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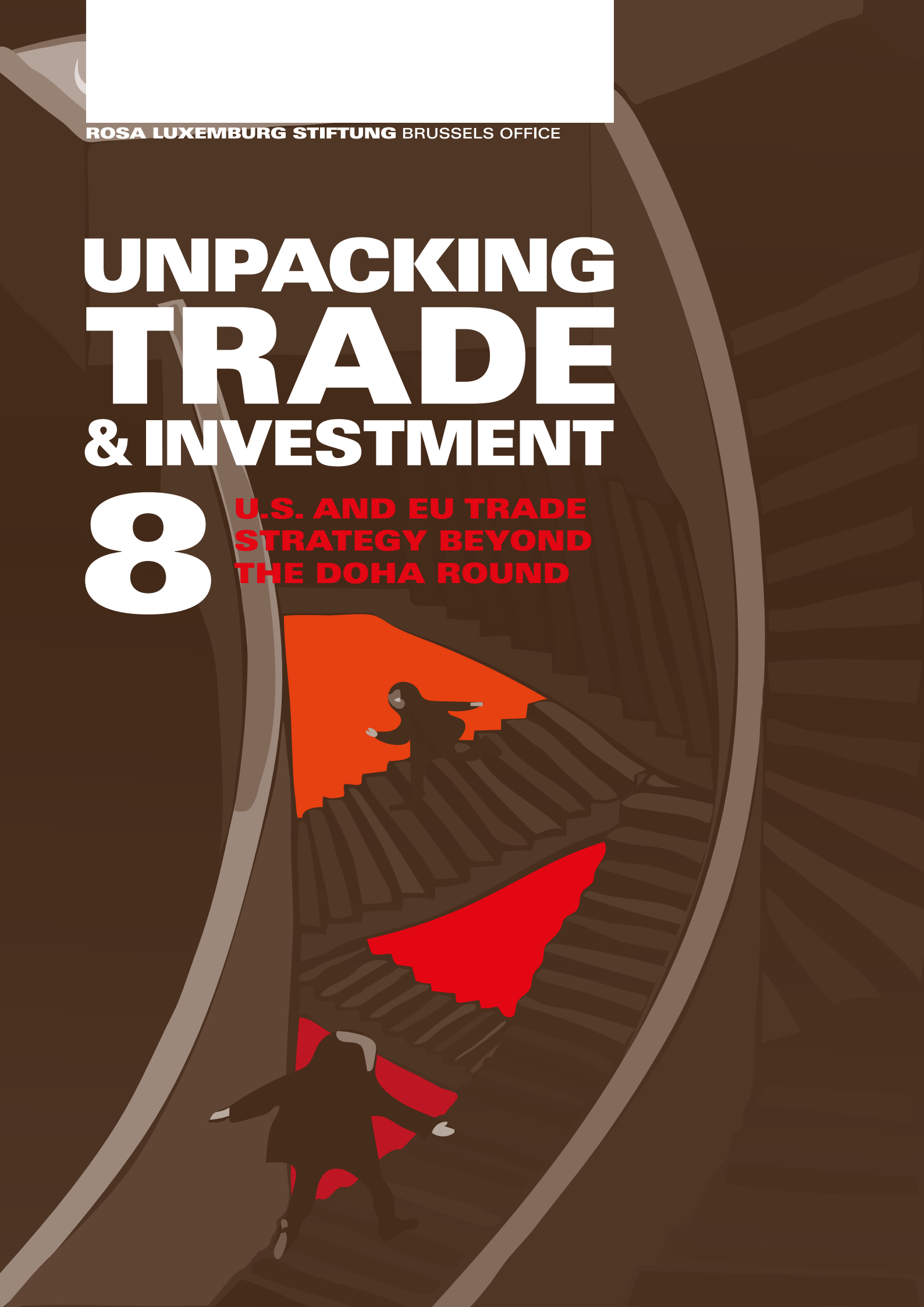
8

U.S. AND EU TRADE STRATEGY BEYOND THE DOHA ROUND



8 U.S. and EU Trade Strategy Beyond the Doha Round

Isabel Estevez

The refusal by the WTO trade Ministers to reaffirm the Doha mandate in December 2015 reiterated a long-standing sentiment within the community of 'international trade experts': 'Doha is dead'. In fact, the so-called 'Doha Development Round' of WTO negotiations, which began in 2001, has for many years been mired in contention between a group of developing countries seeking to preserve the flexibility necessary to pursue their development objectives, and the ambitious agendas of the U.S. and the EU, who seek to expand privileges for their corporations through aggressive measures in the realms of government procurement, investment, competition policy and trade facilitation – the so-called 'Singapore issues'.

