 1987, p. 2.

¹⁰⁷ NUGENT N., RHINARD M., « The European Commission », *Palgrave*, 2015, p. 9.

a) Its composition

The Commission is composed by a college of commissioners, at its head are the President and the Vice-Presidents, one of them being the High Representative. There is a commissioner for each Member State, which means that there are currently 28.

In the context of the last enlargement of the EU, the number of commissioners became an issue and was widely discussed because it was considered too excessive to ensure the efficiency and coherence of the Commission's activities. This change was also supposed to avoid the "nationalisation" of the Commission, whose sole mission was to guarantee the general interest of the EU¹⁰⁸.

To tackle this problem, the Lisbon Treaty provided for a reduction in the size of the College by reducing it to two thirds of the number of the Member States, the members being chosen on the basis of a rotation system respecting the principle of equality. Some Member States, particularly smaller ones, felt disadvantaged by this decision because they were seeing the Commission as an institution that was supposed to protect their interests. Eventually, the project of reducing the members of the Commission was dropped due to the negative outcome of a referendum in 2008 in Ireland, which made the Irish government insist for the restoration of the "one Member State - one commissioner" principle¹⁰⁹.

The members of the Commission are « chosen on the ground of their general competence and European commitment » as well as their independence¹¹⁰. The appointment of the members of the Commission falls within the competence of the European Council, the Council of the European Union as well as the Parliament, so that their appointment is not influenced by the citizens, neither directly, nor indirectly¹¹¹.

Following article 17, paragraph 7 of the TEU, the President of the Commission is appointed by the Parliament based on the proposal of the European Council which has, for the proposal, to take into consideration the results of the elections at the European Parliament.

Then, concerning the other members of the Commission, it is the Council - and not the European Council - by mutual agreement with the elected President, which adopts a list of the

¹⁰⁸ DONY M., « Droit de l'Union européenne », 6th ed., *Editions de l'Université libre de Bruxelles*, Bruxelles, 2015, p. 148.

¹⁰⁹ NUGENT N., RHINARD M., op. cit., p. 11; Communication from the Commission to the Intergovernmental Conference on the reform of the institutions, 22 November 2000, COM(2000) 771 final,
URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2000:0771:FIN:EN:PDF>

¹¹⁰ Article 17, par. 3 TEU.

¹¹¹ DONY M., op. cit., p. 151.

other personalities that they are willing to propose as future members of the Commission. This choice is based on suggestions made by the concerned Member States¹¹².

b) Its role

The main role of the Commission is to represent the general interest within the European Union as opposed to the national interests of Member states¹¹³. It has an almost monopolistic power to initiate legislative proposals, has a mediation role between, above all, the Council and the European Parliament, both of them forming the legislative power of the European Union and also between the national governments.

It is also the Commission, which, in respect to the present thesis, is charged to represent alone the EU in the international relations related to trade¹¹⁴. It is worth noting that the Commission has further executive duties which are, however, not relevant to analyse in this context.

Nevertheless, it is important to note that this institution has the duty to stay "completely independent in carrying out its responsibilities"¹¹⁵, which means that the Commission has to act regardless of national interests. Hence, this is closely linked to the democratic deficit which the Commission is often accused of. As a matter of fact, the founding fathers of Europe wanted to create an institution that is less representative in order to avoid national interests to influence the European policy. They were seeing the general interest as an interest that is transcends the national one. Consequently, the selection of the commissioners had to occur without discussions in the public arena where national discrepancies would, otherwise, lead the debate¹¹⁶.

In short, despite the extensive responsibilities and powers of the Commission, this institution is not directly elected nor does it justify its actions.

¹¹² *Ibid.*, p. 153

¹¹³ Article 17, par. 1 TUE

¹¹⁴ NUGENT N., RHINARD M., op. cit., p. 11.

¹¹⁵ Article 17, par. 3 TUE.

¹¹⁶ LEVRAT N., « La construction européenne est-elle démocratique? », *La Documentation française*, 2012, p. 67.

1.3. The legislative power

1.3.1. The European Parliament

The European Parliament, which is the only directly elected body within the European Union¹¹⁷, was established in 1952 as the Common Assembly of the European Coal and Steel Community. Later, in 1962, it was renamed European Parliament¹¹⁸.

a) Its composition

The European Parliament is « composed of representatives of the Union's citizens »¹¹⁹, who are elected by direct universal suffrage since 1979.

Despite several initiatives to establish a uniform electoral procedure at the EU level, the standardisation has never been set up so that the national legislations keep maintaining the voting system, the electoral constituency, the access to the vote, the eligibility conditions, the incompatibilities, and the electoral dispute mechanisms¹²⁰.

In accordance with the Lisbon Treaty, the Parliament counts 751 members¹²¹, this number being the outcome of lengthy debates in the context of enlargement of the EU. As a matter of fact, a certain proportionality had to be respected between the number of seats and the population of each Member State, however with a double limit: Not only does the number of members not compromise the proper functioning of the institution, but also does not hold a reasonable representation of the different political movements in the smaller Member States. Regarding the structures of the Parliament, the most important actors are the political groups which exist since the constitution of the first assembly at the time of the European Coal and Steel Community¹²².

¹¹⁷ GERKRATH J., « L'Union européenne. Droit, politique, démocratie », under the direction of G. Duprat, *P.U.F.*, coll. *Politique d'aujourd'hui*, 1996, p.229-230.

¹¹⁸ DONY M., op. cit., p. 106-107.

¹¹⁹ Article 14, par. 2 TEU.

¹²⁰ DONY M., op. cit., p. 107.

¹²¹ Article 14, par. 2 TEU

¹²² DONY M., op. cit., p. 111

b) Its role

Initially, the Parliament had a quite modest function, namely only an advisory role and the right to censure the Commission. Due to the traditional link between taxation and representation, the budgetary control of the Community progressively gained power.

Since 1970, the Commission shares the budgetary power with the Council of the European Union and holds a part of the legislative power via the procedure of co-decision, which is now called *ordinary legislative procedure*.

In addition, it influences the EU's external relations, where it has to give its approval in a rising number of international agreements.

And finally, it is a key player in the appointment of the President of the Commission as well as its members¹²³.

1.3.2. The Council of the European Union

The Council of the European Union ("The Council") is the representative institution of the Member States¹²⁴.

a) Its composition

Following article 16 TUE, the Council consists of « a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote »¹²⁵.

Since its origin, the presidency of the Council is ensured, for each Member State on the basis of a six-month rotation¹²⁶.

The Council meets in different configurations according to the agenda, which means that the composition of it is neither stable, nor stationary (see point *b*, second paragraph)¹²⁷.

¹²³ *Ibid.*, pp. 120-121.

¹²⁴ *Ibid.*, p. 132.

¹²⁵ Article 16, paragraph 2 TEU

¹²⁶ DONY M., op. cit., p. 132.

¹²⁷ *Ibid.*, p. 135.

b) Its role

Although the Council initially had the majority of the decision-making power, it is now exerting, conjunctively with the European Parliament, the budgetary and legislative power¹²⁸. Then, in terms of external relations, the Council is the only institution that has the power to conclude agreements in the name of the European Union¹²⁹.

The Lisbon Treaty mentions explicitly only two configurations: the General Affairs Council that is in charge of the consistency in the work of the different configurations, to prepare the meetings of the European Council and to track them in conjunction with the President of the European Council and the Commission and the Foreign Affairs Council which is elaborating the external action of the EU according to the strategic guidelines fixed by the European Council and ensuring the consistency of the external action of the Union¹³⁰. For the rest, the European Council is in charge of establishing a list of other Council configurations¹³¹.

c) The role of the COREPER

The COREPER is a committee that consists of Permanent Representatives of the Governments of Member States which is « preparing the work of the Council and for carrying out the tasks assigned to the latter »¹³².

Apart from the positions of career diplomats, namely the ambassadors and their assistants, the Permanent Representations are composed of officials of the diplomatic corps which are dealing with the institutional and external relations cases. They also include diplomatic consultants which are responsible for preparing the weekly agenda of the COREPER and to ensure specific tasks during the European Councils. Furthermore, the Permanent Representations are made up of technical consultants coming from other ministries which are participating in the working groups of the Council of the EU, as well as contract agents (specialised scientific staff, experts) and a specialised legal department.

At this level, there is a *technification* phenomenon taking place, which means that experts are hired strategically in the development process of the European policies. This is often done at the expense of governmental leadership as the decision benefits more legitimacy through

¹²⁸ Article 16 TEU.

¹²⁹ DONY M., op. cit., p. 148.

¹³⁰ Article 16, paragraph 6 TUE.

¹³¹ DONY M., op. cit., p. 135.

¹³² Article 240 TFEU

specialised technical or scientific expertise rather than on the basis of the sole arguments of the national representative which does not benefit systematic knowledge.

Moreover, we can observe that this *technification* phenomenon is intimately linked to the fragmentation of the Council in specialised councils. In a general point of view, this fragmentation strengthened the bureaucratic character of the participation of the Member States in the decision-making. This led to the *depoliticisation* of matters about which there is no consensus by avoiding conflicts leading to non-cooperative strategies. The domination of a sectorial logic within the Council led to the fact that a large amount of decisions was taken at administrative level rather than at the political level. Hence, the Council of Ministers as such often only has the task to approve or formalise the decision taken at administrative level. As a consequence, the filtering function¹³³ of the Permanent Representatives often converts itself in a decision-making capacity.

In addition, apart from their important contribution in the decision-making process, the Permanent Representatives have a dominant position in the orientation and evolution of the Council's work programme. Progressively, beyond their filtering function of the decision during the pre-negotiations, the Permanent Representatives expanded their role around three types of functions which made their status seem more ambiguous: the role of permanent negotiator, legislator and, eventually, political consultant (as senior directors) of their Minister. The broad spectrum of all these missions generated numerous questions about the nature of their role which is more or less intergovernmental or supranational depending on the authors.

The decision-making capacity switchover to the Permanent Representatives expresses a certain delocalisation of the decision-making power. As a matter of fact, the circumstance that those actors hold a double affiliation, both national and European makes them address pressures from both sides, which is a source of confusion¹³⁴.

¹³³ The *clearing system* following C. Engel; see ENGEL C. & WESSELS W., « From Luxembourg to Maastricht : institutional change in the E.C. after the Single European Act », *Europa Union Verlag*, 1992.

¹³⁴ CHATZISTAVROU F., « Les représentants permanents auprès de l'UE ou la redéfinition d'un rôle politique européen », *Regards sociologiques*, n°27-28, Université de PARIS I Panthéon-Sorbonne 2004, pp. 51-69.

1.4. The judicial power

1.4.1. The Court of Justice of the European Union

The Court of Justice of the European Union ("ECJ") was created in 1952.

a) Its composition

Following article 19 TUE, the Court of justice of the European Union includes the Court of Justice, the General Court and specialised courts¹³⁵.

We will only briefly analyse the composition of the Court of Justice and the General Court, as analysing further would exceed the scope of this thesis.

i. The Court of Justice

The Court of Justice is composed by one judge per Member State and is assisted by Advocates-General of which there are 11¹³⁶. The judges are chosen on the grounds of their independence and if they meet the requirements to exert the highest judicial functions in their respective countries, or who are legal experts of recognised competence¹³⁷.

The appointment of the judges and Advocates-General is made by mutual agreement between the governments of the Member States, done with the duty to consult a specialised panel in order to get an opinion on the candidate's suitability to carry out his future office¹³⁸.

ii. The General Court

The General Court, which was joined to the CJEU in 1988, tends to become the common law judge for almost all types of actions while the European Court of Justice is the Appeal Judge. It is also composed of one judge per Member State, however without Advocates-General¹³⁹.

¹³⁵ Article 19 TEU.

¹³⁶ Article 252 TFEU; DONY M., op. cit., pp. 163-164.

¹³⁷ Article 253 TFEU

¹³⁸ Article 255 TFEU

¹³⁹ DONY M., op. cit., p.165.

b) Its role

In general terms the Court of Justice of the European Union (« CJEU »), which is often qualified as the Constitutional Court of the European Union¹⁴⁰, ensures « that in the interpretation and application of the Treaties, the law is observed »¹⁴¹.

According to its "constitutional" nature, it has to interpret the law according in an abstract manner in response in the context of the preliminary ruling procedure and, concomitantly, and independently of the latter function, analyse, in a more concrete sense, complex and factual and economic situations¹⁴².

1.5. Link with the present thesis

1.5.1. Procedure for conclusion of international agreements

In the context of the present thesis, it is important to mention the procedure that leads to the conclusion of international agreements as seen through the case of the TTIP.

Negotiations are starting with the Commission presenting recommendations to the Council, which adopts a decision allowing the opening of the negotiations. The Council then appoints, depending on the subject matter of the agreement, the negotiator or the negotiation team leader for the EU.

As the TTIP is a mixed agreement, the negotiations have to be led in close cooperation between the negotiator and the Member States in accordance with the *principle of loyal cooperation*¹⁴³. However, in this case, the Member States mandated the Commission to negotiate for all 28 EU countries so that they can speak with one voice¹⁴⁴.

The actual conclusion of the agreement falls within the competence of the Council. Once the negotiations are closed, the Council, based on the negotiator's proposition, adopts a decision allowing the signature of the agreement and, where appropriate, its provisional application

¹⁴⁰ DUE O., « Constitutional adjudication in European Community and National Law », *Mélanges O'Higgins*, London, 1992; RUBIO LLORENTE F., « Tendances actuelles de la juridiction constitutionnelle en Europe », *AUC*, 1996, p. 11.

¹⁴¹ Article 19 TEU.

¹⁴² NAOME C., « Le pourvoi devant la Cour de justice de l'Union européenne », *Larcier*, Brussels, 2016, Chapter 1, Section II.

¹⁴³ DONY M., op. cit., pp. 206-207.

¹⁴⁴ Website of the European Union, « How we'll make TTIP happen », URL: http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/process/index_en.htm

before it enters into force. Then, the Council adopts, still based on the proposition of the negotiator, the decision on the conclusion of the agreement *per se*.

The Parliament is increasing its role in the negotiation of the international agreements. On the basis of article 218, paragraph 6 of the TFEU, the Parliament will have to approve the agreement as a whole or to refuse it¹⁴⁵.

As it is a mixed agreement, the TTIP requires the signature and the ratification of all the Member States.

1.5.2. The democratic legitimacy of the European institutions

Even if certain authors consider that the more or less strict separation of powers is not essential to the democratic character of the European Union¹⁴⁶, we are going to analyse the institutions as complementary powers and counter-powers.

a) The top of the EU institutional iceberg: The European Council

Starting with the European Council, there is, in the context of this thesis, not much to say about it because it is not an essential actor in the conclusion of trade agreements. Moreover, its democratic nature is filled by the fact that its members are elected at national level in accordance with democratic procedures and the international standards that are governing free and fair elections.

b) The European Commission: lack of legitimacy related to its plethoric character

As exposed in N. Nugent's and M. Rhinard's work, it is clear that the Commission's functions are not purely of an executive nature. The Commission is not only the policy leader and initiator - as it is the driving force behind European integration - but this institution has also legislative functions as well as executive ones, not to mention that it has also a « legal guardianship function »¹⁴⁷. In addition, we have to bear in mind that the Commission is also an « external representative and negotiator », especially in terms of trade¹⁴⁸. Concerning the second category of functions, the legislative ones, it is important to remember that the

¹⁴⁵ DONY, M., op. cit., p. 208.

¹⁴⁶ MORAVCSIK A., « Le mythe du déficit démocratique européen », *Raisons politiques*, 2003/2, n°10, p. 29.

¹⁴⁷ NUGENT N., RHINARD M., op. cit., pp. 15-16.

¹⁴⁸ *Ibid.*, p. 18.

Commission is the only one that is able to draft legislative proposals¹⁴⁹ and the only one that can be present at every legislative stage¹⁵⁰. Then, in the name of its executive functions, the Commission undertakes a myriad of responsibilities: « setting out the ground rules and monitoring and coordinating the activities of others » as well as « implementing and policies and laws »¹⁵¹. Finally, in association with the Court of Justice of the European Union (CJEU), the Commission has the role of the legal guardian, which is a quite heteroclite function but may be generalised by saying that it has to ensure that the European Union's treaties and legislation are respected. Indeed, the Commission has, under some circumstances, the power to impose financial penalties (e.g. competition policy)¹⁵².

After having outlined five different roles of the Commission, we can easily understand that not only, to repeat the words of N. Nugent and M. Rhinard, "tensions" can exist between the different functions but also, in our opinion, conflicts, as the Commission holds different aspects of the legislative, executive and judicial power altogether. The Commission is, in the words of O. Costa, a plethoric institution¹⁵³ which can render its work and role quite illegible and raise criticism about its seemingly non democratic nature.

Speaking of the democratic or non-democratic nature of the Commission, we must mention, as a first example, the public consultation that the Commission organised about the TTIP and the CETA in the context of the investor-state dispute settlement mechanism, which setting up creates the illusion of participatory democracy. In fact, although the outcome of this consultation was negative (97 % of the participants voted against an ISDS clause, whatever its formulation), the Commission left the text unchanged in the CETA which is now in ratification process.

We can say that the illegible and the increasingly important powers of the Commission, which is supporting the idea that the Commission lacks of democratic legitimacy, may be countered by the fact that the European Parliament's power of control over the Commission have been enhanced¹⁵⁴.

¹⁴⁹ Except sometimes in the area of Freedom, Security and Justice (AFSJ) policy area.

¹⁵⁰ However, it is important to mention that the fact that the Commission makes the initial proposal does not mean that it has the control over the final proposal that is going to be voted at the final stage of the legislative process.

¹⁵¹ NUGENT N., RHINARD M., op. cit., p. 17.

¹⁵² *Ibidem*.

¹⁵³ COSTA O., « Le parlement européen dans le système décisionnel de l'Union européenne : la puissance au prix de l'illisibilité », *Politique européenne* 2009/2 (n°28), p. 131.

¹⁵⁴ *Ibid.*, p. 136.

c) The European Parliament in the heart of the *parliamentarisation* process

As a matter of fact, there is, as mentioned earlier, clearly a *parliamentarisation* process taking place to, among other things, reduce the democratic deficit. The European Parliament is clearly the institution that has the most similarities with the national level parliaments¹⁵⁵, which enables to classify the Parliament in the legislative branch. In legislative matters, the European Parliament, the Council and the Commission form a "trialogue"¹⁵⁶.

In spite of that, the lack of clarity about international politics and the increasing possibilities for the executive power to bypass democratic participation (see, for instance, below the position of the Commission about the "Stop TTIP" ECI) and oversight due to the multi-level nature of international negotiations corroborate the need to reinforce the role of the Parliament in a context of transnational negotiations. As the Member of the European Parliament (hereafter MEP), Posdorf said, « parliamentary foreign policy » and an « elevated level of vigilance » by elected representatives is requisite to counterbalance governmental monopoly over international affairs: « it is a question of democracy, when parliaments try to stand up for the will of their peoples on international decision-making processes »¹⁵⁷. The growing intergovernmental relations between the EU and the US raise the problem of their democratic dimension, because most decisions are made by the executive branches, with little or no prior parliamentary intervention in a hardly transparent environment¹⁵⁸.

Ensuring that these arrangements are made in a transparent manner lies at the heart of their legitimacy. In the post-Lisbon Treaty European Union, most agreements require the European Parliament's approval, and this represents a primary source of parliamentary influence on EU trade policy and international affairs in general¹⁵⁹. Actually, the Parliament engages not only in the scrutiny of international agreements and the behaviour of the executive but also in non-legislative types of autonomous transnational action, which include « diplomacy-like activism¹⁶⁰, like the promotion and safeguarding of certain values, such as democracy, the

¹⁵⁵ DEHOUSSE R., « Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue? », *West European Politics*, p. 118-136.

¹⁵⁶ COSTA O., op. cit., p. 135.

¹⁵⁷ POSDORF H., « International Parliamentary Cooperation », Speech to the Cambodian Parliament, 2008, URL : www.kas.de/wf/doc/kas_12975-1522-2-30.pdf?080211045828

¹⁵⁸ JANČIĆ D., « The Role of the European Parliament and the US Congress in Shaping Transatlantic Relations: TTIP, NSA Surveillance, and CIA Renditions », *Journal of Common Market Studies*, Vol. 54, No. 4, 2016, p. 896.

¹⁵⁹ *Ibid.*, p. 139.

¹⁶⁰ For instance, it has « established both delegations for relations with virtually all corners of the globe and assemblies with regions such as Latin America, Africa, the Caribbean, the Pacific, the Mediterranean and the countries of the Eastern Partnership. The EP also regularly receives foreign dignitaries, such as the June 2015

rule of law and human rights. This is done by exposing injustices, diplomatic misconduct and human rights violations ». The Parliament « places importance on interparliamentary dialogue, and it uses its powers of consent to make claims, condition intergovernmental negotiations and increase its visibility and impact in foreign affairs »¹⁶¹.

The increased powers of the European Parliament logically led to a change in the Parliament's relation with the Commission and the Council. The breadth of that influence however is delicate to evaluate. Concerning, for instance, the investiture of the Commission, it is difficult to identify why the members of the European Council decided, in 2004, to take account of the result of the European Elections to appoint the President of the Commission. Did they give in to pressure of the Parliament or did they simply want to comply with the public opinion? Even concerning the legislative impact of the Parliament, the scientists as well as the actors of the Parliament encounter difficulties quantifying the legislative influence of the assembly¹⁶².

The European Parliament is the organ that regularly « evaluates the state of TTIP negotiations through briefings of Commission officials by a specially formed monitoring group and through a vast number of hearings by the competent committees ». It is also at this occasion that two matters strongly contested by Members of the European Parliament were mentioned: the transparency of negotiations and the inclusion of an investor-state dispute settlement (ISDS) clause, the latter which is analysed above. The Commission organised a public consultation on these two issues, which returned rather critical feedback (see below).

These two debates had broader implications: thanks to the Parliament's request for enhanced transparency, the EU concluded the 2014 UN Convention on Transparency in Treaty-Based Investor-State Arbitration. In July 2015, it also passed a resolution carrying out a mid-term review of TTIP negotiations, confirming their transparency plea and opposition to ISDS)¹⁶³. L.J. Eliasson declares that the case of TTIP demonstrates that parliaments on both sides of the Atlantic are veto players and that they utilize this power strategically to impose *ex ante* constraints and affect the foreign policy preferences of executive actors¹⁶⁴.

In transatlantic relations, the central forum bringing EU and US parliamentarians together is the Transatlantic Legislators' Dialogue (TLD). The TLD enables law-makers to take better account of their respective legislative processes, because it is precisely internal legislation

visits of the Speaker of the Lower House of the Indian Parliament (Lok Sabha – House of the People) and the Chinese Prime Minister.

¹⁶¹ JANČIĆ D., op. cit., p. 898.

¹⁶² O. COSTA, op. cit., p. 139-140.

¹⁶³ JANČIĆ D., op. cit., p. 900-901.

¹⁶⁴ *Ibid.*, p. 902; ELIASSON L.J., « Problems, Progress and Prognosis in Trade and Investment Negotiations: The Transatlantic Free Trade and Investment Partnership », *Journal of Transatlantic Studies*, Vol. 12, No. 2, p. 129.

with extraterritorial effect that has caused many recent conflicts in EU–US relations. However, as M. Pollack argues, the TLD's policy-shaping impact is limited because it does not necessarily involve parliamentarians in charge of drafting legislation with transatlantic repercussions, because, there is, among other things, no sufficient coordination with governmental transatlantic bodies such as the Senior Level Group, which prepares EU–US summits¹⁶⁵.

« Exchanges of views within the TLD might reduce information asymmetry but are unlikely to ensure democratic control of transatlantic regulatory co-operation, because EU and US parliamentarians do not share a "common political vocabulary" »¹⁶⁶. Although the TLD's statements are not legally binding in transatlantic affairs and cannot generate enough influence to shape transatlantic law and policy, this organ has deliberative and communicative functions, which are important for informing policy-making processes across the Atlantic¹⁶⁷.

Nevertheless, the fact remains that there are still reasons to question the democratic character of the European Parliament. As a matter of fact, there are numerous reasons why the European citizens still do not feel involved in the designation of the members of the Parliament and that an European public opinion cannot emerge : the absence of effective legislative power, the lack of concrete meaning of the electoral constituencies, the lack of knowledge about the European political parties, the persistence of national political strategies, the absence of media exposure of the MEPs (Members of the European Parliament) and the devaluation of their work¹⁶⁸.

We can only agree with Nicolas Levrat's ideas for improvement, namely the homogenisation of the electoral procedures in every Member State, or greater empowerment of the Parliament¹⁶⁹ as well as the creation of an European public opinion through the media and political parties¹⁷⁰.

¹⁶⁵ POLLACK M., « The Political Economy of the Transatlantic Partnership », *Florence: EUI–RSCAS*, 2003, p. 12.

¹⁶⁶ HOWSE R., « Transatlantic Regulatory Cooperation and the Problem of Democracy » in BERMANN G.A., HERDEGEN M. and LINDSETH P.L. (eds), « Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects », *Oxford University Press*, 2000, p. 472.

¹⁶⁷ JANČIĆ D., op. cit., p. 899.

¹⁶⁸ LELEUX A., « La démocratie peut-elle s'appliquer en dehors d'une structure étatique? Regards sur une Union européenne qui se veut démocratique » (Master Thesis), UCL, 2013, p. 75-76.

¹⁶⁹ LEVRAT N., op.cit., p.70.

