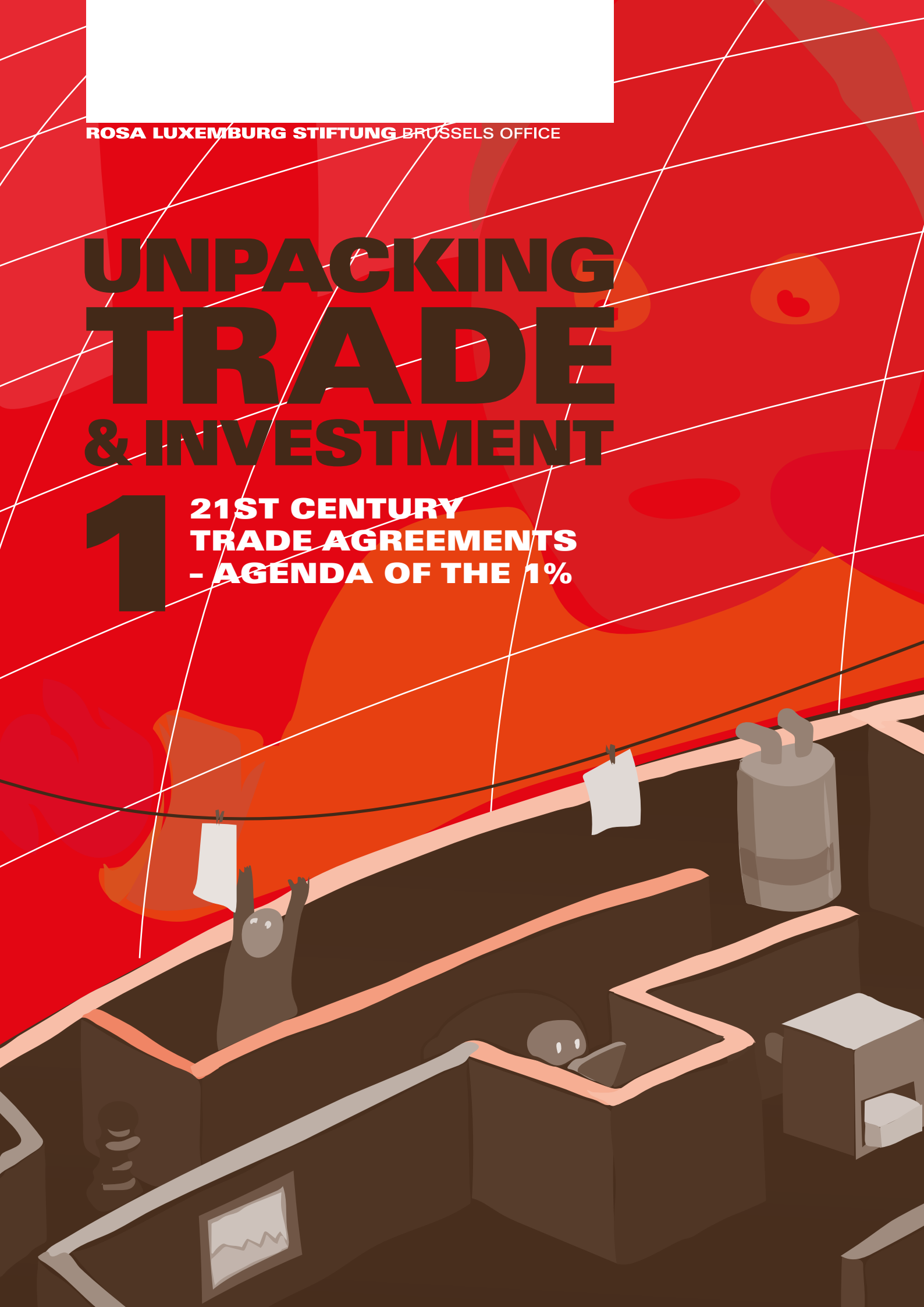
ROSA LUXEMBURG STIFTUNG BRUSSELS OFFICE

UNPACKING TRADE & INVESTMENT

1 21ST CENTURY TRADE AGREEMENTS – AGENDA OF THE 1%



1 21st century trade agreements – agenda of the 1%

Joachim Jachnow

The term '21st century free trade agreements' could not be more misleading. It propagates the same deceitful rhetoric about 'free trade', which should not be mistaken as free commerce between free and equal partners. 'Free trade' strengthens and does not help overcome existing dependencies and inequalities, while further empowering the industrialized countries and business and finance corporations of the Global North, who largely dictate its rules and conditions over the Global South (i.e. its former colonies). The term 'agreements' is equally deceitful, as they are imposed by all sorts of economic and political pressuring. 'Developing' countries are forced to accept them as complete take-it-or-leave-it packages not designed for or by them. There, as in the capitalist centres, democratic approval is largely bypassed or side-lined, and the people and their representatives are kept in the dark about what their governments 'agree' upon. Finally, these deals are also largely unconcerned with 'trade', as the term would suggest, as their main objective is less about fostering trade between nations or regions, and more about imposing an 'investment protection' regime, another euphemism for the power grab of big business over state sovereignty.[1]

ANOTHER CORPORATE POWER GRAB

'21st century free trade agreements' are also no invention of the 21st century. Rather, they build on 20th century neo-liberal policies of 'privatization' and 'liberalization' - that is, expropriation and unrestrained capital - seeking to expand and make them irreversible. Thus, they are putting back on the table what corporate power had pushed for since the early 1990s: firstly, to open every public good for privatization and do away with any sort of marginal protection earlier trade rules still made concessions for – be it for infant industries, the banking sector, essential infrastructure, medical supply, the environment, labour, vital agricultural production or civil and human