Though the Doha Round may continue to languish in stalemate, this does not mean that the trade agendas of the U.S. and the EU have been stymied. In fact, quite the opposite is true. On one hand, reneging on the Doha mandate will allow the countries of the Global North to set their sights on the introduction of yet another set of ambitious 'new issues' to the WTO, such as TiSA-style rules on e-commerce. More important, however, is that as soon as the stagnation of the Doha Round became apparent in the mid-2000s, both the EU and the U.S. shifted strategies and began to pursue their goals outside the confines of the WTO. Thus, although they have continued to diplomatically pay lip service to the Doha negotiations, they have focused the better part of their energies on the pursuit of bilateral, multilateral, and 'mega-regional' trade agreements that would allow them to achieve the acceptance of the Singapore issues (and more) through a piecemeal approach, first with smaller blocks of developing countries, and more recently with larger and more powerful economies. These strategies have led to a proliferation of trade and investment agreements that is likely to continue unless public pressure can shift the tide.

In this article, we place these recent developments within the context of the evolution of U.S. and EU trade strategies. We then discuss how the Singapore issues have been translated into some of the key trade agreements pursued by the U.S. and the EU since the stagnation of the Doha Round. We conclude by looking ahead to some of the priorities that are likely to feature in the U.S. and EU trade agendas in the foreseeable future.

DOHA IN THE CONTEXT OF U.S. AND EU TRADE STRATEGIES

In order to understand what comes after Doha for the U.S. and the EU, we must take a step back to 'see the forest before the trees'. That is, we must place Doha within the broader context of the long-term objectives of EU and U.S. trade strategies and their evolution.

As many observers point out, the trade objectives of the Western powers have little to do with trade (much less 'free trade') and everything to do with protection of long-term interests of corporations.[1] In the EU and the U.S., these range from agribusiness and pharmaceuticals to high-tech manufacturing and financial services. These interests, moreover, can be largely summarised within a single overarching objective: to remove obstacles to the maximisation of profits and their 'repatriation'.[2]

Within the realm of what is conventionally understood as 'trade', the central aim has been to eliminate tariffs (essentially transferring income from the State to the corporate sector) and to eliminate non-tariff barriers that would prevent the expansion of markets for these corporations' products or complicate the extraction of the raw materials required for their operations. After initial WTO negotiations succeeded in dramatically reducing 'trade barriers,' however, 'trade agreements' have become decreasingly about trade and increasingly about protection of 'investments' and deregulation. At the core of this endeavour is an aggressive campaign to expand and redefine corporate rights, and mechanisms for their enforcement, to maximise the value that accrues to corporations relative to workers, consumers and the State in the process of production and trade.

The 'Singapore issues' that have marked the agenda of the Doha Round illustrate this perfectly. Though market access and 'trade facilitation' remained on the agenda, the primary aim of the Doha Round has been to introduce aggressive new measures in the areas of investment, public procurement and competition.[3] Together, these measures would further 'liberate' foreign corporations from having to comply with local regulations, such as requirements for the incorporation of local content and limits on the forms that foreign direct investment can take (public-private partnerships, minority ownership, etc.).[4]

Having accomplished their objectives in previous rounds of WTO negotiations, it was only natural for the U.S. and the EU to expect an equally successful completion of the Doha Round. However, this time their strategy was met with fierce opposition from developing countries, which formed coalitions[5] to oppose the introduction of new issues into the WTO and to demand special and differentiated treatment, such as longer periods to implement tariff reductions.[6]

1 See for example, Noam Chomsky on the Trans-Pacific Partnership and the history of the trade strategies of developed countries: **https://www.youtube.com/watch?v=bgqwfCyZpao**

2 Though repatriation technically refers to the transfer of profits to the place where a corporation is legally based (as opposed to where value is created), due to tax-dodging mechanisms, repatriation can often simply mean the shifting of profits to tax havens.