¹⁷⁰ LELEUX A., op. cit., p. 76.

d) The Council and the growing gap with the European citizens

Concerning the Council, it goes without saying that it enjoys an indirect popular legitimacy as it is made of democratically elected representatives at national level. However, we must remember that it is the COREPER which is in charge of its day-to-day business operations and which is the organ ensuring a certain continuity and stability within this institution, considering the fact that the Council is not composed of the same ministers from one session to another¹⁷¹. This is thus expanding the gap that exists between the citizen and the decision-makers.

With regard to this loss of legitimacy of the Council due to the significant influence of the Permanent Representatives - which is, as explained above - causing a growing *technification* phenomenon - Nicolas Levrat also suggests a solution which he qualifies of simple and logical: each Member State would delegate to a "second Prime minister" for European affairs that would fully attend the government meetings in his capital. This "second Prime minister" would not be in charge of the national foreign affairs, neither be subordinate to the Minister of foreign affairs. Instead, he would coordinate or even carry out the representation of his government within the Council of the European Union. Hence, he would be in Brussels the other days of the week¹⁷².

e) The Court of Justice of the EU – more than just a judge

Regarding the judicial power, the Court of justice of the European Union, despite the fact that it is frequently accused of judicial activism¹⁷³, forms essentially this part of the power. However, speaking of judicial activism, it is often alleged that the CJEU carries out a law-making function involving sometimes « a judge's arbitrary intrusion into the political arena by giving priority to values other than legal ones, such as, in the case of the ECJ, supporting

¹⁷¹ CHATZISTAVROU F., « Les représentants permanents auprès de l'UE ou la redéfinition d'un rôle politique européen », *Regards sociologiques*, n°27-28, Université de PARIS I Panthéon-Sorbonne 2004, p. 57.

¹⁷² LELEUX A., « La démocratie peut-elle s'appliquer en dehors d'une structure étatique? Regards sur une Union européenne qui se veut démocratique » (Master Thesis), UCL, 2013, p. 75-76; LEVRAT N., « La construction européenne est-elle démocratique? », op. cit., p. 65

¹⁷³ DAWSON M., DEWITTE B., « Judicial Activism at the European Court of Justice »; VAN MEERBEECK J., « De la certitude à la confiance », *Anthemis*, Publications de l'Université libre de Bruxelles, 2014, p. 396; PEREIRA COUTINHO L., LA TORRE M., SMITH S.D., « Judicial Activism - An Interdisciplinary Approach to the American and European Experiences », *Springer*, 2015.

the process of European integration »¹⁷⁴, which means that the CJEU is allegedly exceeding the limits of its judicial role.

Continuing on, the Court, within the framework of the creation of the great internal market (or European Single Market), was often criticised for giving priority to the fundamental freedoms - those being the free movement of goods, services, capital and labour - at the expense of the fundamental rights - the former being the free movement of goods, services, capital and labour and the latter being rights that are more focused on the individual himself such as the right to self-determination for instance - which means that it was prioritising economic values over human ones¹⁷⁵.

Quite surprisingly in our opinion¹⁷⁶, and according to what we mentioned above, the General Court of the EU annulled, the 10th of May 2017, the Commission's decision refusing the registration of the European Citizen Initiative (ECI) named "Stop TTIP", which was directed against not only the TTIP but also the CETA, on the ground that the Commission breached the EU substantive law¹⁷⁷. The Court opts clearly for a « citizen-friendly approach », which shows us also that the judicial power is, at least on the surface, fulfilling the aim of offsetting the executive power.

However, the Court's decision could not avoid the conclusion of the CETA, which is presently in the ratification process. The reaction of the Commission towards the Court's decision is quite disappointing : instead of accepting the formerly collected signatures, it accepted to register the ECI and requested the organisers to start over with the collection of signatures¹⁷⁸.

¹⁷⁴ POLLICINO O., « Legal Reasoning of the Court of Justice in the Context of the Principle of Equality between Judicial Activism and Self-restraint », *German Law Journal*, Vol. 5, n° 3, p. 284-286.

¹⁷⁵ MALENOVSKY J., « La conciliation des droits et libertés dans les ordres juridiques européens, Dixièmes journées d'études du Pôle européen Jean Monnet », *Bruylant*, Brussels, 2012, p. 266-268.

¹⁷⁶ This is, indeed, only the second time that the General Court annuls a Commission's decision to reject a proposed ECI.

¹⁷⁷ Judgement of the General Court (1st Ch.), 10th May 2017, *Efler e.a. / Commission*, T-754/14; KARATZIA A., « New Developments in the context of the European Citizens' Initiative: General Court rules on 'Stop TTIP' », *EU Law Analysis*, URL: <http://eulawanalysis.blogspot.be/2017/05/new-developments-in-context-of-european.html>

¹⁷⁸ European Commission, 4th July 2017, « European Citizens' Initiative: Commission registers 'Stop TTIP' Initiative », *Press release*, URL: http://europa.eu/rapid/press-release_IP-17-1872_en.htm

f) Elements which are potentially contributing to the EU's legitimacy

In this case, we still doubt whether the functioning of the institutions is democratic or not, there is an increasing number of "alternative" democratisation mechanisms or norms (mediator, petitions, access to documents, committees of enquiry, expert committees, etc. ; governance standards : transparency, subsidiarity, responsibility, participation, etc. ; establishment of contact with the civil society and multiplication deliberative democracy experiences) but they do not fully create a system. They fall within different approaches and logics which results in a lack of clarity and stresses the limits of the current state¹⁷⁹.

In spite of everything, since the Maastricht Treaty, the national parliaments have acquired an increasing role - even if it is still relatively symbolic - in the functioning of the EU¹⁸⁰. It should be kept in mind that, as most commercial agreements are considered as mixed agreements, each national and regional parliament must ratify the agreement at stake so that it can enter into force.

2. Variety of investment treaties

In order to understand what TTIP really is, it will be necessary to define its type with regard to other treaties that have been made in history. We will thus begin by explaining what bilateral treaties are by providing their origins, legal roots, and main characteristics. After that, we will need to explain the reasons that have led to a *multilateralisation* of agreements, which will open the door for a more specified subsection about the latters. We will then end up with the present section by giving a striking example of multilateral agreement: The *Multilateral Agreement of Investment (MAI)*.

¹⁷⁹ COSTA O., op. cit., p. 137.

¹⁸⁰ *Ibid.*, p. 139.

2.1. Bilateral treaties' phenomenon and the birth of the contemporary investment law regime

2.1.1. Appearance and origins

Many authors agree on the fact that the very first investment treaty has been signed between Germany and Pakistan in 1959. Indeed, although there were already some agreements that presented such characteristics, this one presented the distinctive feature to defend exclusively the interests of economic operators nationals of the other party¹⁸¹. According to De Nanteuil, this treaty coincides with the moment when the first big affairs that opposed a foreign investor with a State started, the most of the time the dispute was about oil. It is at this very moment that States decided to establish themselves the rules applicable in such a situation¹⁸².

Moreover, we can see that these treaties have two main common roots, first with *navigation, friendship and economy treaties*. Secondly with *international organisations* which have established instruments without genuine legal value, as example we can cite the OECD and its "Draft convention on the protection of foreign property"¹⁸³.

We can therefore affirm that, although these treaties are bilateral, their content is never very different, which make them reflect, in a more or less accurate way, the existence of a genuine set of rules constituting the international law of investment¹⁸⁴.

2.1.2. Characteristics

Regarding the characteristics, we will have the opportunity to broach them throughout this project so we will outline them only synthetically. The first characteristic that we can systematically find in a bilateral investment treaty (hereafter BIT) is a disposition containing a definition of what is an investment. The second characteristic is related to the content of the substantial protection provided by the treaty, such as the *general guaranty of a "just and fair" treatment*, *Most Favoured Nation Treatment*, etc. The last characteristic is linked to an *arbitration clause* that offers to the foreign investor a direct access to an arbitral tribunal, made up following the rules of the International Centre for the Settlement of Investment

¹⁸¹ DE NANTEUIL A., « Droit international de l'investissement », *Editions A. Pedone*, 2nd edition, 2017, p. 45.

¹⁸² *Ibidem*.

¹⁸³ OECD, "Draft convention on the protection of foreign property", *I.L.M.*, vol. 7, 1968 (I), p. 117.

¹⁸⁴ DE NANTEUIL A., *op. cit.*, p. 46.

Dispute (hereafter ICSID) or the ones indicated in the treaty, in the hypothesis in which the State would have disregarded the treatment it was supposed to offer¹⁸⁵.

2.1.3. Legal roots

Concerning the roots of it, we can first say that States have played the main role by aiming to attract foreign investors in order to stimulate the national economy. To do so they codified the rules regarding investment in a unique national instrument. It is needless to say that these rules vary from a country to another, but as well depending on the shape of the investment¹⁸⁶. We can therefore conclude that States have played a major role in establishing the main features of the investment treaties.

In a second time, we cannot deny that the investment law is part of international law, much more than the national one. Investment law developed itself following five main components specific to international law:

- Conventions
- Custom
- General principles of law
- International jurisprudence
- Subsidiary sources mentioned in the article 38 of the Statutes of the International Court of Justice (hereafter ICJ)¹⁸⁷

Considering the purpose of the thesis, it is useless to enter more into technical details.

2.1.4. Multilateralisation

We have had to wait the nineties to see the very first multilateral treaty, which consisted in picking up the general rules of bilateral treaties and integrating them in multilateral instruments. For example, one can cite the North American Free Trade Agreement of 1994 (NAFTA) which gather the US, Canada, and Mexico. It entails 11 chapters on the protection of investments¹⁸⁸. We have to note that these treaties are limited on two different aspects. In a first time, geographically speaking, and in a second time in their object or field of application, De Nanteuil gives us in this regard the example of the *Energy Charter Treaty* (hereafter ECT)

¹⁸⁵ *Ibid.* p. 47.

¹⁸⁶ *Ibid.* p. 59.

¹⁸⁷ *Ibid.* p. 91.

¹⁸⁸ *Ibid.* p. 47.

which concerns only the energy sector. He gives us also the example of the European Union law by assimilating its rules to the ones of investment protection¹⁸⁹.

2.2. Multilateral Treaties

2.2.1. The *Multilateral Agreement on Investment*

Another multilateral agreement deserves our attention, namely the *Multilateral Agreement on Investment* (hereafter MAI), which was negotiated secretly in the middle of the nineties by the 29 countries of the Organisation for Economic Cooperation and Development (hereafter OECD) of that period and has been abandoned in 1998 due to the heavy opposition it had to face. Its goal was to gather in a multilateral agreement the main rules existing in bilateral agreements in order to contribute to the sanitation of the field of study. But this had to be put into perspective. Indeed, as we said the agreement was negotiated secretly in the OECD which was and still is considered as a club of the wealthy countries, the organisation was thus representing the interests of rich countries instead of the common interest¹⁹⁰ and by recurring to the *autonomous agreement method*, the other States would have only one choice, to take it or leave it¹⁹¹.

Moreover, we have to highlight the fact that this treaty was not only about juxtaposing bilateral treaties' dispositions on a bigger scale, the negotiations changed many dispositions from the original one. A unique perspective of protection of investor disregarding the public interests of States was neither a pure nor fair sight¹⁹². Effectively, as Juillard opines, we have to ask us about the relation between multilateral and bilateral treaties. Would it be a vertical or horizontal relation? We know almost certainly that if a general instrument came to life, the specific ones would be meaningless¹⁹³.

We can thus affirm that the project failed due to the too broad difference of opinion between the OECD's countries which had for consequence to disclose its existence to the public. But it

¹⁸⁹ *Ibidem*.

¹⁹⁰ *Ibid.* p. 97.

¹⁹¹ JUILARD P., « Accord multilatéral sur l'investissement : un accord de troisième type ? », in « Journée d'étude : un accord multilatéral sur l'investissement : d'un forum de négociation à l'autre ? », *Edition A. Pedone*, Paris, 1999, p. 50.

¹⁹² DE NANTEUIL A., *op. cit.*, p. 97-98.

¹⁹³ *Ibid.* p. 51.

also failed because of the weak level of representativeness of the OECD, the lack of transparency, and, of course, the ideological cleavages within public opinion¹⁹⁴.

2.2.2. Two categories of multilateral treaties

Although the MAI failed, some multilateral treaties succeeded to come into effect, even if they do not present exactly the same physiognomy¹⁹⁵. The first category is about cooperation treaty containing dispositions on investment, which allows foreign investment's protection within the broader question of economic relations between several states¹⁹⁶. These treaties are generally taking place between States of a same region or the ones which are presenting the same economic features. For example, one can cite the *NAFTA* (see above), the *MERCOSUR* of 1991 between South America countries (Brazil, Argentina, Uruguay, Paraguay, and Venezuela), or the *ASEAN* of 1987 in Asia between Brunei, Indonesia, Malaysia, Philippines, Singapore, and Thailand which has been completed by a protocol on the protection of investments in 1996¹⁹⁷.

The second category is about multilateral treaties on investment in a specific sector. Such treaties are quite rare but very extended geographically speaking, but very limited in their field of application, as example one can cite the ECT of 1998 which aimed at the beginning to open the oil and gas markets to central Asia and Russia. It gathers nowadays a total of 54 parties, that is to say 52 countries plus the EU and Euratom¹⁹⁸ which justifies its broad geographical zone of application (Japan and Australia are part to it).

2.3. Why MAI would have been dangerous?

According to Lori M. Wallach, manager of Public Citizen's Global Trade Watch, the agreement, as every international treaty, establish rights and obligations toward the different parties. However in the case of this treaty almost every rights are at the benefit of investors while the obligations are imposed to the States¹⁹⁹. In the following subsections we will

¹⁹⁴ *Ibid.* p. 98.

¹⁹⁵ *Ibidem.*

¹⁹⁶ *Ibid.* p. 99.

¹⁹⁷ *Ibid.* p. 101.

¹⁹⁸ *Ibidem.*

¹⁹⁹ WALLACH M. L., "Le nouveau manifeste du capitalisme mondial.", *Le monde diplomatique* 527, 1998, p. 22. URL : <https://www.monde-diplomatique.fr/1998/02/WALLACH/3537>

therefore analyse more in details what kind of mechanisms this treaty plans in order to provoke such a dissatisfaction toward public opinion, but also toward States.

2.3.1. Right of investors

The main chapter of the agreement is called *right of investors*. It organizes the absolute right to invest, which means that every investor can buy fields, natural resources, telecommunication services, in the condition of deregulation provided by the treaty, in other terms none. Regarding governments, they have the obligation to guarantee the full enjoyment of these investments. Many clauses are providing companies and investors' compensation in case of government action that may be a potential treat to their investment²⁰⁰. Indeed, according to the terms of the Agreement "the loss of a profit opportunity on an investment would be the type of sufficient prejudice that could give right to a compensation for the investor."²⁰¹.

Moreover, this right entails the rules on *expropriation* and *compensation* which allow the investor to contest almost every public policy or governmental action. For example, one can cite fiscal, environmental, or consumer's protection measures. But also the rules about social programs which are already being cut by many governments, and they are asked to endorse a worldwide assistance program to multinational firms²⁰².

It is relevant to say that these rights would have been assured through a mechanism similar to the one of NAFTA, namely an international mechanism that would allow investors to have a direct access to the legislative process of States by bypassing internal courts and using therefore international law while national investors can only use domestic remedies. All this would have been possible because of States' obligation to ensure that foreign investments can develop in the best conditions possible²⁰³. The rules applicable are the ones of disputes settlement mechanism such as defined by the International Centre for the Settlement of Investment Disputes (ICSID)²⁰⁴.

²⁰⁰ *Ibid.* p. 24.

²⁰¹ Multilateral Agreement on Investment, 1997.

²⁰² WALLACH M. L., op. cit., p. 23.

²⁰³ BACHAND R., « Etude comparative des accords et traités d'investissement dans les Amériques : Existe-t-il une alternative au modèle ALENA ? », *Continentalisation*, Notes et études 01-1, January 2001, p. 7. URL : <http://www.ieim.uqam.ca/IMG/pdf/GRIC-etude.pdf>

²⁰⁴ Centre International pour le Règlement des Différends Relatifs aux Investissements, 2006. URL : <https://icsid.worldbank.org/fr/Pages/icsiddocs/ICSID-Arbitration-%28Additional-Facility%29-Rules.aspx>

2.3.2. Common interest

These mechanisms aim precisely to eliminate any discrimination possible between national and international investors. But another aspect of the agreement that we have to take into account are related to the decisions of some countries to guide the investments in the direction of public interest, the MAI had for plan to forbid any investment in this direction, about labour employment or environment, for example, if the profits are less than the ones that could be done by a multinational, the latter would have a right to pursue the State in question. It goes without saying that in some cases discrimination can have positive impacts on the society. We can think to the discriminative dispositions for the election of women within some governments of European countries such as Belgium. These dispositions are of a constitutional degree, and they impose a percentage of women within the government, which constitutes a *positive discrimination*, as example one can cite the article 11bis of the Belgian Constitution²⁰⁵.

In this respect, the Ethyl company issue can be considered as forewarning. This US-based firm is leaning on provisions, which are less favourable than the ones of AMI, of the North American Free Trade Agreement (NAFTA), in order to claim 251 millions of dollars to the Canadian government. In April 1997, Ottawa was notified about the use of the gasoline supplement MMT, a suspicious neurotoxin, which damages cars' pollution control equipment. Ethyl, as only producer brought an action against the Canadian government, claiming that a ban on MMT would amount to an expropriation of the company's assets. As unbelievable as it seems, the case will be heard. If Ethyl wins, the Canadian taxpayers will have to pay 251 millions of dollars to the concerned private firm. We can consider that such a practise will lead to a paralysis of any governmental measure that aims to protect the environment or the natural resources, to guarantee the security and equality of working conditions or to manage investments to favour the common interest²⁰⁶. We know now that Ethyl won and Canada had to compensate for about 25 million dollars, which represents 10% of what they expected. And it is only a beginning...

²⁰⁵ Belgian Constitution, art. 11bis, URL : https://www.senate.be/doc/const_fr.html

²⁰⁶ BACHAND R., op. cit., p. 3.

2.3.3. The most-favoured-nation clause

The MAI sanctions the *most-favoured-nation clause*, which is a justification for non-discrimination toward foreign investors, and this even against investors coming from countries where the human, or labour rights are not respected. We could see such things with the phenomenon of *globalisation* which is developing an unfair competition. It constitutes one of the reason of the growing unemployment of developed countries because foreign firms do not have the obligations to hire local labour²⁰⁷. For instance, we can cite the *interdiction of preferential treatment* agreed by the EU toward the former African, Caribbean, and Pacific colonies²⁰⁸.

In short, the agreement would have changed the exercise of power in the world by submitting to multinational directives a lot of functions currently exercised by States, included the application of international treaties. It would have given the same right and status as national governments to apply its clauses before courts of their own choice, such as the court of arbitration of the International Trade Chamber. It seems clear that such courts will not be partials as the judges will obey to market's logic without any regard to labour or environmental parameters²⁰⁹.

2.3.4. Epilogue

In October 1998, a year after its disclosure to public in April 1997, the MAI was abandoned thanks to a few American officials within the negotiation process. Many NGOs and civil society organisations managed to its annulation with the withdrawal of the French government from OECD's negotiating table. By means of campaigns against the agreement, people realised that they were not submitted to national law voted by representative assemblies, but to commercial rules negotiated under the pressure of multinationals and arbitrated by a private justice²¹⁰.

²⁰⁷ JACOB Y., GUILLON S., « En finir avec la mondialisation déloyale ! », *Rapport au Ministères des Affaires Etrangères et Européennes, de l'Economie, des Finances et de l'Industrie*, January 2012, p. 10. URL : <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000168.pdf>

²⁰⁸ WALLACH M. L., op. cit., p. 27.

²⁰⁹ *Ibidem*.

²¹⁰ DE BRIE C., "Comment l'AMI fut mis en pieces", *Le Monde Diplomatique*, December 1998, p. 21.

3. What is the TTIP?

3.1. Introduction

In July 2013 started negotiations about the Transatlantic Trade and Investment Partnership (or TTIP) between the European Union and the United States. This agreement would have created the largest free-trade area ever made by covering 45,5% of world's GDP, 800 millions of consumers and representing almost a third of all international exchanges²¹¹.

The agreement's main concern is to eliminate every obstacle to the development of international exchanges and also to liberalise the European construction as it has been initiated by the Single European Act or by the Lisbon Treaty²¹². It aims thus mostly non tariff barriers such as health, environmental, or social standards that undermine commercial exchanges and investment. Besides the suppression of tariff and non tariff barriers the project also aims to the opening of public markets and the protection of intellectual property rights. These areas are each one covered by one of the sixteen sections of the negotiation mandate, that would transform in as much chapters if the treaty was realised²¹³. This treaty includes many chapter subject to controversy such as the *harmonization of production standards*, *special tribunals* that will rule on disputes between states and investors, or the principles of *ratchet* and *negative list* on which the process of liberalisation of services bases itself.

3.2. Why such a treaty?

According to the project's negotiators, the benefits of its realisation are multiple. For this reason, we can cite the economic growth, jobs creation, and a way to marginalise the increasing power of China and other emerging countries in world trade. The Council of the European Union, in its mandate granted to the European Commission in 2013, stipulates that: "The objective of the Agreement is to increase trade and investment between the EU and the US by realising the untapped potential of a truly transatlantic market place, generating new economic opportunities for the creation of jobs and growth through increased market access

²¹¹ NOUAHLAT L., « Le discret traité transatlanfric », *Libération*, 8 mai 2014, http://www.liberation.fr/terre/2014/05/08/le-discret-traitetransatlanfric_1013312

²¹² CHEVÈNEMENT J.-P., « Le Partenariat Transatlantique et l'avenir de la mondialisation », *Gallimard, Revue Le Débat*, 2014/1 (n°178), p.26.

²¹³ ZACHARIE A., VAN NUFFEL N., CERMAK M., « Traité Transatlantique (TTIP) : Cartographie d'un Partenariat Controversé », *NZ Maritime*, in Point Sud Les Etudes du CNCD-11.11.11, Juin 2015 (n°13), p. 3.

and greater regulatory compatibility and setting the path for global standards.”²¹⁴. In the same vein, many industrial lobbies, such as *Business Europe*, addressed a message to the European Commission which emphasized the gains of such a deal: “Trade is a key driver of jobs, growth and welfare. By promoting trade we contribute to improving living standards for people, and TTIP offers an unmatched opportunity for growth and development of golden standards.”²¹⁵. Other groups sustain that given the intensity of transatlantic trade flows (nearly two billion euro exchanges per day), and the fact that 80% of the European GDP comes from its exportations, it goes without saying that an opened economy such as the European one would benefit from the reinforcement of transatlantic relations at many levels like the exporting companies, the consumers and employment²¹⁶. Moreover, according to Cristiana Pace, an Italian negotiator responsible for the negotiation with the US, the latter represent 230 million people, in which 220 are in a good situation, they have about 50 000 GDP, and of which it is estimated that 37 000 is the purchasing power, still per persons, so it means that for Europe it is one of the best market right now so far. So the reasons why the negotiators, in general, want to make at zero the custom duties, over down tariff barriers, or non tariff barriers, is just going to increase the balance of trade between Europe and the US²¹⁷.

Another benefit, following Karel De Gucht, former European Commissioner for Trade, this Agreement is an opportunity to define standards that could be imposed afterward to emerging countries such as BRICS: “Perhaps the biggest value of an agreement will be in our relations with rest of the world. Why? Because the EU and the US are the world’s largest markets and the most influential regulators. Any common approach will double that influence. And it may shape regulation around the world, including in countries like Brazil, India, China and Russia, where today standards are typically much lower than in the US and the EU.”²¹⁸.

²¹⁴ Council of the European Union, « Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America », June 2013, published in October 2014, URL : <http://data.consilium.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

²¹⁵ Business Europe, « Together we will make TTIP happen », February 2015, URL : <http://www.busseurope.eu/Content/Default.asp?PageID=867#Blog-059>

²¹⁶ TIMMERMANS P., « Du rond-point Schuman à la Cinquième Avenue », February 2015, URL : <http://vbo-feb.be/fr-be/Newsletter/IMPACT-2015/FEB-IMPACT->

²¹⁷ Annexe, « Questions to Cristiana Pace (responsible for the US) and Laura Travaglini (responsible for Trade), 27th of June 2017, p. 5.

²¹⁸ DE GUCHT K., « The Transatlantic trade and Investment Partnership : Where do we stand on the Hottest Topics in the current debate ? », January 2014, URL : http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152075.pdf

3.3. Where comes the idea from?

It comes from two different lobbies, the first one *Transatlantic Policy Network* (hereafter TPN), was created in 1992 and gather elected representatives from Europe and the US as well as large companies from both sides of the Atlantic. The second one, *Trans-Atlantic Business Dialogue* (hereafter TABD), gather essentially European and American multinationals. The TPN published in 1994 a document named “Toward Transatlantic Partnership. A European Strategy”. This document recommends to the political decision-makers to develop a bilateral politic specific to the European Union in order to integrate markets and ease the investment across the Atlantic, on the basis of the concept of a *North Atlantic Free Trade Area*²¹⁹. Furthermore, the TPN specifies that the politics must include *regulatory cooperation*, the *mutual recognition of the approval of products and processes*, and the *treatment of the investments directs and foreign*. One can highlight that there are already all the ingredients of the TTIP.

