

RTA EXCHANGE NEWS DIGEST

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INTRODUCTION

Wallonia, a French-speaking region of Belgium recently gained notoriety in the negotiation of an RTA, that it perhaps did not anticipate. By denying until the very last minute its support to the [CETA](#) negotiated by the EU Commission and Canada, it ended up playing a disproportionate role as compared with its geographical size or its relative weight in international trade, not to mention Belgium's capital, Brussels, as seat of the most European integration institutions.

Coming so soon after the United Kingdom decided – in the [Brexit referendum](#) – to leave the European



Source - Photo by Jean-Pol Grandmond

Union on terms yet to be negotiated, a failure to endorse CETA may have put into question the possibility of the EU to complete and eventually sign [the TTIP](#) whose negotiations with the United States are in their final stages.

In this scenario, the whole European approach to trade policy and trade negotiations may have to be revised in some fundamental ways. The globalization “backlash” currently taking place against CETA, the TTIP and TTP in different European capitals and in the United States may end up paralyzing and, eventually, changing in some fundamental ways regional trade negotiations, as we have known them so far.

No wonder there is slowly emerging a body of analyses and academic discussions trying to understand whether these anti-trade or anti-globalization demonstrations are sustained by new realities, and not moved by anti-trade concerns alone.

In a piece written in [the Boston Globe](#), economist Jeffrey D. Sachs, well known for his support of an open economy explains why he has become an opponent of [TPP](#) and [TTIP](#). This is, he says, a reflection of two important realities. [First](#), the proposed treaties are more than trade agreements; they would also establish many important rules for the economy that go beyond trade, and in fact would give [far too much power to large multinational companies](#), whose lobbyists have helped drafting these agreements. [Second](#), trade policy should not be crafted in isolation from related budget measures that would ensure the fairness of economic outcomes.

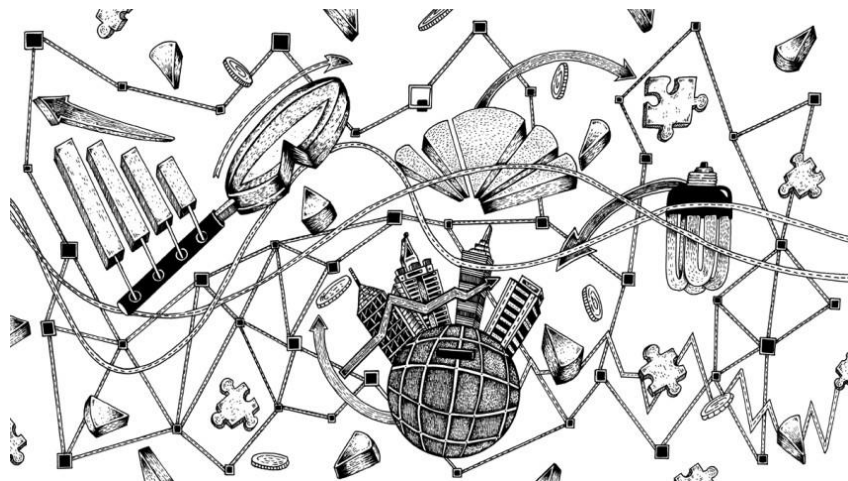
According to Sachs, public opposition to the [TPP](#) and/or the [TTIP](#) are not about the gains from trade, but relate instead to the regulatory framework established by these proposed agreements, in particular the [Investor-State Dispute Settlement \(ISDS\)](#) clauses, which establish the right of foreign multinational companies to challenge the policies and regulations of host-country governments. [ISDS has given enormous, arbitrary and unfair power to multinational companies, and deserve to be voted down.](#)

In the same vein, another international economist, Dani Rodrik, argues that there may be a need for some “regime maintenance”, and some reversal from hyper-globalization need not be a bad thing, as long as it [serves to maintain a reasonably open world economy](#), for which we may need a better balance between national autonomy and globalization.

