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The diffusion of mega-regional agreements and their impact on the  
multilateral governance of the world trade order.

The case of the Transatlantic Trade and Investment Partnership (TTIP).

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## Introduction

The establishment of the World Trade Organization (WTO) during the Uruguay Round in 1995 responded to the deep transformations of the international trade order, by building a multilateral system of governance. Indeed, through the three waves of globalization (occurred respectively in 1860-1914, 1944-1971 and in 1989) the international order shifted from a unipolar governance (led first by the British hegemony and then by the United States) to a multipolar one, characterized by the rise of new emerging countries and new institutional actors (such as the European Union). In this context, multilateralism was perceived as the optimal way to govern the world trade system, in order to avoid the concentration of power on one or more countries. Indeed, multilateralism has been defined as “international governance of the ‘many,’” with its main principle being “opposition [of] bilateral discriminatory arrangements that were believed to enhance the leverage of the powerful over the weak and to increase international conflict” (Kahler, 1992 p.681). Thus, multilateralism increases the power of smallest states and it also discourages the WTO Member States (MS) to act unilaterally or as a free rider (Kahler, 1992). Furthermore, the WTO provides a system of repeated relations in which the reputation is important<sup>1</sup>, through the establishment of periodical Multilateral Trade Negotiations (MTNs). As a consequence, WTO MS are discouraged to adopt non-cooperative behaviour, since they might be sanctioned by when the successive MTNs is held.

Despite multilateralism and non-discrimination are its main principles, the WTO did not eliminate the possibility for MS to deepen their cooperation bilaterally, through the conclusion of Preferential Trade Agreements (PTAs). Instead, the WTO was based on a sort of pyramidal structure, “with multilateralism at the top, regionalism and bilateralism in the middle and domestic trade and economic policies of WTO Member States at the bottom of the pyramid” (Leal-Arcas, 2011 p. 597).

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<sup>1</sup> This concept is related to the theory of international regime. In particular, this theory states that it is possible to have cooperation among states in a context of anarchy, thanks to the establishment of international regimes and institutions. This is possible since international regimes and institutions enhance the transparency and the exchange of information among nation states, and they provide a system of repeated relations in which MS’s reputation is fundamental (Keohane, 1984).

As a consequence, trade liberalization during the 90s followed two parallel tracks: the WTO Multilateral Trade Negotiations (MTNs) and the conclusions of bilateral and preferential agreements (Bhagwati, 2008). However, something started to change already during the first years of 2000, when it became clear that achieving concrete results with the MTNs was quite difficult. The deadlock of the Doha Development Round (DDR) in 2008 further confirmed the difficulty of achieving an agreement multilaterally. As a consequence, from that moment onwards, the number of PTAs notified at the WTO increased dramatically. This phenomenon was then accompanied by the diffusion of a new type of PTAs, which did not only aim to enhance trade liberalization through the elimination of tariff barriers. Instead these new agreements, known as mega-regional agreements, aimed at becoming new forums for setting global standards and rules for trade, challenging in this way the WTO's centrality in the world trade order. The first example of mega-regional agreement is the Trans-Pacific Partnership (TPP), which is already in a quite advanced status of negotiation. Indeed, during the month of October 2015, the TPP members announced that they reached an agreement which will have to be ratified by each of their central governments.

Thus, this dissertation aims to understand which is the impact of regional and mega-regional agreements on the world trade order. In particular, the research question (RQ) of this dissertation is: how the diffusion of mega-regional agreements can impact the multilateral system of the world trade order? In other words, are PTAs stumbling blocks or stepping stones for multilateralism? (Bhagwati, 1991). Supporters of mega-regionals believe that these agreements will be the basis for set new multilateral rules (Hamilton, 2014). Conversely, the thesis of this dissertation is that the diffusion of mega-regionals and the multiplication of rule-setting forums are bringing more fragmentation and competition in the world trade order, while at the same time eroding the multilateral system of global governance.

In order to demonstrate my thesis, I have chosen to use the Transatlantic Trade and Investment Partnership (TTIP) as a case study. In fact, even if negotiations are now stalled, the TTIP is the perfect example of a mega-regional agreement which aims to become multilateral, but which fails to do so. Indeed, I will demonstrate that the TTIP lacks both the technical and the political feasibility to become a global standards' setter.

Conversely, it is a pure bilateral agreement, which is pushing excluded countries to reinforce their own regional network.

This dissertation will be developed in three chapters. The first Chapter will be an overview over regional and mega-regional agreements. In particular, I will firstly focus on definitions and trends, secondly I will analyse the relations between PTAs and WTO's provisions, and finally I will assess the mega-regionals' multilateral potential, considering both how their provisions may spread and whether or not they are useful to solve the problem of overlapping PTAs.

The second Chapter will be dedicated to the TTIP. Thus, I will start by explaining the geopolitical narrative that the US and the EU are constructing for justifying the agreement, with a focus on the argument of TTIP as a global standard-setter. In particular, I will try to demonstrate the contradictions of this argument. Indeed, the real TTIP's ability to set global standards and to become a stepping stone for multilateralism depends on how regulatory cooperation will be achieved, as well as on excluded countries' reaction. For this reason, the second Chapter will assess both the technical and the political feasibility of TTIP's multilateralization, taking in considerations the mode of regulatory cooperation and the possible responses of excluded countries.

Then, the third Chapter will discuss some of the current trends in the international trade, in order to demonstrate that the diffusion of mega-regional agreements such as TTIP is fostering the construction of competing regional blocks. In particular, I will analyse the trade strategy of China, which is excluded both from TTIP and from the TPP. In doing this, I will also discuss the emergence of a Chinese-led mega-regional agreement, the Regional Comprehensive Economic Partnership (RCEP). This will lead me to conclude that the world trade order is going to a scenario of competing regional blocks, while the multilateral principles that inspired the WTO will be progressively marginalized.

## **Chapter I**

In this first chapter, I will define the phenomenon of regional and mega regional agreements, trying first to capture their core characteristics, and then identifying their relation with the multilateral world trade system. More in detail, the first part of the Chapter (1.1, 1.2, 1.3) will be an overview of the phenomenon, which will include general definitions of Regional Trade Agreements (RTAs) and data about their diffusion. Then I will specify the difference between shallow and deep RTAs, which will lead me to present the phenomenon of mega-regional agreements. The second part of this Chapter (2.1, 2.2, 2.3, 2.4) will be dedicated to relevant considerations for answering my research question, among which the relation between RTAs and the WTO, the RTAs' multilateral potential and the "double Preferential Trade Agreements (PTAs)" phenomenon. This first Chapter will lead to some general conclusions about the relationship between mega-regionals and multilateralism.

# 1. Overview of Regional Trade Agreements

## 1.1 RTAs: definitions and general trends

Economists and scholars have used a large spectrum of different definitions to describe the phenomenon of RTAs. In order to have a clear idea of what RTAs are, it will be useful to start from the official definition of the WTO, which defines them as “reciprocal trade agreements between two or more partners” (WTO, 2016b). As we can notice, there is no geographical connotation in this wording. In fact, despite the term “regional”, RTAs does not necessarily involve only countries located in the same geographic region. A second source of misunderstanding when discussing RTAs is their relation with Preferential Trade Agreements or Preferential Trade Arrangements (PTAs) (WTO, 2016b). In fact, several scholars (e.g. Alschner and Pauwelyn 2015, Bhagwati 2008) use the term PTAs when arguing about RTAs, underlying the preferential nature of these agreements. However, following the official WTO definition, PTAs and RTAs are two separate and different concepts. In fact, while PTAs are considered as non-reciprocal and unilateral preferential scheme, RTAs have a reciprocal character, and they consequently entail mutual recognition of a preferential treatment. This misunderstanding is probably due to the fact that RTAs establish a preferential treatment with respect to one or more countries. Consequently, the literature on this theme is more inclined to use the term PTAs rather than RTAs. This, of course, does not mean that they are not aware of the difference. In this sense, it is useful to quote the work of Bhagwati:

*“I use the terminology of preferential trade agreements (PTAs), rather than the earlier one of regional trade agreements (RTAs) simply because PTAs are not always regional in any meaningful sense. (...) The RTAs terminology still persists at WTO, which is not surprising since international bureaucratic and political usage often lag behind reality.”* (Bhagwati, 2008, p. 151).

For the sake of simplicity, this dissertation will use PTAs and RTAs as a synonym. Having said this, RTAs include both Free Trade Agreements (FTAs), which entail a reduction or an elimination of barriers to trade between signatories, and Custom Unions (CU), which entail the liberalization of trade between signatories but also the establishment of a common external tariff barrier. Generally speaking, the most diffuse

form of RTAs are the FTAs, while we have few example of CUs, among which the most relevant ones are perhaps the European Union and the MERCOSUR. The rationale behind these agreements is to foster and liberalize trade relations between the parties, establishing an area in which it is less costly to exchange goods and services, but also to foster investment and, in the case of CUs like the EU, movement of people. However, this is not the only reason why countries decide to conclude Regional Trade Agreements, since they can also have a significant geopolitical meaning, bringing political integration. The European Union is surely the main example of this functionalist view, according to which economic integration will generate positive spill-over fostering political and social integration (Rosamond, 2000).

Beyond the different reasons which lead countries to engage in PTAs, the spread of these agreements is one of the most relevant trend in the world trade system. This is undeniable, given the rapid path through which they are evolving. Just to have an idea of the considerable vastness of the phenomenon, we can look at the evolution of RTAs from 1948 to 2016 (*Figure 1*). Before analysing the content of the figure, it is important to point out that WTO data collection on RTAs is based on “notification requirements rather than on physical number of RTAs” (WTO, 2016c). In fact, as I will explain later, the WTO entails different system of notification for RTA, according to their content (trade in goods, trade in service, market access). This means that *Figure 1* shows both the number of RTAs notified (counting goods, services and accession separately) and the overall number of physical RTAs. Consequently, what we can understand from *Figure 1* is that as of 1<sup>st</sup> of February 2016, the GATT/WTO have received 625 notifications of RTAs, which correspond to 267 physical RTAs currently in force. Another interesting element is that, while RTAs already existed before the establishment of the WTO, they exploded right after its creation during the Uruguay Round. In fact, from 90s onwards, trade liberalization was pursued through two parallel path: Multilateral Trade Negotiations (MTNs) at the WTO and the proliferation of PTAs (Bhagwati, 2008). This trend accelerated even more after the first years of 2000 and, as we can see from *Figure 1*, the number of notifications exploded in 2004. It is interesting to notice that this dramatic spread of PTAs occurred during the crisis of MTNs, within the Doha Development Round. While aiming to be a forum for broadening the trade development agenda, the Doha Round failed to deliver concrete results. The failure of the DDA (Doha

Development Agenda), caused primary by divergent views of developed and developing countries (Cho, 2010), contributed to the consolidation of bilateral and preferential agreements. It was becoming evident that multilateralism was not the optimal way to reach agreements in the world trade system. As a prove of that, since the born of the WTO, the MTNs were able to deliver only one multilateral agreement (concluded in Bali in 2013).

Now that we looked at the way in which PTAs have spread during the time, it is possible to draft some considerations. At the beginning of the 90s, the first wave of RTAs was mainly possible thanks to the belief (widespread among the leadership of the most powerful trading nations) that multilateralism and regionalism could co-exist without contradiction, as long as they both pursued the common aim of trade liberalization (Bhagwati, 2008). Consequently, as we have seen, the PTAs proliferated together with the WTO. This phenomenon has been criticized by several scholars, among which Bhagwati is one of the most famous.

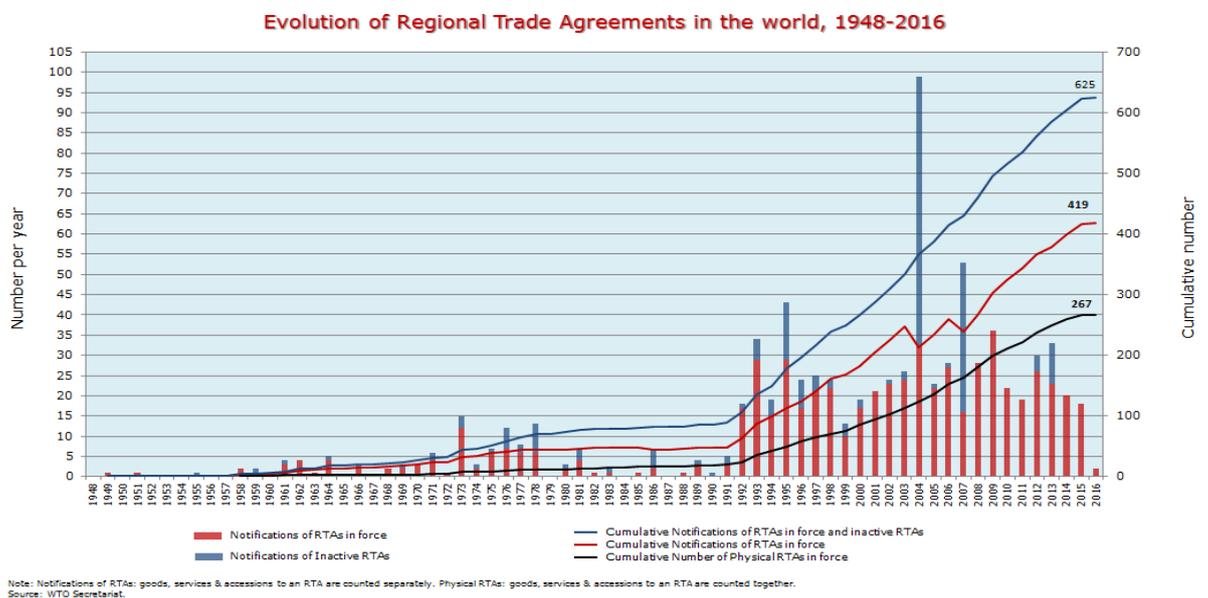


Figure 1. The spread of RTA from 1948 to 2016. Source: WTO website (2016c)

Bhagwati believes that PTAs are “termites in the trading system” (Bhagwati, 2008), meaning that their discriminatory character was undermining multilateralism. Then, after the clear failure of the DDR, another idea led the emergence of PTAs: it was easier to conclude agreements moving bilateral or regional. From that moment onwards, there was a progressive marginalization of the WTO negotiations.

At the time I am writing all the WTO members (with the exception of Mongolia) have concluded RTAs. In addition, “If the agreements that are currently under negotiation are successfully concluded, RTAs will cover all major Global Value Chains<sup>2</sup> (GVCs)” (OECD, 2014). It is also true that some of the most relevant commercial relationships (e.g. US-China, US-Brazil) are still outside the coverage of regional partnerships. However, if mega regional agreements such as the TTIP and the TPP are successfully concluded, “WTO Members will have concluded RTAs with most, if not all, of their major trading partners” (Lejárraga, 2014, p. 8).

In order to fully understand the nature of modern RTAs, one further step should be taken. The considerations of the next paragraph will be focused on the emerging phenomenon of mega-regional agreements. In particular, I will briefly define their main characteristics and their differences with respect to traditional RTAs, already anticipating their geopolitical relevance (which will be better addressed when discussing TTIP).

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<sup>2</sup> The term Global Value Chain (GVC) usually describes a new way of producing goods and services globally, which has become characteristic of the second wave of globalization. It consists in a fragmented process of production, in which different tasks are performed by different national entities.

## **1.2. Shallow vs Deep PTAs: the emergence of Mega-regional agreements**

Mega-regional agreements can be defined as “deep integration partnership in the form of RTAs between countries or regions with a major share of world trade and FDI [Foreign Direct Investment] and in which two or more of the parties are in a paramount driver position, or serve as hubs, in global value chains” (Meléndez-Ortiz, 2015 p. 13). These agreements could include two or more countries in the same region, as well as countries in different part of the world (the TTIP and the TPP are examples). More precisely, the distinctive feature of mega-regionals does not consist in their geographical composition, but rather in their ability to change the architecture of the world trade governance. In addition, these mega-regionals usually include one country which leads the process of integration and standard setting. The literature on this subject also defines them as “deep” RTAs, differentiating them from “shallow” RTAs (Lejárraga, 2014). However, an agreement which contains deep commitments does not necessarily qualifies itself as a mega-regional agreement. Instead, a mega-regional agreement, in order to be defined with this term, is an agreement producing externalities which may bring significant change in the mode of trade governance. In this sense, mega-regional agreements are developing a new preferential way to set global standards, which is in contrast with the multilateral mode of the WTO. Thus, a mega-regional agreement is usually a deep agreement, but a deep agreement is not necessary a mega-regional.

Having said this, it is still useful to understand what is meant with deep RTA (or PTA) agreement and what makes it different from traditional shallow agreements. The work of Baldwin will be extremely useful to understand this distinction. In fact, in his book “Multilateralising 21<sup>st</sup> century regionalism”, Baldwin explains that deep RTAs are not only focused on reducing tariff barriers, but instead they aim to reduce non-tariff barriers to trade (NTBs), trying to underpin international supply chains (Baldwin, 2014b). With the term NTBs we do not refer, in this context, to traditional obstacle to trade such as quotas, anti-dumping duties, voluntary export restraints or direct subsidies to enterprises (De Ville, Siles-Brügge, 2015). Instead, the NTBs addressed by mega RTAs mainly spread from differences in regulatory standards and rules. In fact, regulatory differences (which usually aim to consumer protection) can unintentionally create obstacles to trade, since the supplier of a certain product needs to respect different regulatory standards when trying to access different markets. The most used example to clarify this concept is the

one of the vehicle sector. The EU and the US could have different safety rules about the components of a car, like seatbelt, bumpers and headlights. Consequently, a vehicle produced in Europe would have to respect the US standards when accessing that market, and this generate additional costs for the European factory which produce the vehicle.