Afterward, we could note at the Transatlantic Summit of 1995 in Madrid that the decision makers had adopted a *New Transatlantic Agenda* which engaged to develop a *New Transatlantic Market* aiming to suppress barriers that impede the flows of goods, services, and capitals between the US and Europe²²⁰. The process will be then developed by experts in the shadow until 2013 when the President Obama raised the idea of a transatlantic partnership in its discourse on the State of the Union, and has been immediately picked up by the president of the European Commission of that time, M. Barroso, whose mandate expired in May 2014, and the opening of a great transatlantic negotiation has been acted in June 2013 by the European Council²²¹.

²¹⁹ TPN, « Toward Transatlantic Partnership. A European Strategy, 1994, URL : http://www.tpnonline.org/WP/wp-content/uploads/2013/09/Toward_Transatlantic_Partnership_European_Strategy.pdf

²²⁰ Transatlantic Summit, « The New Transatlantic Agenda, 1995, URL : http://eeas.europa.eu/archives/docs/us/docs/new_transatlantic_agenda_en.pdf

²²¹ CHEVÈNEMENT J.-P., op. cit., p. 26.

3.4. What makes it so unpopular?

3.4.1. Broad picture

There are many reasons that make such a treaty unacceptable for the population. In a first time one can discuss the fact that the interests of multinational firms, which aim to unify standards on both sides of the Atlantic in order to develop on cheaper platforms such as Mexico, are not synchronized with the ones of States²²². Moreover, there are two paradoxes that are inherent to this first reason, the first one is based on the fact that the negotiations are launched while the European Union realised in 2012 a commercial surplus of 118 billion euro on the US which are seeing a future deal as a way to balance it by creating employments on their soil²²³. The second paradox concerns the benefits of the deal (0,5 growing points) which are clearly misjudged. Indeed, as we could see it with the Single Market project of 1987 which was supposed to create six million employments in the horizon 1992 and instead destroyed three to four million the same year²²⁴.

In a second time, we have to underline the fact that the negotiations are the target of an intense lobbying, we estimate the number of lobbyists in Brussels between 15 000 and 20 000²²⁵. Furthermore, the European Monitoring for Trade established that amongst the 560 meetings of the European Commission with interest groups before the launching of negotiations, 92% represented companies' private interests. And among the 25 lobby groups which had the most contacts with the Directorate General for Trade of the European Commission (hereafter DG Trade) while TTIP's preparations, not a single one was representing labour unions, consumer, or environmental organizations. What is really interesting to see is how these stakeholders, which are defending the treaty, say that it will be beneficial for the general interest, while they are essentially defending big multinationals' interests. Within the top 25 of these lobby groups we can find *Business Europe* (which represents the confederation of European businesses), the *European Services Forum* (which represents services companies such as Deutsche Bank, Ernst & Young, or Microsoft), *Food and Drink Europe* (representing among other things Nestlé, Coca-Cola, or Unilever), or the

²²² *Ibidem*.

²²³ *Ibidem*.

²²⁴ *Ibid.* p. 27.

²²⁵ Parlement européen, « Plein feu sur le lobbying en Europe », *Communiqué*, 2008, URL : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20080414FCS26495+0+DOCXML+V0//FR>

American Chamber of Commerce which represents every American industrial lobbies, considered as the most powerful lobby in the world²²⁶. They thus emphasize the positive impact of the TTIP on employment and especially on small and medium-sized firms, while organisations representing the latters are very suspicious about this treaty. We will tackle this concern more in details in this subsection.

In a third time, one should not forget the fact that the negotiations were led in secret by the different groups of interest which makes them opaque. As example we can cite a “Freedom of information request which Corporate Europe Observatory (hereafter CEO) sent in April 2013, to get an overview of the Commission’s contacts with industry, in the context of the preparation for the EU-US trade talks. The most recent documents arrived 14 months after the request was filed (while EU law requires a response within 15 working days). Many of the meeting reports that were released are heavily censored. The Commission has either “whitened” or “blackened” the parts it wants to keep from public scrutiny. In some cases, like a meeting with lobbyists from *Fertilizers Europe*, every single word has been removed from the document.”²²⁷. One can prove it with releases, as said before a long time after the requests were sent, that were heavily censored. Following *Corporate Europe*’s wording, “European Commissioner De Gucht in December 2013 in a letter published in *The Guardian* argued that “there is nothing secret about this EU trade deal” and that “our negotiations over the Transatlantic Trade and Investment Partnership are fully open to scrutiny”. This is blatantly untrue. Not only is the text of the EU’s negotiating position secret, the public is even denied access to sentences in meeting reports that refer to the EU negotiation position. This is especially problematic as these are minutes from meetings with industry lobbyists who were clearly given information about the EU’s negotiating position in the TTIP talks, unlike the public. Sharing information about the EU’s negotiating position with industry while refusing civil society access to that same information is unacceptable discrimination.”²²⁸. Abolishing this opacity “[...] would be a crucial step towards securing citizen’s right to know who influences the EU-US negotiations”²²⁹.

In a fourth time, one must not forget the Investor-State Dispute Settlement (hereafter ISDS) which raises multiple questions about states’ sovereignty. Although, its supporters advocate

²²⁶ Corporate Europe Observatory, « Who lobbies most on TTIP ? », July 2014, URL : <http://www.cairn.info/revue-le-debat-2014-1-page-26.htm>

²²⁷ *Ibid.* p. 1.

²²⁸ Corporate Europe Observatory, « What are you hiding ? The opacity of the EU-US trade talks », February 2014, URL : <https://corporateeurope.org/trade/2014/02/what-are-you-hiding-opacity-eu-us-trade-talks>

²²⁹ Corporate Europe Observatory, « Who lobbies most on TTIP ? », July 2014, URL : <http://www.cairn.info/revue-le-debat-2014-1-page-26.htm>

that this mechanism is essential in a context of globalisation²³⁰, it encounters a significant opposition in Europe, where many NGOs of civil society are criticising the agreement²³¹. The latter stress the fact that the deal will restrict states' normative power in setting up public policies. In other words, these arbitration tribunals may call into question some democratic decisions taken by states on the private law's domain. But we will not linger over this for the moment as an entire subsection will be dedicated to the mechanism.

Finally, we have to highlight that the US have always had some disagreements with the EU, for example linked to agriculture with the *Beef Hormone Dispute*²³², and as said before these issues are really touching the normal citizen. That is the reason why these concerns provoked a growing conscientiousness about the possible effects linked to the agreement, NGOs and all parts of the civil society had to react²³³.

We will therefore enter into further details in order to demonstrate all these concerns by using a study led by the National Centre of Development Cooperation in Belgium (Hereafter NCDC)²³⁴ permitted to highlight in a very accurate way the main chapters subjects on controversy of the TTIP. It provides useful numbers and statements given by many authors and institutions in order to allow us to have an objective view about the subject.

3.4.2. A diverging and unequal growth

The impact of TTIP on growth and employment in absolute terms is one thing, but the repartition of gains and losses between countries and sectors is something totally different. The problem is that, regardless of the studies consulted, the conclusions on the impact of TTIP are all the same: the gains will mainly go to the wealthiest countries, to the big rather than small firms, to the agribusiness rather than the local sector, which will continue to exacerbate internal divergences within the EU²³⁵. In the same vein, the agreement would generate *fusion and acquisition phenomenon*, which will at its turn operate restructuration in some key sectors with high added value. This will also play in favour of multinational firms at the expense of employees themselves. But the most striking consequence would be in regards

²³⁰ X., « An open letter about investor-State dispute settlement », April 2015, URL : <https://www.mcgill.ca/fortier-chair/isds-open-letter>

²³¹ We can however underline that campaigns of smaller scale exist in the US. For example : <http://www.tradeunionfreedom.co.uk/usa-ttip-trade-agreements-broad-coalition-reject-fast-track/>

²³² JOHNSON R., « The U.S.-EU Beef Hormone Dispute », *Congressional Research Service*, January 2015.

²³³ See Annex, « Questions to Cristiana Pace (responsible for the US) and Laura Travaglini (responsible for Trade) », 27th of June 2017, p. 3.

²³⁴ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 18.

²³⁵ *Ibid.*, p. 17.

to developing countries, as a significant part of their exports are towards the EU and US. Resulting in the loss of important market shares. Indeed, a study led by the European Parliament affirm that US and EU's trading partners would suffer an economic hindsight. Especially developing countries which are, for the most part, enjoying preferential access to the European and American markets, which would undergo a *preference erosion*. This would be a consequence of the facilitation of the transatlantic market²³⁶.

3.4.3. Impact of the agreement on SMEs

Since Fall 2014, the EU Commission adopted a new communication strategy, which directly concerns small and medium sized enterprises (SMEs), notably allowing them a specific chapter in currently under negotiation TTIP. The negotiating mandate is particularly evasive regarding that matter since it provides that "the agreement will include some provisions concerning the aspects linked to the small and medium sized enterprises business"²³⁷. The Commission also drafted a factsheet about the TTIP and the SMEs²³⁸. It explains that the SMEs have a lot to gain with TTIP because the abolition of trade barriers like custom duties and regulation differences is useful too for SMEs wishing to import or export goods. It also explains that the chapter dedicated to SMEs mainly provides access to an online helpdesk giving information about American taxes and regulations. Such helpdesk already exists in Europe. The only measure specifically dedicated to the SMEs planned by TTIP is actually a website. A British SMEs association representative recently underlined to the negotiators that it wasn't necessary to wait for the implementation of TTIP, which can still take a few years, to develop that kind of information tools²³⁹. More seriously tough, SMEs themselves don't seem to be particularly excited about TTIP. A survey shows that SMEs in Europe (specifically in Belgium, Germany, Poland and France) are quite sceptical and consider TTIP as a treaty that was asked by and will benefits to the big transnational companies. In France, 94% of the SMEs questioned think that the eventual benefits of TTIP will go to larger

²³⁶ BENDINI R., DE MICCO P., « The expected impact of the TTIP on EU Member State and selected third countries », *Directorate General for External Policies*, September 2014. URL : http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/536403/EXPO_IDA%282014%29536403_EN.pdf

²³⁷ Council of the European Union, "Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America", published in October 2014, URL: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL->

²³⁸ European Commission, "Small and medium sized enterprises (SMEs) in TTIP", January 2015, URL : <http://trade.ec.europa.eu/doclib/docs/2015/january/>

²³⁹ Intervention in July 2014 at the "Stakeholders event" organized by the European Commission during the 7th round of talks in Brussels.

companies²⁴⁰. The SMEs specialised website “SME Insider” suggests that, “The profits for SMEs, if only they exist, are insignificant. The risks are tremendous.”²⁴¹. The NGO “War on Want” executive director, John Hillary, explains that the current regulations have a general tendency to protect SMEs against larger companies and that TTIP, which aims to abolish the regulations, will only favour the concentration of the capital and the economical power within the big companies at the expense of smaller ones. A treaty that will allow a larger importation in Europe of American goods based on standards (working conditions and protection of the environment notably) less demanding and so less expensive will strongly affect SMEs. And more particularly SMEs with a business model focused on good quality products with high quality standards will suffer from a growing competition of less expensive products. Besides, if they want to adapt their production methods to lower standards, it will be more difficult for them to do so than larger companies that already delocalised most of their production abroad (or could easily do so). Moreover, according to the Movement for the Responsibility in Trade Agreements (MORE), SMEs providing components to neighbour larger companies would directly suffer from potential delocalisation to the US of the production units of these companies looking to benefit from a less expensive work force due to restricted access to social protection²⁴². Small enterprises that are focused on the local market are more particularly subject to fall under TTIP’s threat. In the United States, the “Buy American Act” gives a preference for the purchase of American products (which EU aims to abolish through TTIP). In Europe, numerous local authorities put in place some plans in order to boost local economy by giving priority to the local job providers in the public markets. Recently, British government committed to allow 25% of its public contracts to SMEs. According to the available information, these two provisions might become illegal under TTIP which rejects any “discrimination” between local and multinational enterprises and aims to open the public market to global competition²⁴³. Some SMEs, dedicated to exportation might see their activity facilitated by a custom duties drop and the harmonisation of the market entrance for some products; this is actually the Commission’s main communication line. It is important to underline that, following the Commission’s criteria, a SMEs is an enterprise comprising less than 250 employees while in Belgium, for example, SMEs comprise less than 50 employees

²⁴⁰ MILLER C., “TTIP and SMEs: a missed opportunity”, October 2014, URL: http://www.euractiv.com/sections/trade-industry/?type_filter=ttip-and-smes-missed-

²⁴¹ KENNEDY L., “The secret business plan that could spell the end for SMEs”, February 2015, URL: <http://www.smeinsider.com/2015/02/12/the-secret-business-plan-that-could-spell-the-end-for-smes/>

²⁴² ELSNER Richard, “The secret business plan that could spell the end for SMEs”, March 2015, URL: <https://moreforsmesthanttip.wordpress.com/2015/03/02/cinq-questions->

²⁴³ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 18.

(which represents 97% of all the Belgian companies of which only 1% export to the USA). On the whole, only 25% of the 20 millions of European SMEs export outside of their national border²⁴⁴. We can then conclude that the share of SMEs that will benefit from the TTIP is really small while all the SMEs can be hit by the growing competition from large transnational companies.

3.4.4. A downward regulated convergence

The duplication of mandatory products certification procedures, with different legal frameworks on the other side of the Atlantic Ocean, definitely comes to a price for transnational companies. When these different procedures aim to guarantee a similar protection level for the consumers, it might be a way to usefully harmonise and organise the regulations implementation procedures (following a transparent and democratic process). However, in many cases the consumers, environment, workers and public health protection requirements are different. In that situation, how can we guarantee that the harmonisation will not turn into a “levelling down”²⁴⁵. The EU Commission repeats, over and over, that there will not be any lowering of European standards. However, it is not reassuring enough when you know that it is not clearly written down in the negotiation mandate and while American negotiators and lobbies firmly and publically view as highly important, or even essential, really sensitive matters like GMOs, hormones treated beef²⁴⁶ or even the abolition of the *precautionary principle*²⁴⁷. According to Shaun Donnelly, former assistant to the Trade Representative in Europe and the United States: “The TTIP is worth negotiating only if it covers the regulatory aspect, and brings an end to the precautionary principle”²⁴⁸. Indeed, that kind of negotiations implies some compromises from the different parties involved. It is difficult to imagine that the harmonisation of the regulations concerning the use of chemical products in cosmetics (1328 are forbidden in Europe while only 11 in the US) could be done without a lowering of the European citizen’s protection level.

²⁴⁴ According to the North Atlantic Council quoted by ELSNER R., op. cit..

²⁴⁵ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 20.

²⁴⁶ See statements of VILSACK M. to the US agriculture secretary, supporting the inclusion of GMOs, chlorinated chicken and hormone treated beef within TTIP’s negotiations. URL : <https://corporateeurope.org/international-trade/2014/07/ttip-lose-lose-deal->

²⁴⁷ According to DONNELLY S., former member of the American administration for trade policies, now lobbyist for “International Business”: “It is worth concluding TTIP only if it covers the regulatory aspect, for example suppressing the precautionary principle”. URL: <https://corporateeurope.org/trade/2013/12/regulation-none-our-business>

²⁴⁸ Corporate Europe Observatory, “Regulation – None our business ? », 16 December 2013.

3.4.5. Regulatory cooperation

This chapter of the TTIP deserves a special attention because it is the key to the downward regulated convergence. Indeed, to remember that the commitments taken for that kind of treaty are restrictive and can be submitted to a dispute settlement body for the signatory States. That body can impose sanctions if the requirements are not met. For now, the degree to which the regulation requirements could lead to such proceedings is uncertain, but it is important to stress that these requirements are restrictive even if they are sometimes expressed openly. The chapter encourages the Treaty's parties to share information, including some "non-public information linked to examined regulatory initiatives, the more upstream possible", while being ready to "explain themselves in case they refuse to start a regulatory cooperation procedure". Parties are also encouraged to consult private entities, referring notably to NGOs or companies, even if the agreement does not guarantee any transparency or parity between the different types of entities consulted²⁴⁹. Actually, the risk is the creation of more opportunities for the business lobbyists in order to have an influence, in closed hearing, on legislation that sometimes protect private interests without any consideration for the common interest. Parties have to provide an easy access and a "decent" period of time for the "stakeholders" to give their opinion. Knowing that during TTIP's negotiation groundwork process, the "stakeholders" the Commission was consulting were actually almost only companies' interests representatives and knowing the disproportionality of human and financial resources between the lobbyists that represent private market sectors' interests (They have way more resources to analyse the numerous regulation plans and prepare opinions) and those defending the common interest²⁵⁰, one way or another; we understand why Monique Goyens, director of the European Consumer Organisation (hereafter BEUC) defined these mechanisms as "unrealistic institutionalisation of lobbying"²⁵¹. And this is not surprising when you know that, since 2012, the two biggest transatlantic lobbies started to consider the regulatory cooperation as a mean to essentially "co-write the regulations"²⁵².

²⁴⁹ See the Chapter « Regulatory cooperation »

²⁵⁰ For the only financial industry, private interests have 30 times more means dedicated to lobbying than organizations defending common interest, according to Corporate Europe Observatory, AK and OGB, "The fire Power of the Financial Lobby", 2014, URL: https://corporateeurope.org/sites/default/files/attachments/financial_lobby_report.pdf

²⁵¹ GOYENS M., "Regulatory cooperation: perhaps boring, but the TTIP storm on the horizon", *BEUC*, February 2015, URL: <http://www.beuc.eu/blog/regulators-and-consumer-organisations-less-me-and-more-we/>

²⁵² Corporate Europe Observatory, "TAFTA: Les réglementations verrouillées", February 2015, URL : <http://corporateeurope.org/fr/international-trade/2015/02/tafta-les-r-glementations-verrouill-es>

3.4.6. Services liberalisation: Negative lists and Ratchet effect

Services represent more than 65% of developed countries' economic activity²⁵³. A chapter of the TTIP will be dedicated to the services liberalisation that could include the opening of public services like health, education or water to private firms. The US government declared to be willing to use TTIP in order to open the European services market to American companies and particularly "settle the problem of the attributed monopolies" in the field of public services²⁵⁴. The Belgian mutual insurance companies expressed their fear that "including the medical insurance in the TTIP would facilitate the system privatisation and a two-tier system"²⁵⁵. A WHO report also warns against the segmentation and fragmentation of health systems, which are the result of some trade goals centred reforms²⁵⁶. Moreover, the chapter related to intellectual property rights might grant longer medicine patent to the pharmaceutical companies and that would slow down generic medicine production and weight in on health expenditure. Our social security system is clearly targeted and under attack²⁵⁷. The EU Commission maintains that public services are protected, since an exclusion of the services «linked to governmental authority» -as defined in the WTO's General Agreement on Trade in Services (GATS)²⁵⁸- is provided. However, the Commission itself already admitted that this clause does not efficiently protect public services because of the way they are defined; in 1994, that actually made the Commission add other provisions in order to actually protect public services in its draft for GATS. Since then, the Commission changed its mind and is clearly willing to include as much services as possible, including public or common interest services, in trade agreements, putting aside only services linked to sovereign functions as justice, border control or air traffic control²⁵⁹. TTIP and CETA are treaty drafts that go really deep in the field of services liberalisation in the European trade

²⁵³ World Bank, "Growth of the Service Sector", URL: http://www.worldbank.org/depweb/beyond/beyondco/beg_09.pdf

²⁵⁴ Letter from MARANTIS D., US trade representative, to BOEHNER J., Speaker of the House of Representatives.

²⁵⁵ Mutualités Belges, "Le TTIP, un cheval de Troie pour des soins de santé de qualité accessibles à tous?", February 2015, URL: http://www.mloz.be/files/positioncinnicttipfinal_fr20150202.pdf

²⁵⁶ World Health Organization, "Commission on Social Determinants of Health – Final Report", 2008, URL: http://www.who.int/social_determinants/the-commission/finalreport/en/

²⁵⁷ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 28.

²⁵⁸ See TTIP's negotiation mandate from the Council of the European Union, "Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America", published in October 2014, URL: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

²⁵⁹ European Commission, "Commission Proposal for the Modernisation of the treatment of Public Services in EU Trade Agreements", Brussels, published in October 2014, URL: http://www.epsu.org/IMG/pdf/154b-11_EC_paper_on_public_services.pdf

policy history that their actual impact on public services is so really difficult to anticipate. The European Union's proposals on the liberalisation of services as part of TTIP were leaked in June 2014. They confirmed that health and medical services, social services, education (at all level), postal services, financial services, telecommunications, transport, energy, water, cultural and environmental services were on the negotiating table and subject to EU proposals which would give U.S. companies access to such services activities within European States. As it stands, the only sector to be clearly omitted is the audio-visual services due to pressure from Belgian and French governments that threatened to veto the launch of TTIP negotiations²⁶⁰. On that matter, it is to be said that the U.S. government was "working aggressively" in the interest of film and TV industry for the audio-visual services to be included as part of the deal²⁶¹. Actually, the European Commission itself said it did not consider the audio-visual services to be definitively ruled out and that it might try to reintroduce the sector at a later stage²⁶². Moreover, in TTIP, a "ratchet clause" was laid down, meaning that there can be no step backwards once a sector has been liberalised, unless the entire agreement is terminated, which has never happened. A European Commission negotiator admitted in that regard that it would be very difficult for a country to retract on such commitments, citing as an example Ukraine and Bolivia, both negotiating GATS terms with all 160 WTO Members to regain more leverage over healthcare services. This mechanism implies that any opening would be "locked in", with no possible roll-back in the future²⁶³. It would be unnecessary to go into further details within the frame of this thesis, we will therefore conclude this point by saying that the liberalisation of financial services requires particular care because it could lead to deregulation that might dilute the impact of some measures undertaken in the aftermath of the 2008 financial crisis. While many are calling for urgent additional reforms to protect themselves against new financial crisis²⁶⁴, and as US financial regulations such as the Dodd-Frank Act are perceived as more efficient than EU regulations in that matter, the Commission urges for financial services liberalisation to be included in TTIP. This agenda is also wanted by the City of London and EU and US banking

²⁶⁰ European Commission, "TTIP: 1. Draft services/investment offer; 2. US State level measures", 26th of May, URL: <http://data.awp.is/filtrala/2014/06/13/4.html>

²⁶¹ FROMAN M., American Representative for Trade, "Written reply to the Ways and Means Committee of the Congress about President's trade policy", 18th of July 2013, URL: <https://www.geminishippers.com/documents/threads/UST20130628.pdf>

²⁶² European Commission, "Member States endorse EU-US trade and investment negotiations, 14th of June 2013; Le Monde, "M. Barroso, vous n'êtes ni loyal ni respectueux !", 18th of June 2013.

²⁶³ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 30.

²⁶⁴ PLASSART P., « Vous avez aimé la crise financière de 2008, vous allez adorer la prochaine », April 2015, URL : <https://www.lenouveleconomiste.fr/vous-avez-aime-la-crise-financiere-de-2008-vous-allez-adorer-la-prochaine-26731/>

sector. The US government already agreed on relaxing rules on US financial services market access, including removal of capital controls²⁶⁵.

3.4.7. The Investor-State Dispute Settlement (ISDS)

Moreover, one must not forget the ISDS which raises multiple questions about States' sovereignty. Although, its supporters advocate that this mechanism is essential in a context of globalisation²⁶⁶, it encounters a significant opposition in Europe, where many NGOs of civil society are criticising the Agreement²⁶⁷. The latter stresses the fact that the deal will restrict states' normative power in setting up public policies. In other words, these arbitration tribunals may call into question some democratic decisions taken by states on the private law's domain.

a) How the ISDS mechanism works

The ISDS clause enables a private investor to contest, before an arbitral court, a public measure of general interest if it affects the investor's expected profits, without having to bring the case before the national courts. In principle, a panel of three lawyers is in charge of that type of dispute. The investor chooses an arbitrator, the state another one and the third one is chosen by the parties' mutual agreement. In the case they cannot agree, a third body is in charge of choosing the other arbitrator²⁶⁸.

The ISDS clause is introduced on the grounds that foreign investors do not always benefit from the same legal protection as domestic investors,²⁶⁹ as well as the lengthy national procedures²⁷⁰. There is also the argument that the absence of harmonisation and standardisation of the judicial system between the United States and the European Union

²⁶⁵ VANDER STICHELE Myriam, "TTIP Negotiations and Financial Services: Issues and Problems for Financial Services Regulation", *SOMO*, October 2013.

²⁶⁶ X., « An open letter about investor-State dispute settlement », April 2015, URL : <https://www.mcgill.ca/fortier-chair/isds-open-letter>

²⁶⁷ We can however underline that campaigns of smaller scale exist in the US. For example : <http://www.tradeunionfreedom.co.uk/usa-ttip-trade-agreements-broad-coalition-reject-fast-track/>

²⁶⁸ ZACHARIE A., VAN NUFFEL N., CERMAK M., op.cit., p. 23.

²⁶⁹ ZAÏT M., « Une réforme du mécanisme de règlement des différends investisseurs-États (ISDS) prévu par le partenariat transatlantique de commerce et d'investissement est-elle en mesure d'empêcher la limitation de la liberté des États à légiférer? », Thesis, Université libre de Bruxelles, 2016 p. 16; QUICK R., « Why TTIP should have and Investment Chapter Including ISDS », *Journal of World Trade*, 49, 2015, p. 204

²⁷⁰ VINCENT P., « Le Comprehensive Economic Trade Agreement (CETA) », *Tijdschrift voor internationale handel en transportrecht*, 16/4, Université de Liège, 31st of January 2017, p. 511.

pleads in favour of the arbitration mechanism, which enables to avoid having to juggle the systems of different States²⁷¹.