rights. Ergo, states become deprived of their remaining capacity to implement corporate and financial regulations, which the original rules of the World Trade Organization (WTO) had made some allowances for. Enabling this corporate power grab over constitutions and legislation are far-reaching investment clauses at the core of the new model 'Free Trade Agreements' (FTAs), which are forcing contract states to comply with extensive rules for claimed 'investor rights'. So-called Investor-State Dispute Settlement (ISDS) mechanisms, effectively a para-judicial system of private courts, enable big business and finance capital to sue states over alleged – or projected – losses caused by regulation, intervention, non-conforming legislation, or other measures. Simply put, these deals destroy the very base of state sovereignty and democratic rule.

NEW BOTTLE, OLD WINE

In this sense, the 1994 North American Free Trade Agreement (NAFTA) between the USA, Canada, and Mexico might be considered one of the first new-model FTAs, as it conveys to a good extent (with its very strict investment clauses) the shift of power away from national sovereigns to 'investment protection' regimes. A much more pervasive attempt to impose corporate power over states during this time had been envisaged

1 US economist Edward Herman's description of the neo-liberal trade regimes has not lost its validity: The Sophistry of Imperialism: A Corporate Bill of Rights, Zmagazine, March 2002.

by the 'Multilateral Agreement on Investment (MAI)', negotiated between 1995 and 1997 by the Organisation for Economic Cooperation and Development (OECD). Due to the massive mobilization of people and the successful campaigning of NGOs around the globe, it had to be aborted in 1998. Similarly, northern industrialized states tried to impose the same kind of harsh investment rules on the Global South, made evident by their addition of the 'Singapore Issues' (1996) to the WTO agenda, which led again to extraordinary popular resistance, peaking with the 'Battle of Seattle' protests. More importantly, a coalition of more than twenty 'developing' countries successfully blocked the 'Singapore Issues' in the 2003 WTO round in Cancún, Mexico.

