

INTERNATIONAL TRADE À LA CARTE

1. NEW RULES OR HISTORIC RECURRENCE?

The number of free trade agreements (FTA) constantly growing in international trade in recent years, in their ‘tangled’ shape vividly compared to a spaghetti bowl, means that the participants of this exchange prefer solutions which are more efficient for the implementation and protection of their interests to the ones hitherto functioning in the framework of the WTO¹. The deepening erosion of the multilateralisation of international trade rules inevitably weakens the foundations on which the post-war economic order was created. An almost clinical example of this phenomenon is the deep impasse in the negotiations of the WTO’s so-called Millennium Doha Round provoking questions about the further fate of this international organisation.

At the same time one cannot deny the thesis that the participants of this trade, in this respect the founders of the GATT/WTO, for a long time have very eagerly established agreements which – apart from the benefits arising from participation in this organisation – give them still others, this time having the status of uniqueness. This mainly involves all sorts of privileges in the field of trade, enjoyed by members of the integration groups. Let us remind that it concerns trade preferences which are exceptions from the multilateral MFN, a specific foundation of functioning of the WTO. In other words, the current situation in international trade appears to be a kind of *déjà vu*. In this sort of Orwellian reality of international relations based on

¹ Cf. Wiczorek, J. 2014. Transatlantyckie partnerstwo w dziedzinie handlu i inwestycji. [The transatlantic partnership in the field of trade and investment.] *Mysł Ekonomiczna i Polityczna*, Uczelnia Łazarskiego, no. 1; Trade and protectionism. No more grand bargains. The World Trade Organisation’s whole approach to negotiating free trade needs radical change. *The Economist* 8 April 2014.

the principles of formal equality between the parties, in practice for a long time ‘the more equal’ have been prospering a lot better than those who must be content with the principles of egalitarianism. What is today, however, a new quality in the way of realisation of particular interests by the so-called big players in the global economy is primarily the type of applied measures and attempts to create out of them new global rules in international trade. We are talking here about the growing importance of a new generation of non-tariff measures (NTM), and among them, for example, technical (TBT) and sanitary and phytosanitary (SPS) measures². These highly effective means of protecting the market against unwanted imports cannot be at the same time well recognised because of their peculiar nature and mode of action, which, for instance, translates into significant difficulties in their classification in the known inventories of NTM. They also significantly hinder finding effective solutions to their neutralisation or total elimination. It is these very measures that arouse great controversy in relation to the free trade agreement currently being negotiated between the EU and the US (TTIP), especially among European consumers (for example, the case of genetically modified organisms – GMOs). Often regarded as a conspiracy of large international corporations, they are undoubtedly a clear indicator of their leading role in international trade. TBT and SPS petrify the structure of the world exchange which is disadvantageous for less developed countries.

At this point we can ask the question whether the new rules of international trade, aiming at the protection of the environment, e.g. in the context of the fight against excessive CO₂ emissions or guaranteeing high standards of employment, e.g. in terms of the introduction of the right to the minimum wage and its high level, are only a noteworthy attempt to improve the quality of life and economic efficiency on the national and international scale, or whether they are a not very well veiled way to eliminate from international market those who, for various reasons, primarily economic ones, are not able to meet these new standards. Let us indicate, by way of example, that the so-called decarbonisation of the EU will inevitably place many areas of the Polish economy in a difficult position, particularly our power industry, although it will have a positive impact on the environment. Germany’s decision on covering truck drivers with the minimum wage system, on the one hand, will worsen the competitiveness of Polish transport companies, but may also raise their economic status. Empirical studies prove that in the light

² Cf. Wiczorek, J. 2013. Protekcjonizm pozataryfowy – nowa odsłona. [Non-tariff protectionism – a new scene.] *Mysł Ekonomiczna i Polityczna*, Uczelnia Łazarskiego, no. 1.

of a new generation of NTM, only the most developed countries and their companies do best in international trade³.