In the words of W. Ben Hamida, the state-investor arbitration is qualified as « transnational unilateral arbitration ». First, it is transnational as it opposes States to foreign private persons. Second, it is unilateral since it is solely the investor that can take an action before the arbitral body, which means that the State is always the defendant. And finally, we speak of arbitration because the procedure is consensual and based on the parties' approval²⁷².

Such arbitral decisions, which contributed substantially to the reinforcement of international investment law and to the investors' confidence, are final and binding²⁷³. Hence, there is no appeal procedure. As an example, these type of clauses pre-existing in other agreements already enabled transnational firms to challenge the rising minimum wage in Egypt. The nuclear phase-out or the protection of the rivers in Germany, as well as the health warnings on the cigarette packages in Australia and in Uruguay. Those are all current arbitrations but 300 were already concluded : Slovakia paid 29 million euros for having limited the effects of the privatisation in the public health insurance²⁷⁴, Canada 13 million for having prohibited a fuel additive to protect the health of its citizens²⁷⁵, Mexico 15 million for not having granted a mining concession which would threaten to contaminate rivers and soils and, Argentina 400 million in compensation to the Suez firm because the country was controlling the water prices in a context of important economic and social crisis²⁷⁶.

b) Criticisms concerning the ISDS mechanism

In the past, the initiators of that type of clause justified their implementation by their concern about a potential discriminatory treatment of the foreign investors in countries where courts were unpredictable, as it was the case of the first treaty of it's kind between Germany and Pakistan in 1959. However, how can we justify the existence of such mechanisms between democratic and stable countries that have more or less effective judicial systems?

²⁷¹ DONY M., « Les négociations autour du « TTIP »: vers une réforme du mécanisme de règlement des différends entre investisseurs et États et une « privatisation » de la Justice ? », *Justice en Ligne*, 2016, URL: <http://www.justice-en-ligne.be/article805.html>

²⁷² BEN HAMIDA W., « L'arbitrage transnational unilatéral - Réflexions sur une procédure réservée à l'initiative d'une personne privée contre une personne publique », Thesis, Panthéon-Assas University (Paris II), 2003.

²⁷³ CREMADES B., CAIRNS D., « The Brave New World of Global Arbitration », *Journal of World Investment*, 2002, p. 173.

²⁷⁴ FRANC-MENGET L., « ACHMEA II – Seizing Arbitral Tribunals to Prevent Likely Future Expropriations: Is it an Option ? », *Kluwer Arbitration Blog*, 28th of March 2013.

²⁷⁵ MISONNE D., « Payer ou renoncer ? Les investisseurs à l'assaut de la protection de l'environnement », *FUSL*, Bruxelles, 2015.

²⁷⁶ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit, p. 24

Although there are currently more than 3000 bilateral treaties of that kind²⁷⁷ - this being one of the big arguments of the Commission and the pro-ISDS lobbies to justify the ISDS provision in the TTIP - a lot of countries that were engaged in such agreements decided to withdraw from them, which shows that they are obviously not beneficial to public activity. These countries include for example South Africa, Ecuador, Bolivia, Venezuela²⁷⁸. On top of that, Brazil, for instance, has never engaged in an agreement containing such a clause although this country was, in 2013, ranked the fifth world destination in terms of investments²⁷⁹. The example of Australia is also salient, whose government assured that no investor-state arbitration clause would be included in free-trade agreements involving Australia²⁸⁰.

In the context of the present thesis, one of the major criticisms lies in the fact that the ISDS is responsible, among other things, for the limitation of the States' normative power as part of its legitimate implementation of public policies²⁸¹. Since the *raison d'être* of an investment treaty is to promote investment and ensure foreign investors a certain degree of legal certainty, these agreements involve the limitation of the legislative leeway of the host States, or more precisely, avoid the fact that regulations jeopardise the investors' guaranteed rights²⁸². Indeed, the threat that investors engage in such procedures involves the reluctance of the States to take measures of public interest, in the name of democracy²⁸³.

In fact, most contentious cases result in an amicable settlement with a compensation or a sanction at the expense of the State²⁸⁴. Furthermore, as there is no standardized regime that governs the Investor-State relations at a global scale, the rules are incorporated in more than 3000 bilateral agreements whose terms in matters of investment protection are generally vague and open to interpretation, thus giving extreme power to the arbitration courts; instead of applying pre-existing rules, they create new ones through the jurisprudence that was

²⁷⁷ UNCTAD, World Investment Report 2014, « Investing in the SDGs: An Action Plan », United Nations, 2014, p. 115.

²⁷⁸ ZAÏT M., op. cit. p. 21: M. Zaït cites, in his thesis, several examples of different countries withdrawing from investment agreements containing an arbitral clause.

²⁷⁹ UNCTAD, World Investment Report 2014, Overview, Geneva, 2014, p. 4. URL: http://unctad.org/fr/PublicationsLibrary/wir2014_overview_fr.pdf

²⁸⁰ NOTTAGE L., « Investor-State Arbitration: Not in the Australia-Japan Free Trade Agreement, and not ever for Australia? », *Journal of Japanese Law*, Vol. 19 n° 38, 2014, p. 39.

²⁸¹ Commission, « Online public consultation on investment protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP) », Brussels, January 2015, URL: http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf

²⁸² HORCHANI F., « Le droit international des investissements à l'heure de la mondialisation », *Journal du droit international*, 2004, p. 412.

²⁸³ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 25; DONY M., « Les négociations autour du « TTIP »: vers une réforme du mécanisme de règlement des différends entre investisseurs et États et une « privatisation » de la Justice ? », *Justice en Ligne*, 2016, URL: <http://www.justice-en-ligne.be/article805.html>

²⁸⁴ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit.; UNCTAD, op. cit.

generated by their own decisions. However, these decisions jeopardise the protection of the investments in public policies that aim to protect the environment, social rights, health or human rights²⁸⁵.

Although the State may win, the costs of the proceedings are extremely high, as seen in the case of the Philippines who paid more than 50 million dollars for a procedure which, eventually, did not bring any charge against the State²⁸⁶.

In short, the ISDS mechanism is accused of putting private interests over the public interest so as to promote a society model where the rights of the capital are prioritised over the democratic and human rights²⁸⁷.

The ISDS mechanism was so much criticised that the Commission organised a public consultation about an improved version - which consists of the final and actual version of the CETA. However, although 97% of 150 000 participants expressed their disagreement with the existence of such a clause, regardless of its formulation, the Commission kept the mechanism unchanged in the CETA which has been ratified as such²⁸⁸.

c) About the CETA, its Investment Disputes Resolution section and its partial responses to the criticisms mentioned above

The EU and Canada have chosen to strengthen their commercial relations through a bilateral trade agreement called Comprehensive Economic Trade Agreement (CETA), of which one chapter addresses the establishment of a free trade area between the parties²⁸⁹.

Normally, the CETA, much like the most common agreements that protect investments, should have included the use of arbitration as a remedy. However, due to civil-society pressure, the Commission opted for a rather innovative arbitration system, which has been transposed as such in the TTIP proposition as well. In the context of the present thesis, five major changes must be mentioned here:

- The Commission went for the implementation of a permanent Arbitral Court (art. 8.27) and suppressed the possibility for the private investor to elect one of the arbiters/judges²⁹⁰

²⁸⁵ ZACHARIE A., VAN NUFFEL N., CERMAK M, op. cit, p. 24.

²⁸⁶ House of Representatives, Philippines, *Committee Daily Bulletin*, Vol. I No. 89, mars 2011, <http://www.congress.gov.ph/download/commdaily/CDB%20Vol%201%20No.%2089%20%2803.15.11%29.pdf>; ZACHARIE A., VAN NUFFEL N., CERMAK M, op. cit., p. 25.

²⁸⁷ Joint Written Statement by CETIM and AAJ, Human Rights Sub-Commission, Geneva, 2004, URL: http://www.cetim.ch/en/interventions_details.php?iid=216

²⁸⁸ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 23.

²⁸⁹ VINCENT P., op. cit., p. 498.

- Before referring to that court, the Agreement favours a non-jurisdictional dispute settlement: via consultations (art 8.19) or mediation (art. 8.20)
- It also establishes a Court of Appeal about which details are unfortunately lacking (art. 8.28), as it was added as a last-minute change²⁹¹
- The State can only be charged for a compensation amounting the loss suffered by the investor, and not more than that (art. 8.39)
- Application of the "loser pays" principle (art. 8.39).

d) Prospects for improvement

Yet, this system is not considered as satisfying by a part of the public opinion. For instance, this system is still consolidating a mechanism which gravitates above the law and contains rules that are oriented towards investors' own interests and not towards society²⁹².

Concerning the permanent Court, Professor Van Harten, who is a specialist in ISDS, thinks that this new judicial body, such as established in the CETA and in the TTIP proposition, is only acceptable if three conditions are met:

- Replace the ISDS system which would have to be repealed while establishing a real international public law system integrating, on the one hand, investment law and, on the other hand, human rights and environmental and economic issues²⁹³
- Suppress the monopoly of complaint which benefits to the investors until now, which implies establishing obligations that have to be respected by them, there where States cannot make complaints against them), and
- Only representing a complement to the national courts, only accessible after having exhausted domestic remedies²⁹⁴ which would put the investors and the citizens on an equal footing²⁹⁵.

²⁹⁰ Article 8.27 states that « five of the Members of the Tribunal shall be nationals of a Member State of the European Union, five shall be nationals of Canada and five shall be nationals of third countries » and that « the President of the Tribunal shall appoint the Members of the Tribunal composing the division of the Tribunal hearing the case on a rotation basis »

²⁹¹ VINCENT P., op. cit., p. 510-511.

²⁹² VIALE F., LAGAILLARDE M., « Traité transatlantique : un système d'arbitrage toujours aussi 'anti-démocratique' » *Le Monde*, 22nd October 2015, URL : http://www.lemonde.fr/idees/article/2015/10/22/traite-transatlantique-un-systeme-d-arbitrage-toujours-aussi-anti-democratique_4795136_3232.html#EldwR6HdG84cheBG.99

²⁹³ X., « Mécanisme de règlement des différends entre investisseurs et États (RDIE) La proposition de la Commission Européenne pour le TAFTA/TTIP ne comble pas les failles du dispositif », Stop TAFTA Collective, 2016, URL : <https://www.asso-sherpa.org/wp-content/uploads/2016/01/ISDS-ICS-Doc-de-position-VF-210116.pdf>

Then, the fact that an appeal procedure was introduced in the CETA seems only to give the illusion of an improvement : even though an appeal procedure exists, the fact that they will be circumventing the national judicial review remains²⁹⁶. Ben Hamida rightly adds another improvement that could be considered, namely the possibility for the States to make a *counterclaim*, which would aim to challenge the private investors' behaviour in terms of national and international standards²⁹⁷. Ultimately, we agree with M. Zaït in his thesis and with the proposition of the Commission to proceed step by step in reforming the actual system which won't have the consequence of crystallising the *statu quo*.

3.5. What are the answers to these preoccupations?

Within the framework of this thesis, we interviewed two of the negotiators of the TTIP in Italy, Laura Travaglini, who is responsible for trade policy, and Cristiana Pace responsible for US. They were member of the main body representing private enterprises in Italy, Confindustria. The body is more than 100 years' old which give it a very special relation with trade policy within the Internationalisation Department. Each company is a member of an association and the association will negotiate directly with Confindustria. In total the organisation has more than 220 associations which represents more than 150 000 enterprises. According to the negotiators, companies associated operate in all sectors and are of all sizes, from small, medium to large companies. But they emphasized the fact that the backbone of Italian industry is made of small companies. They were thus directly concerned with the progress of the project, and we had the pleasure to ask them some questions about the preoccupations generated by public opinion about the TTIP²⁹⁸.

In their mind, the fact that this treaty was debated so harshly resulted from two main reasons. The first one concern the *scope of application of the agreement which was too broad*, it was touching from environmental issues, to issues related to the security of the consumer. So it

²⁹⁴ ZACHARIE A., VAN NUFFEL N., CERMAK M, op. cit, p. 26-27; VAN HARTEN G., Press conference, 3rd March 2015, Residence Palace Press Center

²⁹⁵ REINER C., SCHREUER C., « Human Rights and International Investment Arbitration», in DUPUY P., M. & al., « Human Rights in International Investment Law and Arbitration », *Oxford University Press*, 2008, p. 82-96

²⁹⁶ VINCENT P., op. cit., p. 512-513

²⁹⁷ BEN HAMIDA W., « L'arbitrage Etat-investisseur cherche son équilibre perdu : Dans quelle mesure l'Etat peut introduire des demandes reconventionnelles contre l'investisseur privé ? », *International Law FORUM*, Vol. 7, No. 4, 2005, p. 262

²⁹⁸ *Ibid.* p. 2.

was not only an economic agreement which had for consequence to generate interest from civil society. The second reason was about *transparency*. According to them, on the one hand it is totally normal to be suspicious when something that big is going on and nothing is made public. A dialogue between civil society and the institutions was thus a necessary solution in order to calm down the movements against the treaty. But on the other hand, there is the negotiation process which by its nature imposes that at some delicate stages we cannot disclose everything because otherwise the negotiations will stop. They continue their reasoning by sustaining that it is normal to keep, for strategic purposes, some elements secret from the public. A balance between transparency and the need of privacy inherent to the negotiation process²⁹⁹.

Now, regarding the decision-making process's issue one of the biggest fear of civil society is to see state's normative power impeded by some private tribunals. Ms. Travaglini defended the idea that in each treaty it is expressly said that all the issues of competence of national level will stay so. For example, with services, which is another big chapter, it will implicate only enterprises that have an economic impact, all the services like security, safety, health, education, or transport, will remain under the power of the state. So in their opinion there is a very special attention on this because it is one of the most delicate point of the agreement³⁰⁰.

4. Lobbying

4.1. What is a lobby?

According to the Oxford Dictionary of English, a lobby can be understood as “a group of people seeking to influence a legislator”³⁰¹. This definition, although being very incomplete, gives us two relevant information about lobbies: the *influence process* and the *interests at stake*. Of course, it is very important to dissociate different types of lobbies, namely, pressure groups, interest organisations, interest groups, or organised groups, but as a matter of clarity we will use all these terms under the umbrella of the term *lobby*.

Then, in a broader sense lobbies can be understood as “a gathering of people that are interested in a precise outcome to be cast in a precise environment, therefore they work in

²⁹⁹ *Ibidem*.

³⁰⁰ *Ibid.* p. 6.

³⁰¹ Oxford Dictionary of English, *Oxford University press*, Third Edition, 2009.

order or make that outcome (may that be a legislation, a setting of the agenda or any other legislator-related mechanism) swing towards their interests.”³⁰². Furthermore, we can distinguish different types of lobbies, that could be classified following their methods of actions and fields of interest: “private lobbies (such as private firms or companies or from the civil society) to national ministers, national agencies and local governments which go under the so called public lobbies.”³⁰³. We can also notice that they have different sizes which significate that they can influence the final decision in different ways. Indeed, some lobbies can be so important that they have many ramifications in the internal bureaucracy which give them much more weight in the balance during the negotiations.

As a matter of example we can take NGOs to show the different manners lobbies are acting. According to R. Van Schendelen, lobbies can affect many different legislative areas, “and even if they share (more or less) the same basic values, they come into different shapes and forms: we have those who cover hybrid organisation, called quasi-NGOs (or QUANGO), or those that are governments organised (called GONGO), which are enjoying a mix of public and private agencies in different fields of interests. We also have the BONHO, or Business Organised NGOs, which are the exact opposite of the previous type. To be observed with the same critical eye are the government-interested NGOs, also know as GINGO, which can transform into Business-interested NGOs, or BINGO, by selling particular products and services. Of course there are also many other types of lobbies, such as national ministers and national agencies, who work in different environments but which share the same (or very similar) set of interests to each other, or private firms such as Microsoft and Bayer which pursue their interests in a even different way.”³⁰⁴.

As we could see it, lobbies act under many different purposes, but in the framework of this thesis we will analyse in details how their economic expert assessments can affect the political decision within the EU. Effectively, lobbies are playing an important role in the political integration of the EU by bringing together different actors in order to harmonize fields such as domestic taxation rules, or technical standards³⁰⁵. We can note these fields coincide precisely with one of the most controversial subject of the TTIP, namely the one about *harmonization of standards* (also called *regulatory cooperation*).

³⁰² ALFONSO N., « Lobbies inside the European institutions : an obscure relation at the heart of Europe », *LUISS University Department of Political Science* (Master Thesis), 2016, p. 7.

³⁰³ *Ibidem*.

³⁰⁴ *Ibid.* p. 8.

³⁰⁵ VAN SCHENDELEN R., “Machiavelli in Brussels. The art of lobbying the EU”, *Amsterdam University Press*, 2010, p. 44.

4.2. How do they work?

After this small introduction we are able to say that a lobby's role is to put pressure on the legislator, by any means available, in order to acquire a specific outcome. But the point of this subsection is to know how they do it, with which instrument do they reach their objectives. Van Schendelen developed four main instruments going from the most aggressive to the least one: coercion, encapsulation, advocacy and argumentation³⁰⁶.

Regarding the first mean, the most aggressive one, we can dissociate different ways depending on the nature of the actor: "A national ministry can coerce its home environment by issuing legislation that is ultimately maintained by police, court and jail systems. It can also try to do so through the EU Council of Ministers/ Private pressure groups have to play a less formal game. NGOs may set up a blockade or a hate campaign, as Greenpeace did against Shell in the 1995 Brent Spar affair. A company can threaten to move production in another country. The EU itself is ultimately based on coercive legislation."³⁰⁷.

The second tool is called *encapsulation* and consists in taking control of a major stakeholders by granting them regular funds or by nominating their leaders, in some cases both can happen which has for consequence to submit the stakeholder to the dependence of a ministry, for example. Another way, subtler, is to establish procedures of decision making. Additionally, a group of citizen can also be made dependent toward its government through yearly funding. In the same vein, a company or NGO can use part of its budget to make others dependent on them³⁰⁸.

The third method is called *advocacy* which is, according to Alfonso "the most democratic and less obscure of all four. Advocacy has three variants, ranging from informal to formal. The most informal one is *propaganda*; in this case a lobby uses the medias in every form to foster their idea and gather recognition from the population, which plays a great role in putting pressure over the legislation itself."³⁰⁹. Petrova continues by saying that this method can give completely reverse results and is therefore not an exact science. It has a great impact in specific areas such as health, education and environment³¹⁰.

Finally, we have the method of *argumentation* which has for purpose to hide self-interest behind an intellectual reasoning based on logical and proved theories and empirically credible

³⁰⁶ *Ibidem*.

³⁰⁷ *Ibidem*.

³⁰⁸ *Ibidem*.

³⁰⁹ ALFONSO N., op. cit., p. 11.

³¹⁰ PETROVA M., "Mass Media and Special Interest Groups", *Journal of Economic Behaviour and Organization*, vol. 84, 2012, pp. 17-38.

references. It has also to be said that its impact will depend heavily on the credibility of the actor that will use it. As a matter of clarity, Van Schendelen gives us the following example: “In the Brent Spar case, neither Shell nor Greenpeace had a credible position, Shell because it neglected the logical alternative of dismantling the platform and Greenpeace because it provided incorrect data about the degree of pollution.”³¹¹. He completes by saying that “Argumentation is frequently used in four situations: when important stakeholders are still wavering (they might be won over); when an issue is in an early phase (many have not yet taken position); when an issue gets publicity (the audience wants argumentation); and when it need an upgrade (to present it as a more general interest). In all these cases the argumentation comes close to salesman’s talk.”³¹².

These techniques might of course be used all in once, and, as we suggested it before, should hide the self-interest of the lobby behind if it wants to be successful. We can legitimately question the fact that if the lobby has to hide its self-interest, is the latter really beneficial for common interest? The answer is obvious.

4.3. To what extend are lobbies involved in the EU’s decision-making process?

In order to answer to that question we need to know how the Commission and the Parliament are including lobbies in their discussions. Both are “performing their democratic duty of law-making”³¹³, which makes the perfect environment for lobbies’ action. Regarding the Commission, lobbies are enrolled as experts that will help in elaborating draft bill by applying their, most of the time, economic knowledge to the situation. For the Parliament, however, the process will be subtler and will consist in approaching a member of the Parliament, or an entire group if the lobby is powerful enough, through a delegate³¹⁴.

4.3.1. The relation between accredited interest groups and the Commission

The Commission being the executive body of the EU, it has thus its own body of government. The commissioners could be seen as ministers, each one being responsible for a different Directorate-General (hereafter DG) in accordance with different policy fields. An important fact to know about the Commission is its exceptionally small size, the average size of a policy

³¹¹ Van Schendelen R., op. cit., p. 45.

³¹² *Ibidem*.

³¹³ ALFONSO N., op. cit., p. 16.

³¹⁴ SCHUTZE R., « European Union Law », *Cambridge University Press*, 2005, pp. 34-56.

unit is about twenty persons, it needs therefore to delegate to other bodies to avoid a work overload³¹⁵. This is precisely where lobbies enter into action; they will be at the origin of many bills and that by using two different methods. The first one consists in the *outsourcing of work* to “national governments (for parts of implementation and inspection) and private consultancies (mainly for research and management).”³¹⁶. The second method is called *insourcing* and aims to bring in “people from the outside, such as: temporary personnel, employed for all sorts of expert work; national civil servants on secondment; and representatives from lobby groups getting an open door for their provision of sectorial information and support and being invited to take place in committees.”³¹⁷. These small groups bear the name of *expert committees* and, according to Alfonso, their role vary: “they look in to a specific issue defining what is the problem, determine which can be the solutions to an issue or even draft proposals, depending on the task assigned. Here, the selection for candidates is open, normally regulated by a *call for interest* which gives virtual access to every lobby who can or want to have a say in a matter of their interest; but some members of such committees are selected directly by the member states, as officially they have to be represented directly. [...] What is interesting is that no rules declare who the member states should send to be part of these committees and act on their behalf. This procedure of committees is very intriguing, as it can lead to groups of people where private and national lobbies are overrepresented and might clash with another committees, mainly because of the presence of an opposite force on the other side.”³¹⁸. As an example, we can cite the preparation of the Tobacco Directive of 2001 during which the pharmaceutical lobby was so powerful that it did not face any resistance³¹⁹.

Regarding all these features, one can affirm that lobbies are full member of the decision-making process, as they are present at every step of legislative creation. Unfortunately, in most of the cases they do not represent anything but their own interest.

³¹⁵ VAN SCHENDELEN R., op. cit., p. 72.

³¹⁶ *Ibid.* p. 73.

³¹⁷ *Ibidem.*

³¹⁸ ALFONSO N., op. cit., p. 18.

³¹⁹ DUINA F., KURZER P., « Smoke in your eyes », *Journal of European Public Policy*, vol. 11/1, 2004, p. 57-77.

4.3.2. The relation between unaccredited interest groups and the Parliament

In the Parliament, there are only informal advisors who are trying to influence a central protagonist: the *rapporteur*. His role is to redact and propose texts in front of the parliamentary assembly. Lobbies are thus here only talking with a representative in the external area which makes the functioning much more uncertain and hard to justify. Effectively, they will exercise a certain pressure on that person in order to get their voice heard by him, which makes lobbies free like a butterfly and highly unofficial³²⁰. Aside from the *rapporteur*, one can refer ourselves to the small introduction, regarding the MEPs and European Political Parties.

4.4. Major criticism

Lobbying has suffered much criticism by public opinion. Indeed, these past 40 years have been witness to many normative concerns that led to a more suspicious view of European lobbying. As a matter of fact, Van Schendelen demonstrated this problem by means of the next extract: “A special occasion of criticism was the aforementioned 1992 EP hearings on lobbying, where the negative side of the debating forum had three major accusations. Firstly, that the most dominant interest groups in society, such as, allegedly, the industrial multinationals, lobby the most. The inference here was that they create an *imbalance of decision-making*, to the disadvantage of the weaker interest groups such as workers, consumers and small enterprises. Secondly, that much lobbying takes place behind closed doors. By inference, this creates a *lack of transparency*, which frustrates competitors, the mass media and other officials. Thirdly, that much lobbying involves a lot of *abuses and immoral practices*, such as document robbery, blackmail and bribery. The inference here was that this should be forbidden.”³²¹.

4.5. A crisis of legitimacy

The European construction has to confront a double crisis of legitimacy. Indeed, between the scepticism of the citizen and the resistance of member States, the formers who can not find

³²⁰ SGUEO G., « Transparency of Lobbying at EU level », *European Parliamentary Research Service*, 2015, p. 7.

³²¹ VAN SCHENDELEN R., op. cit., p. 311.

themselves in the communitarian nebula and the latter which are worrying about the conservation of their sovereignty, complaining about each transfer of competence from the State to Brussels³²². Moreover, law production in our contemporary societies, in general, and within the European Union, in particular, is affected by a series of dysfunctions which are going from the *normative inflation*, to the *quality of law's degradation resulting from a normative disorder*³²³ (see below).

In order to answer to these preoccupations, the European institutions decided to rise the efficiency of the communitarian action as its source of legitimacy. They decided thus to reinforce the efficiency of the juridical production with the Treaty of Lisbon that was supposed to allow the institutions to legislate better by applying a number of principles, as developed by Van Den Abeele in 2009, namely by:

- Analysing the impact of Commission's proposition
- Simplifying legislation
- Reducing administrative burdens
- Consulting citizens and stakeholders
- Coordinating institutions³²⁴

However, although this system can seem efficient, it has to compete with the *standardization* produced by internal or external consultative bodies that fall back on consensual *techno-scientific* rules³²⁵. We can therefore notice that when the political debate take place, it is increasingly restrained by technical norms such as impact analysis, ranking, or benchmark which reduce significantly the possibilities of decision³²⁶. We can obviously apply the same observations to the European Parliament.