Similarly, in the words of Larry Summers, former US Treasury Secretary, the focus of international economic cooperation needs [to shift from opportunities for capital to better outcomes for labour](#). Or - to put it in different words, quoting [Vivek Dehejia](#) from Carleton University in Ottawa, Canada, - “megaregional” proposed deals such as the [TPP](#) and the [TTIP](#) need to be looked at in light of the putative relationship between globalization and inequality, which has animated the anti-globalization backlash in the UK, US, and [elsewhere in the advanced economies](#) in recent months and years.

The provisions on [ISDS](#) in CETA and the TTIP have provoked particular controversy. As pointed out by Christian Odendahl, an economist at [the Centre for European Economic Reform](#), including such a controversial provision in TTIP was probably a mistake; legal systems in the US and Europe are developed enough for investors not to need [the extra legal certainty](#).

Perhaps what differentiates the current debates about the advantages and/or disadvantages of RTAs or free trade in general, is that they have moved from the realm of negotiators and practitioners to enter the realm of politics, and corporate strategies need to be reformulated accordingly.



Source - Harvard Business Review

As Marc L. Busch, a professor in Georgetown University and an international trade law and policy expert, says in a piece published in the Harvard Business Review, the business community needs to be aware of the fact that deals like the TPP go beyond the basic rules established by [the World Trade Organization](#). If the [WTO](#) sets a baseline of legal rights and obligations for its 164 members, then preferential trade agreements (like the TPP) build on these, adding coverage that is [deeper than, or not included in, the WTO](#).

Things being as they are, the fact is that current trade policy debates do not bode well for the future of regional trade agreements. The [Brexit](#) supporters won the referendum to get the UK out of the EU, but have not yet been able to define a coherent strategy to carry on this decision and discrepancies as to whether the British government should go for a “hard” or a “soft” Brexit remain unresolved.

In the United States, the upcoming presidential elections may result, no matter whom the winner is, in a fundamental revision of the traditional active role played by the United States in trade negotiations, at both the multilateral and regional levels. The initially difficulty with [CETA](#), together with the continued [Brexit](#) debates may lead to fundamental changes in one of the pillars of European integration, its common trade policy.

TTIP may remain inconclusive and one has to wonder whether this is not the end of multi-country regional trade negotiations or megaregional deals. Thus, the time may be ripe for a revisiting of the WTO agreements and a return to trade fundamentals, rather than trying to get through bilateral or regional what is not possible to obtain via the multilateral trading system. It is difficult nonetheless to imagine that things should go back to the status quo *ex-ante*. For trade policy to be continued on the basis of international cooperation it needs to be approached differently but we do not know yet how differently would that be.

THE TTIP IN THE (UN) MAKING



Source - Associated Press

In mid-October, demonstrations against major trade agreements – the [TTIP](#), the [CETA](#) and the [Trade in Services Agreements \(TiSA\)](#) intensified. People [went to the streets in Madrid](#) to express their opposition to these proposed treaties, which in their view are not treaties, but *coups d'état*.

The Madrid protests – and similar ones organized in several other European capitals - came soon after the announcement by the EU and US trade negotiators that they would meet in New

York to try to make as much progress as possible on the TTIP negotiations before the end of the year.

However, hopes of a deal before US president Barack Obama leaves the White House in mid-January have evaporated, raising doubts about whether TTIP can ever be agreed amid widespread hostility and [regular street protests](#). As Cecilia Malmström, the EU trade commissioner, said last week: “If we were not [to conclude TTIP before 19 January](#), then there would be a natural pause.”

Despite widespread protests and opposition in some European countries, including within her own country, German Chancellor Angela Merkel told a meeting of the German BGA¹ on October 5, that the EU and the US should continue to negotiate TTIP as long as possible. Chancellor Merkel argued that a successful deal could write [a new chapter in the history of globalization](#). Also, US Congressional trade leaders encouraged U.S. Trade Representative Michael Froman to make as much progress as possible in trade talks with the EU [to create momentum](#) for the deal next year.