3 For a discussion of the Singapore issues and the Doha Round see Khor, Martin (2010) *Analysis of the Doha Negotiations and the Functioning of the World Trade Organization*. South Centre. Available at: **http://www.southcentre.int/wp-content/uploads/2013/05/RP30_Analysis-of-the-DOHA-negotiations-and-WTO_EN.pdf**

4 See Cooper, W. (2011) *Trade in Services: The Doha Development Agenda Negotiations and U.S. Goals*, p. 10. Available at: **http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1816&context=key_workplace**

5 For a study of these coalitions, such as the Like-Minded Group and the Coalition of Small and Vulnerable Economies, see Roland, S. (2007) 'Developing Country Coalitions at the WTO: In Search of Legal Support.' *Harvard International Law Journal / Vol. 48*. Available at: **http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_48-2_Rolland.pdf**

6 For more on special and differentiated treatment, see IISD Trade and Development Brief (203) 'Special and Differential Treatment.' Available at: **http://www.iisd.org/pdf/2003/investment_sdc_may_2003_2.pdf**

Though developing countries considered EU and U.S. objectives in Doha too extreme, corporate coalitions deemed their respective states too timid in defending their interests.[7] The combination of these factors led the U.S. and EU to a strategic shift. If they could not achieve their aims within the multilateral setting of the WTO, they would apply a strategy of 'divide and conquer.'

In 2006, one year after the Doha Round had been scheduled to conclude and the Hong Kong Ministerial Conference cemented the notion that the divide between developing and developed country positions was insurmountable,[8] the EU began to shift its focus to agreements with smaller blocks of countries (and, failing that, to bilateral negotiations). Between 2006 and 2007, negotiations began with the ASEAN countries (including Singapore, Malaysia, Vietnam, Thailand, and the Philippines), India, Korea, the Andean Community and six Central American countries. The U.S., which had continued to pursue its trade agenda outside the WTO even before the WTO was consolidated – achieving the ambitious North American Free Trade Agreement (NAFTA) in 1994 – continued to pursue its extra-WTO strategy, adapting along the way to the strong opposition of labour unions and civil society at home and abroad. This meant that the 'Free Trade Area of the Americas' that it envisaged would have to be built in a progressively piecemeal fashion, with smaller blocks and individual countries. The strategy also expanded beyond the Americas in the mid-2000s to trade negotiations with India, Korea, Malaysia, Taiwan, Thailand, and the UAE, among others. Negotiations of bilateral investment treaties proliferated in tandem.[9]

As negotiations with developing countries gradually legitimised the shift of the rule-making process out of the WTO, U.S. and EU corporate interests set their sights on an even more ambitious objective: the establishment of mega-regional agreements, not only with developing countries, but also between developed countries themselves. The fact that trade between industrialised countries is generally not complementary (they export the same types of goods) is highly indicative of the fact that these agreements have even less to do with trade. This point has not been lost on a myriad of commentators, analysts, activists and even critical politicians, who see agreements like TTIP and CETA as an attempt on behalf of corporations to eliminate current and future local regulations that could put a damper on their 'expected' profits, from environmental and labour standards to financial regulations, such as the Dodd-Frank Act in the United States.[10]

As we look ahead to the next steps in EU and U.S. trade strategy, it is important to bear in mind some concrete examples of how the objectives of the Doha Round are being translated into the emerging extra-WTO trade regime.

7 Kleimann, D. et al. (2012). *What Next in a post-Doha World? – Lessons from EU, U.S., and Chinese Trade Policy Strategies*. European University Institute Global Governance Program Policy Brief, p. 6. Available at **http://globalgovernanceprogramme.eui.eu/wp-content/uploads/2012/06/Policy-Brief-_Trade-Roundtable.pdf**

8 For more details on the strategy shifts of the EU and the U.S. during this period, see Kleinmann, 2012.

9 For general information on the status of these agreements and more, see **bilaterals.org**

10 See for example, U.S. Senator Elizabeth Warren's remarks against the TPP on the Senate floor: **https://www.youtube.com/watch?v=xzfxv2XQoPg**

NO DOHA? NO PROBLEM

How the Singapore issues (and more) resurface outside of the WTO

The measures contained in the extra-WTO agreements that have emerged since the stagnation of the Doha Round clearly point to a continuity with the same overarching objectives. Unsurprisingly, they include measures that advance the stance of Western powers on the Singapore issues and beyond.

One clear example on the procurement front can be found in the EU-Andean Trade Agreement, which is based on the general model agreement for EU negotiations with developing countries. This agreement effectively prohibits governments from giving preferential treatment to national products and services, or even to foreign products and services that incorporate local content. They also proscribe applying technological transfer and local content requirements to foreign providers.[11] This is especially problematic for countries like Ecuador, which has attempted to use public procurement – one of the few industrial policy tools not yet eliminated by the WTO – to support the development of its local industries.