PIECEMEAL NEO-COLONIALISM

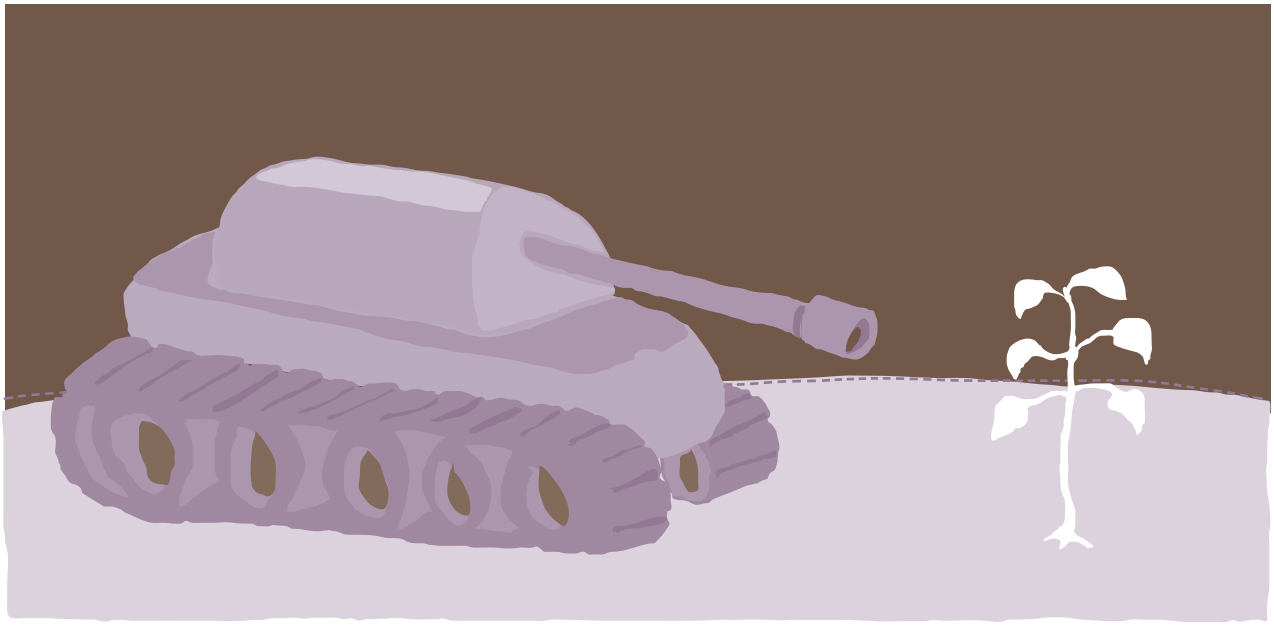
Facing the successful opposition of 'developing' countries, as well as general popular resistance, the neo-liberal agenda promoting an immense and uninhibited 'free trade' regime guided by the 'protection of investors' offered up a more clandestine alternative. The US and the EU shifted their strategies to the pursuit of mega-regional trade agreements, the most important ones being the Free Trade Area of the Americas (FTAA) under US leadership - which is an attempt to expand NAFTA throughout the hemisphere under a harsher regime - and the other being the EU-ASEAN FTA. Since these failed, however, the US and EU divided their mega-regional FTAs into smaller agreements, which are negotiated piecemeal. Examples include the splitting of the FTAA into US agreements with Caribbean countries (CAFTA), Chile, Peru, or Colombia, or the EU-ASEAN deal turning into smaller EU treaties, which presently include Singapore, Malaysia, Vietnam, and Thailand. This sort of *divide et impera* strategy has proven much more successful in implementing FTAs in the Global South. As a result, one can observe the growing tendency of an ever-escalating 'investment protection' regime to follow this blueprint, with the strongest successful piecemeal deals to date serving as models for the ones following.[2]

Contrary to Western rhetoric about 'sustainable' development and promised prosperity, new model FTAs are designed to snatch away 'developing' countries' last tools to foster their own industries and manufacturing, sustain their food security, and improve the living standards of their citizens.