Scientific and technological progress not only forces these countries to seek ever more sophisticated ways to protect their interests against undesirable foreign competition. At the same time, they use the latest technologies to penetrate foreign markets, without major obstacles, and these turn out to be vulnerable in the context of the existing measures of their protection. It is worthwhile in this respect to refer to the interesting observations and conclusions of the report of McKinsey Global Institute of 2014⁴. The report quoted an example of the transfer of commands by computer from country A to country B, as a result of which in the latter country 3D printers produce products sold on its market. And these are not simple products. At stake here are the latest technologies, which in the case of, for example, Rolls-Royce relate to the aeronautic hardware⁵. In this way, one can perfectly get around all import procedures, including its arsenal of market protection measures in the form of NTM. This brings significant profits primarily as a result of the time saved on importation regulations and associated costs. The report indicates a very high dynamics of world trade in information technology. When taken together with the related new technologies, the flow of capital, goods and services, including information ones, it has a chance to rise from the level of 26 trillion USD in 2012 to 85 trillion USD in 2025. In order to assess the possibilities in this respect it is sufficient to refer to data on on-line trading, which in the USA in 2013 reached a volume of 384 billion USD⁶.

Searching for solutions beyond the sphere of traditional rules of international trade is also connected, as it seems, with the increasingly widespread use of new mechanisms of the modern global economy. It concerns the so-called on-demand economy. A very characteristic example of a company highly successful on the global scale, which perfectly illustrates a very specific mode of action on the international market is Uber. Using Google web applications and associating the customer directly with the person who has their own car and free time it effectively eliminates competition in the form of licensed taxi companies. Uber company, which was founded in San Francisco in 2009, already operates in 53 countries, its turnover

³ Cf. Wieczorek, J. *Ibidem*, pp. 52–58.

⁴ See Digital trade: data protectionism. *Financial Times* 5 August 2014.

⁵ 3 D printing. Entering the jet age. Aircraft engines may soon be built one layer at a time. *The Economist* 7 March 2015.

⁶ Digital trade..., *op. cit.*

in 2014 exceeded 1 billion USD, and its market value is estimated at 40 billion USD⁷. The USA is a kind of an incubator for such companies providing services in the constantly increasing range. It is the result of technological progress which reduces or eliminates the distance between the supplier and the recipient. People can provide a variety of services without moving ‘from home’, or practically they can do it from any place where they are currently staying. This breaks the Marxist distinction between those who have the means of production and those who work for them. In brief, it can be argued that currently there are more of those who have the capital but do not have time and those who – vice versa – have time, but they lack money. As a result, fewer and fewer people in the US have permanent employment. There is a growing number of those who work on commission (the so-called freelances) now reaching the level of 53 million people.

These new rules, according to which the US economy works to an increasing extent as well as the EU economy, although not on such a big scale, lead to fundamental changes in the rules of international trade. Aiming to reduce the risks that are an inherent feature of the ‘on demand’ economy, and which result from the growing number of actors operating on the world market, having at the same time the increasing competitive capacity, inspires, therefore, to seek solutions which better safeguard both their own interests and of partners having a similar approach in this respect. As a result, as already indicated, old rules which hamper movement are more boldly abandoned, and new ones are created. Developed countries, therefore, consistently pursue their interests and do not have, as can be believed, illusions about the effectiveness of the existing liberalisation solutions of a multilateral nature. Hence the peculiar flood of free trade agreements which reinforce the trend of ‘exclusive’ and selective treatment in international trade. Thus, it is not any pronounced novelty in this exchange, but the concept of the ‘on demand’ or ‘à la carte’ economy is more relevant to today’s economic conditions on the global scale.

⁷ See The rise of the on-demand economy poses difficult questions for workers, companies and politicians. *The Economist* 3 January 2015.