In the realm of investment, the inclusion of investor-state dispute settlement (ISDS) provisions in the Trans-Pacific Partnership (TPP)[12] marks an important victory for corporations in their quest to 'free' themselves from sovereign jurisdictions – not only the 'corrupt' developing country court systems they claimed to fear in the past, but also, in the case of the TPP, the U.S. judicial system itself. Though the ISDS provision in TTIP has generated much controversy, largely thanks to active civil society opposition in the EU, it is likely the final text will also include such a clause.

Beyond these appalling new institutional mechanisms, the corporate agenda is also being advanced through attrition of the regulations and regulatory capacities of states, to the detriment of their citizens. Especially worrying for EU consumers is the U.S. attempt to use TTIP to dismantle food safety regulations that 'discriminate' against lower-quality, less regulated U.S. products.[13] Though the immediate damage may befall the people of the EU, however, this also represents a loss the people of the U.S., whose ongoing attempts to increase food safety regulations would also be curtailed. In this sense, it is also a gift to the US corporations in their efforts protect their profit margins by blocking consumer attempts to ensure and improve the quality and safety of the products they provide through stronger regulation and transparency requirements.

11 Though the FTA language on the matter is abstruse, when disentangled, it is clear and categorical. Art 175.7 establishes that neither signatory Party "shall seek, take account of, impose or enforce offsets." The "offsets", in turn, include "any condition or undertaking that encourages local development or improves balance–of-payments accounts of a Party, such as the use of domestic content, the licensing of technology, investment, counter-trade, and similar actions or requirements" (Art. 172). The text of the agreement is available at: **http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147704.pdf**. Ecuador is in the process of adhering to the EU-Colombia-Peru FTA.

12 These provisions can be found in Section B of Chapter 9 (Investment) of TPP, available at: **https://ustr.gov/sites/default/files/TPP-Final-Text-Investment.pdf**

13 See sections on sanitary and phytosanitary measures on page 3 of letter of Acting US Trade Representative Demetrios Marantis to John Boehner, Speaker of the US House of Representatives, 20 March 2013. Available at: **https://ustr.gov/sites/default/files/03202013%20TTIP%20Notification%20Letter.PDF**. This letter is referenced in a useful 2015 overview of the TTIP by John Hilary titled *The Transatlantic Trade and Investment Partnership. A Charter for Deregulation, an Attack on Jobs and end to Democracy.* Available at: **http://www.rosalux.eu/publications/update-2016-the-transatlantic-trade-and-investment-partnership-ttip/**

THE NEXT STEPS IN U.S. AND EU TRADE STRATEGIES

The examples discussed in the previous section are only a few concrete expressions of a sweeping general phenomenon: the gradual replacement of the WTO by a system of mega-regional, regional and bilateral agreements, led by the Western powers on behalf of their corporations and, to a smaller extent, as a symbolic reaffirmation of the hegemonic role of Western states in the face of 'the rise of China'.

This is not to say that the WTO will cease to be relevant. It continues to be the foundation of the global trade regime. However, the multilateral setting appears to have yielded all that it could yield and the corporate agenda will, for the foreseeable future, be pursued in a multitude of smaller spaces that are more easily controlled by the great Western powers. Thus, they are more easily shaped according to corporate objectives: the removal of obstacles to profit-maximisation to the detriment consumer safety, labour rights, environmental rights, and the sovereignty of states.

Thus far, the 'divide and conquer approach' has proven to be largely effective, though it has required patience and political pressure. In Latin America, the EU has had to resort to economic blackmail – the threat of removing unilateral trade preferences – to push developing countries into signing FTAs that would allow them to preserve access to European markets. In the Southern cone, the EU was forced to wait over a decade for regime change in Argentina to regain sufficient political will within MERCOSUR for the negotiations to be seriously resumed last year. Many Latin American countries, fully cognizant of the disastrous results of NAFTA,[14] have signed trade agreements with the EU but continue refuse to sign agreements with the U.S.

The mega-regional agreements, TTIP and TPP, also face strong opposition from well-organised and effective civil society movements, so much so that four of the five candidates running for the Republican and Democratic nomination for President in the U.S. have (for the time being) declared their opposition to the TPP. Nevertheless, many important extra-WTO negotiations, including TPP and CETA, have already been concluded and the little-discussed but all-important Trade in Services Agreement (TiSA) and dozens of regional and bilateral agreements continue to be negotiated despite public opposition. Citizens around the world would be well advised to pay closer attention to these processes – particularly the ratification process of TPP and the TiSA and TTIP negotiations – and to increase pressure in an articulated international strategy if they are to prevent corporate powers from continuing to shape the global economy in accordance with their interests, rather than the well-being of the vast majority of the world's population.