PROMOTING HUNGER

Countries that had been self-sustaining in their agricultural production were already turned into food importers with the first WTO induced 'free trade' wave of the 1990s. Committing to '21st century FTAs' with the US and EU, they are facing even more severe food crises, as tariffs on agricultural imports are bound to decrease to zero within few years while the US and EU uphold their agricultural subsidies, thus destroying domestic and local markets in Latin American, Asian, and African countries. Furthermore, uncontrolled, speculative capital flows – the most notorious example being the dramatically growing biofuel agroindustry – have led to unprecedented rates of land-grabbing and peasant displacement in recent years. The peasantry is also under life-threatening attack by strict 'intellectual property' regulations, which are new-model FTAs implemented through ISDS procedures. This means, in part, that ancestral and native seeds are outlawed, and peasants that lose control over their own seeds are forced to acquire GMOs and 'certified' seeds predominantly owned by the Western monopolies Monsanto, DuPont/Pioneer, Dow AgroSciences (all US), and Syngenta (Swiss). The consequences are dramatically increasing rates of economic ruin for the small peasantry, loss of biodiversity, and enormous environmental harm, as modern GMOs tend to go hand-in-hand with the use of pesticides and fertilizers sold by the very same corporations. In Colombia, for instance, these policies of new model FTAs with the EU and USA have already introduced policed destruction of tons of harvest, as their planting allegedly violate the rules regarding the use of only 'legal' seeds. Farmers who are caught using farm-saved seeds or native seeds which have not been formally registered, are outright criminalized and face jail-time if they do not comply, leading to a decrease in food production and the starvation of entire populations.

2 In the words of then EU Commissioner for Trade, Pascal Lamy: 'We always use bilateral free trade agreements to move things beyond WTO standards. By definition, a bilateral trade agreement is "WTO plus". Whether it is about investment, intellectual property rights, tariff structure, or trade instrument, in each bilateral free trade agreement we have the "WTO plus" provision.'



DE-DEVELOPMENT

Extensive 'intellectual property' rights, as imposed by new-model FTAs, not only expropriate the peasantry. They also impose much stricter protection rules not only on economically and educationally important commodities, such as computer software, but also favouring Big Pharma life-saving medicine by attempting to limit or halt generic medicine production.[3] Simultaneously, new-model FTAs extend the rights of multinational corporations to freely patent 'biological substances' and their DNA, 'discovered' in countries that have undersigned the FTA. At the same time, technology transfers from north to south are widely deadlocked, as states can no longer regulate foreign corporations that are exploiting natural resources, and the human labour force in their territory for certain knowledge formerly gleaned from such interactions. Previous regulations, for example, to bind foreign companies to train professionals and workers in exchange for exploitation rights are being outlawed with the new-model FTAs. While 'developing' countries are effectively prevented from using Western patentized technology, corporate power is simultaneously empowered to 'expropriate by copyright' indigenous medicine, plants, and animals when 'discovering' and trademarking their DNA in their laboratories.

CAPITAL UNLEASHED

Another threat largely underestimated by new-model FTAs, is their role in opening countries' financial accounts, with disastrous effects on economic stability and sovereignty of states. While all of the new-model FTAs uphold the hierarchical migration regime, capital mobility is unrestricted as governments are forced to give up control over the flow of foreign investments. Regulative measures regarding tax-speculative capital inflows, which have been successfully employed by some 'developing' countries to reduce the volatility of capital inflows and of the exchange rate, are eliminated. Astoundingly, at a time when financial deregulation has proven to be disastrous on a global scale, new-model FTAs make the unregulated movement of capital in and out of countries the rule, with outlawed capital controls even in times of crisis. Preventing governments from their ability to use capital controls, FTAs dramatically reduce the possibilities for national macroeconomic policies, for example in employment, economic growth, and wealth distribution, while multinational corporations freely repatriate their profits to the Global North.