undertaking among the other TFAs in the Pacific area¹⁰. Besides eliminating almost all of the tariff measures, the agreement is to regulate issues related to intellectual property, services, government procurement and should, as strongly emphasised by M. Froman, US Trade Representative, ensure, first of all, 'high standards of employment, equal conditions of competition for public and private enterprises and unhampered Internet access for the sake of unhindered development of information technology entrepreneurship'¹¹. This kind of a position of a high representative of the American administration is in no way dictated only by the care to ensure appropriate conditions for dynamic growth of economic exchange, especially in the areas most advanced in terms of technique and technology¹². The arguments used by him also indicate a political dimension, whose primary purpose is to counteract the growing role and place of China in world trade. This kind of attitude of the USA to China is confirmed in many other aspects of international relations. India also remains outside the TPP, which believes that its economy has not yet reached such a level of technical-technological maturity and organisational efficiency which would enable it to face competition from more developed members of the above agreement and therefore is still trying to protect its own economy by means of traditional protectionist measures, especially tariffs. It remains a great unknown how Vietnam and Malaysia will find themselves within the TPP, as they build the competitiveness of their exports primarily on the use of cheap labour. However, the example of Mexico shows that its membership in NAFTA creates conditions for the inflow of foreign capital, mostly American, to this country and its result are very modern, export-oriented industries. Anyway, so far the US has signed six FTAs with TPP members, so they probably have positive experience from the functioning of these agreements. A question also arises about Japan's attitude to the TPP, especially in the context of its very strong protection of the interests of its farmers, mostly rice producers. However, given the marginal role of the agricultural sector in the creation of Japanese GDP, this undoubtedly political aspect of agricultural protectionism, might be significantly relativised in the light of the emerging within the TPP chances to boost the entire economy of the country, struggling with a deep recession for years.

¹⁰ The Pacific, *op. cit.*, p. 8.

¹¹ *Ibidem.*

¹² In the opinion from P. Petri from Petersen Institute, the TPP can increase the income of parties by 295 billion USD per year, of which 78 billion would accrue to the USA. Trade Policy. Taking aim at imports. Protectionists in Congress could scupper crucial free-trade deal. *The Economist* 22 February 2014.

In total, first of all, the benefits of the TPP establishment should be no doubt seen in the context of a relatively small degree of homogeneity of this agreement, however its dynamic aspects should be first and foremost borne in mind. Secondly, there are indications that the TPP is an attempt not only to petrify the dominant role of the USA, but also to seriously strengthen it in the Pacific area and beyond. Thirdly, in the opinion of many both American and Asian experts, the TPP is an instrument for the creation of 'accomplished' facts in the form of a set of such rules which can effectively block leeway in this area for other countries in the region¹³.

The Regional Comprehensive Economic Partnership (RCEP) differs significantly from the TPP in a number of aspects. Undoubtedly, it primarily concerns the fact that the former agreement not only has more members, but among them there is China, while the United States are not there. This has serious implications for the prospects of trade liberalisation within the RCEP. Acting under the auspices of ASEAN, in which the abolition of protectionist restrictions refers mainly to tariffs and runs at a slow pace, the RCEP appears to be a fairly loose agreement in terms of creating new rules of conduct. It reflects the philosophy of ASEAN which is based on a formula of consensus of all parties. Apparently, it results also from the fact that China is not formally a member of ASEAN and cooperates with it, just like Japan and South Korea, in the formula 'Plus 3'.

It seems that China treats the RCEP as a convenient platform for the realisation of its both economic and political plans. Playing the role of a regional power it tries to consistently expand its area of influence, but it does not want to expose itself to the accusation of brutal expansion. At the same time it does not give up the moves, the objective of which is the extension of the economic exclusiveness in the region of the China Sea, entering at the same time into a direct conflict with Japan and Vietnam. This China's quest for a certain balance between economic and political interests manifests itself also in the fact that, in the opinion of the high representative of the government of this country, the TPP and the RCEP

¹³ M. Froman, quoted earlier, puts it bluntly: '... the TPP can play a central role in the creation of rules in the region' (*Ibidem*, p. 9). M. Green from Centre for Strategic and International Studies stresses that a failure of the TPP '... could undermine the conviction about the USA as a power in the Pacific region and would mean its abdication from the leadership' (*Ibidem*); also, experts from Singapore's Asian Trade Centre share this opinion, stating that the lack of success of TPP would mean outright disaster and would question the role of the alliance of the USA and Japan in the control in the region (*Ibidem*, p. 10).

could constitute ‘two wheels of the same bicycle’¹⁴. It was received with a positive response from Obama’s administration, which noted with some relief that the government in Beijing does not treat the TPP as ‘anti-Chinese conspiracy’. At the same time the Americans are well aware of the fact that China’s attitude to the rules of the TPP, particularly with regard to state-owned enterprises, as well as to the Internet, effectively blocks the China’s way to the TPP. H. Kissinger notes that where China has not participated as an equal partner in establishing rules of conduct from the beginning, it will be difficult for it to accept the participation in such a project. Reference is also made to behavioural determinants of China’s attitude towards those who in its eyes were in one way or another responsible in the past for its painful humiliation. This pertains mainly to the USA and Japan¹⁵. In total, there are still chances of finding a formula for more close cooperation between the USA and China in the liberalisation of international trade, though existing studies on the subject indicate that in the economic terms basing it on the TPP formula rather than on the RCEP would create better prospects¹⁶.