14 Weisbrot, M.; Lefebvre, S. and Sammut, J. (2014). *Did NAFTA Help Mexico? An Assessment After 20 Years.* Center for Economic and Policy Research, Washington .D.C.. Available at: **http://cepr.net/documents/nafta-20-years-2014-02.pdf**

INDEX OF ACRONYMS

ACP African, Caribbean and Pacific
ACTA Anti-Counterfeiting Trade Agreement
AGOA African Growth and Opportunity Act
AGP Agreement on Government Procurement
AMS Aggregated Measures of Support
AoA Agreement on Agriculture
APEC Asia-Pacific Economic Co-operation
ARA Advisory Referendum Act
ASEAN Association of Southeast Asian Nations
BIT Bilateral Investment Treaty
BRICS Brazil, Russia, India, China, and South Africa
CAP Common Agricultural Policy
CDS Credit Default Swaps
CETA Comprehensive Economic and Trade Agreement
CSI Coalition of Services Industries
DDA Doha Development Agenda
DDR Doha Development Round
DFQF Duty-Free, Quota-Free
EAC East African Community
ECIPE European Centre for International Political Economy
EGA Environmental Goods Agreement
EAHC East African High Commission
EPA Economic Partnership Agreement
ESF European Services Forum
FAN Friends of Anti-Dumping
FAO Food and Agriculture Organization
FET Fair and Equitable Treatment
FTA Free Trade Agreement
FTAA Free Trade Area of the Americas
FTAAP Free Trade Area of the Asia-Pacific
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
GFC Global Financial Crisis
GDP Gross Domestic Product
GVC Global Value Chain
GI Geographical Indication
GM/GMO Genetically Modified/ Genetically Modified Organism
GEMC Group of European Mining Companies
GPA Agreement on Government Procurement
GSC Global Services Coalition
GSP General Preferencial Scheme
GSP+ General Preferencial Scheme Plus
GVC Global Value Chain
ICESCR International Covenant on Economic, Social and Cultural Rights
ICS Investor Court System
ICSID International Centre for Settlement of Investment Disputes
IIA International Investment Agreements
IMF International Monetary Fund
IFC International Finance Corporation
IP Intellectual Property
ISDS Investor-State Dispute Settlement
ITA Information Technology Agreement
ITUC International Trade Union Confederation
JEC Joint EPA Council
LDC Least Developed Countries
LVC Local value chain
MA Market Access
MAI Multilateral Agreement on Investment
MERCOSUR Southern Common Market *Mercado Común del Sur (es)*
MFN Most Favoured Nation
MTA Mega Trade Agreement
NAFTA North American Free Trade Agreement
NAMA[1] Friends of Ambition; also
NAMA[2] Non-Agricultural Market Access
NATO North Atlantic Treaty Organization
NIEO New International Economic Order
NMB Nairobi Ministerial Declaration
NSG Nuclear Supplier Group
NTB Non-Tariff Barriers
OECD Organisation for Economic Co-operation and Development
OPEC Organisation of Petroleum Exporting Countries
OTC Over the Counter
OWINFS Our World Is Not for Sale
PAP Processed Agricultural Product
RCC Regulatory Cooperation Council
RCEP Regional Comprehensive Economic Partnership
RMI Raw Material Initiative
RoO Rules of Origin
RTA Regional Trade Agreement
RVC Regional value chain
S&D Special and Differentiated Treatment
SACU South African Customs Union
SAP Structural Adjustment Program
SCM Subsidies and Countervailing Measures Agreement
SDG Sustainable Development Goals
SDT Special and Differential Treatment; also S&T
SOE State-Owned Enterprises
SP Special Products
SPP Sustainable Public Procurement
SPS Agreement on the Application of Sanitary and Phytosanitary Measures
SSG Special Safeguard
SSM Special Safeguard Mechanism
SUNS South North Development Monitor
SVE Small and Vulnerable Economies
TAFTA Transatlantic Free Trade Agreement
TBT Agreement on Technical Barriers to Trade
TFA Trade Facilitation Agreement
TFEU Treaty of the Functioning of the EU
TiSA/TISA Trade in Services Agreement
TNC Transnational Corporations
TPP Trans-Pacific Partnership
TRIMS Agreement on Trade-Related Investment Measures
TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP Transatlantic Trade and Investment Partnership
UDHR Universal Declaration of Human Rights
UNECA United Nations Economic Commission for Africa
UNEP United Nations Environment Program
UNCITRAL United Nations Commission on International Trade Law
UNCTAD United Nations Conference on Trade and Development
UPOV International Union for the Protection of New Varieties of Plants
VCLT Vienna Convention on the Law of Treaties
WTO World Trade Organization