Furthermore, for the sake of efficiency, the execution of the legislation is not separated from its production. Indeed, the Commission has at the same time the possibility to initiate the creation process while it has also the duty to apply it. This has for consequence to weaken considerably the classical separation between executive and legislative powers. So the main

³²² BOUSSAGUET L., JACQOT S., « Les nouveaux modes de gouvernance », in R. DEHOUSSE (dir.), « Politiques européennes », Paris, *Les Presses de Science Po*, 2009, p. 418.

³²³ VAN WAEYENBERGHE A., « Vers une meilleure méthode communautaire », in PERALDI-LENEUF F. (dir.), DE LA ROSA S. (dir.), « L'Union européenne et l'idéal de la meilleure législation », *Editions Pedone*, Université Paris 1 Panthéon-Sorbonne, 2013, p. 7.

³²⁴ VAN DEN ABEELE E., « L'agenda mieux légiférer de l'Union européenne », *Courrier hebdomadaire CRISP*, 2009, n°2028-2029, p. 24.

³²⁵ FRYDMAN B., « Comment penser le droit global ? », in J-Y. CHEROT and FRYDMAN B., (dir.), « La science du droit à l'ère de la globalisation », *Bruylant*, Bruxelles, 2012, pp. 38-40.

³²⁶ VAN WAEYENBERGHE A., op. cit., p. 14.

question that we can ask ourselves is “Is it possible to streamline law’s production?”³²⁷, this question has been made necessary due to the many dysfunctions of the legislative apparatus in our contemporary societies.

4.6. Dysfunctions

As we mentioned earlier, there are a series of dysfunctions that are riddled within every contemporary societies and especially the EU. The first one, called *normative inflation*, makes reference to the fact that every country, and especially the EU, are producing too many texts of law, the new ones adding to the old ones rather than substituting to them, but also what many authors call the *swelling*³²⁸, or the texts that push always the details further which make them always harder to understand for the citizen. This issue has been precisely discussed by Poncelet during our interview while talking about the difficulties to consult and comparing the agreements’ annexes due to the growing complexity of the matters.

The second one is called *normative intemperance* and denounce the non-enforcement of the rule due to another dysfunction: *the normative disorder* that follows on from the lack of deductive logic that European texts are facing.

5. The Comprehensive Economic and Trade Agreement (CETA): A blueprint of the TTIP?

Although the TTIP is frozen at the moment thanks to an abnormal US presidency, it does not mean that the EU cannot make a similar deal with another country. It is the case with Canada which can be compared to the US in many regards. We will see in this section which are the main preoccupations that raise from this agreement by following a study of the NCDC in Belgium³²⁹. However, in order to undertake the best analysis possible, we will endeavour to put a contemporary look on the issue since the agreement has been ratified by the last parliament that was resisting: The Walloon Parliament.

³²⁷ CHEVALLIER J., « Peut-on rationaliser la production du droit ? », in PERALDI-LENEUF F. (dir.), DE LA ROSA S. (dir.), « L’Union européenne et l’idéal de la meilleure législation », *Editions Pedone*, Université Paris 1 Panthéon-Sorbonne, 2013, p. 17.

³²⁸ HOLLEAUX A., « La fin des règles générales », *Bulletin de l’Institut international d’administration publique*, n°39, July-September 1976, p. 7.

³²⁹ ZACHARIE A., VAN NUFFEL N., CERMAK M., op. cit., p. 33.

5.1. A gateway

Former European Commissioner for Trade, Karel De Gucht, said plainly that “In terms of market access related to services and investments, the effects of CETA go far beyond NAFTA”, since it introduces “many significant elements for the EU, such as further consolidation and ratchet clauses for regulation on major economic sectors, i.e. postal, telecommunications, financial, professional services, etc.”³³⁰. Many connections can be drawn between CETA and TTIP. Beyond an obvious geographical similarity – CETA being literally another “transatlantic treaty” –, it is worth noting that in an internal document, the European Commission welcomes the fact that the agreement reached in CETA is especially thorough compared to past agreements, and that CETA provides a “solid stepping stone for our negotiations with other countries.”³³¹. Also, CETA as it stands would be the first agreement ratified by the EU to include an arbitration clause, to use a negative lists technique for services liberalisation and to create a coordination body for regulations – approaches that were also suggested in the TTIP mandate. It can be said that CETA is a forerunner for TTIP not only because it would be the EU’s first agreement with a G7 country, but also because it would be a gateway for 81% of US companies based both in the EU and Canada to take action against European States in court of arbitration through their Canada-based branches, without further delay or waiting for TTIP³³².

5.2. Negative list

It is worth recalling that CETA is the first EU agreement to adopt a “negative list” approach, meaning the liberalisation of all services, restricted by a list of specific exceptions³³³, while, in the past, the EU had always focused on “positive list” approach. This treaty sets a dangerous precedent for future agreements. Only Germany included a reserve regarding its national social security system related to healthcare and social services, in order to prevent any forms of liberalisation provided for in the treaty. Therefore, other EU Member States will not enjoy

³³⁰ BROWN L., «The problems with CETA: Why should anyone care?», *NUPGE*, URL: http://www.epsu.org/IMG/pdf/CETA_and_Europe.pdf

³³¹ BELTRAME J., BLANCHFIELD, “EU boasts of huge gains in Canadian trade deal”, November 2013, URL: <http://www.cbc.ca/m/touch/news/story/1.2325983>

³³² Public Citizen, “Tens of Thousands of U.S. Firms Would Obtain New Powers to Launch Investor-State Attacks against European Policies via CETA and TTIP”, 17th of June 2015, URL: <https://www.citizen.org/sites/default/files/eu-isds-liability.pdf>

³³³ CETA, “Annex I Reservations for Existing Measures and Liberalisation Commitments”, July 2014, URL: <http://eu-secredeals.info/upload/2014/08/ceta-6.pdf>

a similar degree of protection as Germany against an opening of global competition on services related to social security. Similarly, a country like Belgium did not formulate any reservation in the area of waste management whereas Germany and Sweden, for example, took care to develop safeguards. Such services could therefore be available for Canadian private services suppliers, under the same conditions as Belgian suppliers³³⁴. Another example: according to Ellen Gould, the full liberalisation of telecommunication services would prohibit public authorities from concluding exclusive contracts with suppliers, as it has been done recently by the city of Manchester to make available a free and public wireless connection for all its citizens. On that matter, the EU expressly stated that no exception was to be expected from EU Member States³³⁵.

5.3. Protection of Public Services or the rights of employees

Jumping from one area to another, CETA also promotes export-oriented intensive agrobusiness, at the expense of local peasant farming despite its increasing popularity with consumers. It is doing so by handling food as any other commodity and speeding up food produces distribution on the international circuit. For example, Canada is enthusiastic at the prospect of extended tariff-free quotas that it has achieved for the export of 50,000 tons of beef and 75,000 tons of pork in the EU³³⁶. How would increasing imports affect farmers? No thorough impact assessment has been conducted or even commissioned to identify potential spin-offs on the basis CETA final proposal. But, such a study seems indispensable in order to launch a genuine democratic debate on the process of adopting or not the treaty. It should be underlined that the European Trade Union Confederation (ETUC), representing 70 million European workers, strongly opposes the CETA, partly because it does not sufficiently protect public services or the rights of employees, and because of the arbitration clause that weakens democracy and strengthens multinational companies³³⁷.

³³⁴ European Commission, “Consolidated CETA Text”, published the 26th of September 2014, URL: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf

³³⁵ GOULD E., Public Services in S. SINCLAIR, S. TREW, H. MERTINS-KIRKWOOD, « Making Sense of the CETA. An analysis of the final text of the Canada-European Union Comprehensive Economic and Trade Agreement », 25th of September 2014, URL : <https://www.policyalternatives.ca/publications/reports/making-sense-ceta>

³³⁶ Viewuws, “Brussels Briefing on Agriculture”, October 2013, URL: <http://www.viewuws.eu/food-agriculture/brussels-briefing-on-agriculture-all-you-need-to-know-for-april-may-2015/>

³³⁷ CES, “Le Syndicat européen appelle à un réexamen fondamental des accords commerciaux canadien et américain”, November 2014, URL: <https://www.etuc.org/fr/presse/le-syndicat-europ%C3%A9en-appelle-%C3%A0-un-r%C3%A9examen-fondamental-des-accords-commerciaux-canadien-et#.VTBNmyGeDGc>

5.4. A mixed agreement

CETA was presented on 26 September 2014 by the Canadian government and the EU Commission, marking the end of negotiations. The 1600-pages text was immediately published. It has been submitted to legal assessment and translation into the 24 official languages of the EU, the process is due to end by the last quarter of 2015. Subsequently, it has been presented to all governments within the EU Council of Ministers, then to the European Parliament where it has been submitted to a “yes or no” vote. CETA was considered to be a “mixed” agreement³³⁸, falling under a shared competence of the EU and the Member States, it has been presented to all EU governments and national parliaments for them to ratify the text. And now we are in the last stage, which is the formal adoption by the Council and publication in the Official Journal of the European Union, the agreement will thus enter in its provisional application phase on the 21st of September 2017³³⁹.

5.5. Implications of mixed agreements

CETA, as well as TTIP, has been considered as “mixed”. First, because both treaties encompass so many competences that it is unimaginable that it would affect only Community matters. Second, because EU Member States already threatened the EU Commission with refusing the CETA, would it be presented as not mixed³⁴⁰. We now know that this treaty has been said mixed, which means that one national (or even regional in the case of Belgium) parliament on its own could decide not to ratify the agreement and disrupt its implementation over the whole geographical scope. We could see such case with the Walloon parliament which refused the treaty³⁴¹. However, according to Poncelet, we could see that the parliament endured heavy diplomatic and economic pressure from the other European Member States

³³⁸ SCHOELLMANN W., « Is CETA a mixed Agreement ? », *European Parliament Think Tank*, 1st of July 2016, URL : http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA%282016%29586597

³³⁹ GRAYSTON J., « CETA- Provisional Application as of 21st of September 2017 », *GCO Blog*, 27th of July 2017, URL : <http://www.graystoncompany.com/gco/index.php/gco-blog/entry/ceta-provisional-application-as-of-21st-september-2017>

³⁴⁰ Vieuws EU Trade Insights, “Exec to ask Court to decide on mixity of trade deal”, October 2014, URL: <http://www.borderlex.eu/eutradeinsights/exec-to-ask-council-greenlight-for-upgrade-of-mexico-trade-deal/>

³⁴¹ Site Officiel du Collectif National Unitaire Stop TAFTA, « Traités Transatlantiques : le Parlement Wallon refuse la signature du CETA », 27th of April 2016.

that is had no choice but to sign it³⁴². Now we only have to wait and see our blueprints coming true.

³⁴² See Annex, « Interview with Bruno Poncelet, economist specialized in free trade agreements and anthropologist », 8th of August 2017, p. 10.

Conclusion

To conclude this thesis, we can first say that the ideologies have played a crucial role in shaping the relations between the different social classes. With the help of the classical authors we could demonstrate, within our constructivist frame, that the historic and social issues affected heavily the way the 19th and 20th centuries went through these ideological transformations. Although some authors are sustaining that an ideological transformation never really happened and that liberalism only made concessions to survive, in our opinion it is only a matter of point of view. We can either choose to regard a glass as either half full or half empty. In the first acceptance, in order to stay coherent with the thesis, we affirm therefore that the concessions made by the ruling class were a consequence of social struggles, which produced the first social rights and the spreading of the *Welfare State*. However, some new parameters came into play such as the phenomenon of *globalisation* and all the consequences of it (*offshoring, tax evasion, multinational companies*, etc.). This marked a return of liberalism in its new form: *neoliberalism* which has totally changed power's distribution, from States to international organisations and private entities. Of course all this without operating a judicious change of institutions.

In a second time, by operating a rigorous analysis of the European institutions, and the trade agreements, we managed to demonstrate that democracy is at risk. Indeed, as we showed it in the first part of the work, the European institution's operating mode is very questionable. Putting aside the fact that the EU is fundamentally undemocratic due to the non-compliance with the principle of the division of powers, one can say that some of the basic characteristics that make a democracy are not fully respected. The legislative and executive branches, by their cooperation with lobbies have contributed to distil power in the hand of private groups or multinationals. The latter are able to influence the law thanks to their ability to transform every question into an economic one. In this regard, the *expert committees* are the only ones which are able to undertake a correct preparatory work in the eyes of the European institutions. It will be consequently much more difficult to permit the exchange of opinion between the different social classes as the supremacy of one of them has been empirically proved. Effectively, the section on lobbies has highlighted that if a private interest has more economic weight than a common one, the former will almost always prevail, depending on the lobbies' strength.

Finally, the sections on the TTIP and CETA analysis provided us a useful understanding of these concerns.

Now, regarding our hypotheses.

- The economic issues have taken over the environmental and social ones. Which means that the political power is subordinate to the economic orthodoxy.

We could not agree more with it, thanks to the functioning of the European institutions and its narrow relation with lobbies, we could demonstrate that the social and environmental questions were not, or almost not, taken into account due to the weakness of the lobbies defending them.

- The concerns about the TTIP from environmental and labour NGOs are well-founded.

It goes without saying that if the TTIP (which is frozen for the moment) is one day concluded, we will assist to the weakening of States' sovereignty. Indeed, through the different mechanisms that it praises such as the further liberalisation of services, the ISDS, or the harmonization, this agreement will contribute to ruin environment and to dig social inequalities. We will for sure assist to the concretisation of these fears with the application of CETA.

- The multinational companies and the uncontrolled globalisation that they praise are at the very heart of the problems of our times.

This is a fact that economy has taken over the social and environmental ones. A plausible explanation lies in the powerful actors that constitutes multinational companies. They managed through the last 30-40 years to penetrate the decision-making process. The example of the EU is a striking concretisation as the economic leverages became more and more significant to a point that States have to respect their demands otherwise the formers will *offshore*. This induces the issue that they became so powerful that even do not have to pay any taxes.

Finally, we will conclude this project by answering to our research question, namely: **“How the TTIP negotiations can bring to light a democratic deficit in the European institutions?”**.

Thanks to our hypotheses, the answer will be quick. First of all, we can say that the European institutions, although they are structured in a way that could permit dialogue between different classes, are only listening to the expert committees in order to undertake their reforms, to the detriment of social and environmental issues. Secondly, and we will finish with this, the TTIP negotiations are led by people that have not been elected democratically, and who are obeying to their own interest instead of the common interest.

An interesting path for further research would be to find out solutions in order to avoid multinational companies and their tax evasion strategies.

Annex

ANNEX 08.08.2017

Interview with Bruno Poncelet, economist specialized in free trade agreements, and anthropologist

H = Hamid Razavi

P = Bruno Poncelet

P : Donc premier point sur la méthodologie moi j'ai fait des études il y a longtemps et j'ai fait deux types d'étude, j'ai d'abord fait de l'économie classique à l'ULB, un programme traditionnel qui m'a enchanté au début car il y avait des cours de géographie économique et d'histoire économique et puis à partir de la licence ça devenait vraiment un désert culturel. Mais bon j'ai terminé et quelques années plus tard j'ai découvert l'anthropologie, et je suis tombé amoureux de cette discipline donc j'ai refait un cycle d'étude en anthropologie et la j'ai fait une petite révolution paradigmatique, ce qui a un peu, voire beaucoup, modifié ma vision des choses puisque quand on fait de l'anthropologie, on se rend compte que l'économie ça n'existe pas depuis très longtemps, c'est très récent l'histoire de l'économie, les premières fois où l'on trouve des formulations sur l'économie, un peu dans l'Antiquité, mais ...

H : Mais ça c'était justement dans ce que j'ai au sujet de Polanyi en fait.

B : Voila, c'est super bien contextualisé, et sinon le mot apparaît, je crois au 11ème-12ème siècle [...] et l'économie au sens moderne du terme c'est Kenneth, Adam Smith et Marx qui vont le porter.

Donc moi l'anthropologie m'a porté vers des auteurs comme Polanyi, donc tous ces gens, et Polanyi est vraiment un précurseur là-dessus, qui finalement utilisent la pensée des sociétés non-occidentales et non-modernes pour réfléchir sur les concepts du monde occidental. Et c'est comme ça que Polanyi, même si son œuvre est critiquée pour certains points, mais parce que c'est un précurseur, c'est vraiment quelqu'un que je trouve fondamental dans ce domaine de recherche.

Et donc moi quand j'ai des approches sur des sujets comme le libre échange et l'économie, c'est toujours avec un regard d'anthropologue, un peu mi amusé par les économistes qui prennent tellement leur discipline au sérieux et en même temps énervé parce que l'économie fait de tels ravages à travers le monde et vu l'importance qu'on lui accorde, ça me choque.

Alors pour venir sur le sujet du libre échange en particulier, que ce soit vis-à-vis du CETA, TTIP, ou tout autre traité, pourquoi est-ce que moi je suis contre ? En fait la chose est facile à résumer, on peut dire qu'en économie il y a deux approches différentes. D'un côté **l'approche purement quantitative**, comme une chose qu'il faut faire gonfler, car plus on fera gonfler le gâteau, plus il y aura des retombées économiques pour tout le monde et donc c'est l'argument principal de tous ceux qui sont en faveur du libre échange.

Le seul truc, c'est que l'on devrait savoir qu'en économie, **l'approche qualitative** est tout aussi importante. Alors c'est quoi ? On a un scandale avec les œufs ici, le problème n'est pas de savoir combien on en produit, mais comment est-ce qu'on les produit, qu'est ce qu'on met dedans. Et au final est-ce que le produit que l'on vend aux gens est un bon produit ou un mauvais produit. Donc ça c'est dans l'approche qualitative de l'économie.

Le passage de la tyrannie économique que l'on avait dans nos pays au 19ème siècle, et qu'on a toujours dans beaucoup de pays à travers le monde, a des régimes où l'économie s'est un peu démocratisée, c'est-à-dire que si tu prends le cas de la Belgique durant les Trente Glorieuses, on avait une représentation syndicale paritaire avec des patrons, on avait des encadrements législatifs au niveau national, mais aussi au niveau des secteurs.

H : Oui mais donc au final c'était une manière de calmer la population en leur octroyant un petit quelque chose par le biais de l'Etat Providence ?

P : On peut le voir de différentes façons, avec le verre à moitié vide ou à moitié rempli.

H : Mais moi je le conçois comme ça en tout cas, le fait justement que ce soit le libéralisme qui a développé l'Etat Providence pour se protéger.

P : Oui mais au départ il n'était pas d'accord, quand on voit l'histoire des mouvements sociaux. Au final cela n'a pas tellement d'importance, que ce soit le libéralisme qui ai lâché quelques miettes aux gens pour s'en sortir, ou bien se dire que c'est parce que les gens ont tellement contesté qu'ils ont fini par lâcher des droits, peu importe, mais ce que je veux dire c'est qu'entre les régimes d'organisation du marché du travail que l'on avait au 19ème siècle et celui qu'on a eu courant du 20ème siècle, il y avait quand même des différences notables. Que ce soit la réduction du temps de travail, les congés payés, l'invention de la sécurité sociale, donc tout ça on peut le voir comme des concessions du système qui restent immorales à beaucoup d'autres points de vue, mais le système a quand même été obligé de lâcher ça alors qu'il ne voulait pas le faire au départ.

Et paradoxe des paradoxes, c'est vrai que pour tous ceux qui étaient prophétiques de la fin du capitalisme, c'est que c'est le jour où le capitalisme a lâché des choses qu'il ne voulait pas, qu'il a rebondi, puisque quand les gens ont eu du temps libre et du pouvoir d'achat, ça a boosté le capitalisme.

Mais donc moi j'insiste sur le fait que l'on peut voir l'économie de deux façons : quantitatif ou qualitatif. Ce dernier est tant au niveau social, qu'au niveau fiscal, écologique, etc.

Et mon regard en économie il est farouchement qualitatif. Mon constat aujourd'hui est donc de dire que les arguments des libres échangistes sont essentiellement quantitatifs, mais le qualitatif est systématiquement laissé de côté. Ou alors leur seule invocation c'est de dire que cela n'aura aucune influence sur l'environnement, sur le social, etc.

Alors qu'en fait, et je vais reprendre mes deux concepts de tyrannie économie et de démocratie économique, même si cette démocratie économique est très imparfaite, mais c'est pour avoir deux idées un petit peu claires. Quand on fait du libre-échange, entre des zones qui sont plus au moins similaires au niveau législatif, à la limite on autorise des entreprises à changer leur lieu de production ou les conditions fiscales, sociales ou écologiques sont les mêmes, donc il n'y aura pas de phénomène de délocalisation opportunistes. Par contre quand on le fait à l'échelle européenne, là où les salaires sont dix fois moins chers, dans des pays où on ne finance pas la sécurité sociale, ou en Irlande où il n'y a aucun impôt sur les bénéfices des sociétés, ou à l'échelle mondiale où les problèmes sont plus exponentiels. C'est quoi le libre-échange ? C'est faire deux choses : dire aux investisseurs, désormais vous avez la liberté de faire circuler vos capitaux, vos biens et vos marchandises à l'échelle de toute la planète, donc si vous voulez délocaliser, faites-le tranquillement, il n'y aura aucune mesure que les États pourront prendre en retour pour freiner vos marchandises, parce que le **principe de libre circulation** l'emporte. Et donc moi le libre échange, j'appelle ça du *shopping législatif pour multinationales*. Ça veut dire qu'à chaque fois que des règles, qui rentrent dans les coûts de production pour une entreprise sont différentes dans un même espace de libre échange, et bien ça donne l'opportunité aux investisseurs, et en particulier au plus gros des investisseurs, car un petit coiffeur indépendant n'aura pas l'occasion de bénéficier de ça, de délocaliser. Après il y aura peut-être des PME dans le transport qui peuvent faire des sociétés boîte-aux-lettres et qui donc en bénéficient quand même aussi, mais ça donne au plus gros des investisseurs l'occasion de contourner les règles les plus démocratiques et les plus exigeantes mises à une époque de l'histoire où, justement, le capitalisme/libéralisme a du lâcher des bribes aux gens, et de ne même plus les prendre en compte aujourd'hui pour aller vers le moins fiscal, le moins social, le moins écologique, etc.

Et donc tous ceux qui disent que le libre échange n'a aucune influence sur le social, sur le fiscal, ou sur l'écologie sont des menteurs. Car l'ADN du libre échange, peu importe l'accord, c'est

vraiment de dire aux investisseurs : désormais vous pouvez faire votre *shopping législatif* à chaque fois que des règles démocratiques, non démocratiques, mais des règles juridiques et politiques sont différentes dans un même espace de libre échange. Et donc ça c'est le premier point pour lequel le libre-échange est une vraie menace pour la démocratie, parce que justement dans des endroits comme l'Europe occidentale, on avait réussi à un moment de l'histoire à arracher des concessions au système pour démocratiser ou rendre un peu moins tyranniques les règles qui existaient. Et bien aujourd'hui, ces règles contraignantes les grosses entreprises peuvent les contourner sans aucun problème. Celles qui ont les capacités de se déplacer sur une vaste échelle géographique, pas les petites qui sont liées à une production locale. Et donc c'est parfois dire à des acteurs qui sont parfois aussi puissants que des états, parce que les plus grosses multinationales, quand on regarde ça aujourd'hui, ce sont de vraies puissances, « délocalisez sans soucis ! ».

H : Oui, de toutes façons on sait très bien dans les lobbies européens les plus puissants représentent des intérêts privés au final.

B : Et donc ça donne l'opportunité à ces entreprises de contourner les règles démocratiques en mettant une pression terrible sur les états, et je prends pour exemple le niveau fiscal depuis l'avènement du marché unique européen qui est le paradigme le plus abouti d'un marché de libre échange. Auparavant les entreprises payaient vraiment des impôts sur leurs bénéfices, aujourd'hui toute une série de PME continue d'en payer mais il n'y a plus aucune grosse entreprise qui en paie, parce qu'avec la délocalisation pour des raisons fiscales tous les Etats trouvent des systèmes pour que les investisseurs ne partent pas, et bien l'on fait des règles de plus en plus avantageuses pour ces derniers.

Cela veut donc dire que dans un accord de libre échange il ne faut même pas des lignes qui disent noir sur blanc que l'on va faire reculer le fiscal, le social ou l'écologique, il suffit juste qu'une fois que ça soit mis en place, que les normes soient différentes et ce sont les normes les plus basses qui vont naturellement commencer à servir de référence parce que c'est justement donner les clés du jeu législatif aux plus gros investisseurs qui, à chaque fois qu'ils délocalisent, font des ravages en terme de chômage, de finances publiques, de dépenses sociales et donc que font les états afin de compenser, au lieu de revenir sur le libre échange en disant "aie aie aie faire du libre échange avec des zones géographiques ou politiques qui ne respectent pas les mêmes règles de jeu que nous, c est vraiment se tirer des balles dans le pied", ils se disent : "Non non, on intensifie le libre-échange et à coté on transforme le marché du travail pour flexibiliser, on revoit la fiscalité à la baisse, on invente toute sorte de cadeaux fiscaux aux entreprises qui sont généralement d'abord avantageux pour les grosses boîtes et peu pour les PME".