Finally, the first conclusion that comes to mind when looking at the Free-Trade Area of the Asia-Pacific (FTAAP – 21) is undoubtedly the largest number of members in relation to the previously considered agreements in this region and a significant diversification of their political and economic interests. Acting under the aegis of Asia-Pacific Economic Cooperation (APEC), an organisation that promotes cooperation based on very loose mechanism of integration in the Asia-Pacific region, it brings together countries which sometimes manifest an extremely antagonistic attitude to multiple values. It concerns mainly the USA and Russia. Making a full symmetry between the USA and Russia, which, each in its own way, of course, treat *à la carte* the current world legal order, would be unreasonable¹⁷, because special attention

¹⁴ See the statement of Wang Shouwen, Deputy Minister of Commerce of China (*Ibidem*, p. 9).

¹⁵ Cf. H. Kissinger’s remarks on the attitude of China in his book *World Order* and the statement of Kausikan, Minister of Foreign Affairs of Singapore (*Ibidem*, p. 10).

¹⁶ We are talking here of much greater economic benefits in the context of the TPP than of the RCEP in the amount of approximately 1 trillion USD (*Ibidem*, p. 9).

¹⁷ An interesting commentary on the role of Russia in the modern global economy indicates a very instrumental treatment of the case of the Eurasian Economic Union (EEU) by Moscow. According to experts of the Centre for Eastern Studies: ‘Russia also tends to use the creation of the Eurasian Economic Union to strengthen its narrative about the need to revise the international order and promote a multipolar world while rejecting US dominance. The Eurasian Economic Union is being represented as a bridge between China and the EU, one that is necessary for the

should be devoted to each case. In addition, one would have to also consider the ethical and moral side of the manifestations of such policy and their consequences for the international community, but it is a question worthy of separate treatment.

2.2. The Atlantic region: TTIP

In the opinion of many experts, the TTIP is supposed to be almost model proof of the creation of an economic and political alliance of two economic powers in the area of the Atlantic. Taking into account their share in global trade in goods and services (calculated at approximately 1/3) the TTIP and TPP are supposed to constitute one of the pillars of the construction on which the new edifice of the world economic order is to be created. Noteworthy is quite a militaristic tone of certain opinions, according to which, in light of the new geopolitical situation in Europe, the TTIP appears as an 'economic NATO'¹⁸. According to such a view, TFAs become a weapon in the fight against these players in world economy, who for various reasons stand in the way of achieving political and economic objectives of the so-called hegemonic powers in the world economy. This policy trend is also part of the policy of economic sanctions, which play a role which is often far more effective than measures of a strictly military nature. As a result of policy of favouring stronger ones in international trade, the share of weaker partners decreases, who are in any case permanently marginalised in this exchange. This view of the contemporary world order is far from being proclaimed by some alterglobalists. For example, its author is a representative of Western establishment M. Leonard, a director of the European Council on Foreign Relations, and the place where he has published his thoughts is *the Financial*

establishment of a single economic area spanning Europe and Asia. Such a bridge would be helpful in Russia's efforts to undermine co-operation between the EU and the USA. [Online] Available at: <http://www.osw.waw.pl/pl/publikacje/komentarze-osw/2015-01-20/eurazjatycka-unia-gospodarcza-wiecej-polityki-mniej-gospodarki>; The fact that the idea of EU cooperation with Russia on the TFA plane is present among European politicians can be proved by the statement of German Chancellor Angela Merkel about the worth considering idea of creating a free trade area from 'Lisbon to Vladivostok'. It cannot be ruled out that France would welcome the idea, because it would be a yet another incarnation of the idea promoted in the past by de Gaulle on cooperation in the area lying between the aforementioned cities.