President Barack Obama also came out strongly in support of the TTIP. While recognizing that the politics around trade are difficult across countries, he stressed in an interview to [the Italian newspaper La Repubblica](#), on the eve of a visit by Italian Prime Minister Renzi to the US, that high-standard trade agreements like the TTIP are needed. [By eliminating tariffs and bridging differences in regulations, we'll make it](#)



Source - Boston Globe

[easier to trade, especially for our small and medium-sized](#)

[businesses](#). The TTIP will not lower standards, said Obama, on the contrary, [it will raise standards](#) to better protect workers, better protect the environment, better protect consumers and ensure a free an open Internet, which is essential for today's digital economies.

Despite certain progress achieved on the technical aspects of the TTIP negotiations, some aspects of proposed agreement remain contentious, and although negotiators on both sides of the Atlantic have clearly given up on the idea of concluding [TTIP](#) talks this year, [both sides aim to continue to make progress](#) in the coming months, before the Obama administration ends in early January next year.

Also, there is increasing scepticism from some US Congressmen that any breakthrough can be reached this year on such issues as the EU's attempts to include geographical indications (GIs) in the agreement and apparent unwillingness to include an adequate mechanism for the effective resolution of investment disputes. Another question, which remains open, is whether and when [a possible Clinton administration](#) will prioritise [TTIP](#), although the Democrats are believed to be favourable to the idea of [TTIP](#) in general.

¹ The BGA, the Federation of German Wholesale, Foreign Trade and Services, is the leading organization for the wholesale, foreign trade and service sector in the Federal Republic of Germany. It was originally founded in 1916, and re-founded after the Second World War (1949). (http://www.bga-online.de/about_us.html)

BREXIT IS BREXIT, BUT STILL UNDEFINED

In early October, UK Prime Minister Theresa May indicated that she will kick-start the Brexit countdown next spring by introducing a [Great Repeal Bill](#) that will remove the [European Communities Act 1972](#) from the statute book, and end the supremacy in Britain of EU law. The repeal bill will also end the jurisdiction of the European Court of Justice in the UK. Her pledge was made at the annual conference of the Conservative party, in Birmingham. The repeal of the 1972 Act will not take effect until the UK leaves the EU under the process for quitting the bloc known as Article 50.

In an interview with [The Sunday Times](#), the prime minister said the repeal bill would mark "the first stage in the UK becoming a sovereign and independent country once again". "It will return power and authority [to the elected institutions of our country](#)," she said. [It means that the authority of EU law in Britain will end.](#)

Outlining a timetable for [Britain](#) to leave the [European Union](#), Mrs May put immigration at the centre of her strategy for withdrawal, suggesting that [Britain](#) could be headed for a "hard Brexit," or clean break, from the bloc. [We have voted to leave the EU and become a fully independent, sovereign country](#), Mrs. May said to applause from delegates. We will do what independent [sovereign countries do](#). We will decide for ourselves how we control immigration. And we will be free to pass our own laws.

After leaving the EU, Mrs May promised that Britain will be both fully sovereign again but also outward-looking and internationally-minded. However, [detailed analysis](#) shows it is likely to be more difficult than Prime Minister May has expressed.

European Communities Act 1972

- In 1972 the UK Parliament passed the European Communities Act
- It gave direct effect to the EU law, so if there is a conflict between an act of the UK Parliament and EU law, Westminster loses out and the EU law prevails
- The European Court of Justice (ECJ) became a kind of Supreme Court of Europe, interpreting the EU law with judgements that were binding on all Member States

At about the same time, UK trade minister Liam Fox indicated that Britain expected to agree to post-Brexit terms with the WTO in a way that causes minimal disruption, adding that it did not need to re-join the international trade body when it leaves the EU as it was already a full and founding member of the WTO. What we do need to have are the schedules, [which are effectively our license to trade](#). He said that this is what Britain is discussing at the present time.

As discussed by [The Economist](#), the debate over Brexit is becoming feverish. There have been reports of British cabinet splits, of European leaders saying that the only choice is between a [hard](#) Brexit and [no](#) Brexit; and of [the UK government's plan to allow Parliament a vote](#) on the eventual terms of a deal with the EU to get Britain out of the EU, all this before formal Brexit negotiations with the EU have even begun!