3 Addressing the EU-India FTA negotiation for example, activists are clear, that such a treaty will be lethal for people of the Global South: 'Is our memory so short that we have forgotten the situation we were in barely 10 years ago? None of us could get effective HIV treatment (…) because of the stranglehold multinational companies had on medicines. Now the EU wants to shut down generic production and send us back in time – when we watched helplessly as our colleagues, friends and families struggled with ill-health and death because some big company and its government decided to put profits before people." Loon Gangte of the Delhi Network of Positive People (DNP+)

4 Deutscher Richterbund, Statement on the EU commission's proposal of an Investment-Dispute-Settlement-Court for TTIP. **http://www.drb.de/fileadmin/docs/Stellungnahmen/2016/DRB_160201_Stn_Nr_04_Europaeisches_Investitionsgericht.pdf**

CORPORATE CHARTER VS. CONSTITUTIONS

In sum, new model FTAs accelerate the old 'free trade' pattern of active and intentional underdevelopment and reduce them to suppliers of cheap labour and raw material. Due to their anti-democratic and neo-colonial nature, new-model FTAs and their 'investment protection' regimes have generated fierce opposition in affected 'developing' countries and regions that went mostly unreported by corporate western media news outlets and were repeatedly, brutally repressed. Opponents have labelled the new-model FTAs to be a more silent, but equally efficient, *coup d'état*. In Colombia, for instance, a state senator accused the then sitting president of high treason for signing the country's new-model FTA with the US. In the same vein, a departmental court ruled it unconstitutional, as it was seen to be in conflict with the nation's sovereignty and crucial parts of its constitution. Similarly, in the capitalist centres, where lawsuits against the ISDS have dramatically increased in the past decade, concerns have arisen over their role in undermining democracy and the 'rule of law', as they are incorporated in the CETA, TTIP, and TiSA treaty frameworks. The German Magistrates Association, for instance, clearly stated that TTIP investment courts would 'deprive courts of member states of their power' and be therefore illegal.[4] Given the rising concern also within parts of the establishment, it is still uncertain if a small compromise concerning ISDS courts might be made in order to rescue the rest of the 'free trade' package of the aforementioned treaties. It is entirely unlikely that ISDS mechanisms as such will be discarded, as they are at the core of TTIP and its ilk. Though the predominant power of the US and its corporations in the negotiations is evident, it is also clear that corporations on both sides of the Atlantic have convergent agendas. Combined, the three mega treaties currently being designed under US and corporate lead – TTIP, TPP, and TiSA – would not only mean a corporate *coup d'état* in the very centre of global capitalism, they would also undoubtedly strengthen the US-centred Western economic empire, which would dictate rules beyond its borders. In this case, the '21st century free trade agreements' of the past years would prove to be just the first group in a line of Trojan Horses aiming to achieve unrestricted power for monopoly capitalism.