¹⁸ A trade deal with America would be good for everybody, yet it is still may not happen. *The Economist* 13 December 2014.

Times, a very opinion-forming medium in the circles of the global business¹⁹. Also *The Economist*, an equally opinion-forming medium, publishes a similar kind of opinions. American historian E. Luttwak also fits into this trend of views. In his view, modern geoeconomics should be understood in terms of ‘trade grammar and logic of war’²⁰. In this ‘grammar’ TFAs play an important role, while the ‘war’ proceeds in a ‘soft power’ version, without the use of proverbial gunboats.

A clear reluctance of many communities, particularly NGOs, to solutions aimed at creating the new economic order of the world is focused largely on the TTIP. Despite many assurances from the EU Commission that the negotiated regulations will not impair the safety standards of European consumers, if only because – for example – the case of GMOs is outside the sphere of these negotiations, this problem still returns like a boomerang on various forums²¹. Searching for the real reasons for the existence of deep distrust for the TTIP, it seems too simplistic to think that, for example, Germany doubts the reliability of the American party in the context of the scandal connected with the illegal eavesdropping of German politicians by the US NSA²². Apparently, also the argument about the lack of adequate transparency of the negotiations does not seem to be totally convincing, though at the beginning of 2015 the EU Commission published a number of documents relating to the issues negotiated in the framework of the TTIP²³.

¹⁹ Leonard, M. 2015. An uneasy peace that will tear the global economy as asunder. *Financial Times* 24 March 2015.

²⁰ *Ibidem*.

²¹ Cf. Lamy, P. 2015. Transatlantic trade negotiators should own up to their ambition. *Financial Times* 28 October 2014; Kleiber, M. 2015. GMO, czyli Globalna Manipulacja Opinii. [GMOs, or Global Manipulation of Opinion.] *Dziennik Gazeta Prawna* 16 April 2015.

²² De Gucht, K. 2014. Time is running out for US-Europe trade deal. *Financial Times* 26 September 2014; In Germany’s shadow. Germany is coming to terms with a messy world. *The Economist* 28 March 2015.

²³ However, not all the documents have been revealed because of the binding principle of confidentiality of negotiations, especially with regard to the so-called sensitive issues. Information on energy issues also has not been presented, because it has not been settled whether a special place in the TTIP will be devoted this issue. By the way, Poland was the initiator of the inclusion of an energy chapter in the TTIP, primarily due to the energy security of Poland and the EU in the context of Russia’s attitude in this regard. See Ujawnione negocjacje umowy handlowej. [Disclosed trade agreement negotiations.] *Gazeta Wyborcza* 8 January 2015; Clapham, T. 2015. Tajna umowa przeciw demokracji. [The secret agreement against democracy.] *Dziennik Gazeta Prawna* [Online] 6–8 March 2015. Available at: <http://biznes.interia.pl/wiadomosci/>

The real reason seems, therefore, the fear that the interests of the European side of the TTIP will not be adequately protected in the light of its weak competitive position when compared to the US side. The EU Commission's numerous actions against a dominant position of large US computer giants in the European market, especially Google, deftly using the methods of the so-called tax optimisation, are perhaps convincing evidence to support the contention about the fact that Europeans are looking for ways to effectively protect their interests²⁴. This fits logically in the earlier cited view that the TTIP is a 'conspiracy' of large international corporations, mostly American, having an undisputed competitive advantage, especially in the fields of high-tech, over European rivals. The EU Commission's operations of this kind are not an effective panacea for the problems of European companies. They can even be qualified as quasi-protectionist actions, which, paradoxically, can only deepen the problems of these companies. The history of protectionism brings a number of clear evidence of the lack of effectiveness of protective measures in creating a strong position in the domestic and international market.