Briefly, deep RTAs are designed not only to sell and exchange good and services, but also to produce it, “by enabling factories to cross borders and to set up or insert themselves into global value chains” (Baldwin, 2014b.). In this sense, it seems that deep RTAs are better suited to encounter the need of the new mode of production of the GVC.

Of course, this trend has led to several questions and concerns about the method through which regulatory divergences will be eliminated. In fact, opponents to mega-regionals usually argue that these new agreements will clear the way for a race to the bottom<sup>3</sup> in standard and consumer protection. This is a relevant and concrete concern, but the real effects of mega- regionals (both on quality of standards and on multilateralism) will very much depend on the path they will follow. I will better explain this concept in the second Chapter, since it is also useful to understand the impact of mega RTAs on multilateralism. For now, I would just anticipate that there are two main ways through which NTBs could be reduced: harmonization or mutual recognition of regulatory standards (De Ville and Siles-Brügge, 2015). The former refers to the adoption of a unique and common standard by the signatories of the agreements, while the second implies a mutual recognition of existing different standards, which remain consequently unchanged (De Ville and Siles-Brügge 2015). Regulatory harmonization is surely more difficult to achieve, since it is not clear how this common regulation will be drafted<sup>4</sup>. Mutual recognition is more easy

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<sup>3</sup> The term “race to the bottom” is used to describe a situation in which capitals are attracted by high rate of return (Vogel and Kagan, 2004), and, consequently, they move to (or import from) countries with the lowest regulatory standards (Drezner, 2006).

<sup>4</sup> Harmonization can be achieved in two main ways: by adopting the regulation of one of the signatories or by working together to set a new common regulation (De Ville and Siles-Brügge, 2015). Both options present some problems. In fact, if signatories decide for the first option, one or more countries would admit that their regulation is less valid with respect to the one they are adopting. This will of course result in a political problem. On the other hand, following the second option some concerns will remain in place. For example, some argue that lobbies and representatives of multinational corporation will exert their pressure to influence the process of standard setting in their favour.

to realize, but it does not eliminate consumer's concerns about the lowering of standards quality. Even in that case, there is still the possibility for foreign products, produced with lower standards, to enter the home country<sup>5</sup>. Advocates for mega-regionals state that the race to the bottom risk will not be a problem, since regulatory convergence (in the form of harmonization or mutual recognition) will be realized only in the sectors in which there is already a high degree of similarity between countries' regulation. They also add that mega-regionals aim to reduce useless regulatory divergence. Talking about the sectors in which this deeper cooperation will be realised, we should distinguish two main dimensions. First of all, mega-regionals' provisions aim to improve cooperation in sectors which are already covered by the WTO commitments. In this sense we talk about WTO plus (WTO+) provisions<sup>6</sup>, which are largely included in a considerable number of PTAs already in place. The second dimension, which is typical of mega-regionals, is the one which include the so called WTO-beyond or WTO-extra (WTO-X) provisions. These latter refer to provisions which cover sectors outside the WTO current mandate<sup>7</sup>.

However, mega PTAs do not simply aim to foster trade liberalization through the reduction of NTBs. Instead, their complementary objective is to reduce the so called "spaghetti bowl" effect. This term is used by the economists to describe the complex situation of overlapping existing PTAs. This happens when there are two or more PTAs that include the same countries. When this is the case, some countries may have the same relation covered by two or more PTAs. Consequently, we often talk about "double PTAs" (Alschner and Pauwelyn, 2015). This phenomenon creates problems of clarity (when there are conflicting provisions in two PTAs, what should be applied?) and of transparency, since "it is not clear who is doing what with whom, given that everyone is

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<sup>5</sup> If the US and the EU adopt the mutual recognition path, for example, vehicles produced in both countries with their relative standards and rules of procedure will be allowed to access both the US and the EU markets. Consequently, there is still the possibility that a car produced with a lower standard in one countries is able to enter a market with higher standards.

<sup>6</sup> Examples of WTO+ provisions are: industrial and agricultural products, TRIPS (Trade-Related Intellectual Property Rights), SPS (Sanitary and Phytosanitary), TBT (Technical Barriers to Trade), Public Procurement.

<sup>7</sup> Example of WTO-X provisions are: Anti-corruption provisions, Environmental laws, competition policy, IPR (Intellectual Property Right), Investment, Movement of capital.

concluding RTAs with everyone” (Leal-Arcas p. 624). In this complex scenario, mega-regional agreements aim to bring coherence on the current PTAs “spaghetti bowl”, by creating regional clusters of both deep and shallow provisions, which may also be a basis for global standards. From this perspective, mega-regionals are building blocks for multilateralism. I will elaborate more on this concept in the last part of this Chapter, trying to assess the real multilateral potential of mega-regionals.

Talking about data, a study conducted by Lejárraga in 2014<sup>8</sup> showed that the 57% of RTAs signed since the beginning 2001 contain a deep coverage. Furthermore, before the establishment of the WTO, regionalism was mainly characterized by South-South ties among developing economies (Lejárraga, 2014), with the content of the agreements mainly circumscribed to border protection of goods (Lejárraga, 2014). Starting from NAFTA, RTAs progressively shift from shallow to deep, involving both developed and developing countries. In fact, deep integration is no longer a North-North phenomenon, but it is equally prevalent in a North-South context, as well as in South-South partnership (Lejárraga, 2014).

Another relevant contribution in terms of data is the one of Dür, Baccini and Elsig of 2014. These three authors elaborated a new dataset for PTAs, called DESTA, which “contains information on a total of 733 PTAs and a detailed analysis of the design of 587 PTAs” (Dür, Baccini and Elsig, 2014 p. 25). Their main objectives in constructing DESTA was to demonstrate that the design of PTAs was an important variable to look at. To be more clear, they state that there is a relevant difference, in term of impact on trade flow, between shallow and deep PTAs. Indeed, they found out that “provisions included in PTAs that do not directly concern tariffs - such as those liberalizing services trade or protecting investments and intellectual property rights - have a significant impact on trade” (Dür, Baccini and Elsig, 2014 p. 26). This is also the reason why mega-regionals agreement include beyond-the-border provisions, which are able to produce a higher level

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<sup>8</sup> The work of Iza Lejárraga relied on core studies carried out by the OECD Trade Committees. The report has also received contributions from the OECD Trade and Agriculture Directorate, as well as members of the Working Party of the Trade Committee. In addition, the participants of the OECD Global Forum on Trade “Reconciling Regionalism and Multilateralism in a Post-Bali World,” (held in Paris on 11-12 February 2014) provide interesting comments on the matter.

of trade liberalization. Following this logic, the spread of deep and mega RTAs will benefit the world trade order, spurring trade liberalization more than shallow RTAs used to do.

### **1.3 Geographical trends**

Now that I have explained the main characteristics of mega-regionals, I will briefly point out some interesting elements in their geographical distribution, which will help me understand if PTAs create a fragmented trade world system. One of the most interesting trend If we look at the current dissemination of PTAs is the growing importance of the Asia Pacific region. In fact, it seems that “the largest concentration of RTAs has shifted away from Europe toward Asia-Pacific Region in the last few years” (Leal-Arcas, 2011 p. 613). Despite this, we can still retrace a “power law” in RTAs distribution (Alschner and Pauwelyn, 2015), in which few countries serve as hubs for several PTAs network. For instance, the EU still represents the most central node of PTA networks, followed by EFTA members, while the US remain behind. The centrality of the EU is due to the fact that it has begun to establish PTAs really soon in its history. Consequently, it was able to attract several countries, which in turn were willing to consolidate their position establishing a network with “the well-connected hub EU” (Alschner and Pauwelyn, 2015).

As I have already said before, some scholars reject the term “regional”, because they believe that PTAs cannot be understand in a geographical dimension. This is in part true, since PTAs seem to create an overlapping and complex structure in which we cannot retrace any geographical coordinates. This is also why economists often use the term of “spaghetti bowls” to describe the PTAs phenomenon, which corresponds to a complex and fragmented world trade system. However, regional dimension is still important in PTAs, since “most clusters of PTAs correspond to specific region” (Alschner and Pawelyn, 2015) with the notable exception of South-East and East Asia (which are part of the cluster of the Americas). This regional connotation can help us to draft some first considerations about the effects of PTAs on multilateralism. In fact, if mega-regionals consist in networks dominated by few members, which are also part of the WTO system, it is more likely that the rules set in that context will be the basis for a multilateral

convergence. More in detail “as these deep PTAs rule-makers are also centrally positioned in the network as a whole, they are more likely to facilitate (...) the emergence of a coherent body of WTO-extra norms” (Alschner and Pauwelyn, 2015). Briefly, powerful countries in mega-regionals could potentially set global standards. Following this reasoning, mega-regionals are building block for multilateralism, since they help to bring coherence among the “spaghetti bowl” of different PTAs and they serve as a “laboratory” for MTNs agreements (Alschner and Pauwelyn, 2015). Nonetheless, the extent to which mega-regionals will be able to serve multilateralism, depends mainly on the path they will follow, especially with respect to relations among double PTAs. In the following paragraphs I will focus my analysis first on the relation between PTAs and WTO; secondly I will identify the necessary practical conditions through which PTAs can be multilateralized; finally, I will consider the relations between overlapping and double PTAs, trying to find out if mega-regionals can actually reduce the “spaghetti bowl” effect or if they produce a more fragmented world trade system.

## 2. WTO and PTAs

### 2.1. WTO provisions on PTAs

At a first glance, PTAs are inherently inconsistent with the main principle of the WTO: the Most Favoured Nation Rule, embedded in the General Agreement on Tariffs and Trade (GATT). In fact, that article states: “(...) any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties” (GATT, Art. I (1)). Briefly, this means that, if a WTO Party want to engage in a preferential relation with another Party, it should extend this preferential treatment also to all other WTO contracting parties. Thus, this prohibits the members of WTO to established preferential relation with only one or some of the WTO Parties. Framed in this way, the practice of establishing PTAs should be considered a violation of the WTO. However, the coexistence of such a practice with the WTO system is possible thanks to three provisions: 1) GATT Article XXIV: 4-10; 2) the Enabling Clause; 3) Article V of the General Agreement on Trade in Services (GATS). All the three above mentioned provisions follow the same reasoning, according to which PTAs are allowed only as far as they foster trade liberalization. In fact, as paragraph 4 of GATT Art. XXIV states, “they [the contracting parties] recognize that the purpose of custom unions or free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories”.

More precisely, GATT Art. XXIV defines both the substantial and the procedural conditions under which PTAs can be established. First of all, from a substantive point of view, para 5 (a) of Art. XXIV states that the duties and regulation established by a PTAs in a given territory should not be more restrictive than the prior regulation. However, if a PTAs fails to encounter this or other relevant requirements, the WTO will not have the power to consider it as invalid. What would happen, instead, is that the WTO will not be able to justify the PTAs under GATT Art. XXIV, and it will consequently require for an adaptation of the agreement following the MFN principle. To use an example, if NAFTA is considered in violation of Art. XXIV provisions, the US would have to extend the

preferential treatment also to other commercial parties outside NAFTA, like the EU. In this way, NAFTA's provision will spread to third countries, leading to a further level of trade liberalization. However, some shortcomings need to be considered. First of all, the US would still have the possibility to obtain a waiver using Art. IX:3 of the Agreement establishing the WTO<sup>9</sup> and GATT Art. XXIV:10<sup>10</sup>. Secondly, the relations between the US and its trading parties might be already covered by preferential agreements. Consequently, the extension of NAFTA's provisions might lead to the multiplication of the "spaghetti bowl" effect. Thirdly, the EU could not necessarily benefit from the extension of an agreement which it has not negotiated. This is especially true if we talk about mega PTAs, which contain provision that require a long process of political discussion and negotiation among the contracting parties. Therefore, the theory according to which PTAs' provision can easily spread to third countries has some limits.

Then, GATT Art. XXIV also establishes procedural conditions under which FTAs and CUs are admissible. In particular, the parties in PTAs should notify the agreement to the other contracting parties of the WTO<sup>11</sup>. However, the system of notification is far from being clear or even effective. First of all, different types of agreements follow different types of notification procedures. To be more clear, a PTA dealing with trade in goods should be notified under the GATT Art. XXIV, while if it deals with services it has to be notified under GATS Art. V. Instead, the Enabling Clause<sup>12</sup> is applied in the case that

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<sup>9</sup> "In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths of the Members unless otherwise provided for in this paragraph" (Art. IX:3 of Marrakesh Agreement).

<sup>10</sup> "The CONTRACTING PARTIES may by a two-thirds majority approve proposals which do not fully comply with the requirements of paragraphs 5 to 9 inclusive, provided that such proposals lead to the formation of a customs union or a free-trade area in the sense of this Article" (GATT Art. XXIV:10).

<sup>11</sup> GATT Art. XXIV par. 7(a). This article states that "Any contracting party deciding to enter into a customs union or free-trade area, or an interim agreement leading to the formation of such a union or area, shall promptly notify the CONTRACTING PARTIES and shall make available to them such information regarding the proposed union or areas as will enable them to make such reports and recommendations to contracting parties as they may deem appropriate."

<sup>12</sup> This provision was established with a decision of GATT parties in 1979. It allows derogation from the MFN rule in favour of developing countries. It has continued to be applied after the Uruguay Round and

participants to PTAs are developing countries. This fragmentation is maintained also in the review system for the notified agreement. In fact, during the Uruguay Round, the WTO Committee on Regional Trade Agreements (CRTA) was given the task to attest the compliance with WTO rules in both goods and services agreements, while the WTO Committee on Trade and Development had the role to examine PTAs established under the Enabling Clause. Consequently, “an institutionalized divide between North-North, North-South and South-South FTAs was created” (Mortensen, 2016 p. 162) and it continues nowadays. Moreover, it was not even clear what type of information were required in the process of notification. All these fails in the WTO oversight mechanism has been raised several times, and even the WTO itself has recognized the need for a more coherent and clear mechanism. Following these concerns, in 2006 a new Transparency Mechanism (TM) was envisaged, but its establishment is still under review. In the next paragraph I will elaborate more on the evolution of the mechanism after 2006.

## **2.2 The reform of 2006 and the establishment of a Transparency Mechanism**

In 2006, after years of negotiations, the General Council of the WTO gave to the Rules Negotiation Group<sup>13</sup> the approval to establish a TM system, which could enhance the multilateral oversight over PTAs. The TM introduce some important novelties, which were actually able to ameliorate the transparency and the clarity of the notification system. In fact, under this review, the WTO established stricter criteria for notification, which included an early announcement and specific information to provide. In the table below<sup>14</sup>, we can see in more details what the WTO requires at each step of notification.

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the creation of the WTO. This Clause has often been criticized also because it does not require a formal examination of the FTA or CU, but it only suggests bilateral consultations.

<sup>13</sup> During the Doha Round in 2001, it was decided to create a new Trade Negotiation Committee (TNC) to oversee over the Doha Round Negotiation. This Committee was allowed to create subsidiary negotiating bodies, to carried out different negotiation subjects, among which the Rules Negotiation Groups was established.

<sup>14</sup> This table uses reference to the Decision of the WTO to establish a Transparency Mechanism (December 2006) and from the work of Mortensen J. L. (2015).

Process	Requirements
Early Announcement	<p>Members parties to a newly signed RTA shall convey to the WTO, in so far as and when it is publicly available, information on the RTA, including its official name, scope and date of signature, any foreseen timetable for its entry into force or provisional application, relevant contact points and/or website addresses, and any other relevant unrestricted information.</p> <p>(para. 1(b) of the Decision, 2006)</p>
Notification	<p>The [...] notification of an RTA by Members that are party to it shall take place as early as possible. [...] In notifying their RTA, the parties shall specify under which provision(s) of the WTO agreements it is notified. They will also provide the full text of the RTA (or those parts they have decided to apply) and any related schedules, annexes and protocols, in one of the WTO official languages.</p> <p>(para. 3 and 4 of the Decision, 2006)</p>
Procedures to Enhance Transparency	<p>The consideration by Members of a notified RTA shall be normally concluded in a period not exceeding one year after the date of notification. A precise timetable for the consideration of the RTA shall be drawn by the WTO Secretariat in consultation with the parties at the time of the notification (para. 6 of the Decision, 2006).[...] Normally, the timing of the data submission shall not exceed ten</p>

	weeks – or 20 weeks in the case of RTAs involving only developing countries – after the date of notification of the agreement (para. 8 of the Decision, 2006).
Subsequent Notification and Reporting	The required notification of changes affecting the implementation of an RTA, or the operation of an already implemented RTA, shall take place as soon as possible after the changes occur (para 14 of the Decision, 2006). At the end of the RTA's implementation period, the parties shall submit to the WTO a short written report on the realization of the liberalization commitments in the RTA as originally notified (para. 15 of the Decision, 2006)

*Table 1. the Transparency Mechanism. Source: WTO, 2006 and Mortensen, 2015.*

As we can see, this reform is surely an improvement from the point of view of clarity and transparency. In fact, the TM specifies which kind of information are required and in which limit of time. Moreover, since 2009, all the information which are provided by the parties are published on the WTO website. However, the divided structure between GATT Art. XXIV, GATS Art. V and the Enabling Clause remain in place. In addition to this unsolved problem, the WTO Secretariat has only the power of preparing factual presentations of the RTAs, “refrain(ing) from any value judgement” (para. 9 of the Decision, 2006). Briefly, “no mandate is given for independent fact-finding examinations by the WTO Secretariat” (Mortensen, 2015, p. 166). From this point of view, it seems that, while the reform has enhanced the transparency of the notification system, the WTO still lacks the power of assessing and evaluating the real impact of RTAs. This transparency vs enforcement dilemma is not a new feature in the WTO system, instead, it has its roots in the so called “dispute-settlement awareness” which pervade the WTO (Mortensen, 2015 p. 166). To be more clear, the WTO usually refrains itself to adopt a

practice which could become object of a litigation in its dispute settlement panel. For this precise reason, the reform of 2006 did not give to the WTO the power of assessing the impact of RTAs (Mortensen, 2015). The only critics or evaluation accepted are the ones that come from the outside of the WTO structure, like NGO and think tanks, but they usually lack the legitimacy that only a multilateral institution would have (Mortensen, 2015). The WTO inability to have a real control over the spread of PTAs is surely a source of concern, since it is an evidence of the WTO's loss of centrality in the world trade system. As Baldwin said in a recent warning:

*The current trajectory seems certain to undermine the WTO's centrality, with the mega-regionals taking over as the main loci of global trade governance. Without reforms that bring existing deep RTA disciplines under the WTO's aegis and facilitate development of new disciplines inside the WTO, the trend will continue.* (Baldwin, 2014b, p. 39)

Moreover, since all the WTO members (with the exception of Mongolia) are engaged in PTAs, it is really unlikely that they will decide to design a stringer WTO discipline on the matter. To use an expression of Bhagwati, it seems that "the WTO watchdog has turned into a friendly poodle" (Bhagwati, 2008, p. 37). Thus, it seems that the multilateral monitoring of PTAs has failed (Mavroidis, 2015b), and the world trade order is now confronted with the question of how to deal with this new PTAs reality.