The UK's choices seem to be mainly three. [First](#) is an option like Norway's that secures largely barrier-free access to the single market but involves customs controls and accepting EU laws,

migrants and budget payments. [Second](#) is [a free-trade agreement that avoids such obligations](#) but excludes most services and would take years to negotiate and ratify. And [third](#), is trading on plain WTO terms, which implies tariffs on cars and other products and also (largely) excludes services. None of these options would be without costs.

While politicians are having a difficult time in agreeing on the best Brexit strategy, debates in the academic world are also proliferating, with mainstream economists arguing that turning away from the EU, far from boosting Britain's trade, would restrict it.

The so-called [gravity model](#) is discussed in another issue of [The Economist](#). The gravity model, concocted in the 1960s by Jan Tinbergen, a Dutch Nobel-prize winner, makes two simple points about the geography of international trade. First, the bigger the GDP of the countries involved in a bilateral trading relationship, [the more they trade with each other](#); and second, the farther away two countries are from each other, the smaller the volume of trade.

The gravity model, however does not seem to work as well for trade in services, which makes a significant proportion of British exports, but it is still strong, according to a report on Brexit by [the International Monetary Fund \(IMF\)](#). Another report from [the National Institute of Economic and Social Research](#), notes that much services trade is a by-product of goods trade. If Britain's exports and imports of goods declined, Britain's services exporters would also suffer.

While British politicians and economist disagree over the possible impact of Brexit, Britain's main trading partners outside the EU are not making things easier. At a recent event at the [Graduate Institute in Geneva](#), US Trade Representative Michael Froman indicated that until the UK sorts through [the nature of its relationship with the EU](#), it's impossible to have a serious conversation about knowing what kind of trade agreement you can have with the UK separately.

And the US industry is also starting to react to the possible consequences of [Brexit](#). US companies with almost USD 600 billion of investments in the UK are reviewing their plans for expansion in the UK amid concerns over its post-Brexit access to the EU's single market. The [US Chamber of Commerce](#) has warned that a post-Brexit UK would need "unfettered access" to the European market in goods and services [to retain and attract US investments](#).

The WTO Director General Roberto Azevedo, on his part, does not seem too concerned about the Brexit consequences for the trade body. As reported by most British media, Mr. Azevedo has indicated that Brexit will not cause UK trade 'disruption' and vowed to ensure Britain will not face a trade vacuum, although its exit from the EU would be. In an exclusive



Source - [bbc.com](#)

interview with [Sky News](#) on 26 October, DG Azevedo also said that while Britain would have to renegotiate its membership of the trade body after its EU departure, [the process was relatively straightforward](#). Similar comments by [the WTO chief](#) were reported the day after by [The Times](#).

At about the same time, UK Trade Secretary Liam Fox said that his government wants a full divorce with Brussels concluded within two years to ensure [the Wallonia problem](#) does not scupper the whole process, adding that [any deal negotiated between the UK and Brussels](#) within the [Article 50](#) exit period could not be vetoed by any one country, as it only required the support of a qualified majority of EU leaders and it was in everyone's interests to ensure that happened.

THE TPP

As for [the Transpacific Partnership \(TPP\)](#), it seems that opposition to the agreement is not restricted to member countries. Third parties are also expressing their concerns. Kenya, for instance, is lobbying against the TPP out of fear of losing its preferential access under [the African Growth and Opportunity Act \(AGOA\)](#). Kenyan officials joined trade ministers from African countries at this year's AGOA forum in Washington to urge the US to reconsider the move, arguing that the proposed pact will make African goods uncompetitive in the US market.

Trade Principal Secretary Chris Kiptoo told [the Business Daily](#) that the preferences that Kenya enjoys would be eroded once the US enters into trade agreements with other countries outside Africa. "Other trade agreements, such as the TPP, eliminate or reduce tariffs on goods traded among AGOA partner countries, and [will affect the goods that are currently enjoying preferential rates](#) in the US," he said.

According to John R. Kasich, a Republican Party member and a governor of Ohio, the outcome of the vote of the US Congress on the [TPP](#) trade agreement will affect the course of the United States' security, prosperity and global influence for the rest of the 21st century and determine whether the US advances or retreats from [its leadership role](#) at a time of worldwide turmoil and uncertainty.