Another area of controversy around the TTIP is the issue of the possible inclusion of the mechanism of settling disputes between the investor and the State (Investor-State Dispute Settlement – ISDS) to the provisions of this agreement. A negative attitude to this solution is manifested primarily by Germany, namely the centre-left-wing political forces, which have been succoured, paradoxically, by the French far-right circles. In contrast, 14 EU countries addressed a letter to the EU Commission in which they express their support for this project on the grounds that it has already been approved in the negotiating mandate. The Polish government has also declared its support in this area²⁵. In the EU Commission itself an inconsistent position on the ISDS can be observed. Its Chairman, J.C. Juncker, and his influential head of the Cabinet, incidentally German, M. Selmayr, indicate the lack of support, as opposed to C. Malmström, Commissioner for Trade in the EU Commission. It is speculated that because of the liberal view of C. Malmström, who comes from Sweden, J.C. Juncker

news/mg-polska-nie-boi-sie-wolnego-handlu,2060989,4199#iwa_item=4&iwa_img=0&iwa_hash=36860&iwa_block=business_news?utm_source=paste&utm_medium=paste&utm_campaign=other

²⁴ Cf. Can America and Europe ever get over their differences on data protection? *The Economist* 4 April 2015; Bielecki, T., Majdan, K. 2015. Google na brukselskim celowniku. [Google at Brussels's gunpoint.] *Gazeta Wyborcza* 16 April 2015.

²⁵ See comments on this topic of Director of Trade Policy Department of the Ministry of Economy. Available at: <http://biznes.interia.pl/wiadomosci/news/mg-polska-nie-boi-sie-wolnego-handlu...>, *op. cit.*

deprived her of the exclusive competence in this area, and the matter will be the subject of an internal arbitration, in which a fundamental role is to be played by Dutchman F. Timmermans, the first Vice-President of the EU Commission²⁶.

From the above we can draw a conclusion that the ISDS case has a serious specific and political gravity. It is argued that the ISDS mechanism enabling foreign investors, mainly American corporations, to question and appeal government decisions to international arbitration institutions, and consequently to exclude the jurisdiction of national courts, undermines national sovereignty. And it applies especially to areas where European standards are higher than those of the USA: in terms of food, health and the environment. By the way, the Polish government also has negative experiences with ISDS in the case of a very high financial compensation for Eureko in the context of the privatisation of PZU. As can be seen in the light of the Polish position on ISDS in the TTIP, it does not matter for us²⁷.

However, the case of ISDS is not so simple. The existing opinion that the ISDS mechanism well protects the interests of investors and thereby stimulates the inflow of foreign direct investment is not confirmed, e.g. by the policy of the Brazilian government which is opposed to the inclusion of ISDS in its foreign trade agreements and this position does not have a negative impact on the volume of FDI²⁸. The ISDS mechanism, having already long history (it is claimed that it first appeared in 1959 in a bilateral trade agreement between Germany and Pakistan) has quickly gained popularity. So far, EU countries have signed investment agreements containing ISDS in 1400 cases, and the USA in 50. There are 9 arrangements containing ISDS between the EU and the USA. The number of disputes based on it is interesting for the assessment of this mechanism. In 2012, which was record-breaking in this regard, there were 59 cases, while in 2013 – 56²⁹. By the way, since the signing of the investment agreement between Poland and the USA in 1994, the ISDS mechanism has been used six times³⁰.

²⁶ Oliver, C., Spiegel, P. 2014. UE states tell Juncker not to dilute trade deal with US. *Financial Times* 23 October 2014.

²⁷ <http://www.bankier.pl/wiadomosc/Ugoda-PZU-z-Eureko-Polska-rozdaje-pieniadze-2023636.html>

²⁸ Cf. Investor-state dispute settlement. The arbitration game. *The Economist* 11 October 2014.

²⁹ *Ibidem*; cf. also *Investor-State Dispute Settlement (ISDS) provisions in the EU's international investment agreements*. Directorate-General for External Policies, Policy Department, volume 2-studies, EXPO/B/INTA/2014/08-09-10, September 2014.

³⁰ However, this does not raise any objection of the representative of the Ministry of Economy of the Republic of Poland; in his opinion ‘...the assessment of the effects of this mechanism is not bad, because it has not been used excessively.’ (underlined by JW).