This analysis helped me to understand which is the relation between the WTO structure and the PTAs. From what we have seen until this moment, it seems that the WTO, even if it provides an institutionalized framework to deal with PTAs, lacks the power to exercise a real control over regional trends. This is partially already an answer to my research question. In the next paragraph I will rely on the study of Lejárraga (Lejárraga, 2014) in order to assess the multilateral potential of PTAs.

### 2.3 PTAs' multilateral potential

In order to bring coherence to the “spaghetti bowl” of PTAs, mega-regional agreements have to design provisions which can easily serve as a path toward global standards. The study conducted by Lejárraga in 2014<sup>15</sup> on which I rely, mainly focus on the technical feasibility for PTAs' multilateralization and on the characteristics PTAs should have in order to be “multilateral friendly” (Lejárraga, 2014 p. 3). Then of course, technical requirements are necessary but not sufficient for PTAs multilateralization. In fact, a political will of the main governments involved is fundamental to set common global standards. Before addressing this important issue, I will briefly point out the main technical elements required for PTAs' multilateralization. The following considerations will focus on WTO-plus provisions in PTAs, since they are the most widespread and they show a higher level of similarity.

There are some criteria to understand whether or not WTO-plus provisions may become multilateral. First of all, there should be a widespread practice among different PTAs, which should suggest a certain degree of consensus over that practice, “that may facilitate multilateralization” (Lejárraga, 2014 p.12). In this sense, the more widespread WTO-plus provisions are the ones relative to the investment and service sector, followed by transparency and competition rules. In the same line, over 65% of PTAs have improved their obligations on Intellectual Property Rights (IPRs) beyond the regulation provided by the Agreement on Trade-Related Intellectual Property Rights (TRIPs)<sup>16</sup> (Lejárraga, 2014). Finally, provisions on Technical Barriers to Trade (TBT), Sanitary and Phytosanitary (SPS) and government procurement are sufficiently present in an important number of PTAs<sup>17</sup>. Conversely, the environmental provisions are less widespread issue in PTAs<sup>18</sup>.

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<sup>15</sup> The data presented are indicative, since the study refers to 2014.

<sup>16</sup> The Agreement on TRIPs is one of the agreements concluded within the framework of the WTO, which set the minimum standards for many types of IPRs.

<sup>17</sup> Since 2014 over 60% of PTAs have improved regulation on TBT and SPS (Lejárraga, 2014). In addition, Government procurement is an extremely interesting area (Lejárraga, 2014). In fact, countries which are not part of the Government Procurement Agreement (GPA) of WTO have been willing to commit themselves in this domain with PTAs.

<sup>18</sup> Even if there has been an increasing number of environmental provisions in RTAs, these are usually concentrated in trade partnership of specific economies, like the EU and the US.

Then, a second important factor to verify is whether or not these widespread practices show a considerable level of similarity among them. From this point of view, the homogeneity of PTAs provisions is increasing, especially in the field of investment, services, transparency and e-commerce, while government procurement “show a mixed picture” (Lejárraga, 2014 p. 17). The third dimension to assess is the level of discrimination of the widespread and homogenous provisions. If mega-regional are less discriminatory than traditional PTAs, there is more technical feasibility to move multilateral. Indeed, one of the new features that make mega-regionals possible stepping stones for multilateralism is that their effects are not always confined to the signatories of the agreements. Some scholars (e.g. Meléndez-Ortiz, 2014) pointed out that mega PTAs’ provisions do not establish nor preference neither discrimination. The level of discrimination depends mainly on the design of rules of origins (ROO). ROO for judicial persons in mega PTAs tend to be enough liberal in defining the nationality of a firm. Consequently, even foreign firms which are constituted in the territory of a Party may benefit from the preferential treatment<sup>19</sup> (Meléndez-Ortiz, 2014). In the case of natural person, instead, the ROO regulation is more stringent, because “there is no provision on ROO under GATS, so that requirement depend on the criteria set and definition of natural person in domestic jurisdiction” (Lejárraga 2014, p. 21). So when it comes to natural persons, the discriminatory degree of PTAs varies a lot across sectors.

The extent to which PTAs provisions are implemented and enforced is also an important variable to look at. Indeed “WTO-plus measures that create substantive obligations which are enforceable via a dispute-settlement procedure are likely to be riper for multilateralization than best-effort engagements” (Lejárraga, 2014 p. 23). In this case, it is difficult to provide a clear picture, since the level of enforceability of WTO-plus measures varies a lot across sectors (Lejárraga, 2014). Moreover, regardless the level of enforceability, the PTAs provisions may be submitted only to regional dispute settlement mechanisms, which tend to be more asymmetric with respect to the WTO DSM. However, it seems that mega-regionals have improved the level of regulatory transparency on deep measures. Thus, a great number of deep PTAs provisions lead to facilitate procedures, making them less restrictive and uncertain.

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<sup>19</sup> For example, Toyota USA can benefit from preferences of US PTAs (Meléndez-Ortiz, 2014).

Finally, we should consider the marginal economic gain that will come from multilateralization. This variable is not easy to estimate, since we are talking about beyond the border measures. The classical concepts of trade diversion and trade creation can be useful, but they are best suited to capture the economic consequence of at the border provisions. The multilateral economic gain of mega PTAs is usually derived by their less discriminatory nature. Indeed, as I have explained, they are not discriminatory in the traditional sense. Instead, in certain case they can also be considered as providers of public goods (Pauwelyn, 2015). From this point of view, they create positive externalities which can be potentially expanded through multilateralization.

From this brief overview, we can understand that there is certain degree of technical feasibility for mega-regionals multilateralization. In this sense, mega-regionals may be useful to reduce the “spaghetti bowl” effect, setting global standards and becoming building blocks for multilateralism. However, there are two further variables to consider, which go beyond the technical feasibility. First of all, we should verify whether or not there is enough political will to move multilateral. In fact, since the standards drafted in mega-regionals have often a high geopolitical relevance, we can expect that countries will accept standards as global only if they have some voice in the negotiations. We will see, talking about the TTIP, that both the US and the EU are building a narrative for setting global standards and for restoring the Western standard setting power. This narrative has been developed in response to new competitive standards, spreading from BRICS countries. Consequently, if the US-led project of TTIP and TPP will be realized, we could expect that emerging countries will be ready to exert pressure over how these standards are drafted. Therefore, the process of multilateralization of mega RTAs may not be as straightforward as the technical feasibility may suggest, since it entails a high level of geopolitical importance. In addition, even if the mega-regionals’ standards will become global, the process through which these standards are set is far from being multilateral. We will have global standards designed by few power countries in different fora of negotiation.

The second variable is related to the phenomenon of “double PTAs”. In fact, in order to understand the real effects of mega-regionals on the world trade system, we should not only look at their relations with the WTO, but instead, we should focus on the way in which they will solve the conflict between double PTAs (Alschner and Pawelyn, 2015).

In the next paragraph, I will present the main ways through which mega-regionals could approach the problem of overlapping PTAs, in order to understand to what extent and in which way they can help to reduce the fragmentation of the world trade system.

#### **2.4. The relation between double PTAs: toward a fragmented world trade system?**

The emergence of mega-regionals raises the question of how they will concretely achieve a greater uniformity across the current “spaghetti bowl” of PTAs. It is extremely difficult to answer to this question, since the result depends on the step mega-regionals take to regulate the conflict between double PTAs. We can identify two possible scenarios.

The first one consists in the approach “one PTA at time” (Alschner and Pauwelyn, 2015), and it can be realized in three main ways: termination, accession and incorporation. Termination means that that the successive PTA substitutes the previous one. This path is usually taken when the scope of the later PTA is to broaden and deepen the integration between the same membership. NAFTA, for example, has replaced the US-Canada FTA. This approach has the advantage of eliminating overlapping and conflicting provisions, leading to a more coherent trade system. Nonetheless, it can be complicated to achieve, because the termination of an existing agreement may be controversial from a political point of view and complex from a judicial one. Despite the fact that it used to be a relatively rare approach, the termination path has been applied recently in the case of Mexico-Central America FTA, which ended previous FTAs between Mexico, El Salvador, Guatemala, Honduras and Nicaragua. The second way for having one PTAs at time is to broaden the membership of a pre-existing PTA. In this case, the scope of the new PTA is not to bring new and deeper provisions among the same countries, but just to extend the existing set of provisions to new members, through a process of accession. Although this could be the best suited way to conclude mega-regionals (since it provides an effective way to avoid overlapping provisions without creating political or judicial problems), this practice is actually extremely rare. In fact, the only concrete example is the European Union (Alschner and Pauwelyn, 2015).

Finally, the incorporation of certain chapter of a previous PTA into a new one may be a way for a partial realization of the “one PTA at time” approach. For instance, the China-Singapore FTA has incorporated the investment chapter of the ASEAN-China FTA. In

this case there are still two coexisting PTAs, but when it comes to investment, we only have one discipline. The same principle is applied in TPP, where the discipline of Art. XX of GATT is incorporated in several Chapters<sup>20</sup>.

The alternative approach for double PTAs is the one of “two PTAs side-by-side” (Alschner and Pauwelyn, 2015). This path is easier than the “one PTA at time” approach from a practical point of view, because parties do not have to worry about how terminate the previous agreement. However, it contributes to create a fragmented and complicated world trade system. The main problem arises from potential conflict between PTAs’ norms. When there are two or more PTA which cover the same territory, with one or more conflicting provisions, which should prevail? The answer may be different according to the scope of the successive PTA. For instance, if the new agreement just aims to provide a broader membership than the former, it make sense to decide that norms in previous PTA prevails. Conversely, when the successive PTA establishes deeper commitments, the new norms will be applied. This is actually the main way through which mega-regional are concluded. The degree of integration can also be a variable in deciding which PTA’s norm should prevail. The ASEAN-Japan approach states that, in case of conflicting provisions of double PTAs, the one which provide the higher degree of integration will be applied (Aslchner and Pauwelyn,2015).

What we can conclude from these considerations is that the extent to which PTAs will be able to solve the “spaghetti bowl” problem depends on the approach they use when it comes to overlapping PTAs. The “one PTA at time” approach is the best suited to bring coherence to the world trade system but, since it is problematic both from a judicial and a political perspective, it is not enough widespread. Conversely, it seems that modern mega-regionals tend to co-exist in parallel with previous PTA, trying to solve the conflict between double PTAs in favour of later or deeper provisions. This “two PTAs side-by-side” approach could be equally useful to reduce the complexity of double PTAs, but only if it clearly defines the method of solving conflicts among double provisions. This

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<sup>20</sup> Chapter 2 (National Treatment and Market Access for Goods), Chapter 3(Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5(Customs Administration and Trade Facilitation), Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8(Technical Barriers to Trade) and Chapter 17 (State-Owned Enterprises and Designated Monopolies).

consideration, combined with the previous one about the multilateral potential of mega-regionals, seems to suggest that mega-regionals are not necessarily “termites in the trading system” as Bhagwati used to define them (Bhagwati, 2008), since they have the possibility to transform the “spaghetti bowl” into a “lasagna” of regional agreements and then into a “multilateral” pizza (Bhagwati, 2008). However, the fact that mega RTAs are structured in regional cluster, “with a limited group of countries that are centrally placed in the network” (Alschner and Pauwelyn, 2015), create a geopolitical concern about how these norms are designed. In fact, norms and standards are designed outside the legitimate framework of WTO, raising relevant concerns about their legitimacy.

The aim of this Chapter was to give an overview about the PTAs and mega-regionals phenomenon, trying to underlying the most relevant effects on the world trade system. My focus was mainly on the relation between PTAs and multilateralism. Since now, I have obtained contradictory results for answering my Research Question. On the one hand there is a certain degree of technical feasibility for the multilateralization of mega regionals, which is given by: the presence of few powerful countries in each PTA, with a consolidate position at the WTO, able to set and spread global standards; the presence of widespread and homogenous practices among different PTAs; the adoption of a coherent approach to deal with double PTAs. On the other hand, technical feasibility is not enough to multilateralize PTAs. Instead, what is need the most is political will to accept, at a global level, standards which are designed outside the legitimate framework of the WTO. Briefly, the outcome of mega-regionals may become multilateral, but the process is not, and this may create some concerns from the side of emerging countries excluded by the standard setting process.

## Chapter II

The project of a comprehensive free trade agreement between the two Atlantic powers was envisaged for the first time between 2011 and 2013, within the framework of the High-level working group on Jobs and Growth. This Group was led by the EU Commissioner for Trade on one side, and the US Trade Representative on the other, and it consisted in discussions about improving economic cooperation and fostering job creation both in the EU and in the US. Following this event, the first negotiations for a Transatlantic agreement started, with the Commission negotiating on behalf of the EU Member States, and the US Representative for Trade negotiating for the counterpart. Since 2013, 14 rounds of negotiation have been concluded, but a lot of issues still remain uncertain. From 2014, negotiators have been working on the concrete scope and architecture of the individual chapters (Commission, 2016), and textual proposals have been submitted by both parties. The next step will be to have an agreed text which could reflect both the US and the EU interest. Considering the current state of play, characterized by outstanding issues especially in the field of market access and regulatory cooperation, “concluding TTIP in 2016 will (...) require considerable flexibilities on both sides” (Commission, 2016 p. 2). Furthermore, the negotiations have always been hampered by the opposition of the trans-national civil society, which is worried about the dangerous effects of TTIP on democracy and consumer protection. Given the rise of protests during the last two years, negotiators have encounter great difficulty to proceed toward the conclusion of the agreement. Indeed, after 14 rounds of negotiations there are still open issue in field of regulatory cooperation, such as government procurement. In addition, the TTIP’s negotiations have recently been questioned by the Germany Economy Minister Sigmar Gabriel, who openly declared during an interview that the TTIPs negotiations have failed (Sim and Stones, August 2016). Two days later, the French Secretary of state for Foreign Trade Matthias Fekl joined these critics, by declaring that in France there is no more political will to support the negotiations (Posaner, August 2016).

For these reasons, there are many interrogatives about the success of the TTIP project. However, it is still interesting to evaluate the potential impact of the agreement on the world trade order. Indeed, the TTIP is proposing itself as a stepping stone for multilateralism and as a global standard setter (Hamilton, 2014) but there are both

technical and political difficulties which hamper this objective. Thus, in order to understand the possible effects of the TTIP on the world trade order, it will be useful to provide a two-level analysis, taking in consideration both the technical and the political aspect of the agreement. I will start by defining the narrative behind the agreement, which is focused on revitalising the EU-US standard setting power. Then, I will assess the level of technical feasibility for the spread of TTIP's provision to third countries and for its ability to set global standards. Finally, I will consider the geopolitical feasibility of a TTIP's multilateralization, trying to underline the alternative strategy that third countries could adopt to respond to TTIP. In fact, as I will show, the TTIP's multilateral potential largely depend on two factors: how the regulatory harmonization will be achieved and how third countries decide to react.

## 1. The EU and US narrative about the TTIP: setting global standards?

The Transatlantic Trade and Investment Partnership does not only aim to generate economic gains for the signatories. Instead, it is also designed to be a forum for drafting global standards and reinforcing transatlantic relations, in order to effectively balance the rising power of emerging countries. The language used by Hamilton summarise this concept:

*TTIP (...) is about creating a more strategic, dynamic and holistic US-EU relationship that is more confident, more effective at engaging third countries and addressing regional and global challenges, and better able to strengthen the ground rules of the international order.* (Hamilton D.S., 2014 p. xi).

The negotiations for a reinforced transatlantic partnership are the result of a specific geopolitical objective: restoring the US and EU standard setting power, which has been challenged by the latest changes of the international order. It will be useful to provide a brief historical background, in order to understand which are the leading forces behind the conclusion of a transatlantic agreement.