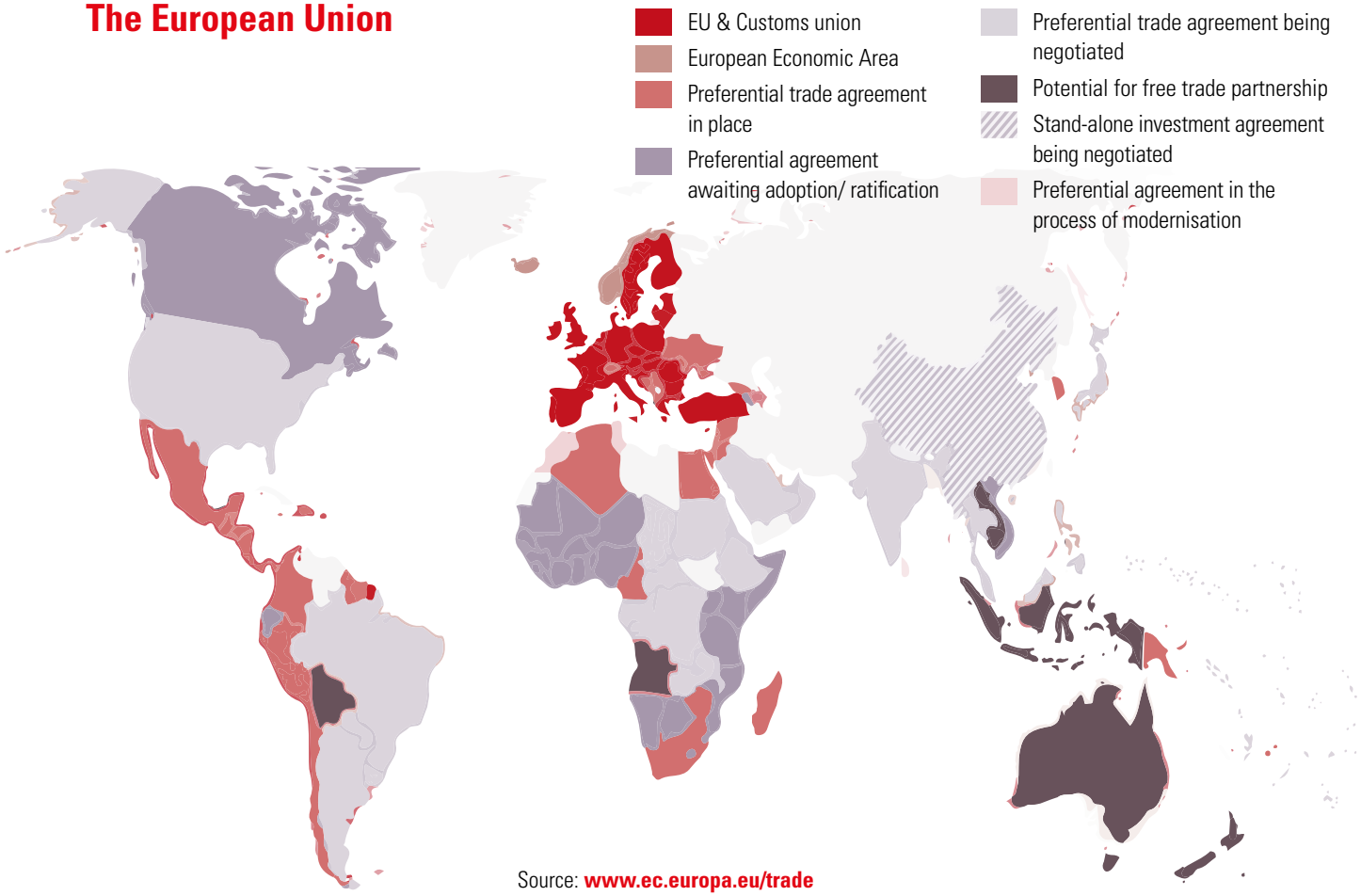
Recommended readings:

Ibon Primer on 21st Century Free Trade Agreements. Trading Away Our Future for Corporate Plunder and Profit. **http://iboninternational.org/sites/ibon/files/resources/Primer%20on%2021st%20Century%20FTAs%20E-book.pdf**

Thomas Fritz, Public Services Under Attack: TTIP, CETA, and the secretive collusion between business lobbyists and trade negotiators. Published by: AITEC, CEO, EPSU, IGO, TNI, Vienna Chamber of Labour, War on Want. Available in several languages on the author's homepage: **http://thomas-fritz.org/default/public-services-under-attack**