Et donc c'est le premier gros clivage que moi j'ai à souligner par rapport à l'enjeu démocratique. C'est que le libre-échange, quand on regarde l'économie d'un point de vue qualitatif, c'est du *shopping législatif* qui permet aux grandes entreprises de jouer un rôle politique prépondérant. Ça c'est le premier grand problème.

Le deuxième, je ne vais pas insister trop lourdement là-dessus car tu m'en as déjà toi-même parlé, une fois qu'on travaille sérieusement sur le libre-échange, on se rend compte effectivement que systématiquement avant la prise de décision politique, il y a des demandes de lobbys financiers.

Prenons deux exemples tout bêtes, le marché unique européen, il est décidé en 1986, et en fait la vraie origine du marché unique européen c'est 1982 quand toute une série d'industriels, 18 entreprises européennes, à l'invitation du PDG de Volvo, se réunissent à Paris pour fonder la "European Round Table of Industrialists" (ERTI), qui va être le lobby principal et qui va demander la création d'un accord de libre échange européen.

Encore aujourd'hui lorsque l'on va voir les affiches de l'ERTI sur leur site, on peut revoir une série de choses que ce soit l'élargissement aux pays de l'est, tout ce qui est compétitivité, la création du marché unique, la création de réseaux autoroutiers et ferroviaires internationaux à l'échelle européenne, si l'on compare la date de prise de décision politique et les dates de demande de l'ERTI, il y a entre 2 ans et parfois 8 ans d'avance chez l'ERTI avant les prises de décision politiques et ça c'est vrai pour le marché unique européen, le TTIP, le CETA, etc.

Donc lorsque l'on va fouiner un peu, on parlait de la technocratie tout à l'heure, qui est effectivement un des grands problèmes en Europe, c'est la prépondérance de gens qui ne sont ni élus et qui n'ont absolument aucun compte à rendre à des électeurs ni même à des comptes publics. Un négociateur du TTIP, il n'y en a jamais un qui a été invité à s'exprimer dans une émission télé. Moi je m'amuse souvent à citer le responsable qui négocie tout ce qui est produits sanitaires, donc les cosmétiques etc., que l'on met sur sa peau, parce que finalement cette personne elle est censée nous défendre, nous représenter lorsqu'elle va discuter avec ses homologues de différents pays pour différents accords.

H : Mais au final, cette personne représente des intérêts privés

P : Et en fait, exactement, elle ne représente que des intérêts qu'elle défend. Je prends l'exemple des cosmétiques, ce sont des choses qui se retrouvent sur la peau tous les jours, donc qui rentrent dans le corps, et donc suivant que ça soit toxique ou non, de nouveau nous sommes dans ce paradigme-là.

Et Donc deuxième point ou l'on a un gros court-circuitage de la démocratie, c'est tout ce qui est le règne de la technocratie.

Maintenant il y a un troisième point et moi j'insiste de plus en plus sur celui-là qui est terrible dans les accords de libre-échange, c'est ce que l'on appelle la *coopération réglementaire*.

H : Oui, j'en ai justement parlé avec l'article de Point Sud, qui disait que les lobbies considèrent les accords de libre échange comme une manière d'interpréter la coopération économique à leur sauce, donc de règlementer eux-mêmes quelque part.

P : Oui, je vais d'abord faire un petit point méthodologique sur "*c'est quoi un marché*".

Donc en économie, le marché est composé d'individus, il y en a qui offrent des choses, d'autres qui en achètent. On fait les rencontres de courbes d'offre et de demande et on voit comment ça marche, depuis la concurrence parfaite en partant vers l'oligopole, le monopole etc.

Premier point sur lequel cette théorie est court-circuitée c'est que dans ces fameuses courbes d'offre et de demande, il n'y a pas que des individus puisque, je prends les plus grosses multinationales aujourd'hui, ce n'est plus comparable à des individus, une PME est éventuellement comparable à un individu sur un grand marché, mais des sociétés comme EXON, Amazon, Google, ne sont pas des individus, ce sont de puissantes institutions qui ont des services juridiques, des services d'espionnage, etc.

H : Oui ça j'en parle justement quand je fais référence à Susan Strange, elle parle exactement de ça.

B : Voilà, donc premier point sur lequel la théorie classique de l'économie est invalidée c'est qu'elle ne tient pas compte de ces puissantes institutions.

Donc moi ma vision du marché à fort recours à mes concepts d'anthropologie, parce qu'autant l'économie c'est récent, mais les marchés ça existe depuis des milliers d'années, mais quand on voit comment fonctionnent les marchés à travers l'histoire, on se rend compte qu'il y a trois grandes constantes chez les marchés, c'est-à-dire qu'on a toujours : des valeurs à la base des marchés ; des règles du jeu ; et des institutions.

[Exemple tribu africaines]

Cela reste valable dans tous les marchés, même les marchés les plus modernes, et donc c'est un énorme mensonge le mythe néolibéral comme quoi le marché est autorégulé, car prenons typiquement les marchés du 19^{ème} siècle, on avait des règles du jeu, qui étaient par exemple que les syndicats sont interdits, pas d'organisation des travailleurs, on utilise tel type de monnaie donc très vite l'argent c'étaient des autorités politiques qui l'ont authentifié et qui ont certifié sa valeur mais donc en Belgique, 19^{ème} siècle, on avait des lois, des valeurs qui dominaient qui étaient plutôt élitistes, en faveur du monde marchand, qui disaient comment devait fonctionner le marché, on avait des règles du jeu qui défendaient ces valeurs, et on avait des institutions qui mettaient clairement le cadre en place pour ces valeurs. Donc par exemple en Belgique, à l'époque on avait le franc belge, on avait une banque nationale de Belgique qui émettait du Franc Belge, le Parlement belge qui mettait les règles du jeu pour comment pouvait fonctionner le marché. Quand on est passé à un marché européen, la théorie tient toujours ; valeur dominante : libre circulation

des marchandises, règles du jeu : ce sont toutes les normes qu'on a pondus pour pouvoir faire exister le marché unique européen et les institutions il y en a de deux sortes dans ce marché là c'est :

1. Toutes les institutions qui organisent le fonctionnement du marché et ça a été notamment le transfert de pouvoir politique depuis les institutions nationales aux Européennes, la Commission est le gendarme du marché unique, mais également la présence de super institutions comme acteurs mêmes du marché.

Prenons l'exemple du marché financier aux US, si j'étais, la veille des subprimes, un petit fond d'investissement qui gérât quelques centaines de milliers de dollars mais qui n'était pas un gros fond d'investissement, que j'avais fait mon boulot correctement et que je m'étais rendu compte que les subprimes allaient s'écrouler et que je voulais investir tout mon argent en pariant que ça allait s'écrouler, en fait j'aurais pu aller voir n'importe quelle grande banque américaine, genre Goldman Sachs, mais vraiment des grandes institutions, parce que les règles du jeu du marché financier américain disaient que ces institutions là étaient homologuées pour créer de nouveaux produits financiers, et c'est ce qui est arrivé en l'occurrence, il y a eu de petits fonds d'investissement. Mais donc dans tout ce que je raconte ici, nous avons toujours trois constantes : valeurs, règles du jeu et des institutions, qui peuvent être aussi bien actrices du marché (Delhaize qui participe au marché de la consommation en Belgique qui est une institution privée) que des institutions qui régulent le fonctionnement du marché. Et on peut avoir aussi bien des régulations publiques, quand ce sont des normes démocratiques qui définissent le fonctionnement de l'institution, qui définissent les règles du jeu du marché, que parfois des firmes privées qui régulent elles-mêmes le marché, typiquement ce que je viens de t'expliquer avec le marché financier, on est dans dans un cas où la société américaine avait délégué à de grandes banques privées le droit de créer de nouveaux produits financiers.

Donc: des valeurs, qui peuvent être très variables d'un monde à l'autre, et c'est là tout l'intérêt de l'anthropologie, de voir l'éventail, les règles du jeu et les institutions. Et ici le problème du libre échange c'est justement que la valeur dominante c'est ce shopping législatif.

Maintenant je reviens à ma coopération réglementaire, quand on fait des accords de libre échange, on peut éventuellement en faire ou on modifie les valeurs et les règles du jeu, tout en conservant les institutions qui sont considérées comme étant nationales. Donc dans beaucoup d'accords de libre-échange, il s'agit d'un accord entre tel ou tel pays, ils s'entendent pour harmoniser toute une série de règles, par un accord bilatéral, mais les institutions qui restent gérantes des normes du marché restent nationales. Aujourd'hui on est justement avec le CETA, le TTIP dans des logiques où, à coups de lobbying, mais aussi car on a tellement avancé dans la libéralisation des échanges,

on commence justement dans des accords de libre-échange de dernière génération à créer des formes d'embryon d'institutions communes pour gérer le marché.

Le cas le plus abouti c'est évidemment le cas du marché unique européen, puisque c'est la Commission Européenne qui a les pleins pouvoirs pour gérer beaucoup d'aspects. On n'est pas aussi loin dans la création de marchés internationaux dans des accords comme le CETA etc., mais on fait quand même un pas dans cette direction. Et donc on peut le comprendre à travers l'exemple du CETA, quand on regarde l'accord du CETA, on a une trentaine de chapitres qui sont sur toute une série de thèmes, les accords sur les droits de douane, sur le sanitaire, sur la finance.

Donc le corps juridique du CETA sur 450 pages, ces chapitres renvoient à des annexes qui sont l'essentiel de l'accord. Les 30 chapitres introductifs sont en quelques sortes des considérations générales, **mais le vrai contenu de l'accord se trouve dans les annexes.**

Donc je vais prendre l'exemple avec les normes sanitaires et phytosanitaires, donc ce sont les produits alimentaires et les pesticides, le monde des végétaux en somme, et bien le principe est de dire qu'on va aller vers une reconnaissance d'équivalence entre les normes canadiennes et européennes, même si à priori les Etats peuvent conserver des normes qui leur sont propres mais ils doivent alors se justifier en prouvant qu'il ne s'agit pas d'une **norme discriminatoire**. Ça c'est ce que dit *grosso modo* le contenu de l'accord, tout en disant aussi que le Canada et l'UE, quand ils sont dans des négociations internationales avec d'autres états, vont essayer de défendre des points de vue communs, donc il y a vraiment l'idée d'harmoniser, enfin de faire converger à une échelle transatlantique entre le Canada et l'Europe des normes sanitaires, même si les Etats gardent des marges de liberté.

Cela dit, le vrai contenu de l'accord se trouve dans les annexes, parce que c'est dans l'annexe que l'on trouve par exemple sur l'accord sanitaire, on a 7 ou 8 annexes rien que pour ce chapitre, c'est là-dedans que l'on va trouver par exemple sur 30 pages les législations Canadiennes et Européennes qui, aussi bien pour le bœuf que pour le poisson, sont reconnues comme équivalentes, et à quelles conditions elles le sont. Donc si l'on veut savoir si il y a déjà un danger sanitaire dans le CETA, ça implique d'aller ouvrir des dizaines de textes législatifs Canadiens et Européens qui se trouvent dans ces annexes qui font énormément de pages, de comparer ces textes et de se rendre compte de ce qu'on a accepté comme échange de substance qui n'existait pas auparavant donc rien que déjà ça du point de vue démocratique c'est compliqué parce que autant les experts européens ils ont un boulot à temps plein pour faire ça, quand moi je vois tous les militants libre échange et je les connais car nous avons milité ensemble, notre boulot à temps plein ce n'est pas ça, c'est un boulot qu'on fait en plus du boulot, même si on a la chance d'avoir des institutions qui nous laissent des marges de manœuvre. **Mais donc tout ça pour dire qu'on n'a ni le temps, ni les connaissances parfois pour pouvoir faire ce travail** de bêttement

lire une fois que le CETA est signé, ou sont les enjeux sanitaires sur ce qui est signé parce que la quantité de textes à avaler et les qualifications en termes juridique ou en terme biochimique sont telles que c'est très compliqué pour ces militants de faire ce travail. Donc du point de vue du processus démocratique il y a déjà un petit problème.

Mais ça ne s'arrête pas là, parce qu'en fait, en prenant l'annexe concernant les produits phytosanitaires du CETA, donc qu'est ce que le Canada et l'UE ont reconnu comme normes phytosanitaires communes, **l'annexe est vide**, il est juste marqué "*cette annexe sera remplie ultérieurement*", alors cette annexe sera remplie par qui ? Et bien c'est la que l'on en vient à la coopération réglementaire, dans le texte général sur l'accord sanitaire entre l'Europe et le Canada, on a un petit paragraphe qui dit "*l'Europe et le Canada vont créer un comité UE-Canada des normes phytosanitaires*". Il est clairement écrit qu'il y aura la création d'un comité transatlantique UE-Canada, ou ils choisissent qui ils veulent envoyer, sans considérations sur des normes, par exemple, de respect de la démocratie pour désigner les fameux experts.

H : Faites vous ici référence aux appels d'offres de la Commission?

P : Pas vraiment, ici il s'agit vraiment de la création d'un comité technocratique qui est habilité à se réunir au minimum une fois par an et s'il le souhaite de modifier le contenu des annexes.

H : Mais donc au final ce sont des lobbies qui vont le faire ?

P: Bien sûr, mais au-delà des lobbies, ce que je veux dire, c'est qu'en terme de confiscation de la démocratie c'est important à bien voir. Je continue sur l'exemple des normes phytosanitaires, pour l'instant l'annexe est vide, qui va s'occuper de la remplir ? c'est le comité technocratique, qui est mis en place. Par ailleurs, effectivement le chapitre précise que le comité pourra s'appuyer sur l'avis de différents experts. Evidemment, ils citent les syndicats, les ONG et le monde privé. Donc en effet si ce comité veut rencontrer une ONG expertes en environnement, évidemment ils peuvent le faire. Mais on sait bien comment cela va se passer, ceux qu'ils vont aller voir, ce sont les entreprises privées, on le sait à travers la pratique, dans ce genre de structure politique on sait très bien que c'est comme cela que ça va se passer, donc de :

1. Confier à un premier comité technocratique le droit de faire des propositions de transformation des annexes qui contient l'essentiel de l'accord.
2. Que le comité va aller s'appuyer sur le monde privé et que c'est prévu dans l'accord, même si la formulation est prudente car elle inclut d'autres organismes. La pratique nous l'a bien montré.

Mais donc ce qui est important de bien comprendre c'est que le contenu des annexes, donc le jour ou on a signé le CETA et on devra encore le ratifier à l'échelle des différents pays nationaux, donc le jour ou les Etats ratifient le CETA, en quelques sortes ils signent un **chèque en blanc** car l'essentiel du contenu de l'accord se trouve dans les annexes, or j'ai donné l'exemple du chapitre

sanitaire, mais c'est vrai pour quasi tous les chapitres du CETA, à chaque fois que qu'il y a un gros chapitre dans le CETA, il y aura un comité technocratique, thématique qui sera créé et son pouvoir sera essentiellement de reformuler le contenu des annexes, mais donc ça veut dire qu'en fait, pour que le CETA puisse être lancé au départ, il a fallu l'aval des Etats-membres qui ont été d'accord qu'ils négocient avec tel mandat de négociation. Une fois que le CETA est signé en fait c'est un **accord de négociation permanent**, parce que tous les chapitres sont toujours susceptibles d'être remis en cause dans le contenu les plus ultimes. Et donc c'est la que la *coopération réglementaire*, tout comme le *shopping législatif*, c'est pour moi un gros point de controverse dans ces traités de libre-échange c'est que ça met vraiment en place une architecture institutionnelle qui n'est pas aussi aboutie que ce qu'on a dans le cadre du marché unique européen, mais qui est un embryon de ça et qui laisse une marge de manœuvre à des technocrates et à leurs amis du monde privé pour commencer à modifier de plus en plus le contenu de l'accord. En spécifiant bien, pour être nuancé jusqu'au bout que si des compétences sont d'ordre régionales, les comités technocratiques seront habilités à faire des propositions que les Etats pourraient toujours refuser, mais la on voit bien comment ça s'est passé quand la région Wallonne a dit qu'elle ne voulait pas du CETA, on devient ostracisé à l'échelle européenne, des pressions diplomatiques et financières terribles et par ailleurs on aura lorsque ces propositions tomberont un package de 30-40 mesures à prendre ou à laisser, avec une pression diplomatique terrible et ou aucun parlementaire n'aura pu faire un vrai travail parlementaire, à savoir prendre un problème à la racine, entendre différents points de vue d'experts, pro, anti, etc., pour se faire une opinion un peu plus nuancée et plus dense car lorsqu'on entend des points de vue de personnes différentes sur certains sujet, cela donne matière à réflexion. Ici les parlements seront bombardés de propositions à prendre ou à laisser dont ils n'auront pas eu le temps d'analyser soigneusement.

Donc pour moi, dans les traités de libre-échange aujourd'hui, il y a **deux gros problèmes prioritaires**, c'est un le *shopping législatif* qui donc remet vraiment les clés du jeu politique entre les mains de multinationales qui a travers les délocalisations peuvent pousser de plus en plus les gouvernements, qu'ils soient dits de gauche ou de droite à prendre des décisions dans leur sens, et c'est bien ce à quoi on assiste à l'échelle de l'UE car il y a un marché européen qui obéit à ces règles-là. On a pu le voir avec le gouvernement grec qui a dû accepter les conditions avec un couteau sous la gorge.

Et donc la *coopération réglementaire*, deuxième gros problème, parce qu'effectivement ça court-circuite le jeu politique et donc la coopération réglementaire rend un pouvoir qui est aujourd'hui dit national ou européen, est peu à peu transféré à une échelle internationale.

Un autre exemple précis que je connais bien au sujet des enjeux financiers. Donc on a eu la crise des subprimes en 2008 qui était due à toutes les règles néolibérales qu'on a pu inventer aussi bien

au Etats-Unis qu'ici en Europe quand on a poussé les banques à se privatiser et à investir à l'étranger, depuis lors on a dit qu'il fallait revenir à des mesures prudentielles qu'on a pas beaucoup prises, mais dont l'accord financier du CETA préconise la libre circulation des produits financiers. Mais il dit également que les Etats pourraient également être amené à finalement restreindre cette liberté des produits financiers pour des raisons prudentielles.

H: Mais donc à ce moment cela serait considéré comme de la discrimination, non ?

P: Alors ce que je veux dire par là c'est que les produits sont antinomiques, c'est-à-dire que la libre-circulation des produits financiers c'est un produit financier qui est créé au Canada peut circuler en Europe et vice-versa. Mais l'idée de dire attention, ce produit est dangereux, et donc on ne l'autorise pas, c'est vraiment le principe inverse. Donc les règles prudentielles vont complètement aux antipodes du contenu, de l'ADN du traité.

Et donc que dit le CETA sur cet équilibre entre ces deux principes ? Il part du principe qu'on est dans le libre échange, que si un Etat contrevient aux règles du libre échange, une entreprise ou le Canada qui se serait senti lésé pourrait entamer une procédure juridique via les tribunaux d'arbitrages etc. Donc dans ce cadre-là, s'il y a un conflit pour savoir si c'est prudentiel ou pas, ceux qui vont être amenés à trancher ce sera de nouveau un comité technocratique UE-Canada qui va être créé. Et bien ce que dit le CETA sur le sujet, c'est, imaginons que demain le gouvernement canadien prenne une mesure prudentielle contre des produits européens, ce qui est crédible car ils sont plus vigilants sur le plan financier économique. Il y a plusieurs cas de figure possibles :

Une entreprise s'en plaint, celle-ci pourrait-elle attaquer le gouvernement canadien en justice ? Ça va dépendre du comité technocratique mis en place sur les mesures financières du point de vue de la Commission européenne, si celle-ci accepte de défendre la position du gouvernement canadien en reconnaissant qu'il s'agit d'une mesure prudentielle alors la firme ne pourra pas attaquer en justice. Dans le cas contraire, elle pourra.

Mais donc sur le plan démocratique ça veut dire que demain et c'est vrai autant pour le gouvernement canadien qu'Européen, jusqu'ici c'étaient des états souverains en matière financière qui définissaient en toute souveraineté qu'est ce qu'il prenait comme mesure prudentielle sur toute une série de dossier. Et bien ça veut que demain, pour pouvoir adopter des mesures prudentielles, notamment dans le domaine de la finance, leur point de vue va dépendre de celui d'un autre état qui va avoir son mot à dire pour dire s'il s'agit d'une mesure prudentielle ou pas. Mais c'est donc bien là qu'on assiste à travers la coopération réglementaire à du transfert de pouvoir politique depuis un échelon local vers un échelon de plus en plus international, sans évidemment prendre en considération la moindre forme de contre pouvoir ou de garantie démocratique qui est à l'échelle de ce qu'on connaît dans des pays comme la Belgique ou la France. Et donc là le danger

démocratique est bien réel, on met en place des institutions transatlantique, interétatiques qui n'ont pas toujours les pleins pouvoirs, mais qui commencent à gagner des pouvoirs qu'elles n'avaient pas auparavant.

Et donc un Etat, même si demain il y a une coalition de gauche qui arrive au pouvoir, il pourra décider de sortir du CETA, ça prendra du temps, mais tant qu'il restera dans le CETA, sur toutes les mesures prudentielles en matière financière et bien son autonomie de décision sera limitée par les prises de position de l'UE. Et donc c'est bien là qu'on a du **transfert de pouvoir d'un échelon local à un échelon global**.

Et pour conclure, cette coopération réglementaire elle me semble très dangereuse en l'Etat mais également lorsqu'on lit les lobbies qui sont à l'origine des traités de libre échange, en fait eux leur ambition c'est d'aller vers un marché mondial car le monde regorge de paradis fiscaux où les coûts de production sont moindres. En lisant la production littéraire du Transatlantic Policy Network, leur ambition est d'aller vers un marché mondial, avec une institution mondiale, évidemment la moins contraignante possible, qui va réguler les normes mondiales. Et donc les traités de libre-échange qui aujourd'hui mettent en place des formes de coopération réglementaires, pas aussi abouties qu'à l'Union Européenne, mais déjà avec un réel pouvoir de décision et d'influence, sont un peu l'embryon qui va mener vers ce marché mondial. Et donc dans cette grande course à une mondialisation contrôlée par le secteur privé, c'est pour moi un réel danger.

H: Parfait. Donc maintenant je voudrais aborder de manière plus spécifique votre paradigme, celui de la transformation des idéologies par les rapports de force entre acteurs. Est-ce que vous pensez que ce paradigme peut expliquer le retour du néolibéralisme ?

P : D'un point de vue anthropologique, je constate que le monde moderne a inventé quelque chose de terrible, c'est l'économie. Terrible car l'économie ça a une influence sur la biosphère, mais ça n'a pas du tout été inclus dans les calculs économiques, l'économie suivant qu'on la suit de gauche ou de droite on va inclure les normes sociales, etc. Mais donc l'économie elle a tendance à fonctionner en vase clos pour beaucoup d'économistes, ce n'est pas le cas pour tous, il y a de très bons socio-économistes, donc des gens qui incluent l'économie dans le tissu social, historique, contextuel, etc. Et ce sont des gens que je trouve remarquables. Mais les économistes purs et durs qui réfléchissent dans leur petite discipline en vase clos, et qu'ils soient d'ailleurs de gauche ou de droite, ont tendance à m'irriter car je trouve qu'ils raisonnent à courte vue. Mais malheureusement leur discipline ayant l'influence qu'elle a, est préférée.

Donc moi maintenant si je devais solutionner les problèmes du monde, je dirais de clairement faire désenfler la place de l'économie dans nos sociétés et alors de développer une approche beaucoup plus qualitative de l'économie que quantitative c'est-à-dire tout ce qu'on n'a pas intégré

dans le regard économique, l'intégrer peu à peu. Tout à l'heure on parlait de tyrannie et démocratie économique, je ne pense pas qu'on ait déjà vécu dans une démocratie économique parfaite et surtout je pense que nos fameuses Trente Glorieuses elles se sont quand même faites sur le dos d'une série de pays à travers le monde où on a maintenu des dictateurs pour avoir plus facilement accès aux ressources minières, et pour avoir une main-d'œuvre bon marché. Même si on accepte le concept de démocratie économique en disant qu'il y a de la sécurité sociale, la diminution du temps de travail, etc. Elle s'abreuve tel Dracula sur des régimes politiques à travers le monde entier qui sont plus que crapuleux donc notre bien-être occidental a été payé par des milliers d'individus à travers le monde entier.