After the end of the Cold War, the US was enjoying a hegemonic position, being the only country able to provide monetary, commercial and political stability. During this period, the US-based international order led both the process of globalization and liberalization, relying on the principle of capital mobility and floating currency, which spread after the collapse of the Bretton Woods system in 1971. However, this unipolar momentum started to fade already during the 90s, when a group of emerging countries showed relevant economic performances. The rapid growth of the so-called BRICs<sup>21</sup> (Brazil, Russia, India and China) suddenly shaped a new perspective for the international order: the unipolar world was being replaced by a multipolar one. This already challenging context was complicated by the financial crisis of 2008, which hit both Europe and the United States. Conversely, the rising powers continued to growth, showing “to have achieved a level of development which made them independent of what happened in the rest of the

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<sup>21</sup> This expression was coined by O’Neill in 2001. Successively, term changed in BRICS to include South Africa.

international economy” (Gamble, 2015 p.11). One example of this new multipolar trend was the marginalization of the G8 in favour of the G20 (Gamble, 2015), a forum which includes new arising countries (China, India, Brazil, Mexico, Indonesia, Turkey, South Africa, Saudi Arabia, South Korea, Australia and Argentina).

Having said this, we can draft some considerations about the EU and US interests in concluding the TTIP. In fact, both powers will gain some advantages in reinforcing their relations. The US is seeking to regain its role of leader with a double strategy, which involve both Europe (with the TTIP) and Est Asia (with the TPP). From this point of view, the construction of mega-regional agreements lead by the US does not address the goal of a more coherent world trade order. Instead, it is the reflection of the US geopolitical objective to restore its leadership through a regional strategy. Some also argue that TTIP and TPP have the specific aim to marginalize Russia and China (Gamble, 2015). From its side, the European Union is willing to strengthen its transatlantic relations, given the failure of its initial objective of being an independent pole. The project of a European Union was led by the idea of breaking the historical dependence from the United States, but the financial crisis showed that the EU was not ready to renounce to its most powerful ally (Gamble, 2015). In addition to these considerations, the EU was also worried about the project of TPP, which entails a higher level of economic and political integration in the Trans-Pacific space. In this sense, the TTIP can be seen as a way to rebalance the situation, by reassuring the Transatlantic partner of the US.

Thus, considering both the EU and the US perspective, the TTIP project aims to give new energy to the transatlantic alliance, restoring its ability to influence the world trade order. Moreover, advocates in favour of TTIP usually argue that the provisions of the agreement will be beneficial also for third countries, because they will be able to set the basis for a higher degree of regulatory convergence at the multilateral level. Briefly, the reinforcement of the EU-US relationship is presented as the only way to underpin a strong rule-based international order and to revitalize multilateral negotiations (Hamilton S.D., 2014). However, this could be nothing more than a narrative. In fact, the real effects of TTIP on multilateralism and global standards will very much depend on third countries’ strategy. We should not forget, that the TTIP is still a closed agreement, meaning that third countries are not allowed to have part in the negotiation process. Consequently, we

could at least expect some resistance by the side of excluded countries, which may be not willing to accept standards they have not negotiated.

The TTIP's narrative also underlines the similarity of US and EU regulatory practice, which should facilitate the process of setting global standards. However, this assumption needs to be reconsidered, since the EU and the US still show a considerable degree of divergence in some important regulatory issues (De Ville and Siles-Brügge, 2016). This is evident if we consider the complaints filed before the WTO Dispute Settlement Body (DSB) by the EU and the US. Indeed, out of 479 total cases at the DSB, "the EU has been complainant in 92 cases, defendant in 78 (...) and a third party in 144 cases" (Duchesne and Ouellet, 2015 p. 108). The US shows even higher numbers, with 107 cases as complainant, 121 as defendant and 144 as a third party. To complete the picture, 32 of the 92 EU's complaints were against the US, and 19 of the 107 US' complaints were against the EU. These figures show that the US and the EU are still divided on a number of important trade related issues. In particular, the US are bothered by "the way in which the EU tries to reconcile free trade disciplines with some non-trade concerns" (Duchesne and Ouellet, 2015 p. 109). The *Hormones* case is a perfect example of the US and EU divergent perception of risk assessment and consumer protection<sup>22</sup>. From its side, the EU is instead worried about the excessive protectionist attitude of the US, which is rooted in its hegemonic ambitions. In fact, in most of the EU complaints against US, the protectionist goals of US acts were targeted<sup>23</sup>.

This brief overview over the divergences between the transatlantic powers shows that the TTIP may fail to achieve one of its main objectives: delivering global standards. Consequently, we should have some doubts about the multilateral potential of TTIP. In

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<sup>22</sup> In 1989 the EU (at the time was the EC) banned the importation of beef containing six types of hormones. Canada and the US opposed the ban, and issued a complaint against the EC before the WTO DSB. The WTO SPS agreement allows Members to ban the importation of certain products, but only if they prove that there is a scientific evidence of a risk for the health. In 1997 the DSB ruled against the EC, which in turn appealed the ruling.

<sup>23</sup> The US protectionist goal was focus on acts about dumping, subsidies, countervailing duties or safeguards (Duchesne and Ouellet, 2015). The EU considered this attitude as an obstacle to trade in a number of cases, such as: *Tax Treatment for Foreign Sales*, *Anti-Dumping Act of 1916* and *Regulations and Methodology for Calculating Dumping Margins*.

fact, while the agreement may surely achieve some important progress and help to ease some multilateral vexations (Duchesne and Ouellet, 2015), it should not be considered as an optimal substitute for multilateralism. In this sense, mega-regional agreements such as TTIP are a second-best option, which should run in parallel with legitimate WTO MTNs.

To conclude, the narrative behind TTIP is based on the following assumption: restoring the Transatlantic standard setting power will be a stepping stone for a more coherent and ruled-based world trade system, being able to spread higher practice at the multilateral level. At the same time, the TTIP will allow the US and the EU to reinforce their relations and to face the complex economic and security challenges of the 21<sup>st</sup> century international context. This process of strengthen relations has its centre in the regulatory cooperation, which should be facilitated by the considerable degree of similarity of EU and US regulatory practice. This narrative, as I have already said, can be challenged both from a technical and a political perspective. From a technical point of view, the process of regulatory convergence may be more difficult than it is presented by TTIP's supporters, since US and the EU still have divergent standards in relevant sectors. Furthermore, even if fully regulatory cooperation will be achieved, the real effect on third countries and multilateralism will depend on the approach adopted (harmonization vs mutual recognition). From a political point of view, third countries may then have alternative reactions to TTIP, trying to consolidate their own regional blocks. In this competing block scenario, the world trade order will go through a higher degree of fragmentation.

## **2. Technical feasibility of TTIP's multilateralization**

Now that I have introduced the narrative behind the TTIP and its weak points, I will analyse the multilateral potential of the agreement. TTIP's supporters often underline the non-discriminatory nature of the agreement, which made it a possible candidate for multilateralization. In the first part of this paragraph (2.1) I will elaborate more about this concept, trying to understand if we can really define the TTIP as a public good provider. Secondly, I will explain the two way in which regulatory cooperation could be achieved, which will produce different result on multilateralism. The analysis in this paragraphs will help me understand to which extent the TTIP is a multilateral-friendly agreement.

### **2.1. The TTIP as a public good provider**

The main difference between traditional PTAs and mega-regional agreements, is that, while the formers were focus on tariff barriers reduction, the latter aim to overcome NTBs to trade. Moreover, traditional PTAs had a more discriminatory nature than the new ones, since the reduction or elimination of tariffs was only beneficial for the Parties in the agreement. This was made possible thanks to a precise rule of origin practice: "if a good is not found to be made in the PTA partner, the tariff preference is denied" (Pauwelyn, 2015 p. 187). Shallow PTAs which spread during the 20<sup>th</sup> century, have been established to be temporary. In fact, the final end of preferential liberalization was to guarantee tariffs reduction for all at the WTO, on a MFN basis. From this perspective, PTAs were supposed to be stepping stone for multilateralism (Baldwin, 2010). Mega-regional agreements have taken one step forward, by designing provisions which establish soft preferences<sup>24</sup> or not preferences at all (Baldwin, 2014a). As I have already explained, this is possible thanks to a more liberal set of ROO, which allow third parties to enjoy the preferential treatment. Moreover, modern PTAs also entail provision on enhancing

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<sup>24</sup> Baldwin defines soft preferences as preferences that lack discrimination technology, which means that there is no effective way of excluding a third party from enjoying the preferential treatment. For example, according to TPP text, an "enterprise of a Party" is any firm constituted under the law of another Party, or owned by a person of another Party (Baldwin, 2014a).

transparency and accountability, which create commitments that spread to other trading partners. Briefly, “once a commitment is made *vis-à-vis* one PTA partner, the commitment tends to leak to or benefit also third countries” (Pauwelyn, 2015 p.188).

Following these considerations, the TTIP has been defined as a possible public good provider (Pauwelyn, 2015). If this assumption is true, it will mean that the TTIP provisions are feasible to be multilateralized, since they do not create a discriminatory effect on third countries. Pauwelyn argues that there are at least five ways through which TTIP’s provisions may become “public good” (Pauwelyn, 2015). The first one is by necessity, which means that a commitment in a PTA is establishing a pure public good, non-rivalrous and non-excludible. For example, provisions in US and EU PTAs establishing publication or transparency commitments have not limited effect on PTAs partners only. When a proposed law is published, it is published for all. Secondly, a PTA provision may spread to third countries by volition. For instance, when the Parties of a PTA agree to comment on procedures for the preparation and implementation of technical regulations, such procedures allow all the interested person to comment, disregarding if they are PTA’s Parties or not. These type of procedures are present in the EU-Korea PTA (Art. 21.2(b)). Thirdly, there are some sectors which enjoy a higher degree of protection by the WTO, like the TRIPs. In fact, two countries may decide to establish a PTA on Intellectual Property, but if they do, they have to extend their commitment on a MFN basis. In fact, it is not possible to use Art. XXIV or other exception to the MFN principle when it comes to TRIPs. Another relevant case of extension of commitment on a MFN basis is the one of SPS and TBT. In fact, PTAs on SPS and TBT usually include provisions on mutual recognition or equivalence of third countries (Pauwelyn, 2015). These provisions “may force PTA parties to accept another country’s standards if those meet the PTA country’s appropriate level of protection” (Pauwelyn, 2015 p. 192). The fourth way by which PTA’s provisions may spread is by circumvention (Pauwelyn, 2015). As I already explained, ROO may be particularly liberal in some cases, making difficult to know if a good or services is made in a PTA’s country. This is particularly true for services, since most PTAs do not have ROO in that domain. For instance, TTIP’s concessions on services may be applied to Swiss or Japanese companies, if they set up an EU or US subsidiary or branch (Pauwelyn, 2015). Finally, provisions in PTAs may spread through emulation, if a third party decide to unilaterally adopt it.

Therefore, this brief overview showed us that PTAs like the TTIP may be an effective way to spread global standards, following a different path with respect to the WTO. In fact, while the WTO has proven to be good at “enabling reciprocal exchanges of market access, (...) following a (...) zero-sum mindset” (Pauwelyn, 2015 p. 195), PTAs allows countries to deliver commitments multilaterally without engaging with all countries. Framed in this way, PTAs may be defined as an example of counter-multilateralism (Keohane and Morse, 2015), which want to spread a more effective type of multilateralism, challenging the WTO mindset. However, we have already seen how is technically difficult to achieve global standards in ambitious PTAs like the TTIP, since the US and the EU are still divergent in a number of relevant issue. Moreover, even if they succeed in reaching an agreed text, its ability to spread multilaterally will depend on the approach used for regulatory cooperation. In fact, convergence on rules, procedures and standards can be achieved through harmonization or mutual recognition of regulatory standards. In the following paragraph I will address this issue, showing that the path the TTIP is taking is limiting its ability to set global standards.

### **2.3. Harmonization vs mutual recognition**

The TTIP is not the first attempt to achieve regulatory convergence among the two sides of the Atlantic. In fact, the Transatlantic Declaration of 22 November 1990 already introduced a reference to transatlantic regulatory cooperation (Berman, 1996). At that time, regulatory cooperation was supposed to be achieved through the work of EU and US agencies. However, this approach was proved to be a shortcoming, since the EU agencies lacked of regulatory power, and the US was usually confronted with the European Commission (Meuwese, 2011). Another relevant example of the EU-US regulatory cooperation is the *Guidelines on Regulatory Cooperation and Transparency* of 2002. These *Guidelines* consisted in dispositions about spread of information, exchange of data and “warning system for anticipated regulatory action” (Meuwese, 2011). Even if this practice has been an improvement for a higher level of communication among the transatlantic powers, it was surely less ambitious than the TTIP. Moreover, when it comes to the real effect of the *Guidelines* “little effort has been made to implement [the *Guidelines* provisions], as their primary function seems to be a symbolic one”. Conversely, the TTIP regulatory chapter aims to dramatically reduce the NTBs to trade,

by achieving a considerable level of regulatory convergence. This will allow a stricter US-EU relation, being also a path toward the drafting of global standards. There are two main ways through which regulatory cooperation could be achieved by TTIP: harmonization or mutual recognition (De Ville and Siles-Brügge, 2015). As I have already anticipated in previous paragraphs, harmonization means that the US and the EU will adopt only one set of regulation, while with mutual recognition the parties will reciprocally recognise the validity of their existing standards. These two approaches produce different outcomes. Harmonization can be realized by adopting the regulation of one Party (see footnote 4). However, this will put the other Party in a difficult position for two reasons. First of all, this approach will recognize the higher validity of the regulation adopted, at the expenses of the other Party's one. Secondly, adopting one Party's regulation will generate adaptation costs only for the other Party, creating a situation of a zero-sum game.

The Parties can also decide to adopt a common regulation by relying on existing international standards. However, it may be politically problematic to admit that “both (Parties) have in the past been applying standards that are inferior to an already existing international regulation that will henceforth applied” (De Ville and Siles-Brügge, 2015 p. 57). For all these reasons, the harmonization approach is unlikely to be adopted in the case of TTIP. De Ville and Siles-Brügge conducted a close analysis of the EU position papers and EU Commission website, finding out that “harmonization is not on the agenda” (European Commission, 2015d).

Conversely, with the mutual recognition approach, the US and the EU will maintain their current regulations, recognizing the reciprocal validity of one another standards (De Ville and Siles-Brügge, 2015). Even if this path may seem easier to achieve, there are considerable shortcomings to bear in mind. First of all, mutual recognition will change the relation between market forces and national governments. In fact, when only one national regulation is in place, firms have to adapt itself to the standards set up by the government, if they want to access that market. Instead, with mutual recognition the firms in the market will be able to choose the regulation they prefer (among the ones recognized by the Parties of the agreement). This is the reason why some believe that mutual recognition is for its nature deregulatory (Trachtman, 2007), since firms are allowed to “bypass higher standards” (De Ville and Siles-Brügge, 2015 p. 58). Secondly, mutual

recognition may be technical difficult to achieve, even when the US and the EU regulation provide the same level of protection. A study conducted by the German Social Accident Insurance (DGUV)<sup>25</sup> assess the effects of mutual recognition in the area of technical regulations and conformity assessment for work and protective equipment. The results show that “the underlying principles and assignment of responsibility between the affected market players differ so widely between the EU and the USA that mutual recognition could lead to hazards”<sup>26</sup>.

Despite these difficulties, the mutual recognition approach seems to be the most likely to be adopted in TTIP (De Ville and Siles-Brügge, 2015). However, mutual recognition could be realized in two ways, which have different ability to provide global standards. The Parties can decide to simply recognize their standards in a reciprocal way, without extending this principle to third countries. This approach is known as “bilateral mutual recognition” (De Ville and Siles-Brügge, 2015 p.59). In this scenario, the EU will only grant preferential access to its market to US goods and services (and vice versa), creating a discriminatory effect for third countries. Therefore, if bilateral mutual recognition is adopted, the TTIP will create reciprocal preferential access for US and EU markets, giving away its ability to draft global standards.

Alternatively, the US and the EU may decide to follow the *erga omnes* mutual recognition path (De Ville and Siles-Brügge, 2015), meaning that third countries may access both markets by complying either with the US or with the EU standards. In this way, the TTIP will effectively be able to spread its regulation to third countries. However, it seems that the modality of bilateral mutual recognition is the preferred one by the European Union (De Ville and Siles-Brügge, 2015), since it will allow European firms to gain preferential access to the US market without suffering from third countries’ competition. Even if negotiators have not communicated yet which approach of regulatory cooperation will be

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<sup>25</sup> The DGUV is an umbrella organization of trade associations and accident insurers. The study was conducted together with the KAN (A German commission which deal with OSH issue) and the polish OSH institute.

<sup>26</sup>Citation from the KAN website, which summarize the study:

<https://www.kan.de/en/publications/kanbrief/115/ttip-gegenseitige-erkennung-von-normen-als-moeglicher-weg/>

adopted for different sectors, we can presumably expect that the bilateral recognition approach will be the favoured one<sup>27</sup>.

To conclude, the extent to which the TTIP will be able to draft global standards depends on the approach chosen for regulatory cooperation. While harmonization and mutual recognition *erga omnes* would provide a higher level of multilateral potential, bilateral mutual recognition will only benefit the Parties in the agreement. Given the political and technical difficulty to achieve harmonization, the transatlantic powers are likely to adopt the mutual recognition path. In addition, the Parties in TTIP seems more inclined to reciprocally enhance their regulatory cooperation, preventing third countries to benefit from the agreement. If this path will be confirmed once TTIP is concluded, the agreement will not result in global standards. This show us that the assumption according to which mega-regional agreements like TTIP will bring higher degree of integration in the world trade order is not self-evident. Instead, regulatory convergence among the Transatlantic powers may create disadvantage for third countries, which can decide to engage in their own regional blocks, trying to balance the TTIP economic and political effects.

In this paragraph I have challenged the assumption of the technical feasibility of TTIP multilateralization. In the following ones, I will address the political level of the matter, trying to identify the possible third countries' reaction to the conclusion of the TTIP.

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<sup>27</sup> These considerations rely on the work of De Ville and Siles-Brügge of 2015, already mentioned in the paragraph. They analysed European Commission position papers on the matter and they have concluded interviews about the mode of regulatory cooperation.