As for presidential candidates criticizing the [TPP](#), it seems that at least one of them is not so down on the [TPP](#). Hillary Clinton has expressed her opposition to the TPP during the US presidential campaigns. However, Clinton has expressed in the past, the importance of closer ties with Asia, saying "We decided, and [I led the way on this](#), that we were going to be a major presence" in Asia given that 40 percent of US and world trade goes through the South China Sea, Clinton told New York business leaders in November 2013.



Source - Politico.com

Nevertheless some leading economist like Jeffrey Schott, a senior fellow at [the Peterson Institute for International Economics](#), thinks that although Clinton is “against the [TPP](#) in its current form” she is “[open to moving forward with the TPP](#) if it is restructured in some way.”

CETA

It took seven years for the EU and Canada's trade deal to be negotiated, but just a few days to secure its signing at the last minute on October, 30. However, this latest short period has probably been the most turbulent one in all the history of the [CETA](#) negotiations. The agreement has to go through judiciary and parliamentary rulings, official counterparts' warnings and it was at some point on the border of collapse.

In mid-October, Germany's Constitutional Court ruled on the allegedly undemocratic nature of the trade deal. More than 125,000 people signed a petition organized by three activist groups aimed at blocking the CETA ([Campact](#), [Foodwatch](#) and [More Democracy](#)). The legal basis of their claim was that [CETA will be used as a model to push through](#) an even more controversial EU-US trade deal – the [TTIP](#), still under negotiation. The activists argued that [CETA](#) and similar deals put job security and social welfare at risk, in a global "race to the bottom" that serves the interests of the wealthy elite.

Germany's Constitutional Court rejected the legal challenge on October 13, while laying down conditions for Angela Merkel's government that will be hard to fulfil. [First](#), the court ruled that the provisional implementation of the agreement — before it officially goes into force — must not cut across [areas relating to national competencies](#), such as tribunals set up under the agreement to deal with disputes between foreign investors and governments; portfolio investments; shipping; the mutual recognition of professional qualifications; and worker protection.

[Second](#), the constitutional court also demanded that the Bundestag should have the right to veto any decisions taken by the CETA Standards Committee, whose role is to deepen and extend the agreement over time. The court also wanted Berlin to be able to [opt out of CETA](#) in case it decides in its final ruling that [the deal contravenes German constitutional law](#).

The very next day, October 14, the parliament of the francophone Belgian region of Wallonia voted to block the [CETA](#), making it legally impossible for the Belgian government to give its assent to the provisional application of [CETA](#). As a result, the signing of the agreement planned for October 27 had to be postponed. Seven years of negotiations were left hanging in the balance after Wallonia demanded stronger safeguards on labour, [environmental and consumer standards](#). It also wanted more protection for Walloon farmers, who would face new competition from Canadian imports.

It should be mentioned, that the CETA complication is not the first one in the history of the EU's dealings with Canada. Interestingly, it was Canada, and not Belgium, who challenged a previous deal ten years ago, when [Quebec dairy farmers vetoed the agreement and left the EU's negotiators fuming](#). Now it was the turn of Wallonia's dairy farmers to call a halt.

A permanent defeat of the CETA would have meant that nobody of sound mind would ever bother to strike a trade agreement with the EU again - and that includes Theresa May – argues Wolfgang Muenchau from the Financial Times. Had the EU – Canada trade deal not been signed, this would have serious consequences for the British prime minister and her Brexit strategy, which consists of

striking a bilateral trade agreement with the EU. If the EU is not in a position to ratify a trade deal with Canada, it will surely not be in a position [to agree a wider-ranging deal with the UK either](#).

Last-ditch efforts to salvage EU's trade deal with Canada almost appeared to have collapsed on October 27, as Canadian International Trade Minister Chrystia Freeland walked out of talks with the regional government of Wallonia. "Canada worked really hard, and me personally, I worked very hard," she said in French, expressing Canada's disappointment — as well as her own — at this turn of events. "It's become evident for me, for Canada, that the European Union isn't capable now to have an international treaty [even with a country that has very European values like Canada](#). And even with a country so nice, with a lot of patience like Canada."