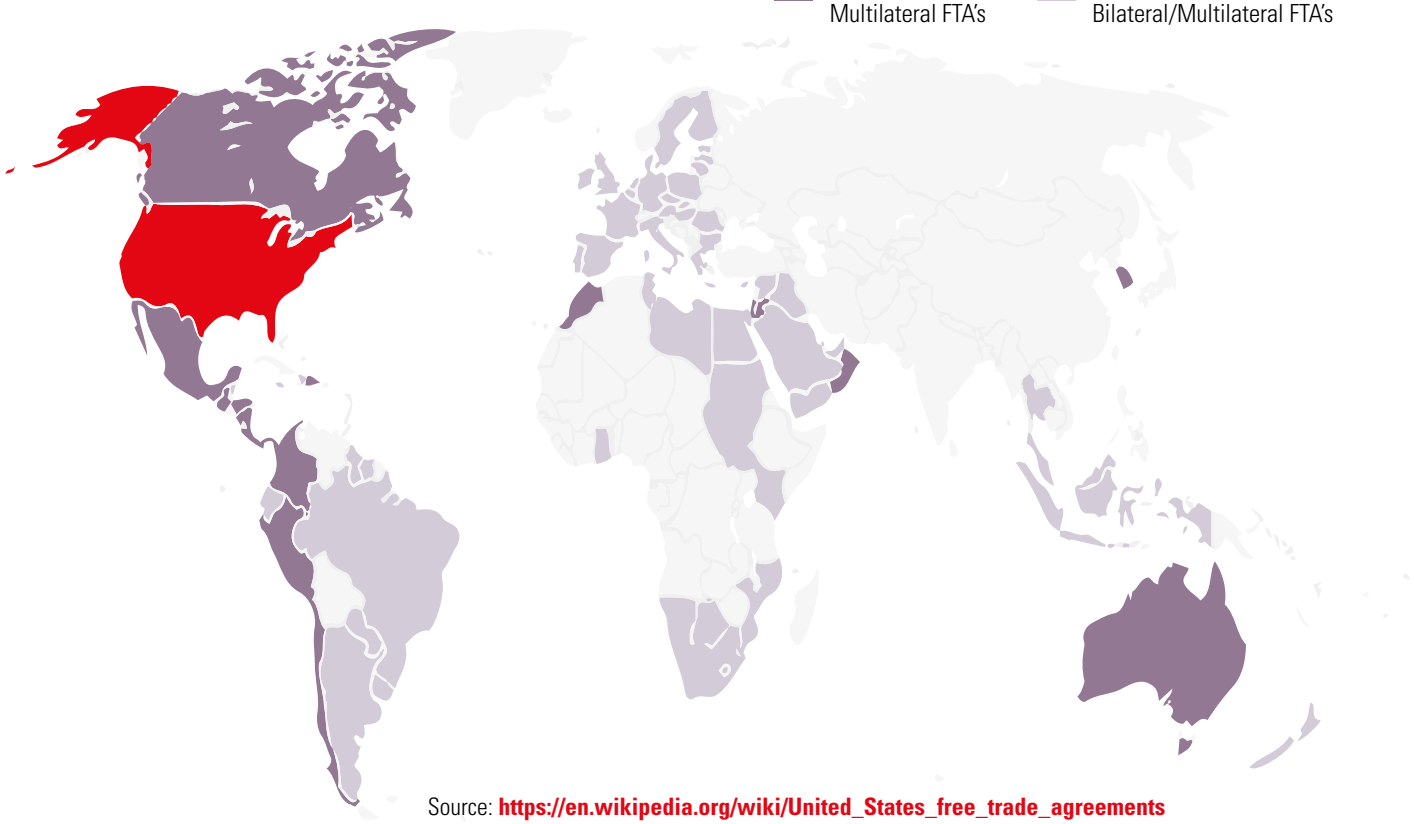
MAP OF NEW FTAs

The European Union



Source: **www.ec.europa.eu/trade**

The United States



Source: **https://en.wikipedia.org/wiki/United_States_free_trade_agreements**