### **3. The political level of TTIP' multilateralization: what TTIP means for the rest of the world?**

Despite their declared interest for an agreement with a multilateral potential, the US and the EU have not devised a clear mechanism for third country's accession yet. In fact, given the complexity of the agreement, the US and the EU have concentrated their efforts in finding compromise on the most complicated issues of TTIP, leaving outside the question of third country's position. However, if the Transatlantic powers are really interested in drafting global standards, they should pay more attention to how enhance the open character of the agreement. In this paragraph, I will first assess the open character of the agreement, demonstrating that the TTIP's provision are difficult to be multilateralized and showing the alternative possible accession mechanisms. Then, I will try to understand whether or not third countries may still have incentive to join the TTIP once it is concluded. Finally, I will describe alternative strategies and responses of excluded countries.

#### **3.1. The question of openness**

The question of the open character of TTIP is highly relevant to understand the agreement's multilateral potential. We can identify two scenarios with different outcomes on multilateralism. If TTIP reveals to be a real open agreement, with the possibility for third Parties to influence the negotiations (for example by participating as observers or by advancing proposals and suggestions), the multilateral potential of the agreement will be higher. In fact, in this scenario, third countries will be more willing to adopt the TTIP's provisions, since they had a role in drafting it. Conversely, if TTIP's negotiations leave third countries completely outside the negotiation's table, the agreement will simply remain bilateral, giving away the possibility of becoming multilateral.

Given the current state of play, it is highly probable that third countries will be able to adopt the TTIP standards only once the agreement is concluded, meaning that they will not contribute to the standard setting process. From this perspective, the US and EU current approach "could produces a bilateral agreement which is difficult to multilateralize" (Ülgen, 2014). In other words, the TTIP's negotiation have a bilateral

character, which contradicts with the declared aim of “working toward a multilateral deal for which an initial EU-US agreement is only a stepping stone” (Ülgen, 2014).

From their side, excluded countries have interest in seeking for an effective strategy to influence the negotiations, given the fact that, in any case, they will be affected by the agreement. In fact, it is undeniable that this huge Transatlantic PTA will reshape both the political and economic aspect of the world trade order. In particular, the TTIP will revitalize the US and EU relations and it will restore their standard setting power, forcing third countries to go back to their former position of rule-takers. This is worrying especially for emerging countries, which are not willing to renounce to their acquired position of rule-makers in the world economy. The scenario of a non-inclusive TTIP is not welcomed also by countries which already have consolidate relations with the US and the EU, like Turkey and Norway. In fact, they are worried that a “fortress TTIP approach” (Ülgen, 2014) could erode their position in the transatlantic space, and they are consequently keeping their eyes on the negotiations.

Another important issue is the one of the accession mechanism. As I have already said, it is more likely that third countries will be able to join the agreement once it is concluded, but the Parties of TTIP have not negotiated an accession mechanism yet. This may be a shortcoming, since “postponing this decision until the time of actual enlargement will create unwanted difficulties and possibly unnecessary political friction” (Ülgen, 2014). Instead, by establishing an accession mechanism, Brussels and Washington will be able to reassure third countries and to partially eliminate they pressure for participating in the negotiations.

We can identify two possible accession mechanisms. The first one consists in excluded countries searching for a FTA with the EU or with the US. However, this approach will not result in third parties becoming members of TTIP. Indeed, this option may only ease the possible trade diversion effect, providing to third countries preferential relations with one of the TTIP parties, but it does not give to excluded countries voice on TTIP provisions. Instead, it is more likely that such approach will only generate a complex web of overlapping PTAs. The second possible approach entails the creation of bridge agreement between existing PTAs and the TTIP. For instance, such agreement may be concluded between NAFTA and the TTIP or between the European Free Trade Association (EFTA) and TTIP (Ülgen, 2014). This approach will allow for the extension

of some mutual concession of TTIP to Parties of NAFTA and EFTA. However, in order to be effective, the bridge agreements must entail a harmonization of ROO. In fact, if NAFTA, EFTA and TTIP have completely different ROO, it will be impossible to create a symmetric FTA (Ülgen, 2014). Given the complexity of harmonizing ROO, the bridge agreements approach is unlikely to be adopted. Moreover, even if involved countries successfully overcome this difficulty, the bridge agreements will not confer to third countries the power of cooperating in setting global standards. Instead, they would only benefit from the extension of provisions drafted by the US and the EU.

From this brief overview, we can conclude that the TTIP is far from being an agreement open to third countries. Moreover, the US and the EU are failing to provide a mechanism which will at least guarantee a fair and balanced enlargement process. The interpretation of Ülgen summarize this concept:

*Thus, without an option of outright accession, third countries would need to accept a permanently reduced role in this new world of trade policy norm setting. A genuine solution would require the TTIP agreement to contain a specific provision for accession by non-member countries. (Ülgen, 2014)*

Despite this consideration, third countries may still have some interest in accessing the TTIP once it is concluded. This is particularly true for countries that have tight relations with the US and the EU, which may be willing to limit the negative externalities of TTIP by joining it. However, excluded countries may decide to adopt alternative strategies to react to the transatlantic PTA, which in turn will have different result on the multilateral world trade order. Before directly address this issue, I will try to verify whether or not excluded countries may still have incentives to join the TTIP, by looking at its economic and political externalities.

### **3.2. TTIP's economic and political externalities**

The willingness of third countries to join the TTIP largely depends on the potential externalities that the agreement will generate. The first relevant negative externalities that TTIP may produce is trade diversion. This phenomenon refers to the replacement of excluded countries' goods with the one of the PTA's Parties, due to the elimination (or reduction) of tariff barriers (Viner, 1950). As already explained in former paragraphs, this effect is usually associated with traditional PTAs, which were mainly related to tariffs' reduction. Supporters of mega-regional state that, since the current level of tariff is low, mega PTAs will not generate high level of trade diversion (Pauwelyn, 2015). Instead, through the process of regulatory cooperation, they will be able to positively affect third countries. Nonetheless, excluded countries may still have reasons to be concerned about the trade diversion effect. This is especially true for US and EU major trading partner, like China, Russia, Turkey and Switzerland, which will suffer from preference erosion. Turkey is a peculiar case, since it has a custom union with the EU. Therefore, if the TTIP will be successfully concluded, the US good will be able to enter the Turkish market through the EU channel, while the Turkish goods will not enjoy a preferential access to the US market (Sapiro, 2015).

Furthermore, we should not forget that the elimination of NTBs will also create a different type of economic losses for third countries, which has been defined as "regulatory diversion" (Francois, Hoekman and Nelson, 2015 p. 19). Generally speaking, is quite difficult to quantify the economic effects of NTBs reduction. However, a study conducted in 2014 by Egger et al. tried to estimates the discriminatory effect of TTIP regulatory cooperation (Egger et al., 2014). The study takes in consideration the expected economic gains for reduction of NTBs in goods and services, relying on WTO and other PTAs' data. The study concludes that, in area in which higher savings are expected, NTBs' reduction is supposed to generate higher loss in market access for third countries. Such areas are ones of primary agriculture, motor vehicles, chemicals and pharmaceutical, and processed foods.

Beside the economic shortcomings that TTIP may generate on excluded countries, we should also take in consideration the geopolitical perspective. Indeed, there are already evidence of third countries' concerns over the agreement. Some of the latest decision of emerging countries has been surely influenced by the TTIP's negotiations. For instance,

some argue that Chinese decision to finally join the pluri-lateral talks on TiSA (Trade in Services Agreement) has been influenced by the perspective of a closer US-EU relationship (Blockmans and Hamilton, 2015). From this point of view, the mega-regional project of TTIP is considered to be a stimulus for the enhancement of multilateral cooperation. The conclusion of the Bali agreement in 2013 is often taken as a further prove of that. Nonetheless, this interest for multilateral talks is running in parallel with the construction of further regional blocks. This is evident if we look at the strategy China is pursuing in the Pacific Region. China is now engaged in several regional and mega-regional agreements, which show its willingness to maintain a relevant role in the world trade order.

Thus, the conclusion of TTIP will surely change the international environment, creating the incentive for third countries to formulate an effective strategic response. It is indeed clear that “despite rhetoric to the contrary, the message is that the US and the EU have given up on the grand multilateralism that define the post-World War II era” (Blockmans S. and Hamilton D., 2015 p. 6). In the former paragraph we have concluded that one possible path third countries may take is searching for accessing the TTIP once it is concluded. However, there are two problems related with this strategy: firstly, third countries may be unwilling to accept provisions that they do not contribute to draft; secondly, even if they decide to join the TTIP once it is concluded, there is no clear mechanism for accession yet. For these reasons, third countries are more likely to search for alternative reactions to the Transatlantic agreement, producing different results on the world trade system. In the following paragraph, I will shortly encompass these possible strategies and I will take in consideration their alternative effects on the international order.

### 3.3. Alternative third countries' strategies

There are at least four possible strategies that non-Parties may adopt after the TTIP conclusion<sup>28</sup>. Firstly, an excluded party may search for a bilateral FTA with one of the TTIP's Party. This may happen when the third party fears a loss in its relevant economic and trade relations with one of the Party. For instance, a third Party may decide to conclude a PTA with the EU, but not with the US (Aggrawal and Evenett, 2015). This scenario suggests that the conclusion of a new agreement between one excluded Party and one Party of TTIP does not necessarily lead to the spread of TTIP provisions. Indeed "any subsequent FTA between the EU and the third party will not address the same matters as if the third party had sought to join the TTIP" (Aggrawal and Evenett, 2015, pp. 98-99). Consequently, even if the above-mentioned scenario may alleviate the negative externalities for third countries, it does not result in a multilateralization of TTIP's provisions.

A second option is to wait for TTIP's provisions to be multilateralized at the WTO (Aggrawal and Evenett, 2015). Third countries may adopt this strategy if they believe that the cost of concluding an agreement with the US or the EU is higher than the TTIP's harm. The logic behind this, is that, if the Parties are willing to extend the agreement at the WTO, they are supposed to "pay" for that (Aggrawal and Evenett, 2015.). Consequently, it would be more favourable for third countries to wait and receive something in exchange for a TTIP's multilateralization. This latter may happen through the combined pressure of the EU and the US at the WTO. Indeed, the TTIP's Parties have a consolidated position at the WTO, for their economic and political relevance, which may favour the adoption of TTIP's provision at a multilateral level. However, given the timing of multilateralism, the extension of TTIP's provisions at the WTO may be a too far scenario. Another possibility to consider is that the TTIP may serve as a bridge agreement between the other two examples of mega-regional integration: the TPP and the Regional Comprehensive Economic Partnership. The presence of the US in two of these agreements (TPP and TTIP) may favour the harmonization and multilateralization of mega RTAs provisions at the WTO, bringing benefits for third countries (Bellman and Singh, 2015). However, as

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<sup>28</sup> These four strategies do not include accession, which has been already mentioned in the former paragraph.

I have already said, this scenario of mega-regionals multilateralization need the political will of third countries to accept the spread of provisions they do not contributed to draft. In addition, as I will explain in the third Chapter, the TPP and the RCEP seems to constitute an example of competitive regionalism (Katada, Solis and Stalling 2009), rather than sharing common basis for potential multilateralization.

Then, excluded countries may decide to negotiate an agreement with the US and the EU on a narrower set of TTIP issues. In this case, there will be a certain degree of spread for TTIP's provisions. However, this will be limited to some countries interested in enhancing their cooperation in a certain number of issues. Finally, third parties may decide to unilaterally adopt the TTIP standards, seeking for a subsequent recognition by the US and the EU. Nonetheless, this strategy may prove to be totally ineffective, since the US and the EU are going through a process of bilateral mutual recognition. Even if a third country's firm adopt the TTIP standard, this will not grant it with the same treatment of US and EU firms.

Thus, the "US and EU claims to be establishing global standards through TTIP should be treated with some scepticism" (Aggrawal and Evenett, 2015 p.99). Indeed, the different strategies third countries may adopt do not facilitate the spread of TTIP provision at a multilateral level. Conversely, in all the four cases there is a certain degree of fragmentation. In addition to these strategies, third countries may decide to construct rival trade blocks, in order to contrast the US-EU hegemony.

In this second Chapter, I have comprehensively addressed the TTIP's impact on the multilateral order. The real TTIP's multilateral potential depends on a number of complex factors, which goes from the technicality of regulatory cooperation to the reaction of excluded countries. Through the analysis of both technical and political feasibility of TTIP's multilateralization, we can conclude that the global ambition of the agreement does not fit with the reality. The US and the EU are constructing a PTA which aims to restore their power, without creating enough incentives for third countries to adopt their standards. Thus, third countries are more likely to react in a way which would led to a higher level of complexity in the world trade order.

## Chapter III

In former paragraphs, I presented a general overview about third countries' position and possible reactions. To complete the picture, it will be necessary to look at what is actually happening in the world trade order, following the spread and the consolidation of mega regional agreements. Thus, this Chapter will present the perspective of a country which is excluded from two of the most ambitious example of mega-regionals (TPP and TTIP): China. This exclusion is by no way casual, since China represents an alternative economic model with respect to the Western one. Indeed, over the past decades, China showed relevant economic performances, thanks to its "labor-intensive manufacturing and huge domestic market" (Yang and Yiwei, 2015). Thus, "If China is not contained through rules and standards, the U.S. and EU can do nothing but watching emergence of a 'China Century'" (Yang and Yiwei, 2015.)

We have already encompassed the several ways in which third countries may react to TTIP. Since the unilateral adoption of TTIP rules by China is quite unlikely, I will focus on the other two alternatives: searching for bilateral FTAs (with the EU and the US) or trying to consolidate its regional block. We will see that China is pursuing both these strategies, contributing to the fragmentation of the world trade system. I will also consider the Regional and Comprehensive Economic Partnership (RCEP), which has been recently backed by China (in 2014). Before directly addressing these issues, I will provide a brief background about Chinese position on TTIP.

## 1. What TTIP means for China?

The debate over the meaning of TTIP is dividing Chinese intellectuals<sup>29</sup>. Generally speaking, the TTIP is often perceived as a threat for the Chinese political and economic power, since it is considered as part of the US “pivot to Asia”<sup>30</sup>. However, not all Chinese intellectuals share this opinion. Instead, we can retrace three different point of views adopted by Chinese scholars. The first one is focused on potential positive externalities of the agreement. This argument relies on already mentioned reasoning, according to which the Transatlantic PTA will be able to increase the level of trade both for Parties and non-Parties. Following this logic, the TTIP is considered positive for China and other emerging countries, since “transatlantic economic integration might be able to spur China’s external trade, investment and economic growth” (Li, 2013). In addition, the consolidation of a unique Transatlantic regulation will benefit China, which will be able to access both markets by respecting only one regulation. Finally, some Chinese scholars also support the idea of TTIP as a stepping stones for multilateralism. From this point of view, the TTIP may produce the necessary peer pressure to push MTNs (Xiaotong, 2015).

A second group of intellectuals is instead convinced that the TTIP will not bring any significant change for Chinese economic and political model, neither for the world in general. They support this thesis by affirming that, since the US and the EU already have a great level of complementarity, this will not change after the conclusion of the agreement (Xiaotong, 2015). Furthermore, they are also confident about the new role of China and the other emerging economies on the world trade order. Thus, they believe that any relevant change in the world trade’s rules cannot be realized without the involvement of the emerging countries (Wu, 2013).

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<sup>29</sup> As Xiaotong state in its work (Xiaotong, 2015), the term “intellectuals” is used to include scholars, think tank contributors and journalists.

<sup>30</sup> The politics of a US pivot to Asia was launched in 2009. The logic of this strategy was based on the assumption that “lion’s share of the political and economic history of the 21st century will be written in the Asia-Pacific region” (Andrews and Campbell, 2013). As a consequence, the US administration is constructing a strategy for improving its role in that region, through people to people contact and through the revitalization of diplomatic, economic and security relations with the region.

Finally, a greater amounts of intellectuals warn Chinese government about the hazardous nature of the TTIP (Xiaotong, 2015). In particular, they are worried about two negative TTIP externalities (that we have already partially encompassed): the trade diversion effect and the consolidation of new Western-draft standards. Indeed, since China is the most important trading partner of both US and the EU, it is likely that it will be greatly affected by both those externalities.

We have already seen the difficulties associated with the calculus of trade diversion. Indeed, the final amount of this effect depends on several factors, which include the current level of tariffs and the contribution of trade creation. However, generally speaking, we can predict that “TTIP-induced trade diversion effects on China would be more significant in the EU market than in the US market, largely because the EU market has on average higher levels of tariff than the US” (Xiaotong, 2015 p. 120). Moreover, we should also consider the level of similarity between, respectively, EU’s and Chinese goods and US’s and Chinese goods. In fact, if this level is high, it is more likely that consumers will prefer Transatlantic goods once the tariffs are eliminated. Using the Export Similarity Index (ESI)<sup>31</sup>, we are able to calculate the competing relationship between Chinese and European exports as well as between Chinese and American exports (Xiaotong, 2015), and to make some forecast in the case of TTIP’s conclusion. The index has a value that goes from 0 to 100, the more the index is high, the more competitive the relationship is. What this index shows us is that the competition is higher with European goods, especially in the sectors of chemicals, vehicles, plastics and rubbers. Consequently, we can conclude that in these sectors the trade diversion effect will be considerable.

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<sup>31</sup> This index has been formulated by Finger and Kreinin (1979), using the following formula:

$$S(i, j, k) = \left\{ \sum_l \min\left(\frac{x_{ik}^l}{x_{ik}}, \frac{x_{jk}^l}{x_{jk}}\right) \right\} \times 100$$

Assuming that there are two different countries or regions “i” and j, this formula estimates export similarity of “i” and “j” with “k”. “X” are the exports, “l” stands for the certain commodity classification, and the two subscripts stand for export country and export destination respectively. The first fraction in brackets is the share of commodity “l” in the export from “i” to “k”. The second fraction is the share of commodity “l” in the export from “j” to “k”.