In spite of the fact that the EU included ISDS to the TFA with Canada³¹, which is to be a model example for other FTAs, especially with regard to partners from Asia, in particular China and the USA has similar intentions with regard to Asian partners, ISDS still raises many objections. NGOs are especially active in this respect. According to them, ISDS is a weapon in the hands of multinational corporations which ruthlessly take advantage of their dominant position in the market and political potential to realise their particular interests, to the detriment of the public good. Therefore, in order to eliminate the disputed results of the existing solutions in the framework of ISDS, a model which has been developed by the WTO could be used. It could be incorporated into future FTAs or be the subject of their renegotiation. In the light of the solutions proposed by the WTO governments would retain essential control over the ISDS mechanism, including the selection of arbitrators. Companies would have to convince the authorities of their state that their previously agreed trade principles were violated and only the state could file complaints. The proceedings would be transparent and subject to appeal. This would ensure adequate protection of investors' interests, prevent arbitrary verdicts of arbitration institutions and would restore to states their competences in the conduct of policy in line with their goals³².

The TTIP collects negative reviews also in these areas which were supposed to be its strongest side. In the opinion of many experts the TTIP will not bring extraordinary results in the fields of employment, trade and GDP, in the opinion of the authors of the report which was prepared in the American Tufts University, it may even result in losses³³. This is in a way understandable. Reports existing on this topic significantly differ in the methodology of research used in them. As a result, the picture of the expected benefits and losses is very diverse³⁴. Therefore, the above results of research and conclusions formulated on their basis should be treated

It is difficult to figure out from this statement whether it concerns the frequency of resorting to ISDS, or its consequences, cf.: <http://biznes.interia.pl/wiadomosci/news/mg-polskanie-boi-sie-wolnego-handlu...>, *op. cit.*

³¹ *Negotiations on the EU-Canada Comprehensive Economic and Trade Agreement (CETA) concluded*. Directorate-General for External Policies, Policy Department, DG EXPO/B/PolDep/Note/ 2014_106, October 2014.

³² Cf. A better way to arbitrate. Protections for foreign investors are not the horror critics claim, but they could be improved. *The Economist* 11 October 2014.

³³ Cf. TTIP: *European disintegration, unemployment and instability*. GDAE Working Paper no. 14-03, 2014

³⁴ Wieczorek, J. *Transatlantyckie partnerstwo... [The transatlantic partnership...]*, *op. cit.*

with great moderation. It is worth noting that the TTIP contains a very substantively complex liberalisation element in the form of the harmonisation of regulations in many areas. It is, therefore, difficult to predict what the results will be, but here a very important factor has to be taken into account which will influence the size and direction of trade flows. It concerns the already well known diversion effect of J. Viner which probably, as has been previously stated in the case of the EU, will lead to the concentration of the benefits from the liberalisation of trade within the TPP or TTIP countries.

There is, however, a methodological difference with respect to research by J. Viner and present ones. In the former ones results of tariff liberalisation were taken into account, but today attention is primarily drawn to issues relating to wider non-tariff liberalisation. Both these trends of research clearly show, however, that in general the countries belonging to free trade zones will gain more as a result of turnover increase than third countries³⁵. The final shape of benefits and losses of all parties will be undoubtedly determined by the balance of the results of diversion and creation effects and the multiplier mechanisms (spill-over). There is no doubt, however, that the growing importance of TFAs leads to the decomposition and fragmentation of the global exchange. Out of the universal economic world order, even personified by the WTO, its hybrid form is born. Although the thesis of equality of the parties within the framework of the “old” economic order was, as already emphasised, largely formal, the current changes in this respect are no longer so carefully concealed behind the screen of political correctness, propagating slogans of universal rights for all.

2.3. The region of the Atlantic and Pacific: TiSA

An agreement, which fits perfectly into the philosophy of the new global economic order is the currently being negotiated Trade in Services Agreement (TiSA), which aims to liberalise trade in services. It duplicates the earlier analyzed approach, which emphasises the similar (like-minded) point of view of a group of countries on matters concerning the regulation of the global exchange. Thus, a coalition of the willing is coming into being, which shares a conviction that it is possible to better realise one’s interests in the

³⁵ Cf. Game of zones. Regional trade deals aren’t as good as global ones but they are still beneficial. *The Economist* 21 March 2015.

framework of agreements functioning outside universal solutions³⁶. However, in order to be a member of this exclusive club, the desire to participate in it is not enough, what is needed first of all is a kind of a registration fee in the form of a significant share in the given category of international trade³⁷.