The same day, the European Council's President Donald Tusk warned that the deal's collapse could be the end of Brussels' attempts [to strike any trade deals](#) in the future.

However, after marathon talks between the Belgian Prime Minister Charles Michel, and the Walloon Parliament, during which the parties agreed on [an addendum to the deal that](#) addressed regional concerns, Wallonia finally approved the signature of CETA by the 28th EU member country.



Source - Getty Images

Supporters of [CETA](#) say [it will increase EU - Canadian trade by 20%](#) and boost the EU economy by 12 billion euros a year and Canada's by 8.16 billion euros a year. The deal can be applied provisionally once [the European Parliament also ratifies it in December](#). But for it to be fully put in place, it will have to be ratified by the EU's more than 30 national and regional parliaments.

OTHER RTAs ACTIVITY

Less attention has been given to [the Regional Comprehensive Economic Partnership \(RCEP\)](#), a trade agreement between the fast growing ASEAN members and six other countries, including China, India and Japan. Yet, as indicated by The Economist, the RCEP would harvest much more of global trade's low-hanging fruit. Its member countries covered 36% of global goods exports in 2015, compared with 28% for the TPP, and [tariffs protecting emerging markets are much higher](#) than those around developed countries—China still has on average 10% tariffs, compared with 5% in Europe and under 4% in America—so the immediate boost to the economy from lowering them would be higher.

But the RCEP is not immune to criticism. The agreement comes with intellectual property rules that are stricter than the WTO standards, said Chalerm Sak Kittittrakul from the [AIDS Access Foundation](#). According to Mr. Chalerm Sak, these provisions would allow pharmaceutical companies to extend their patents by years. This will hinder generic competition, which usually helps lower the price of drugs. "Anything more than the WTO's Trade Related Aspects of Intellectual Property Rights (TRIPs)

conditions will be detrimental to Thailand's public health system," he said. [FTA Watch](#) recently petitioned the Thai negotiators for RCEP, calling on them [to refuse these strict conditions for intellectual property](#), said coalition coordinator Kannikar Kijtiwatchkul.

In parallel, at the [BRICS Summit](#) held in Goa, India in mid- October, China attempted [to bring to the negotiating table an informal proposal](#) for a BRICS Free Trade Agreement (FTA) between the five major emerging economies – Brazil, Russia, India, China and South Africa, but other members of the bloc were not as enthusiastic.

Brazil, in particular, pointed out that it participates in FTA negotiations as part of Mercosur – a trading bloc and customs union of several Latin American countries. Declining to take up the Chinese FTA proposal, Brazil also cited [the recent political turmoil surrounding its government change](#). India, on its part, said it is already participating in negotiations on the [RCEP](#). And South African trade and industry minister Rob Davies, speaking ahead of the BRICS Summit, said that [an immediate push for a BRICS FTA will polarize](#) heavily-industrialized and lesser-industrialized nations within the five-member group.

All five leaders of the BRICS countries emphasized the priority of the WTO in global trade relations and noted in their final declaration that bilateral and regional trade deals must be complimentary to it. "We reiterate our support for the multilateral trading system and the centrality of the WTO as the cornerstone of a rule based, open, transparent, non-discriminatory and [inclusive multilateral trading system with development at the core](#) of its agenda," the Goa declaration reads.

Two other Latin American countries confirmed their intentions to boost free trade between them by signing a free trade agreement. At the beginning of 2016, Chile and Uruguay decided to take their economic relationship to a higher level by agreeing to launch negotiations for a new-generation free trade agreement. This agreement includes those trade issues already negotiated in the Economic Complementation Agreement between Chile and MERCOSUR (ACE 35), in force since 1996, incorporating new trade disciplines that will deepen their bilateral trade relations. Chile and Uruguay signed the FTA on October 4. [This is a "new generation" agreement](#) that includes issues such as e-commerce, environment, labor, trade and gender, SMEs, cooperation, and transparency and corruption.