Beside the economic externalities of TTIP, China will also be confronted with new rules and standards which will challenge its economic model. Indeed, TTIP is going to establish new regulations in sensitive field for Chinese economy, like state-owned enterprises (SOEs) and government procurement. In particular, the sector of SOEs has always been important for Chinese economy, since it allowed China to open itself to the gains of international trade without renouncing to a certain degree of control (Bandow, 2010). More precisely, since Chinese SOEs enjoy some advantages with respect to the stranger ones, the principle of market competition is in danger. That is the reason why the US and the EU want to restructure the rules about SOEs and hopefully expand these new standards in the world (Xiaotong, 2015). If US and EU will successfully reach their objective, China will be forced to adapt its economic model to the new Transatlantic rules.

Another sensitive issue for Chinese economy is the one of the government procurement. Indeed, China is trying to access The Agreement on Government Procurement (GPA) since 2007, and the conclusion of TTIP may potentially complicate this process. The GPA has been established in 1981, within the framework of the WTO, but it has been renegotiated in 1994, during the Uruguay Round. Its main principles are transparency and non-discrimination, while its aim is to “mutually open government procurement markets among its parties” (WTO, 2016). At the same time, the US and the EU are negotiating new standards and rules which will make easier for their respective companies to compete for both US’s and EU’s public contracts. Thus, if TTIP will succeed in spreading its provisions, the new rules and standards on public procurement may create pressure to restructure the GPA in accordance with US and EU standards. This will of course create difficulties for China to access.

To sum up, if TTIP is concluded, China will surely face a more complicated external environment, and it will probably experience a pressure to adequate its standards and rules to the one of TTIP. As a consequence, China may “accelerate the pace of its own FTA negotiations” (Xiaotong, 2015 p. 121), in order to response to the TTIP’s challenge in an effective way. Indeed, China is worried about the possible combined effect of TTIP and TPP, which may erode its power both in the region and in the world trade order. Analysing the reaction of China is then interesting to understand what outcome the conclusion of a great mega-regional will produce. In the following paragraph I will analyse two strategies that China seems to be pursuing: enhancing its investment relations

with the EU and the US, while consolidating its own regional blocks. I will also show how these two scenarios will generate higher fragmentation in the world trade system.

## **2. China's Possible Reactions**

Among the possible actions that could be taken after the TTIP's conclusion, China may decide to wait for TTIP's provisions to be multilateralized at the WTO. Alternatively, China may decide to adopt them unilaterally and seeking for subsequent recognition by the TTIP's signatories. However, these options may seem unsatisfactory to China. Indeed, waiting for multilateral adaptation may require too much time, while the adoption of TTIP's provisions may not result in concrete gains for excluded countries. The latter statement is true for two reasons. First of all, China may not be willing to face the political and economic adaptation costs of adopting TTIP's standards. Secondly, even if it accepts to do, China may not receive benefits from this type of action. Indeed, it seems that the US-EU regulatory cooperation is being pursued through a bilateral mutual recognition path (De Ville and Siles- Brügge, 2015) which will not grant preferential treatment to third countries adopting TTIP's standards. As a consequence, China may prefer to respond to TTIP's challenge by negotiating bilateral agreement either with the EU or the US, or by consolidating its position in the FTA network of the Asia Pacific and beyond. My thesis is that China is pursuing a two level strategy. The first level aim to maintain good bilateral trade relations with Brussels and Washington (especially in the field of investment), in order to preserve its political and economic relevance, while the second is directed to the consolidation of Chinese FTA network in the Asia Pacific region and in other parts of the world. In the next sections I will analyse these two strategies in turn.

## 2.1. Enhancing Chinese Relations with the Transatlantic Powers

The European External Action Services (EEAS) has recently pointed out in that “as two of the three biggest economies and leading traders in the world, the EU and China have a strong interest in a deep and comprehensive partnership” (EEAS, 2016 p. 1). The EU willingness of a deeper partnership with China has recently been embedded in the latest official Joint Communication on the strategy on China, adopted by the High Representative of the EU and the Commission on the 22 June of 2016. This official document contains the main elements for understanding EU’s position toward China, and it provides a specific section on investment and trade cooperation (*Section III.2: Boosting Trade and Investment*). By looking at this section, we can retrace the existing willingness from the side of the EU to enhance its relations with China, with the final aim to move toward a comprehensive project of FTA. Indeed, the Joint Communication states:

*“A Comprehensive Agreement on Investment is the EU’s immediate priority towards the objective of deepening and rebalancing our relationship with China. The conclusion of such an agreement, as well as progress in China’s reforms towards liberalising its economy and therefore creating a level-playing field for business, would open new market opportunities and allow both sides to envisage broader ambitions such as a Free Trade Agreement.”*  
(EU Commission and HR Joint Communication, 2016)

From its side, China has showed a good level of interest in the EU’s proposal of deepening their trade and investment relations. In doing so, China is surely conditioned by two external factors: the tightening of Brussels-Washington relations, achieved through the TTIP, and the US’s TPP project, which is a threat to Chinese hegemony in the Asia-Pacific region. For these two reasons, China may be more willing to cooperate with the EU. As a prove of this new approach, China has recently declared its support for the Investment Plan for Europe. Indeed, during the High Level Economic and Trade Dialogue held in Beijing on the 28 September 2015, “China announced its intention to contribute to the Investment Plan, as well as closer cooperation with the EU on investment issues in general” (European Commission, 2016c). This initiative has also been accompanied by the establishment of a EU-China working group which is directed to enhance their cooperation on investment-related issues. In addition, the two partners have also discussed the project of a EU-China Connectivity Platform, which aims to increase

Chinese investments in Europe through a set of key corridors and infrastructures. The Connectivity Platform is still an on-going process, but it surely demonstrates the Chinese pro-active position toward the EU. The Connectivity project may also clear the way for European participation to the One Belt One Road project (Islam, 2015). This latter is a development strategy aiming to increase transport, energy and digital connectivity among Chinese and Eurasian territories. Several European countries already provide economic support to the project, through the Asian Infrastructure Investment Bank (AIIB), which is the main financial contributor to the One Belt One Road initiative.

All these cooperative initiatives between Beijing and Brussels are moved by strategic considerations. In fact, China has a strong interest in enhancing the corridors and the transport infrastructures with Europe, in order to increase its ability to invest and export in that market (World Economic Forum, 2016). However, this deeper cooperation with the EU goes beyond purely economic considerations. Instead, all these initiatives “provide(s) an important insight into Beijing’s determination to take on a stronger regional and global role and to shape the international environment according to its priorities and interests” (Islam, 2015).

At the same time, China is negotiating a Bilateral Investment Treaty (BIT) with the United States. The project has been envisaged for the first time eight years ago (Tiezzi, 2016), with the aim of increasing the amount of Foreign Direct Investment (FDI) flow in both countries. If the BIT will be effectively concluded, there would be important economic gains for both parties. Moreover, as in the case of China-EU investment cooperation, the prospect of a US-China BIT “could also serve as a vehicle for each side to advance its broader international interests” (Gloudeaman and Salidjanova, 2016 p. 3). Indeed, the US may be interested in address some Chinese practices which are considered to be “out of line with international investment and legal standards” (Gloudeaman and Salidjanova, 2016 p. 3), in order to increase their ability to access Chinese market. From its side, China may be interested in gaining a first-row position for setting the rules of investment. This is particularly true when it comes to the protection of SOEs, “which to date have been the biggest investors in the United States and globally” (Gloudeaman and Salidjanova p.6).

In conclusion, Chinese attitude toward the EU and the US may be interpreted as a response to TTIP and TPP. The current trend is creating two mega regional blocks led mainly by the United States, one Transatlantic and one Trans-Pacific. In this scenario, it

is extremely important for China to avoid marginalization from the world economy, by enhancing its relations both with the EU and the US, and by trying to become part of the standard setting process. At the same time, China is pursuing a parallel strategy, by expanding and consolidating its FTA network, both in its region and in other relevant areas of the world.

## **2.2. Chinese FTA strategy**

Although China was not among the first countries to engage in Free Trade Agreement, it is now the centre of the Asia Pacific FTA network. Indeed, while the first wave of regionalism involved primarily the EU and the US (Alschner and Pauwelyn, 2015), China started to construct its own regional FTA block right after its accession to the WTO. Before 1978, China did not have significant trade relations with the rest of the world. Instead, China was mainly an inward looking economy, which exported only a minimal amount of goods (rough material and simple manufactured goods) to cover payments for its strategic imports (Li X., 2012). This trend was reversed starting from 1978, with a series of reforms which allowed China to become the trading power it is nowadays (Li X., 2012). During the 80s, exports grew more than imports, creating trade surpluses, but it was only in the 90s that Chinese exports exploded. This was possible thanks to two strategies. First, China moved from a “dual-track exchange rate system” (Li X., 2012 p. 26) to a system pegged to the US dollar (Li X., 2012). This created considerable currency stability, which in turn allowed China to expand its trading relations and to export at competitive prices (Li X., 2012). Secondly, China committed itself to accede to the WTO, and it started a process of tariff cuts, “driving down the simple average of tariffs from 47.2 percent in 1990 to 15.8 percent in 1999” (Li X., 2012 p. 26).

In 2001, China completed its accession process to the WTO. From that moment on, it further expanded its trade strategy through the conclusion of FTAs. Indeed, in 2001 China became a member of the Bangkok Agreement, which has been negotiated since 1975 between Bangladesh, India, South Korea, Sri Lanka, Laos, Philippines, and Thailand. The agreement was then renamed as Asia Pacific Trade Agreement (APTA) in 2005, and it entered into force in 2006.

However, the APTA was mainly about tariffs reduction. Moreover, “as [it] does not include a services or investment agreement, it does not necessarily qualify it as a full FTA” (Salidjanova, 2015 p. 7). Despite this, it still had an important strategic significance, since it allowed China to establish economic link with major markets such as India and the Republic of Korea (ROK) (Salidjanova, 2015).

The second important step that China took in order to construct its FTA network was the conclusion of a trade agreement with the ten members of the Association of Southeast Asian Nations (ASEAN). The agreement was proposed for the first time by Chinese Premier Zhu Rongji during the ASEAN-China summit, held in November 2001 (Salidjanova, 2015). The main objective of a ASEAN-China FTA (ACFTA) was to reassure Chinese partners about its WTO’s accession (Salidjanova, 2015). Differently from APTA, the ACFTA is a complete FTA, which includes provisions on trade in good (adopted in 2004), trade in services (adopted in 2007) and on investment (2009). The agreement was then formally adopted in 2010, becoming the largest FTA among emerging countries (Salidjanova, 2015). In addition, “after the EU and NAFTA, the ACFTA is the third largest regional trading agreement by value” (Salidjanova, 2015 p.8).

The ACFTA generated economic returns both for ASEAN members and China<sup>32</sup>, but it also had geostrategic implications (Salidjanova, 2015). Indeed, as already said, the agreement aimed to consolidate Chinese relations with ASEAN countries, as well as “increase its influence and counterbalance U.S. influence in the region” (Salidjanova, 2015 p. 8). This latter objective became even more important after the US strategy of launching a “pivot to Asia”, which included the project of TPP. As a prove of the renewed interest of China in reassuring its key partners, in 2013 “Chinese Premier Li Keqiang said that China considers its relationship with ASEAN as a priority in its regional diplomacy” (Salidjanova, 2015 p.8). In sum, the ACFTA project is gaining new strategic importance for China, which aims to “reduce the U.S. influence and to win the ASEAN states’

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<sup>32</sup> The ACFTA was characterized by a considerable cut in tariffs. Indeed, tariffs on ASEAN import to China were reduced from 9.8 per cent to 0.1 percent. At the same time, tariffs on Chinese exports to ASEAN members were lowered from 12.8 to 0.6 percent. Nonetheless, the agreement also contains provisions to register sensitive goods which will be not subject to tariff reductions until 2020 (Salidjanova, 2015).

supportive and sympathetic attitude on important issues addressed at various international forums” (Gradziuk, A 2010 p.2).

In addition to ACFTA, China concluded FTA with its Special Administrative Regions (SARs), the Closer Economic Partnership Agreement (CEPA), which is considered to be “a successful application of the “One Country, Two Systems” principle<sup>33</sup>” (China Ministry of Commerce, 2016). Furthermore, China has also concluded bilateral FTAs with other relevant Asian and non-Asian countries (Pakistan, Singapore, New Zealand, Taiwan, Australia, Chile, Peru, Costa Rica, Iceland and Switzerland). In addition, China is negotiating agreement with Norway, South Korea, Japan and the countries of the Gulf Cooperative Council (GCC).

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<sup>33</sup> The “One Country, Two System” principle was envisaged to deal with the SARs of Hong Kong and Macau. It provides them with the right of self-govern their economic and political affairs with the exception of foreign policy, which should be aligned with the one of Beijing.

Partner	First signed	Participants	Geography	Phasing of agreement	WTO reporting
<i>Signed</i>					
ASEAN	2002	Multi-Partner	Proximate	Step-by-step: Framework (2002), goods (2004), services (2007), investment (2009)	Enabling Clause & GATS Art. V
Hong Kong	2003	Bilateral	Proximate	Single undertaking	GATT Art. XXIV & GATS Art. V
Macau	2003	Bilateral	Proximate	Single undertaking	GATT Art. XXIV & GATS Art. V
Chile	2005	Bilateral	Distant	Step-by-step: goods (2005), services (2008)	GATT Art. XXIV & GATS Art. V
Pakistan	2006	Bilateral	Proximate	Step-by-step: goods (2006), services (2009)	GATT Art. XXIV & GATS Art. V
New Zealand	2008	Bilateral	Distant	Single undertaking	GATT Art. XXIV & GATS Art. V
Singapore	2008	Bilateral	Proximate	Single undertaking	GATT Art. XXIV & GATS Art. V
Peru	2009	Bilateral	Distant	Single undertaking	GATT Art. XXIV & GATS Art. V
Costa Rica	2010	Bilateral	Distant	Single undertaking	GATT Art. XXIV & GATS Art. V
Taiwan	2010	Bilateral	Proximate	Step-by-step: framework (2010), goods and services (not signed yet)	GATT Art. XXIV & GATS Art. V
Switzerland	2013	Bilateral	Distant	Single undertaking	GATT Art. XXIV & GATS Art. V
Iceland	2013	Bilateral	Distant	Single undertaking	Unnotified
Australia	2014	Bilateral	Distant	--	Early notification
<i>Under negotiation</i>					
Norway	--	Bilateral	Distant	--	Early notification
Gulf Cooperation Council	--	Multi-Partner	Distant	--	Unnotified
South Korea	--	Bilateral	Proximate	--	Unnotified
Japan and Korea	--	Multi-Partner	Proximate	--	Unnotified

Table 2. Summary of Chinese FTA. Source: Chinese Ministry of Commerce; WTO.

Together with the consolidation of its regional and bilateral trade, China is working, with other relevant Asian partners, for the establishment of an important mega-regional agreement, which is considered to be the Chinese response to TPP (Xiao, 2015). This mega PTA is the Regional Comprehensive Economic partnership (RCEP), and it is supposed to link the ten members of the ASEAN (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam) with six other countries (Australia, China, India, Japan, South Korea and New Zealand). In the following paragraph, I will analyse the emergence of this PTA and its geopolitical meaning, in order to understand if it can be effectively considered as an example of “competitive regionalism” (Katada, Solis and Stalling 2009). More precisely, I will consider the RCEP and the TPP in a comparative perspective, to show that the world trade system is being characterized by competing regional blocks, which bring alternative model of regional integration.

### **2.3 The TPP and the RCEP: towards a Competitive Regionalism?**

As we have seen in the former paragraph, China has moved fast since 2001, trying to consolidate relevant economic and political relations both in the Asia Pacific region and in the world. However, we have also seen that there are two main threats to Chinese power: the intrusion of US in the Asia Pacific region through the conclusion of the TPP and the Transatlantic ambitions to set new global standards for trade and investment through the TTIP. China is already responding to these threats, by fostering its investment in the EU and in the US and by consolidating its FTAs network. In addition, China is willing to maintain its role of rule-makers in the world trade order. For this reason, it is unlikely that China will simply accept the TTIP's provisions. Instead, China is already pursuing a strategy that some scholars defined as "competitive regionalism" (Katada, Solis and Stalling 2009), which is going to produce higher fragmentation in the world trade system. To be more clear, in their work of 2009, Katada, Solis and Stalling studied the diffusion of FTAs in the Pacific Rim's Countries (Katada, Solis and Stalling, 2009). Through the analysis of some case studies, they demonstrate that the dissemination of FTAs in that part of the world was the result of competitive peer pressure. As a consequence, FTAs network established according to this competitive logic are less suited to be part of a more coherent regional integration project (Katada, Solis and Stalling, 2009). Having said this, the on-going negotiations of the RCEP, which has been recently spur by China, can be taken as example of competitive regionalism

The project of a Regional Comprehensive Economic Partnership is the result of two different proposals of regional integration: the Chinese and the Japanese one. Indeed, after the successful conclusion of ACFTA, China proposed the establishment of an East Asian Free Trade Agreement (EAFTA) in 2004, with the aim of harmonizing ROO and improving existing production networks among ASEAN+3 countries (ASEAN plus China, Japan and South Korea) (Xiao, 2015). The EAFTA had been already proposed by the East Asia Vision Group (EAVG)<sup>34</sup> in 2002, but the leaders of ASEAN+3 countries did not allow for the beginning of the negotiations (Xiao, 2015). However, this Chinese initiative was confronted with the Japanese proposal of a Comprehensive East Asian

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<sup>34</sup> The EAVG was established during the first ASEAN+3 meeting in 1998, with the aim of studying a long term project for further integration among the members.