Comment est-ce que j'explique le succès du libéralisme ? Il y a plusieurs aspects :

1. La pensée libérale fonctionne dans le cadre de la pensée occidentale. Donc toutes les sociétés sont traditionnelles, même celles les plus dynamiques. C'est-à-dire que la culture humaine ça ressemble un peu à un immense iceberg, ce qu'on a dans la tête qu'on décide vraiment, "*je suis de gauche, je suis de droite, je pense comme ci, comme ça*", c'est la pointe émergée de l'iceberg, ce dont on n'a pas le contrôle c'est la pointe immergée de l'iceberg et c'est l'essentiel. On ne s'en rend pas compte tant qu'on a pas fait un peu de visite culturelle dans d'autres sociétés, mais quand on fait de l'anthropologie, on se rend compte que tous les concepts qu'on utilise tous les jours, à commencer par le concept d'être humain, sont des concepts inventés au fil du temps. Après on peut les aimer ou les détester, mais qu'on le veuille ou non, on se trouve dans une tradition de pensée. La tradition de pensée occidentale en l'occurrence s'est développée malgré toute une série de choses mais à l'époque moderne on a inventé un champ de réflexion qui s'appelle l'économie, qu'on lui a donné de plus en plus d'importance et donc l'un des phénomènes qui explique le succès du libéralisme, c'est qu'il est pleinement cohérent avec la **pensée occidentale qui a accordé à l'économie une place hégémonique**.
2. Le fait que les pensées qui étaient dans le champ économique plutôt à gauche, je pense notamment au marxisme ou d'autres courants dans ce style là, ont été à un moment utilisés de façon stupide. Marx étant un penseur à la fois fabuleux en terme de richesse de réflexion, mais qui a les défauts de son époque. Exemple : quand on lit Marx, donc je parle du "*Capital*", on voit qu'il n'arrête pas de conspuer tout le naturalisme économique des libéraux, et ça c'est magnifique. Et à la fois quand on voit Marx dans ses approches historiques, c'est un naturaliste parfait. C'est assez cocasse à voir finalement, Marx dans ses analyses sur le fonctionnement de l'économie, est un véritable sociologue qui remet en cause des vérités d'ordre quasi divin que les libéraux professent à son époque, mais dès qu'il tombe lui-même dans le champ historique, alors là il est dans les prophéties quasi-

religieuses et il n'est pas difficile de trouver dans le « *Capital* » des moments où Marx sort des évidences comme des lois gravitationnelles en disant que c'est ainsi que l'histoire va se dérouler. Et l'un des malheurs de l'histoire du Marxisme c'est que malheureusement les successeurs, peut-être pas théoriques, mais en tout cas politiques, ceux qui ont brandi l'étendard pour défendre des nouveaux systèmes de pensée, finalement, ont souvent utilisé ce qu'il y avait de plus pauvre dans la pensée de Marx plutôt que de continuer à l'enrichir. Morin et Castoriadis sont des exemples parfaits car ils ont été acteurs de tout cela puisqu'ils ont été militants communistes tous les deux et qu'ils ont été dégoûtés des pratiques de leurs camarades à défendre l'indéfendable et après à se faire ostraciser, et ils ont donc réagi de la plus belle façon c'est-à-dire la subtilité, et pousser la réflexion dans ses derniers retranchements, subtil et complexe. Ils sont donc les successeurs de Marx dans le meilleur sens du terme, mais ceux qui ont, notamment tous les partis communistes européens qui ont défendu tout ce que faisait l'URSS à l'époque etc., beaucoup appauvri le Marxisme. Mais dans le succès du libéralisme, il n'y a rien à faire c'est un facteur explicatif. Les prises de position politiques de tous les partis communistes, qui ont soutenu l'URSS, forcément ça a joué dans la décrédibilisation des idées de gauche radicales, plutôt que de le nourrir et de continuer à enrichir ce paradigme. Et le fait de décrédibiliser une pensée qui est anti-libérale, a fait le jeu du libéralisme.

3. C'est une pensée qui arrive à rebondir sur ses propres erreurs, donc je m'explique, on crée un marché unique européen, ça crée une situation de dumping social, fiscal ==> délocalisation, perte d'emploi. Comment va réagir le libéralisme ? Il va se dire "*Ah c'est catastrophique, on perd des emplois donc ça veut dire qu'on a un marché du travail trop rigide, et donc il faut assouplir le marché du travail*". Donc quand le libéralisme crée un problème, il va l'approfondir d'avantage mais il a des arguments pour dire qu'il a la solution au problème. Donc d'une part, c'est la dynamique du marché donc ce n'est pas de sa faute, et d'autre part, si c'est une faute, c'est celle de l'Etat qui est trop rigide, trop exigeant, etc. Et il va pouvoir rebondir en disant qu'il faut faire plus de libéralisme. Donc c'est une pensée qui en se développant de façon concrète dans la prise de décision politique, va créer à la fois toute une série de nouveaux problèmes, mais va avoir à la fois le discours pour désigner des bouc-émissaires afin de ne pas faire face à ses propres responsabilités. J'ajouterai également parfois les discours réducteurs et mensongers. Donc par exemple les anti-libre échangistes plutôt multiculturels, se font parfois traiter de fascistes.

Et donc il y a également cette espèce d'amalgame fait entre l'ouverture ou la fermeture. Donc ceux qui sont pour le CETA sont pour l'ouverture, et ceux qui sont contres sont pour

la fermeture. Donc des discours mensongers et réducteurs. C'est une pensée qui arrive à rebondir sur ses propres erreurs, donc je m'explique, on crée un marché unique européen, ça crée une situation de dumping social, fiscal ==> délocalisation, perte d'emplois. Comment va réagir le libéralisme ? Il va se dire *"Ah c'est catastrophique, on perd des emplois donc ça veut dire qu'on a un marché du travail trop rigide, et donc il faut assouplir le marché du travail"*. Donc quand le libéralisme crée un problème, il va l'approfondir d'avantage mais il a des arguments pour dire qu'il a la solution au problème. Donc d'une part, c'est la dynamique du marché donc ce n'est pas de sa faute, et d'autre part, si c'est une faute, c'est celle de l'Etat qui est trop rigide, trop exigeant, etc. Et il va pouvoir rebondir en disant qu'il faut faire plus de libéralisme. Donc c'est une pensée qui en se développant de façon concrète dans la prise de décision politique, va créer à la fois toute une série de nouveaux problèmes, mais va avoir à la fois le discours pour désigner des bouc-émissaire afin de ne pas faire face à ses propres responsabilités. J'ajouterai également parfois les discours réducteurs et mensongers. Donc par exemple les anti-libre échangistes plutôt multiculturels, se font parfois traiter de fascistes. Et donc il y a également cette espèce d'amalgame fait entre l'ouverture ou la fermeture. Donc ceux qui sont pour le CETA sont pour l'ouverture, et ceux qui sont contres sont pour la fermeture. Donc des discours mensongers et réducteurs.

4. Mais en même temps on vit dans un monde et la c'est le dernier aspect explicatif et la j'appuie plutôt sur tout ce qui est relatif à la société du spectacle, qui crée une société où les gens n'ont plus vraiment de réflexion. Et c'est peut-être une des pires choses que l'on a perdue par rapport à la période de la guerre froide où les partis communistes ont, bien qu'étant blâmables sous beaucoup d'aspects, créé des contrepoids effectifs au capitalisme le plus débridé parce que si à un moment le système a concédé toute une série de choses, c'est parce qu'on avait des partis politiques, des intellectuels, qui disaient qu'il y avait un monde ailleurs qui était beaucoup mieux, c'était une erreur. Mais en même temps c'est ce qui obligé les élites locales en partie à faire des concessions et les mouvements communistes faisaient un travail de formation qui étaient peut-être un peu réducteurs et simplificateurs et qui n'utilisaient pas la meilleure partie des réflexions de Marx, parfois même la plus pauvre, mais qui en même temps donnait dans la tête de la population de véritables antidotes par rapport à des choses que l'on a aujourd'hui. Moi je me rends bien compte pour avoir milité et fait énormément de conventions sur le libre échange, qu'aujourd'hui il faut repartir de quasi zéro. Sauf avec des publics qui sont déjà dans des dynamiques associatives, dynamiques et culturelles, on va dire alternative car eux ont des consciences assez développées pour vouloir privilégier le qualitatif au quantitatif. Mais

quand on tombe sur M. et Mme tout le monde, moi je fais des formations syndicales pour des gens qui veulent avoir des mandats de délégué en entreprise, on se rend compte que quand les gens ne sont pas dans des dynamiques associatives ou des dynamiques culturelles un peu alternatives, sauf si ils ont eu la chance d'avoir un milieu familial qui les a ouvert à ça, leurs idées sur la politique c'est un néant et pour moi le succès du libéralisme il repose là-dessus, on a plus vraiment dans la tête et dans la pensée collective de notre époque, des gardes fous idéologiques, et donc dans le cas d'un marché, on sait qu'il peut fonctionner selon des règles différentes et donc de se demander quel jeu celui-ci nous propose.

Ici quand on nous parle d'un marché c'est soit il y en a, soit il n'y en a pas. Donc en fait les gens acceptent toute une série de raccourcis de pensée, qui sont réducteurs et mensongers quand on les analyse, mais dont les gens ne se rendent pas compte car ils n'ont pas les connaissances élémentaires qui pourraient leur servir de garde-fou.

H : Oui, si l'on se met à la place de gens qui n'ont pas fait spécialement d'études ou qui n'ont pas spécialement poussé la réflexion.

P : Précisément parce que les écoles de pensée qui faisaient ce genre de travail ont toutes disparues, au CEPAG on est un mouvement d'éducation populaire donc on le fait encore mais à une petite échelle, mais la disparition des mouvements communistes a été préjudiciable parce qu'ils ont formé des milliers de militants, pas toujours de façon intelligente, c'est vrai, mais ils ont quand même donné des garde-fous aux gens.

Et puis on va pas se mentir, il y a tellement d'autres choses à faire que de se renseigner et s'instruire (facebook, snapchat, etc.) que les gens n'ont pas spécialement envie de s'intéresser à la politique, voilà tout. On l'a bien vu avec l'élection de Macron qui défend les idées du libre-échange et qui arrive à faire croire à la population que ce n'est pas de la faute du libéralisme. Et s'il arrive à faire croire ça, c'est quelque part qu'une partie non-négligeable de la population, qui a le droit de vote, n'est pas bien renseignée ou n'a pas l'envie de se renseigner.

H : Je crois qu'on peut s'arrêter là. Merci beaucoup de votre aide.

Question to TTIP Negotiators: Cristiana Pace (assistant to Marco Felisati, responsible for US) and Laura Travaglini (assistant to Marco Felisati, responsible for Trade)

Cristiana Pace = C

Laura Travaglini = L

Hamid Razavi = H

L: First, a few words about Confindustria is the confederation of Italian industries, it is the main body representing private enterprises in Italy, we associate, we are secondary in that association which means that we do not associate directly companies, but it is like a pyramid, there are companies that associate to local and sectorial associations and then Confindustria associates these associations. We have more or less 220 associations and they represent more than 150 000 companies in total, so we are really the main body in Italy for private sector. Companies associated operate in all sectors and are of all sizes, from small, medium to large companies. But of course as you know the backbone of Italian industry is made of small companies. So that was just a brief introduction, Confindustria is more than 100 years old, so we have a very personal link with trade policy within the Internationalization Department, and then Cristiana is also part of the Internationalization Department but she is more in charge for the issues with the US, and more broadly among the countries, in short she speaks for us.

H: Ok, thank you very much for this introduction. So now we are going to talk about the TTIP. Although this treaty is already considered as dead.

L: No, it is frozen, we prefer to say that it is frozen.

C: It is on standby.

H: Anyway with that kind of [US] President, it is a bit compromised. I would like to know what kind of concerns have led the public opinion to have such a bad picture about this project. Because a lot of people are protesting against it, and the point of this thesis is to know the whys and wherefores of theses protestations.

So I have eight questions, for each one feel free to answer following your own competences. what are in your opinion the main features of such a treaty? I mean what does this treaty organise exactly?

L: You mean, the chapters inside?

H: Yes, but more broadly what kind of features does it represent? Who wants to answer first?

L: Yes, I can do that. So I will start with the first question. So why this treaty has been debated so much, and the public opinion, not all of it of course, is in favour of it.

H: Of course, but I am considering this possibility.

L: Ok, so as Confindustria, in the trade policy department, we follow all the treaties that the European Union is negotiating at the moment and of course in the last years, TTIP was the main focus for us, the reasons can be easily understood, I mean it is probably after CETA, it is the first treaty between two big blocks and industrialized blocks the interest for Italian industries was very high, on all the chapters of this agreement. In my opinion, I mean I have been following all the negotiating process of the TTIP, there are basically two reasons why the public opinion was growing against the TTIP. One was the scope of the agreement, because for the first time, it was a very broad scope of negotiations, it was touching from environmental issues, to issues related to the security of the consumer. So it was not only an economic agreement, but the civil society at all levels was touched by the agreement. So first of all the scope of the agreement, but I try to summarise because like this we can deepen all the arguments I am talking about. The second is the transparency, of the negotiations because the negotiators were accused for the first time that the negotiations were not transparent. Nobody knew what was going on, and when you don't know what's going on, you think that risks are so high that you have to start to understand and to ask and to look to the papers or the draft of the treaty. So this is what happened and what Italy did, asking for transparency in order to calm down a little bit this movement against this treaty. For the first time there was the so-called disclosure of the text and anybody was able to see what was going on. Not really anybody because you could not have the texts on the Internet, but you could find a way to ask questions, to be heard and answered, to really know what was going on.

H: To have an exchange between the population and the ...

L: Yes, between the institutions and the civil society, and this was the very first time that this was happening in the negotiations of a treaty, of a trade agreement.

H: Ok, just another sub question about this: Why should the negotiations of a treaty not be transparent, I mean there are surely quite obvious reasons that appear to you? Should they not be transparent?

L: Ok, one thing is transparency, that should be ensured at any level in my opinion, but another thing is negotiations. As you know, the negotiating process, for its nature imposes

that at some delicate stages you cannot disclose everything because otherwise the negotiations will stop.

H: You mean that the other parties will know about your weaknesses and it will break the process?

L: Yes, it is normal to keep, not for lack of transparency, but it is a strategy which is normal for negotiating such complex treaties and agreements. You need to balance transparency with the need to wait for transparency, I don't know how to say. [The main idea is to balance transparency with the needs of the negotiating process.].

H: No it is fine, I totally understood the point. Thank you very much.

L: Ok, so these are the two main points, and I would like to stress the point that the US, vis-à-vis the EU has always had big problems, for example linked to the agriculture, I mean the meat, the hormone beef dispute. We have always had different point of views, and, as I said before, these issues are really touching the normal citizen, the man of the street, so there was a growing and growing conscientiousness about the possible problems linked to the agreement. This is why the NGOs and all the civil part of the society reacted so strongly and even violently in some cases, like the "No TTIP" movements all over Europe, the roots of them we can find them in Germany, but then they spread out all over, and in Italy also we had strong movements.

H: Yes of course, here in Italy, it has been a year that I am leaving here and I felt that the citizens were more dependent toward small corporations, there are, as you said, less big enterprises, for example there are no Starbucks, or that kind of big company, because I think that here in Italy people are more attached to their own traditions ...

L: Family businesses, more than in other countries.

H: So now, maybe we can go through the second question, about the main features of this treaty.

C: I mean she is in charge of the TTIP, I am more related to the business, that's why I am not sure if I can help.

H: No worries, I also have some questions for you.

L: Ok, so the main issues for us is of course related to tariff liberalisation is the most visible consequence of an agreement, with the elimination of duties between the two blocks. So the main interest of Italian companies was of course linked to that, but if you look at the tariff profile of the US, it is not so bad, I mean neither EU, neither the US have high rates of duties so this was a ... let's say a side effect of the agreement even if I cited it first. But the very main one was really the convergence of standards and the regulatory legislation because as

you know even if the duties are very low for example for exporting machinery, these machines will never enter to the US market if they ...

H: Don't harmonize ...

L: The standards and so on our point of view, and we also wrote documents that I can share with you, I think one is also in English so it will be easier for you. It is a summary, but we stressed the fact that, ok, the duties will be cancelled anyhow, but the real victory would be on the harmonization of standards.

H: All right.

L: So this is the main concerns, afterwards we are also interested in public procurement, investments, protection of investments, this ISDS issue.

H: Yes, I am going to ask you a question about it later.

L: And another big issue for us is linked to the Intellectual property protection and especially with the geographical indications. We have the example of CETA, the agreement with Canada, and we reached a very good agreement for us where more than 200 European organisations are protected and among which 41 are Italians, so we were hoping at that time that TTIP could replicate this agreement. And also there was an issue that was agreed by that treaty but was ongoing.

H: Ok, thank you, so now Ms. Pace, why was it so important to make such a deal with the US? I think that it is a broad question, but what is the first thing that comes to your mind?

C: Ok, so let's say that we are talking about 230 million people, in which 220 are in a good situation, they have about 50 000 GDP, and of which it is estimated that 37 000 is the purchasing power, still per persons so it means that for us, for Europe in general, it is one of the best market out there right now so far. So the reasons why we want to let's say, easy up, make at to zero the custom duties, over down tariff barriers, or non tariff barriers, is just going to increase the balance of trade between Europe and the USA.

H: All right, perfect and do you think that such a treaty would have made a difference in the wallet of Americans and Europeans? If yes, do you have an idea of how much, and give me an idea of how to calculate such a number?

L: You are meaning in terms of growth, in trade ?

H: Yes.

L: We do not estimate growth in term of GDP or job creations, I mean the EU did that as a whole, but as Confindustria we are reluctant to do such estimations because, I mean they are very effective for medias for example, but we try not to do that, what we try to do is to determine what are the problems with the companies now vis-à-vis the US and what we can

do for eliminating, as Cristiana was saying, tariff duties, non tariff barriers, which is more realistic as results, but then how many jobs we create ...

H: Ok so you don't have such numbers.

L: No, we try not to do that. But of course the position of Confindustria is a lot in favour of TTIP, this was what I should've said from the beginning.

H: No, I think it was clear, no worries.

L: We are very much in favour of this and we are convinced that it will create jobs, that it will make both economies grow, and we will have many positive effects, also we have to monitor possible negative effects, but on the balance the positive will win against the negative effects, so we are very much in favour of it.

H: Ok, perfect. I think I understood well the positive effects, so now let's talk about the negative ones. Many detractors of the TTIP are talking about the negative effects that it could have on the power of the States to legislate, they think that such a treaty would paralyse their decision-making process. How would you think these concerns could be true?

L: Ok, I will make you an example because we don't believe that the treaty will undermine or weaken the power of the state to legislate, because in each treaty, even in CETA, it is expressly said that all the issues of competence of national level will stay so. I will make you an example for services, which is another big chapter, and it will implicate only services dedicated to enterprises which have an economic impact, all the services like security, safety, health, education, or transport, will remain under the power of the state. So there is a very secured attention on this because it is one of the most delicate point about that. The balance about opening the economy as much as they can without weakening the power of the state to legislate. So at this stage we are not considering this, and even for example for the protection of the investments, which was the most debated issue among civil society and the negotiators, even on this issue there are closes that secure the position of the state to continue to hold this position.

H: Ok so it goes on the next question which is more specific, about the Investor-State Dispute Settlement Mechanism. Do you think it is an effective way to ensure justice?

L: We believe that the progresses made with the CETA will ensure an effective justice, probably ISDS as such were not perfect at all, and was exposing at possible injustices.

H: You mean for the states or more for the investors?

L: No, for the states, I mean, because it was known that a lot of companies won cases and trials and it was therefore not really protecting the state as a whole, but with the ICS (investment court system) included in the CETA, many progresses were made, first of all the

tribunal is made of judges who are professionals and independent. And you have a second level of judgement that was not possible with ISDS, so probably not even ICS is perfect but it is much better than ISDS.

H: Ok, but I wanted to ask you this question because it is known that the states are too afraid to legislate about some concerns such as ...

L: Environment

H: Yes, exactly they were too afraid to have to go in front of these tribunals most to lose their trials.

L: Yes, but now it is not like that anymore because the procedure is much more balanced, it was probably too much in favour of multinationals before, we have examples of it, but then they corrected it

H: Ok so how did they correct it exactly? Was it with new judges, ...

L: Secondary level, and the fact that the tribunal can become permanent afterwards. I will have a look to the notes about it and I will give it to you.

H: Thank you very much! Ok, so there are two more small questions. Now about the environmental issues, the EU is world's spearhead of this concern, and as we already said the ISDS would limit its legislative power. Do you think ratifying this treaty will block the agenda in this field? Or could even lead to regressions?

L: In our opinion we never saw as a regression, we always said that the European standards will stay the same, it is not me who say that but the European Commission, they say that they will never go back, not even a step.

H: Yes, maybe you want to speak about the standstill principle?

L: Yes, of course but also every principle related to environmental standards and also especially the consumers' safety, products security, ... All the standards because of course the European standards are among the highest at the international level, so there are no ways to ignore them, even during the negotiations of a treaty with the United States.

H: Ok, perfect, so now the last question and then you will be free to go.

H: So as you said the negotiations are frozen for the moment. So are there any recommendations that you would make about this treaty? I mean what kind of improvements could make it more acceptable by the population?

L: Ok, you know as we said one of the main problem with this treaty was the too broad scope of application, so probably it will be needed to proceed step by step, chapter by chapter, and make agreements on a smaller scale would make the process much easier, first of all. Secondly, there are chapters that in our opinion would never see the light (laughing), for

example the public procurement chapter is very complicated so if we think that the agreement will enter into force, thinking that it could be made on such a big scale would be utopic at the moment and it will remain frozen forever, but if the choice is made to proceed chapter by chapter, from the easiest ones to the toughest ones, by elimination, no tariff barriers, or even harmonization of standards, we can hope to, on one side go ahead, and on the other side also to have the civil society on our side and to calm down all this debate and these movements anti TTIP. Because it would be much more understandable for everybody.

H: Ok, perfect, any things to add to this?

C: She said everything (laughing).

L: I will just give you the document I told you and whenever you need anything just tell.

H: Thank you very much!

Bibliography

Monographs:

- BASTIAT F., « Justice et fraternité », *Œuvres économiques*, Paris, 1983.
- BAUDOUIN C., “La démocratie à l’épreuve de l’intégration Européenne”, *Lextenso éditions*, Issy-les-Moulineaux Cedex, PHD Université d’Angers, 2014.
- CASTORIADIS C., « La société bureaucratique », *Christian Bourgois*, 1990.
- CASTORIADIS C., « L’institution imaginaire de la société », *Editions du Seuil*, cinquième édition revue et corrigée, Paris, 1975.
- CASTORIADIS C., « Domaines de l’Homme. Les carrefours du labyrinthe. », *Seuil*, 1999.
- CHATZISTAVROU F., « Les représentants permanents auprès de l’UE ou la redéfinition d’un rôle politique européen », *Regards sociologiques*, n°27-28, Université de PARIS I Panthéon-Sorbonne 2004
- COHEN B. J., « The geography of money », *Cornell University Press*, 1998
- CORM G., « Le nouveau gouvernement du monde : Idéologies, structures, contre-pouvoirs », *La découverte*, Paris, 2010.
- DE GERANDO J. M., « Traité de bienfaisance publique », *Librairies Jules Renouard et cie*, Paris, 1839.
- DEHOUSSE R., « Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue? », *West European Politics*, p. 118-136.
- DE NANTEUIL A., « Droit international de l’investissement », *Editions A. Pedone*, 2nd edition, 2017.
- DONY M., « Après la réforme de Lisbonne, les nouveaux traités européens », *Edition de l’Université de Bruxelles*, 2008.
- DUCHÂTEL M. T., “Considérations d’économie politique sur la bienfaisance ou De la charité dans ses rapports avec l’état moral et le bien-être des classes inférieures de la société”, *Guiraudet et Jouaust*, 2nd edition, Paris, 1836.
- DUINA F., KURZER P., « Smoke in your eyes », *Journal of European Public Policy*, vol. 11/1, 2004, p. 57-77.

- EWALD F., « Histoire de l'Etat Providence : les origines de la solidarité », *Librairie Générale française*, Paris, January 1996.
- FOUILLEE A., « La démocratie politique et sociale en France », *Félix Alcan*, Paris, 1910.
- GADDIS J. L., « We now know : rethinking Cold War History », *Oxford University Press*, Oxford, 1997.
- GINSBERG R. H., “Demystifying the European Union: The Enduring Logic of Regional Integration”, *Rowman & Littlefield Publishers Inc.*, Lanham, 1992.
- JUILLARD P., « Accord multilatéral sur l'investissement : un accord de troisième type ? », in « Journée d'étude : un accord multilatéral sur l'investissement : d'un forum de négociation à l'autre ? », *Edition A. Pedone*, Paris, 1999.
- KRIGE J., « American Hegemony and the Postwar Reconstruction of Science in Europe », *The MIT Press*, Cambridge, Massachusetts – London, England, 2006.
- LAKEHAL M., « Dictionnaire de science politique », *L'Harmattan*, Paris.
- LA ROCHEFOUCAULD-LIANCOURT F. A. F., « Premier rapport du comité de mendicité », *Imprimerie Nationale*, Paris, 1790.
- LE GOFF J., “Du Silence à la Parole; Une Histoire du Droit du Travail, des Années 1830 à nos Jours”, *Presses Universitaires de Rennes*, 2004.
- LEVRAT N., « La construction européenne est-elle démocratique? », *La Documentation française*, 2012.
- LIEBMAN M., « Introduction aux doctrines politiques contemporaines : Conflits idéologiques et conflits sociaux au XXème siècle », *Presses Universitaires de Bruxelles*, édition 1983-84.
- MACLEVER R. M., introduction to POLANYI K., « The great transformation : the political and economic origins of our time », *Beacon Press*, Boston, Eleventh printing, November 1971, x.
- MALENOVSKY J., « La conciliation des droits et libertés dans les ordres juridiques européens, Dixièmes journées d'études du Pôle européen Jean Monnet », *Bruylant*, Brussels, 2012.
- MISONNE D., « Payer ou renoncer ? Les investisseurs à l'assaut de la protection de l'environnement », *FUSL*, Bruxelles, 2015.
- NAOME C., « Le pourvoi devant la Cour de justice de l'Union européenne », *Larcier*, Brussels, 2016, Chapter 1, Section II.