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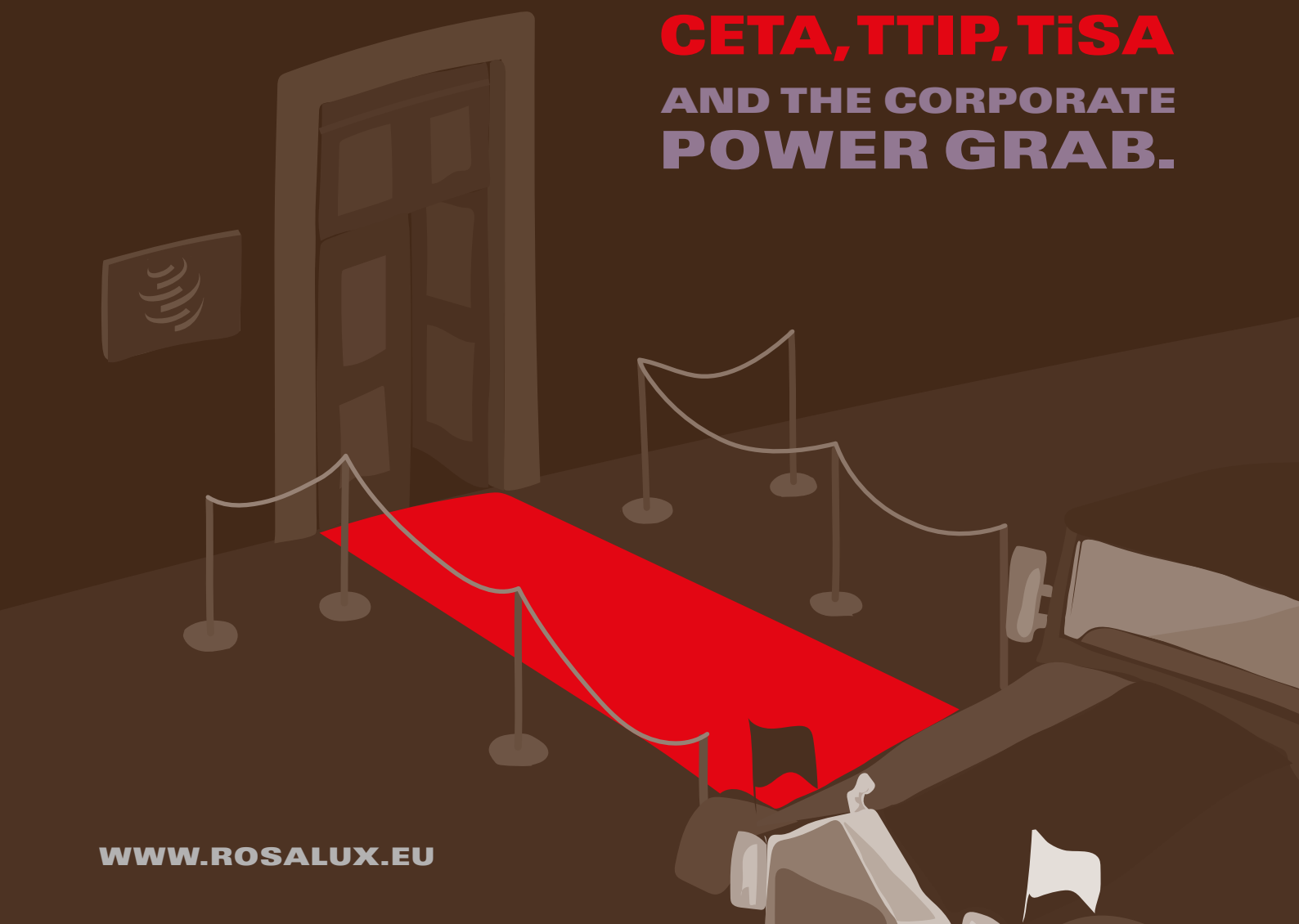
A SERIES OF 11 FACT BOOKLETS ABOUT THE WTO DOHA ROUND, FTAs, BITs, ISDS, CETA, TTIP, TiSA AND THE CORPORATE POWER GRAB.



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