Partnership (CEAPA) in 2006, which would include the ASEAN+6 countries (the ASEAN+3 countries plus India, Australia and New Zealand). The declared logic behind CEAPA was that it would have consisted in higher economic returns with respect to EAFTA, especially thanks to “the incorporation of a resource rich Australia and a fast-growing India” (Xiao, 2015 p.19). Nonetheless, some scholars argue that the CEAPA project was the result of the Japanese strategy to oppose the emergence of a regional block led by China (Urata, 2013). In any case, CEAPA and EAFTA remained two parallel project until August 2011, when China and Japan proposed the formation of a unique FTA, with the countries of ASEAN+3 and ASEAN+6 as members. There is reason to believe that the timing of this joint proposal was not casual. Indeed, “the progress in the TPP negotiations rejuvenated the stagnating progress on the proposed East Asia-wide FTA. The TPP influenced the strategies of Japan and China to the extent that the two countries agreed to launch the RCEP” (Xiao, 2015 p.22).

The TPP started as a small project in 2006, which had only four members (Brunei, Darussalam, Chile, New Zealand and Singapore), but it became geopolitical significant in a relative short amount of time. Indeed, the participation of US in 2008 provided “the catalyst for other Asia-Pacific states to jump onto the TPP bandwagon” (Xiao, 2015 p.21). As a consequence, by November of the same year Australia, Vietnam and Peru joined the negotiations (Xiao, 2015). Finally, Japan joined the negotiation in 2013, and China remained the main excluded country from the TPP. Thus, it could be suggested that China’s willingness for an East Asian FTA was mainly due to the success of a new Asia Pacific mega-regional (Urata, 2011), which had its expression in the TPP.

Having said this, why it is said that TPP and RCEP are example of a competitive regionalism (Katada, Solis and Stalling, 2009)? The answer to this question is that TPP and RCEP may be considered as two different path to achieve a Free Trade Area of the Asia Pacific (FTAAP) (Xiao, 2015). The FTAAP is a project of long-term economic cooperation among the APEC countries, which has been envisaged since 2006. This project has two main objectives: generating economic returns through trade and investment liberalization (APEC, 2009) and solving the “spaghetti bowl” problem in the Asia Pacific region (APEC, 2014). Indeed, the FTAAP is supposed to bring more coherence in the current FTA networks of the Asia Pacific, “by developing and building on ongoing regional undertakings such as ASEAN+3, ASEAN+6, and the Trans-Pacific

Partnership” (APEC, 2014). In this context, the TPP and the RCEP are two alternative paths toward the realization of a FTAAP, led, respectively, by US and China (Xiao, 2015). Indeed, the two agreements are supposed to achieve trade liberalization of the Asia Pacific region, being a stepping stone for the FTAAP project, but they follow two different approaches (Xiao, 2015). The table below briefly summarise some of the differences between TPP and RCEP<sup>35</sup>.

*Table 3. Differences between TPP and RCEP. Source: Xiao, 2015 pp. 24-25.*

	TPP	RCEP
Primary Goal	Address new and traditional trade issues through a comprehensive “twenty-first century” FTA.	Address noodle bowl problem by multilateralizing ASEAN FTAs.
Membership model	All Asia-Pacific countries accession encouraged.	ASEAN-plus-X model, accession yet to occur.
Relation to regional architecture	Not tied to any existing organization (independent of APEC)	Affirms principle of ASEAN Centrality
Scope and coverage	“WTO Plus” aspirations – 20 non-tariff issues targeted	“WTO consistent” only – mostly focussed on tariffs
Current Members	12: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, NZ, Peru, Singapore, US, Vietnam.	16: ASEAN-10, Japan, Korea, China, India, Australia, NZ.
Significant excluded countries	China	US
Special Treatment of developing economies	Include all issues in a “single undertaking”	Gradual and sequential; different components negotiated and implemented under different time schedules

<sup>35</sup> For more details about differences between TPP and RCEP, see Xiao, 2015.

The first relevant difference we can retrace concerns primary goal of agreements. In fact, the TPP has a deeper scope with respect to RCEP, since it is designed to “exceed(s) both the WTO and FTAs that have already been concluded by participant countries, and ultimately, set a precedent for future trade negotiations worldwide” (Xiao, 2015 pp. 25-26). Conversely, the RCEP primary aims to simplify the FTAs network in the region, but it is not supposed to replace existing FTAs. Indeed, the underlining principle of RCEP states that:

*“[The] ASEAN+1 FTAs and the bilateral/plurilateral FTAs between and among the countries will continue to exist and no provision in the RCEP will detract from the terms and conditions in these bilateral/plurilateral FTAs between and among the participating countries”* (Guiding Principles and Objectives for RCEP, p. 1).

In addition, the RCEP is mainly an ASEAN-centred project (Xiao, 2015). This characteristic is also confirmed by the membership model of the agreement, which indeed has ASEAN countries at its core. Instead, the TPP encouraged all the Asia-Pacific members to join the agreement, and it does not rely on any existing regional architecture (Xiao, 2015).

Despite this, it is still not clear how the final clause for TPP’s accession will look like. For now, it seems that developing countries will be quite disadvantaged in the process. In fact, at the current moment, the TPP requires for aspirant members to guarantee a commitment to all TPP’s provisions, regardless if they are developed or developing countries. This means that developing countries should go through a process of internal reforms if they want to join the TPP. Instead, the RCEP is more flexible in approaching developing countries. The Guiding Principles state as follows:

*“Taking in consideration the different levels of development of the participating countries, the RCEP will include appropriate forms of flexibility including provision for special and differential treatment, plus additional flexibility for the least-developed ASEAN Member states”* (Guiding Principles and Objectives for RCEP, p. 1)

Then, the main excluded country from RCEP is the US, while the TPP is excluding China. The two mega-regionals are surely influenced by their respective major countries,

contributing to the creation of two competing regional model (Xiao, 2015). Beijing's influence on RCEP has been confirmed in 2014, during the APEC Economic Meeting held in China, when the "Beijing Roadmap to RCEP" was launched. Thus, the TPP and the RCEP may be considered as the US and China alternative path towards a FTAAP (Xiao, 2015). "It is also interesting to note that in 2013-2014, the Chinese leadership advanced its regional initiatives as a whole package of concepts, policy plans, and economic incentives. In this context, the RCEP is not just a regional trading pact, but also a strategic counterweight to US "rebalancing" in the Asia-Pacific" (Xiao, 2015 p. 53)

To be more clear, "the search for a broader regional economic architecture eventually took the form of the RCEP and the TPP, representing the East Asia and Asia-Pacific approaches to economic integration respectively" (Xiao, 2015 p. 23).

### **3. Consequences for the world trade order**

In this Chapter I have addressed some of the relevant trends occurring nowadays in international trade, in order to understand how the diffusion of mega-regionals is influencing the multilateral structure of the world trade order. Firstly, I focused on Chinese response to TTIP, which consists in improving investment relations with the transatlantic powers while at the same time consolidating its regional block. Secondly, I analysed the project of the Regional Comprehensive Economic Partnership, which seems to be a reaction to the establishment of TPP, and which is being influenced by Chinese willingness of counterbalance the US "pivot" to Asia (Xiao, 2015). My analysis showed that the major trends of the world trade order are consolidating a scenario of competing regional blocks and marginalization of the WTO forum. Indeed, the spread of Trans-Pacific and Trans-Atlantic mega FTAs is pushing excluded countries like China to engage in their own mega-regionals to avoid marginalization. This have relevant consequences on the WTO-based multilateral order.

The WTO was indeed designed to be a ruled-based, decentralized decision-making forum about relevant matters of international trade (Leal-Arcas, 2011). However, the spread of mega-regional agreements eroded the centrality of the WTO's multilateral trade governance (Baldwin, 2014a). Indeed, even if the spread of mega-regionals may in some

way spur MTNs, the current trends of the world trade system show a different dynamic. From this point of view, the mega-regional agreements have failed to accomplish one of their primary goals: turning the “spaghetti bowl” of FTA into a mega-regional “lasagna” and then into a multilateral pizza (Bhagwati, 2008). It is true that the emergence of mega-regionals had some positive impact on multilateralism, like the conclusion of the Bali Agreement in 2013. However, concluding PTAs remains the preferred option for major countries, since it allows to reach an effective result in relatively short time (Yong, 2014). “As a result, the global economy is drifting dangerously towards the use of national discriminatory trade, regulatory and investment practices” (Blockmans and Hamilton, 2015 p. 9). In addition, even if TTIP and other mega-regionals may have multilateral ambitions, we have seen that this may be only a narrative. For example, in the case of TTIP, the combined effect of a bilateral mutual recognition and the Chinese competitive reaction is likely to annul the multilateral feasibility of the agreement.

There are three main reasons to be concerned about the WTO’s marginalization (Baldwin, 2014a). First, if rules for trade and investment are formulated in PTAs, it is likely that they will disadvantage small countries. This may happen because the new process of rules-setting will be influenced by the major countries in PTAs, leaving the smallest one at the margins (Baldwin, 2014a). Instead, the WTO is a decentralized system, which should guarantee a balanced outcome through MTNs (Baldwin, 2014a). In addition, “lacking the legitimacy that comes from multilateralism and consensus, it is not at all clear that the new norms will be universally respected” (Baldwin, 2014s p. 26). Secondly, the spread of mega RTAs will lead to the multiplication of decision making forum. Consequently, “without a single forum for all trade and investment issues, it will be difficult to arrange the trade-offs necessary to make progress on trade-related policies” (Baldwin, 2014 p. 26). Finally, the multiplication of rules in PTAs may complicate the function of the WTO’s adjudication body. Indeed, it is difficult for judges to “connect the dots” between the PTAs “spaghetti bowl” (Baldwin, 2014a). Thus, “the WTO’s inability to update its rules (will) gradually undermines the authority of the Dispute Settlement Mechanism” (Baldwin, 2014a p. 27). In order to solve this problem, the rules draft in PTAs should be multilateralized (Baldwin, 2014a), but we have already seen how this is politically and technically difficult.

Thus, the spread of mega-regional agreements such as TPP, TTIP and RCEP is not a stepping stones for multilateralism. Instead, “this scenario runs the risk that global trade governance drift back towards a 19<sup>th</sup> century Great Powers world” (Baldwin, 2014a p. 27).

## Conclusion

The diffusion of mega-regional agreements and their impact on the multilateral world trade order were the main subjects of this dissertation. Through the three Chapters of this thesis, I arrived to the conclusion that the spread of mega PTAs is progressively eroding the multilateral trade governance, pushing major countries in the GVC to construct their own regional blocks.

The first Chapter was an overview about the phenomenon of regional and mega-regional agreements. Indeed, the purpose of that Chapter was to identify mega-regionals and their relations with multilateralism. In order to do so, the first part of the Chapter was dedicated to defining the PTAs' phenomenon as well as understanding the relations between PTAs and the WTO. Then, I underlined the distinctive nature of mega-regionals, which consists in the elimination of NTBs through regulatory cooperation. This latter, should be the basis for drafting global standards and spur multilateralism. Consequently, I tested the multilateral potential of PTAs', by assessing their technical multilateral feasibility. Finally, I look at the way in which modern PTAs may effectively solve the problem of overlapping RTAs, bringing more coherence in the world trade order.

After having considered all these elements, I concluded that there is a certain degree of technical feasibility for mega-regionals' multilateralization (Lejárraga, 2014). Indeed, the presence of few powerful countries in each PTA (able to set and spread global standards), the emergence of widespread and homogenous practices among different PTAs and the adoption of a coherent approach to deal with double PTAs may create the conditions to revitalize the multilateral trade governance (Alschner and Pauwelyn, 2015).

However, technical feasibility is not enough to multilateralize PTAs. Instead, there is also the need of political will to accept, at a global level, standards which are designed outside the legitimate framework of the WTO.

These considerations led me to explore the case of the Transatlantic Trade and Investment Partnership, which aims to be a forum for drafting global standards (Blockmans and Hamilton, 2015) and, consequently, for preserving the multilateral structure of the world trade governance. As stated in my introduction, the case of TTIP is particularly useful to answer my RQ. In fact, together with TPP and RCEP, is one of the most ambitious mega-regional agreements currently in negotiation. In addition, the TTIP openly presents itself

as a global standard setter, which will create benefit for both the Transatlantic power and the world trade order (Blockmans and Hamilton, 2015).

Thus, the second Chapter was dedicated to understand if TTIP's ambitions fit the reality, and to what extent the agreement will be able spur multilateralism. In order to answer these questions, I provided a two level analysis, taking in consideration both the technical and the political aspect of the agreement. At the end of the second Chapter, I concluded that, since the TTIP is following the path of bilateral mutual recognition for regulatory cooperation, its multilateral potential is de facto annulled. (De Ville and Siles-Brügge, 2015). Then, the relation between TTIP and third countries had to be analysed from a political perspective. In doing so, I demonstrated that the TTIP is far from being an open agreement. Indeed, it lacks of an accession mechanism for excluded countries willing to join it. Thus, the TTIP aim to be a forum for drafting global standards, but third countries may not be willing to accept standards they did not contribute to define. Conversely, they may be more willing to engage in their own mega-regional agreements, in order to avoid the marginalization from the process of setting trade standards.

The final Chapter of this dissertation tried to reconcile the abovementioned findings with the reality of current world trade trends. The analysis of Chinese FTA strategy led me to conclude that the world trade order seems to be shaped by a logic of competitive regionalism, with major countries being the hubs in different regional networks. Thus, even if the spread of mega-regional agreements may have some positive impact on multilateralism, the current trends of the world trade system show a different dynamic. From this point of view, the mega-regional agreements result to be "termites in the trading system" (Bhagwati, 2008), which tend to progressively erode the multilateral structure of the world trade order.

## **Acronyms**

ACFTA: ASEAN-China Free Trade Agreement

APEC: Asia-Pacific Economic Cooperation

APTA: Asia-Pacific Trade Agreement

ASEAN: Association of Southeast Asian Nations

BIT: Bilateral Investment Treaty

BRICs: Brazil, Russia, India and China

BRICS: Brazil, Russia, India, China and South Africa

CEPA: Closer Economic Partnership Arrangement

CEPEA: Comprehensive Economic Partnership in East Asia

CRTA: Committee on Regional Trade Agreements

CU: Custom Union

DDA: Doha Development Agenda

DDR: Doha Development Round

DSB: Dispute Settlement Body

EAFTA: East Asian Free Trade Agreement

EAVG: East Asia Vision Group

EEAS: European External Action Services

EFTA: European Free Trade Association

EU: European Union

FDI: Foreign Direct Investment

FTA: Free Trade Agreement

FTAAP: Free Trade Area of the Asia Pacific

GATS: General Agreement on Trade in Services

GATT: General Agreement on Tariffs and Trade

GCC: Gulf Cooperation Council

GPA: Agreement on Government Procurement

GVC: Global Value Chain

IP: Intellectual Property

IPRs: Intellectual Property Rights

MERCOSUR: Mercado Comun del Sur

MFN: Most Favoured Nation

MS: Member States

MTNs: Multilateral Trade Negotiations

NAFTA: North-Atlantic Free Trade Agreement

NTB: Non-Tariff Barrier

OECD: Organization for Economic Cooperation and Development

PTA: Preferential Trade Agreement

RCEP: Regional Comprehensive Economic Partnership

ROK: Republic of Korea

ROO: Rules of Origin

RQ: Research Question

RTA: Regional Trade Agreement

SARs: Special Administrative Regions

SOE: State-Owned Enterprise

SPS: Sanitary and Phytosanitary

TBT: Technical Barriers to Trade

TiSA: Trade in Services Agreement

TM: Transparency Mechanism

TNC: Trade Negotiations Committee

TPP: Trans-Pacific Partnership

TRIPs: Trade-Related Intellectual Property Rights

TTIP: Transatlantic Trade and Investment Partnership

US: United States

WTO: World Trade Organization

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## Abstract

This dissertation aims to analyse the phenomenon of mega-regional agreements and their impact on the multilateral structure of the world trade governance, with a focus on the Transatlantic Trade and Investment Partnership (TTIP). Indeed, the Research Question (RQ) which led my study was: how the diffusion of mega-regional agreements can impact the multilateral system of the world trade order? This RQ is nowadays extremely relevant, given the way in which Regional Trade Agreements (RTAs) are developing. Indeed, this dissertation wants to demonstrate that the diffusion of a new kind of RTAs is progressively eroding the centrality of the World Trade Organization (WTO) and its multilateral principle in the international trade governance.

The spread of Regional and Preferential Trade Agreements (RTAs and PTAs)<sup>36</sup> became a relevant feature of the international trade during the 90s. Indeed, while the declared principles at the basis of the WTO were non-discrimination and the Most Favoured Nation (MFN) rule, the establishment of RTAs was considered a way to foster trade liberalization, preserving at the same time the multilateral structure of the world trade order. Thus, during the 90s, trade liberalization was achieved using both multilateralism and the preferential approach of RTAs (Bhagwati, 2008).

From this point of view, the diffusion of RTAs was not considered as a threat to the WTO. In fact, the WTO was based on a pyramidal structure, “with multilateralism at the top, regionalism and bilateralism in the middle and domestic trade and economic policies of WTO Member States at the bottom of the pyramid” (Leal-Arcas, 2011 p. 597). As a prove of that, the legal structure surrounding the WTO contains provision to deal with PTAs. Indeed, GATT Art. XXIV set the conditions under which RTAs on trade in goods are allowed, GATS Art. V contains indications about RTAs on services and the Enabling Clause regulates the possibility for developing countries to engage in RTAs.