- POLLACK M., « The Political Economy of the Transatlantic Partnership », *Florence: EUI-RSCAS*, 2003.
- POLANYI K., « The great transformation : the political and economic origins of our time », *Beacon Press*, Boston, Eleventh printing, November 1971.
- PONCELET B., « Europe une biographie non autorisée : de la « Paix Américaine » à la « Civilisation Poubelle » », *éditions Aden*, Bruxelles, Mars 2014.
- QUETELET A., « Recherche sur le penchant au crime dans les différents âges », *Nouveaux Mémoires de l'Académie Royale des sciences et des belles-lettres*, Bruxelles, 1832.
- ROSANVALLON P., « La démocratie inachevée : histoire de la souveraineté du peuple en France », *Gallimard*, 2000.
- SCHUTZE R., « European Union Law », *Cambridge University Press*, 2005, pp. 34-56.
- STRANGE S., « Mad Money : when markets outgrow governments », *the University of Michigan Press*, 1998.
- VAN SCHENDELEN R., «Machiavelli in Brussels. The art of lobbying the EU», *Amsterdam University Press*, 2010.
- WEBER M., « Economie et société. L'organisation et les puissances de la société dans leur rapport à l'économie », Tome 1, *University of California Press*, 1922.

Collective books:

- ARES M. (dir.), BOULANGER E. (dir.), «L'investissement et la nouvelle économie mondiale: Trajectoires nationales, réseaux mondiaux et normes internationales», *Bruylant*, Bruxelles, 2012.
- ASSO P. F., «The “Home bias” approach in the history of Economic thought: issues on financial globalization from Adam Smith to John Maynard Keynes», in “Markets and Authorities: Global finance and human choice”, ed. LORENTZEN J. et al., *Edward Elgar Publishing*, Massachusetts, 2002.
- BOUSSAGUET L., JACQOT S., « Les nouveaux modes de gouvernance », in R. DEHOUSSE (dir.), « Politiques européennes », Paris, *Les Presses de Science Po*, 2009.
- BRACK N., COSTA O., «Le fonctionnement de l'Union Européenne», *Editions de l'université de Bruxelles*, 2014.

- BULMER S., WESSELS W., « The European Council : Decision-making in European Politics », *Macmillan*, London, 1987.
- CHEVALLIER J., « Peut-on rationaliser la production du droit ? », in PERALDI-LENEUF F. (dir.), DE LA ROSA S. (dir.), « L'Union européenne et l'idéal de la meilleure législation », *Editions Pedone*, Université Paris 1 Panthéon-Sorbonne, 2013.
- DUE O., « Constitutional adjudication in European Community and National Law », *Mélanges O'Higgins*, London, 1992; RUBIO LLORENTE F., « Tendances actuelles de la juridiction constitutionnelle en Europe », *AUC*, 1996.
- DAWSON M., DEWITTE B., « Judicial Activism at the European Court of Justice »; VAN MEERBEECK J., « De la certitude à la confiance », *Anthemis*, Publications de l'Université libre de Bruxelles, 2014.
- ENGEL C. & WESSELS W., « From Luxembourg to Maastricht : institutional change in the E.C. after the Single European Act », *Europa Union Verlag*, 1992.
- FRYDMAN B., « Comment penser le droit global ? », in J-Y. CHEROT and FRYDMAN B., (dir.), « La science du droit à l'ère de la globalisation », *Bruylant*, Bruxelles, 2012, pp. 38-40.
- GOBIN Corinne, “L'Union Européenne, la recomposition conservatrice”, in ANDREANI Tony & VAKALOULIS Michel, “Refaire la Politique” (dir.), *Ed. Syllepse*, Paris, 2002, pp. 103-116.
- GWOSDZ K., DOMANSKI B., “Social consequence of delocalisation in labour intensive industries: the experience of old and new members of the EU”, in LABRIANIDIS Loïs, « The moving frontier: the changing geography of production in labour », *Ashgate*, Hampshire, 2008.
- HOWSE R., « Transatlantic Regulatory Cooperation and the Problem of Democracy » in BERMAN G.A., HERDEGEN M. and LINDSETH P.L. (eds), « Transatlantic Regulatory Cooperation: Legal Problems and Political Prospects », *Oxford University Press*, 2000.
- JACOB Y., GUILLON S., « En finir avec la mondialisation déloyale ! », *Rapport au Ministères des Affaires Etrangères et Européennes, de l'Economie, des Finances et de l'Industrie*, January 2012, URL : <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/124000168.pdf>
- LANG T. F. A., “Reconstructing embedded liberalism: John Gerard Ruggie and Constructivist Approaches to the study of the International Trade Regime”, in

RUGGIE John Gerard, "Embedding Global Markets: An enduring challenge", *Ashgate*, Harvard University, 2008.

- LORENTZEN J., introduction to "Markets and Authorities: Global Finance and Human Choice", by LORENTZEN Jochen et al., *Edward Elgar Publishing*, Massachussetts, 2002.
- NUGENT N., RHINARD M., « The European Commission », *Palgrave*, 2015.
- PAULY L. W., « Private power and public authority », in « Markets and Authorities : Global Finance and Human Choice », ed. LORENTZEN J. et al., *Edward Elgar Publishing*, Massachussetts, 2002, pp. 138-152.
- PEREIRA COUTINHO L., LA TORRE M., SMITH S.D, « Judicial Activism - An Interdisciplinary Approach to the American and European Experiences », *Springer*, 2015.
- REINER C., SCHREUER C., « Human Rights and International Investment Arbitration», in DUPUY P., M. & al., « Human Rights in International Investment Law and Arbitration », *Oxford University Press*, 2008.
- VAN WAEYENBERGHE A., « Vers une meilleure méthode communautaire », in PERALDI-LENEUF F. (dir.), DE LA ROSA S. (dir.), « L'Union européenne et l'idéal de la meilleure législation », *Editions Pedone*, Université Paris 1 Panthéon-Sorbonne, 2013.
- WIENER A., DIEZ T., "European Integration Theory", *Oxford University Press*, Second Edition, Oxford, 2009.
- WOODS N., « Editorial introduction. Globalisation : Definition, debates ... », *Oxford Development Studies*, February 1998, Vol. 26 Issue 1.

Journals:

- BACHAND R., « Etude comparative des accords et traités d'investissement dans les Amériques : Existe-t-il une alternative au modèle ALENA ? », *Continentalisation*, Notes et études 01-1, January 2001, URL : <http://www.ieim.uqam.ca/IMG/pdf/GRIC-etude.pdf>
- BEN HAMIDA W., « L'arbitrage Etat-investisseur cherche son équilibre perdu : Dans quelle mesure l'Etat peut introduire des demandes reconventionnelles contre l'investisseur privé ? », *International Law FORUM*, Vol. 7, No. 4, 2005.

- BONNAFE P., CARTRY M., « Les idéologies politiques des pays en voie de développement », In *Revue française de science politique*, 12^e année, n°2, 1962, pp. 417-425. URL : http://www.persee.fr/doc/rfsp_0035-2950_1962_num_12_2_403378
- BISWAS S., « Stories of Hegemony : The Political Stakes of the Rise and Decline of US Power », *The Journal of Asian Studies*, Vol. 75, n°4 (November), 2016, p. 1033.
- BUGRA A., “Karl Polanyi et la séparation institutionnelle entre politique et économie”, Review of *Raisons politiques*, 2005/4 (#20), pp. 37-56, URL: <https://www.cairn.info/revue-raisons-politiques-2005-4-page-37.htm>
- CHEVÈNEMENT J.-P., « Le Partenariat Transatlantique et l’avenir de la mondialisation », *Gallimard*, Revue Le Débat, 2014/1 (n°178).
- COSTA O., « Le parlement européen dans le système décisionnel de l’Union européenne : la puissance au prix de l’illisibilité », *Politique européenne* 2009/2 (n°28).
- CREMADES B., CAIRNS D., « The Brave New World of Global Arbitration », *Journal of World Investment*, 2002.
- DE BRIE C., “Comment l’AMI fut mis en pieces”, *Le Monde Diplomatique*, December 1998.
- ELIASSON L.J., « Problems, Progress and Prognosis in Trade and Investment Negotiations: The Transatlantic Free Trade and Investment Partnership », *Journal of Transatlantic Studies*, Vol. 12, No. 2.
- GIDE C., « L’idée d’une solidarité en tant que programme économique », Review of *Revue internationale de sociologie*, by René Worms, Editions Giard & Brière, Paris.
- HOLLEAUX A., « La fin des règles générales », *Bulletin de l’Institut international d’administration publique*, n°39, July-September 1976.
- HORCHANI F., « Le droit international des investissements à l’heure de la mondialisation », *Journal du droit international*, 2004.
- House of Representatives, Philippines, *Committee Daily Bulletin*, Vol. I No. 89, mars 2011, <http://www.congress.gov.ph/download/commdaily/CDB%20Vol%201%20No.%2089%20%2803.15.11%29.pdf>
- JANČIĆ D., « The Role of the European Parliament and the US Congress in Shaping Transatlantic Relations: TTIP, NSA Surveillance, and CIA Renditions », *Journal of Common Market Studies*, Vol. 54, No. 4, 2016.

- MORAVCSIK A., « Le mythe du déficit démocratique européen », *Raisons politiques*, 2003/2, n°10.
- NOTTAGE L., « Investor-State Arbitration: Not in the Australia-Japan Free Trade Agreement, and not ever for Australia? », *Journal of Japanese Law*, Vol. 19 n° 38, 2014.
- PETROVA M., “Mass Media and Special Interest Groups”, *Journal of Economic Behaviour and Organization*, vol. 84, 2012, pp. 17-38.
- POIRIER N., “Cornelius Castoriadis. L’imaginaire radical”, in *Revue du MAUSS*, 2003/1 (n°21), *La Découverte*, pp. 384. URL : <https://www.cairn.info/revue-du-mauss-2003-1-page-383.htm>
- POLLICINO O., « Legal Reasoning of the Court of Justice in the Context of the Principle of Equality between Judicial Activism and Self-restraint », *German Law Journal*, Vol. 5, n° 3.
- QUICK R., « Why TTIP should have and Investment Chapter Including ISDS », *Journal of World Trade*, 49, 2015.
- TOOZE R., “Susan strange et l’économie politique internationale”, review of *L’Economie Politique*, *Altern. Économiques*, 2001/2 (#10), URL: <http://www.cairn.info/revue-l-economie-politique-2001-2-page-101.htm>
- VAN DEN ABEELE E., « L’agenda mieux légiférer de l’Union européenne », *Courrier hebdomadaire CRISP*, 2009, n°2028-2029.
- VINCENT J.-M., « Aux sources de la pensée de Max Weber », in *L’homme et la société revue internationale de recherches et de synthèses sociologiques*, vol. 6 n°1, 1967, pp. 55, URL : http://www.persee.fr/doc/homso_0018-4306_1967_num_6_1_1065
- VINCENT P., « Le Comprehensive Economic Trade Agreement (CETA) », *Tijdschrift voor internationale handel en transportrecht*, 16/4, Université de Liège, 31st of January 2017.
- WALLACH M. L., "Le nouveau manifeste du capitalisme mondial.", *Le monde diplomatique* 527, 1998, URL : <https://www.monde-diplomatique.fr/1998/02/WALLACH/3537>

Thesis/PHD:

- ALFONSO N., « Lobbies inside the European institutions : an obscure relation at the heart of Europe », *LUISS University Department of Political Science* (Master Thesis), 2016.
- BARASCH M., « Le socialisme juridique », (Phd. Diss.) *Presses Universitaires de France*, Paris.
- BEN HAMIDA W., « L'arbitrage transnational unilatéral - Réflexions sur une procédure réservée à l'initiative d'une personne privée contre une personne publique », Thesis, Panthéon-Assas University (Paris II), 2003.
- LELEUX A., « La démocratie peut-elle s'appliquer en dehors d'une structure étatique? Regards sur une Union européenne qui se veut démocratique » (Master Thesis), *UCL*, 2013.
- ZAÏT M., « Une réforme du mécanisme de règlement des différends investisseurs-États (ISDS) prévu par le partenariat transatlantique de commerce et d'investissement est-t-elle en mesure d'empêcher la limitation de la liberté des États à légiférer? », Thesis, Université libre de Bruxelles, 2016.

OCDE:

- OECD, "Draft convention on the protection of foreign property", *I.L.M.*, vol. 7, 1968 (I).

European Union:

- Council of the European Union, "Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America", published in October 2014, URL: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL->
- Judgement of the General Court (1st Ch.), 10th May 2017, *Efler e.a. / Commission*, T-754/14; KARATZIA A., « New Developments in the context of the European Citizens' Initiative: General Court rules on 'Stop TTIP' », *EU Law Analysis*, URL: <http://eulawanalysis.blogspot.be/2017/05/new-developments-in-context-of-european.html>

- Parlement européen, « Plein feu sur le lobbying en Europe », *Communiqué*, 2008, URL : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRESS+20080414FCS26495+0+DOCXML+V0//FR>
- SCHOELLMANN W., « Is CETA a mixed Agreement ? », *European Parliament Think Tank*, 1st of July 2016, URL : http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_ATA%282016%29586597
- SGUEO G., « Transparency of Lobbying at EU level », *European Parliamentary Research Service*, 2015.
- Treaty on European Union, 7th of February 2012.
- Treaty on the functioning of the European Union, 1st of December 2009.
- Website of the European Union, « How we'll make TTIP happen », URL: http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/process/index_en.htm
- Web page of the European Union, URL: <http://www.strasbourg-europe.eu/explications-detaillees-sur-les-institutions-de-l-union-europeenne,3214,fr.html?DisablePublicationWorkflow=1>

European Commission:

- Commission, « Online public consultation on investment protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP)», Brussels, January 2015, URL: http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153044.pdf
- European Commission, 4th July 2017, « European Citizens' Initiative: Commission registers 'Stop TTIP' Initiative », *Press release*, URL: http://europa.eu/rapid/press-release_IP-17-1872_en.htm
- European Commission, “Small and medium sized enterprises (SMEs) in TTIP”, January 2015, URL : <http://trade.ec.europa.eu/doclib/docs/2015/january/>
- European Commission, “Consolidated CETA Text”, published the 26th of September 2014, URL: http://trade.ec.europa.eu/doclib/docs/2014/september/tradoc_152806.pdf
- European Commission, “TTIP: 1. Draft services/investment offer; 2. US State level measures”, 26th of May, URL: <http://data.awp.is/filtrala/2014/06/13/4.html>

- European Commission, “Member States endorse EU-US trade and investment negotiations, 14th of June 2013.
- European Commission, “Commission Proposal for the Modernisation of the treatment of Public Services in EU Trade Agreements”, Brussels, published in October 2014, URL: http://www.epsu.org/IMG/pdf/154b-11_EC_paper_on_public_services.pdf
- Intervention in July 2014 at the “Stakeholders event” organized by the European Commission during the 7th round of talks in Brussels.

Other specialized references:

- BELTRAME J., BLANCHFIELD, “EU boasts of huge gains in Canadian trade deal”, November 2013, URL: <http://www.cbc.ca/m/touch/news/story/1.2325983>
- BENDINI R., DE MICCO P., « The expected impact of the TTIP on EU Member State and selected third countries », *Directorate General for External Policies*, September 2014. URL : http://www.europarl.europa.eu/RegData/etudes/IDAN/2014/536403/EXPO_IDA%282014%29536403_EN.pdf
- BROWN L., « The problems with CETA : Why should anyone care ? », *NUPGE*, URL : http://www.epsu.org/IMG/pdf/CETA_and_Europe.pdf
- CES, “Le Syndicat européen appelle à un réexamen fondamental des accords commerciaux canadien et américain”, November 2014, URL: <https://www.etuc.org/fr/presse/le-syndicat-europ%C3%A9en-appelle-%C3%A0-un-r%C3%A9examen-fondamental-des-accords-commerciaux-canadien-et#.VTBNmyGeDGc>
- Corporate Europe Observatory, « Who lobbies most on TTIP ? », July 2014, URL : <http://www.cairn.info/revue-le-debat-2014-1-page-26.htm>
- Corporate Europe Observatory, “Regulation – None our business ? », 16 December 2013.
- Corporate Europe Observatory, AK and OGB, “The fire Power of the Financial Lobby”, 2014, URL: https://corporateeurope.org/sites/default/files/attachments/financial_lobby_report.pdf

- Corporate Europe Observatory, “TAFTA: Les réglementations verrouillées”, February 2015, URL : <http://corporateeurope.org/fr/international-trade/2015/02/tafta-les-reglementations-verrouill-es>
- DE GUCHT K., « The Transatlantic trade and Investment Partnership : Where do we stand on the Hottest Topics in the current debate ? », January 2014, URL : http://trade.ec.europa.eu/doclib/docs/2014/january/tradoc_152075.pdf
- DONNELLY S., former member of the American administration for trade policies, now lobbyist for “International Business”: “It is worth concluding TTIP only if it covers the regulatory aspect, for example suppressing the precautionary principle”. URL: <https://corporateeurope.org/trade/2013/12/regulation-none-our-business>
- DONY M., « Les négociations autour du « TTIP »: vers une réforme du mécanisme de règlement des différends entre investisseurs et États et une « privatisation » de la Justice ? », *Justice en Ligne*, 2016, URL: <http://www.justice-en-ligne.be/article805.html>
- ELSNER Richard, “The secret business plan that could spell the end for SMEs”, March 2015, URL: <https://moreformesthanttip.wordpress.com/2015/03/02/cinq-questions->
- FRANC-MENGET L., « ACHMEA II – Seizing Arbitral Tribunals to Prevent Likely Future Expropriations: Is it an Option ? », *Kluwer Arbitration Blog*, 28th of March 2013.
- FROMAN M., American Representative for Trade, “Written reply to the Ways and Means Committee of the Congress about President’s trade policy”, 18th of July 2013, URL: <https://www.geminishippers.com/documents/threads/UST20130628.pdf>
- GOULD E., Public Services in S. SINCLAIR, S. TREW, H. MERTINS-KIRKWOOD, « Making Sense of the CETA. An analysis of the final text of the Canada-European Union Comprehensive Economic and Trade Agreement », 25th of September 2014, URL : <https://www.policyalternatives.ca/publications/reports/making-sense-ceta>
- GOYENS M., “Regulatory cooperation: perhaps boring, but the TTIP storm on the horizon”, *BEUC*, February 2015, URL: <http://www.beuc.eu/blog/regulators-and-consumer-organisations-less-me-and-more-we/>
- GRAYSTON J., « CETA- Provisional Application as of 21st of September 2017 », *GCO Blog*, 27th of July 2017, URL :

<http://www.graystoncompany.com/gco/index.php/gco-blog/entry/ceta-provisional-application-as-of-21st-september-2017>

- JOHNSON R., « The U.S.-EU Beef Hormone Dispute », *Congressional Research Service*, January 2015.
- KENNEDY L., “The secret business plan that could spell the end for SMEs”, February 2015, URL: <http://www.smeinsider.com/2015/02/12/the-secret-business-plan-that-could-spell-the-end-for-smes/>
- Letter from MARANTIS D., US trade representative, to BOEHNER J., Speaker of the House of Representatives.
- MILLER C., “TTIP and SMEs: a missed opportunity”, October 2014, URL: http://www.euractiv.com/sections/trade-industry/?type_filter=ttip-and-smes-missed-
- Mutualités Belges, “Le TTIP, un cheval de Troie pour des soins de santé de qualité accessibles à tous?”, February 2015, URL: http://www.mloz.be/files/positioncinnicttipfinal_fr20150202.pdf
- Oxford Dictionary of English, *Oxford University press*, Third Edition, 2009.
- PLASSART P., « Vous avez aimé la crise financière de 2008, vous allez adorer la prochaine », April 2015, URL : <https://www.lenouveleconomiste.fr/vous-avez-aime-la-crise-financiere-de-2008-vous-allez-adorer-la-prochaine-26731/>
- POSDORF H., « International Parliamentary Cooperation », Speech to the Cambodian Parliament, 2008, URL : www.kas.de/wf/doc/kas_12975-1522-2-30.pdf?080211045828
- Public Citizen, “Tens of Thousands of U.S. Firms Would Obtain New Powers to Launch Investor-State Attacks against European Policies via CETA and TTIP”, 17th of June 2015, URL: <https://www.citizen.org/sites/default/files/eu-isds-liability.pdf>
- Statements of VILSACK M. to the US agriculture secretary, supporting the inclusion of GMOs, chlorinated chicken and hormone treated beef within TTIP’s negotiations. URL : <https://corporateeurope.org/international-trade/2014/07/ttip-lose-lose-deal->
- Site Officiel du Collectif National Unitaire Stop TAFTA, « Traités Transatlantiques : le Parlement Wallon refuse la signature du CETA », 27th of April 2016.
- The Business Dictionary. URL : <http://www.businessdictionary.com/definition/globalization.html>
- TPN, « Toward Transatlantic Partnership. A European Strategy, 1994, URL : http://www.tpnonline.org/WP/wp-content/uploads/2013/09/Toward_Transatlantic_Partnership_European_Strategy.pdf

- Transatlantic Summit, « The New Transatlantic Agenda, 1995, URL : http://eeas.europa.eu/archives/docs/us/docs/new_transatlantic_agenda_en.pdf
- TTIP's negotiation mandate from the Council of the European Union, "Directives for the negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America", published in October 2014, URL: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>
- UNCTAD, World Investment Report 2014, « Investing in the SDGs: An Action Plan », United Nations, 2014.
- UNCTAD, World Investment Report 2014, Overview, Geneva, 2014, p. 4. URL: http://unctad.org/fr/PublicationsLibrary/wir2014_overview_fr.pdf
- VANDER STICHELE Myriam, "TTIP Negotiations and Financial Services: Issues and Problems for Financial Services Regulation", *SOMO*, October 2013.
- Vieuws, "Brussels Briefing on Agriculture", October 2013, URL: <http://www.vieuws.eu/food-agriculture/brussels-briefing-on-agriculture-all-you-need-to-know-for-april-may-2015/>
- Vieuws EU Trade Insights, "Exec to ask Court to decide on mixity of trade deal", October 2014, URL: <http://www.borderlex.eu/eutradeinsights/exec-to-ask-council-greenlight-for-upgrade-of-mexico-trade-deal/>
- World Bank, "Growth of the Service Sector", URL: http://www.worldbank.org/depweb/beyond/beyondco/beg_09.pdf
- World Health Organization, "Commission on Social Determinants of Health – Final Report", 2008, URL: http://www.who.int/social_determinants/the-commission/finalreport/en/
- X., « An open letter about investor-State dispute settlement », April 2015, URL : <https://www.mcgill.ca/fortier-chair/isds-open-letter>
- X., « Mécanisme de règlement des différends entre investisseurs et États (RDIE) La proposition de la Commission Européenne pour le TAFTA/TTIP ne comble pas les failles du dispositif », Stop TAFTA Collective, 2016, URL : <https://www.asso-sherpa.org/wp-content/uploads/2016/01/ISDS-ICS-Doc-de-position-VF-210116.pdf>
- ZACHARIE A., VAN NUFFEL N., CERMAK M., « Traité Transatlantique (TTIP) : Cartographie d'un Partenariat Controversé », *NZ Maritime*, in Point Sud Les Etudes du CNCD-11.11.11, Juin 2015 (n°13).

Newspaper articles:

- LeMondePolitique.fr, « Libéralisme économique », 2010, URL : <http://www.lemondepolitique.fr/cours/introduction-economie/pensee-economique/liberalisme-economique.html>
- Le Monde, “M. Barroso, vous n’êtes ni loyal ni respectueux !”, 18th of June 2013.
- NOUAHLAT L. , « Le discret traité transatlantique », *Libération*, 8 mai 2014, http://www.liberation.fr/terre/2014/05/08/le-discret-traite-transatlantique_1013312
- VIALE F., LAGAILLARDE M., « Traité transatlantique : un système d’arbitrage toujours aussi ‘anti-démocratique’ » *Le Monde*, 22nd October 2015, URL : http://www.lemonde.fr/idees/article/2015/10/22/traite-transatlantique-un-systeme-d-arbitrage-toujours-aussi-anti-democratique_4795136_3232.html#EldwR6HdG84cheBG.99

Agreements, treaties and constitutions:

- Belgian Constitution, URL : https://www.senate.be/doc/const_fr.html
- CETA, “Annex I Reservations for Existing Measures and Liberalisation Commitments”, July 2014, URL: <http://eu-secredeals.info/upload/2014/08/ceta-6.pdf>
- Multilateral Agreement on Investment, 1997.

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Convenant qu'aucune justification, telle que des considérations médicales, l'absence d'antécédents disciplinaires ou le niveau d'étude, ne peut constituer un facteur atténuant.

Prenant note de l'article XI.165 du Code de droit économique, de l'article 66 du *Règlement général des études* du 3 juillet 2006, du *Règlement de discipline relatif aux étudiants* du 5 octobre 1970, et de l'article 54 du *Règlement facultaire relatif à l'organisation des examens* du 9 décembre 2004;

Le Jury du Département de science politique recommande formellement d'attribuer au minimum aux étudiants qui commettent une faute de plagiat avérée la note de 0 pour l'ensemble du cours en question, sans possibilité de reprise en seconde session. Cette recommandation ne présage pas de la sanction finalement proposée au jury par le Doyen en fonction des détails relatifs au cas de plagiat qui lui a été transmis.

I **Hamid Razavi**, confirm having read this regulation and certify that I have not committed plagiarism for this research.

Done in (location) **Brussels**

Date **13/08/2017**

Signature of the student