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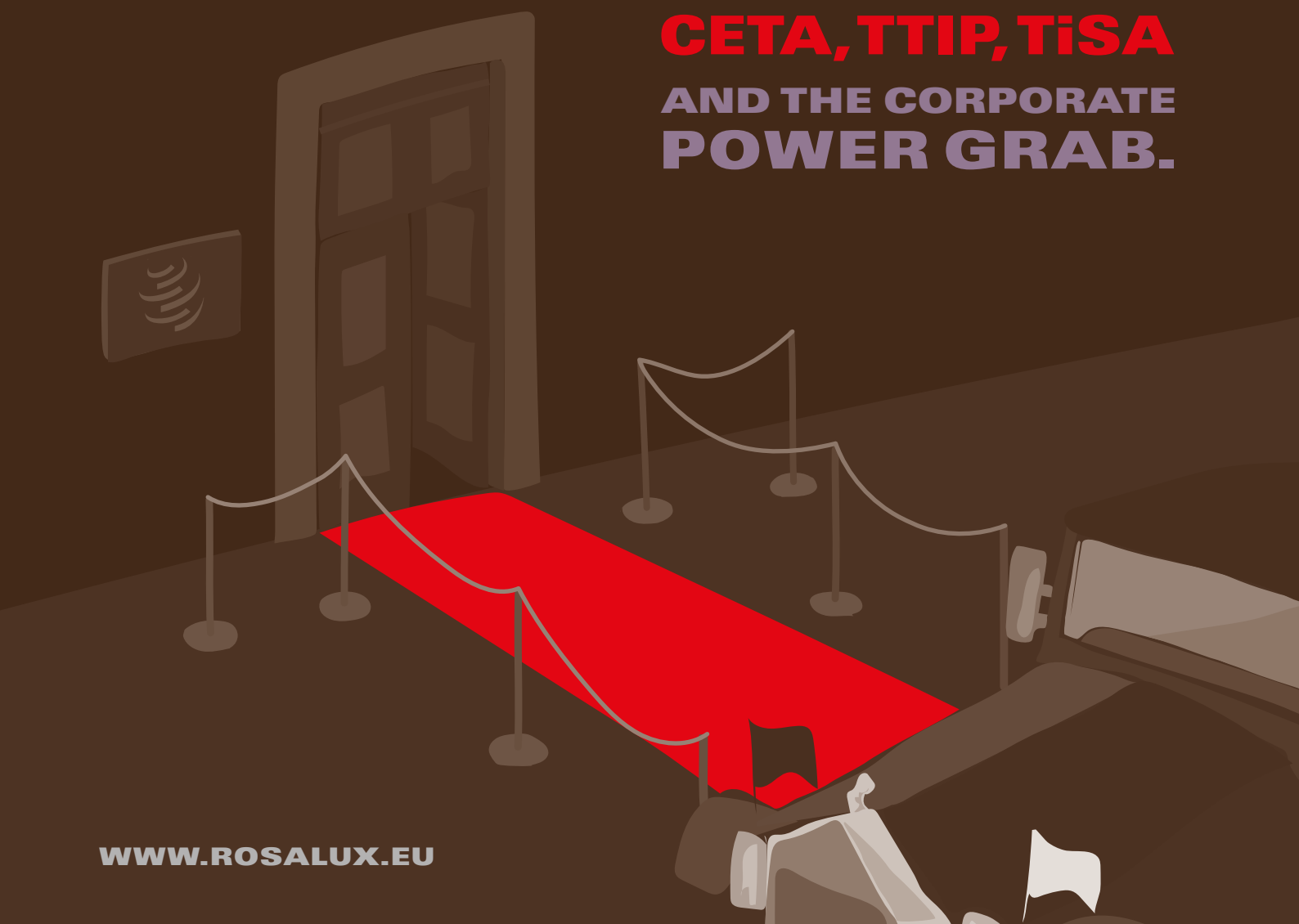
A SERIES OF 11 FACT BOOKLETS ABOUT THE WTO DOHA ROUND, FTAs, BITs, ISDS, CETA, TTIP, TiSA AND THE CORPORATE POWER GRAB.



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