From this perspective, it seems that PTAs and multilateralism may follow a parallel track. However, this statement was questioned by a new form of RTAs which started to emerge

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<sup>36</sup> This dissertation uses the term RTAs and PTAs as synonymous.

during the 2000s, and which constitute the main target of this dissertation: the mega-regional agreements.

The stuck of Multilateral Trade Negotiations (MTNs) at the Doha Round resulted in a progressive dissatisfaction with the multilateral trade governance. As a consequence, it became clear that concluding PTAs was a more effective strategy to achieve a higher level of trade liberalization. Thus, from 2004 onwards, the number of PTAs notified at the WTO increased dramatically. This phenomenon was then accompanied by the diffusion of a new type of PTAs, which did not only aim to enhance trade liberalization through the elimination of tariff barriers. Instead these new agreements, known as mega-regional agreements, aimed at becoming new forums for setting global standards and rules for trade, challenging in this way the WTO's centrality in the world trade order.

Mega-regional agreements may be defined as “deep integration partnership in the form of RTAs between countries or regions with a major share of world trade and FDI [Foreign Direct Investment] and in which two or more of the parties are in a paramount driver position, or serve as hubs, in global value chains” (Meléndez-Ortiz, 2015 p. 13). In addition, the distinctive feature of mega RTAs is their ability to reshape both the political and economic aspect of the world trade order. The literature on this subject also defines them as “deep” RTAs, differentiating them from “shallow” RTAs (Lejárraga, 2014). The reason for this distinction is that mega RTAs do not only focus on reducing tariff barriers, but instead they aim to reduce non-tariff barriers to trade (NTBs), trying to underpin international supply chains (Baldwin, 2014b). The NTBs addressed by mega RTAs mainly spread from differences in regulatory standards and rules. In fact, regulatory differences (which usually aim to consumer protection) can unintentionally create obstacles to trade, since the supplier of a certain product needs to respect different regulatory standards when trying to access different markets. Thus, mega-regional agreements aim to reduce or eliminate NTBs to trade, through the strategy of regulatory cooperation.

This strategy aims to create a common set of rules and standards for trade among the members of a mega RTAs. In this way, it will be easier for Parties to exchange goods and services. Following this logic, the establishment of mega RTAs should also results in benefits for third countries, which will face only one regulation when trying to access the Parties' markets.

However, a mega-regional agreement is not just an agreement containing deep commitments and regulatory cooperation. Instead, the distinctive nature of mega-regionals lays in their ability to bring significant change in the governance of international trade. Indeed, one of the most important purpose of mega-regionals is to bring coherence in the world trade order, by solving the “spaghetti bowl” problem. This term is used by the economists to describe the complex situation of overlapping PTAs, which creates problem of clarity and transparency, since “it is not clear who is doing what with whom, given that everyone is concluding RTAs with everyone” (Leal-Arcas pp. 624). In this complex scenario, mega-regional agreements aim to create regional clusters of both deep and shallow provisions, which should be a basis for global standards. Following this reasoning, mega-regionals are considered as building blocks for multilateralism.

Starting from this consideration, I have tried to assess the multilateral potential of mega-regional agreements. In doing so, I relied on a study conducted by Lejárraga in 2014, which identifies the different elements which make deep RTAs feasible to be multilateralized. In sum, what is necessary for an RTAs to become multilateral is a set of homogeneous and widespread practices, which do not create a high level of discrimination for third countries. In addition, the presence of one or more countries with a consolidate position at the WTO may favour the agreement’s multilateralization.

Generally speaking, mega-regional agreements show a good level of multilateral potential. Indeed, there is a certain number of widespread and homogeneous practices among different mega PTAs, such as the one in the field of investment and service sector. In the same line, over 65% of PTAs have improved their obligations on Intellectual Property Rights (IPRs) beyond the regulation provided by the Agreement on Trade-Related Intellectual Property Rights (TRIPs) (Lejárraga,2014). Then, deep PTAs are also considered to be less discriminatory with respect to the traditional PTAs. In fact, they mainly contain provisions which creates soft preference or not preference at all (Baldwin, 2014a). The term soft preference is used to describe provisions which lack effective discrimination technology to exclude third countries from the preferential treatment (Baldwin, 2014a). Indeed, PTAs’ provisions are mainly about beyond-the-border issues, which lack a stringent rules of origin (ROO) practice to discriminate excluded countries. In fact, ROO for judicial persons in mega PTAs tend to be enough liberal in defining the nationality of a firm. Consequently, even foreign firms which are constituted in the

territory of a Party may benefit from the preferential treatment<sup>37</sup> (Meléndez-Ortiz, 2014). Moreover, modern PTAs also entail provision on enhancing transparency and accountability, which create commitments that spread to other trading partners. Briefly, “once a commitment is made *vis-à-vis* one PTA partner, the commitment tends to leak to or benefit also third countries” (Pauwelyn, 2015 p.188).

Finally, we can still retrace a “power law” in RTAs distribution (Alschner and Pauwelyn, 2015), in which few countries serve as hubs for several PTAs network. For instance, the EU still represents the most central node of PTA networks, as well as the United States. Therefore, since mega-regionals are often characterized by the presence of a powerful country which is a central node in the Global Value Chain (GVC), there is the possibility for mega-regionals’ provisions to spread at a global level.

Thus, mega-regional agreements have a good level of multilateral feasibility. Indeed, the presence of few powerful countries in each PTA (able to set and spread global standards), the emergence of widespread and homogenous practices among different PTAs and the lack of a stringent discrimination technology may facilitate mega-regionals’ multilateralization. However, technical feasibility is not enough to guarantee the adoption of mega-regionals’ provisions at a multilateral level. Instead, what is needed the most is the political will to adopt standards and rules which have been drafted preferential forum, rather than in the legitimate institutional framework of the WTO. In addition, in order to understand whether or not mega-regionals may be considered stepping stones for multilateralism, we should look at the way in which they deal with the “spaghetti bowl” of double PTAs.

There are two main approaches that mega-regionals could take to solve the problem of overlapping PTAs. The first is the “one PTA at time” approach (Alschner and Pauwelyn, 2015), which is the best suited to bring coherence to the world trade system. Nonetheless, this approach is problematic both from a judicial and a political perspective, because it entails the termination or the incorporation of one of the two PTAs. Thus, it is not enough widespread. Conversely, the “two PTA side by-side” approach is more diffused (Alschner and Pauwelyn, 2015). Indeed, modern mega-regionals tend to co-exist in parallel with previous PTAs, trying to solve the conflict between double PTAs in favour of later or

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<sup>37</sup> For example, Toyota USA can benefit from preferences of US PTAs (Meléndez-Ortiz, 2014).

deeper provisions. This approach could be equally useful to reduce the complexity of double PTAs, but only if it clearly defines the method of solving conflicts among double provisions.

These considerations, combined with the previous one about the multilateral potential of mega-regionals, seems to suggest that mega RTAs are not necessarily “termites in the trading system” as Bhagwati used to define them (Bhagwati, 2008). Instead, they may spread multilaterally and bring coherence in the overlapping system of double PTAs. However, the fact that mega RTAs are structured in regional cluster, “with a limited group of countries that are centrally placed in the network” (Alschner and Pauwelyn, 2015), create a geopolitical concern about how these norms are designed. In fact, norms and standards are designed outside the WTO framework, raising relevant concerns about their legitimacy. Briefly, mega RTAs provision may spread multilaterally, but the process in which they are designed it is not. Thus, there is reason to believe that the multilateral adoption of rules draft outside the WTO will not follow a smooth path.

The second part of this dissertation is focused on the Transatlantic Trade and Investment Partnership and its potential impact on trade governance. The TTIP is one of the most relevant attempt of mega-regional integration (together with the TPP, which is already in an advanced status, and the RCEP). In addition, the agreement presents itself as a forum for global standard’s setting, which will bring benefits for the Signatories but also for the world trade order. Thus, I was interested in verifying whether or not the TTIP may bring benefits for the multilateral structure of the world trade system. In order to answer this question, I provided a two-level analysis, taking in consideration both the technical and the political aspects of the agreement.

From a technical point of view, the TTIP’s multilateral feasibility largely depends on the mode of regulatory cooperation, which can be realized using two approaches: harmonization or mutual recognition. These two paths toward regulatory cooperation have different ability to set global standards. The harmonization approach is the best suited to spread TTIP’s provisions multilaterally, since it entails the adoption of a unique set of regulation by the Parties. However, this path is problematic from a political and technical point of view. Indeed, harmonization can be achieved in two main ways: by adopting the regulation of one of the signatories or by working together to set a new common regulation (De Ville and Siles-Brügge, 2015). Both options present some

problems. In fact, the first option will recognize the higher validity of the regulation adopted, at the expenses of the other Party's one. The second entails the adoption of a common regulation, which will be draft by the Parties relying on existing international standards. However, it may be politically problematic to admit that "both (Parties) have in the past been applying standards that are inferior to an already existing international regulation that will henceforth applied" (De Ville and Siles-Brügge, 2015 p. 57). For all these reasons, the harmonization approach is unlikely to be adopted in the case of TTIP.

On the other side, the path of mutual recognition presents some shortcomings as well. This approach consists in recognizing the validity of both Parties' existing standards. Then, the extent to which mutual recognition will spread multilaterally depends on the form it takes. Indeed, Parties may decide to adopt an *erga omnes* or a bilateral mutual recognition approach. The former allows for third countries to enjoy the preferential treatment provided by TTIP, if they adopt one Party's standards, while the latter exclude this possibility.

To conclude, the extent to which the TTIP will be able to draft global standards depends on the approach chosen for regulatory cooperation. While harmonization and mutual recognition *erga omnes* would provide a higher level of multilateral potential, bilateral mutual recognition will only benefit the Parties in the agreement. Given the political and technical difficulty to achieve harmonization, the transatlantic powers are likely to adopt the mutual recognition path. In addition, the Parties in TTIP seems more inclined to reciprocally enhance their regulatory cooperation, preventing third countries to benefit from the agreement (De Ville and Siles-Brügge, 2015). If this path will be confirmed once TTIP is concluded, the agreement will not result in global standards.

The second variable to look at in order to verify the TTIP's multilateral potential is its relation with third countries. Indeed, if the TTIP's Parties really want to spread provisions globally, they should enhance the inclusivity of the agreement. As I have already explain talking about mega-regionals' multilateral potential, the TTIP's multilateralization need the political will of third countries to accept rules and standards drafted outside the legitimate framework of the WTO. For this reason, the question of the open character of TTIP is highly relevant to understand the agreement's multilateral potential.

If TTIP reveals to be a real open agreement, with the possibility for third Parties to influence the negotiations, the multilateral potential of the agreement will be higher. In fact, in this scenario, third countries will be more willing to adopt the TTIP's provisions, since they had a role in drafting it. Conversely, if TTIP's negotiations leave third countries completely outside the negotiation's table, the agreement will simply remain bilateral, giving away the possibility of becoming multilateral. The current US and EU approach does not allow for third countries to participate or influence the negotiations. Moreover, the Parties have not even envisaged an accession mechanism yet. Thus, the US and EU current approach "could produce a bilateral agreement which is difficult to multilateralize" (Ülgen, 2014). In other words, the TTIP's negotiation have a bilateral character, which contradicts with the declared aim of "working toward a multilateral deal for which an initial EU-US agreement is only a stepping stone" (Ülgen, 2014).

After having explored the TTIP's relation with third countries, I was interested in looking at possible third countries reaction. Indeed, excluded countries may decide to adopt different responses to TTIP, which will in turn have different impact on the world trade order. Although there are several ways in which excluded countries may react, four of them are particularly interesting. First, they may decide to join the agreement once it is concluded. This scenario will effectively spread the TTIP's provision multilaterally. However, if TTIP's Parties adopt a bilateral mutual recognition path, third countries will not have incentive to adopt TTIP's standards. Secondly, an excluded party may search for a bilateral FTA with one of the TTIP's Party. This may happen when the third party fears a loss in its relevant economic and trade relations with one of the Party. The conclusion of a new agreement between one excluded Party and one TTIP's Party does not necessarily lead to the spread of TTIP's provisions. Indeed "any subsequent FTA between the EU and the third party will not address the same matters as if the third party had sought to join the TTIP" (Aggrawal and Evenett, 2015, pp. 98-99). Therefore, this strategy will only multiply the number of PTAs in force, without bringing higher level of coherence in the trade system. Another option is to wait for TTIP's provisions to be multilateralized at the WTO (Aggrawal and Evenett, 2015). Third countries may adopt this strategy if they believe that the cost of concluding an agreement with the US or the EU is higher than the TTIP's harm. The logic behind this, is that, if the Parties are willing to extend the agreement at the WTO, they are supposed to "pay" for that (Aggrawal and

Evenett, 2015). Consequently, it would be more favourable for third countries to wait and receive something in exchange for a TTIP's multilateralization. Finally, excluded countries may decide to engage in their own mega-regional blocks, in order to avoid marginalization from the process of standard's setting. This will result in a fragmentation of the world trade system, which will be dominated by competing regional blocks.

Having said this, it is necessary to verify which of these strategies better represents what is actually going on in the international trade. Therefore, the third Chapter of this dissertation was an analysis of the current trends in the world trade order, with a focus on China. Indeed, China is excluded both from TTIP and TPP. Thus, I was interested in analysing how China is reacting to the Transatlantic attempt of mega-regional integration.

The Chinese reaction to TTIP highly depends on how China perceives the agreement. Chinese intellectuals are divided on the matter, but the majority of them believe that the TTIP will challenge the position of China as a trading superpower. There are two type of negative externalities that TTIP could produce on China: the trade diversion and the rules effect. The term trade diversion refers to the replacement of excluded countries' goods with the one of the PTA's Parties, due to the elimination (or reduction) of tariff barriers (Viner, 1950). Although this effect is usually associated with traditional PTAs, which mainly address tariff barriers, it may also spread from mega-regionals. For what regards China, we can predict that "TTIP-induced trade diversion effects on China would be more significant in the EU market than in the US market, largely because the EU market has on average higher levels of tariff than the US" (Xiaotong, 2015 p. 120). Beside the trade diversion effect, China is worried about the spread of new rules and standards from TTIP. The Transatlantic PTAs contains provisions addressing sensitive fields for Chinese economy, such as State Owned Enterprises (SOEs) and Government Procurement. Thus, if TTIP will be concluded, China will surely face a more complicated external environment, and it will probably experience a pressure to adequate its standard and rules to the ones provided by the TTIP.

Having said this, I analysed Chinese strategic reaction to the TTIP: on one hand it is willing to improve its bilateral investment relations with the US and the EU, on the other it is ready to "accelerate the pace of its own FTA negotiations" (Xiaotong, 2015 p. 121). The most interesting example of the Chinese FTAs' strategy is the Regional Comprehensive Economic Partnership (RCEP). The RCEP is the result of two different

proposals of regional integration: the Chinese (an FTA including ASEAN countries plus China, Japan and South Korea) and the Japanese one (which involved the same countries proposed by China plus Australia, New Zealand and India). These two projects remained separated till August 2011, when China and Japan proposed the formation of a unique FTA, with the countries of ASEAN+3 (China, Japan and South Korea) and ASEAN+6 (ASEAN+3 plus Australia New Zealand and India) as members. There is reason to believe that the timing of this joint proposal was not casual. Indeed, “the progress in the TPP negotiations rejuvenated the stagnating progress on the proposed East Asia-wide FTA. The TPP influenced the strategies of Japan and China to the extent that the two countries agreed to launch the RCEP” (Xiao, 2015 p.22). From this point of view, the TPP and the RCEP may be considered as examples of “competitive regionalism” (Katada, Solis and Stalling, 2009), since they are two alternative path towards the realization of a Free Trade Area of the Asia Pacific (FTAAP). The concept of competitive regionalism has been developed by Katada Solis and Stalling in 2009, when they studied the diffusion of FTAs in the Asia Pacific region. What they concluded was that the dissemination of FTAs in that part of the world was the result of competitive peer pressure. As a consequence, FTAs networks established according to this competitive logic are less suited to be part of a more coherent regional integration project (Katada, Solis and Stalling, 2009).

Through the three chapters of this thesis, I tried to understand the impact of mega-regional agreements on the world trade system and multilateralism. First, I analysed the characteristics and the multilateral potential of mega-regional agreements. Secondly, I tried to understand whether or not the TTIP may be able to set global standards and to be a stepping stone for multilateralism, focusing both on technical and political aspects of the agreement. Finally, the analysis of Chinese FTA strategy led me to conclude that the world trade order seems to be shaped by a logic of competitive regionalism, with major countries being the hubs in different regional networks.

Therefore, my analysis showed that the major trends of the world trade order are consolidating a scenario of competing regional blocks and marginalization of the WTO forum. Indeed, the spread of Trans-Pacific and Trans-Atlantic mega FTAs is pushing excluded countries like China to engage in their own mega-regionals to avoid marginalization. This have relevant consequences on the WTO-based multilateral order.

In fact, the spread of mega-regional agreements is eroding the centrality of the WTO's multilateral trade governance (Baldwin, 2014a). From this point of view, the mega-regional agreements have failed to accomplish one of their primary goals: turning the "spaghetti bowl" of FTA into a mega-regional "lasagna" and then into a multilateral pizza (Bhagwati, 2008). It is true that the emergence of mega-regionals had some positive impact on multilateralism, like the conclusion of the Bali Agreement in 2013. However, concluding PTAs remains the preferred option for major countries, since it allows to reach an effective result in relatively short amount of time (Yong, 2014). As a result, the world trade order is being shaped by competing regional forum, which undermine the multilateral nature of the trade governance.