23 parties participate in the TiSA negotiations, which formally began in March 2013³⁸. So far, the BRICS countries have remained outside these negotiations, although China has indicated the willingness to participate in the talks. The promoters of TiSA propagate the view that the agreement grows on the basis of the WTO GATS (the TiSA parties are members of the World Trade Organisation) and takes over its most important achievements (scope, definitions, market access, national treatment and exemptions). This does not change the fact that no attempt is made to modify the GATS, but a separate structure of a regulatory nature is being created. Of course, it is possible to understand to some extent the arguments pointing to a deep institutional crisis within the framework of the WTO, which effectively immobilised the process of liberalisation of world trade (see the impasse in the WTO Doha Round negotiations), but as the creators of TiSA understand it, it is better to abandon the old, rigid corset of regulations and to 'sew' a 'suit' which is made to size and better suits their needs. In other words, there are numerous indications that TiSA has a chance to become a new regulator of world trade in services.

Although the EU is the biggest global exporter of services, its bargaining position seems to be inadequate for the above fact³⁹. It is possible that it was influenced by the perturbations connected with the elaboration and

³⁶ Cf., for example, Trade and protectionism. No more grand bargains. The World Trade Organisation's whole approach to negotiating free trade needs radical change, *op. cit.*

³⁷ The countries-negotiators of TiSA have 70% share in world trade in services. Available at: <http://ec.europa.eu/trade/policy/in-focus/tisa/>

³⁸ They are: Australia, Canada, Chile, Taiwan, Colombia, Costa Rica, the European Union, Hong Kong, Iceland, Israel, Japan, South Korea., Liechtenstein, Mexico, N. Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Switzerland, Turkey and the USA, *Ibidem.*

³⁹ The services sector in the EU produces almost 80% of global GDP and dominates in the employment sector. For example, 89% of the activities of EU small and medium-sized enterprises belong to the service sector. See *Ocena skutków regulacji. Wdrożenia Dyrektywy 2006/123/WE o usługach na rynku wewnętrznym. [Regulatory Impact Assessment. Implementation of the Directive 2006/123/EC on services in the internal market.]* The Ministry of Economy, the Department of Economic Regulation, Warszawa, January 2008.

implementation of the Services Directive, known as the Bolkestein Directive⁴⁰. As a result, the EU is one of three, alongside Australia and the US, chairmen alternately presiding the negotiations in Geneva. The EU Commission is negotiating on behalf of the EU, and is obliged to report the progress to the EU Council and the EU Parliament. Generally, however, the transparency of the negotiation process is very limited. Although, as in the case of the TTIP, the Commission organises meetings with entrepreneurs and representatives of civil society, in the majority of cases the negotiations are strictly secret. Here, too, as is the case of the TTIP, mainly the EU Commission invokes the principle of confidentiality of the negotiations. This does not change the repeated allegation, on the part of NGOs in particular, about the conspiracy policy of furnishing the world without the knowledge and approval of civil society, however in the interest of large and selfish enterprises.

The case of TiSA obviously has a developmental character and it is, therefore, difficult to predict what the final shape of the agreement will be like. However, it is once again worthwhile to emphasise the thesis which seems to be very sensitive and crucial for a political assessment of this project. The EU Commission in its publications tries by all means to convince that TiSA is not a breach in the approach to the global idea of liberalisation of services in the framework of the WTO, but it is a useful way to facilitate overcoming of the deep deadlock in the activities of the World Trade Organisation⁴¹. Poland, in the name of which the EU Commission negotiates, does not report publicly any objections to this project. Although the Ministry of Economy of the Republic of Poland notes that the idea of TiSA was proposed by the USA as a reaction to the situation in the WTO Doha Round negotiations and this position fits into the concept of plurilateral solutions (i.e. in fact not multilateral in the framework of the WTO), this issue does not appear to specifically absorb the attention of our government administration⁴².

⁴⁰ F. Bolkestein, the Commissioner for internal market at that time, initially proposed the principle of the 'country of origin' in respect to the treatment of services provision in the EU, which was protested by the more developed EU countries, fearing competition from cheaper, in their opinion, service providers from the new EU members (the 'Polish plumber' syndrome). Finally, the Services Directive of 2006 adopted the principle of 'freedom to provide services'.

⁴¹ Cf., for example, http://ec.europa.eu/trade/policy/in-focus/tisa/index_pl.htm

⁴² <http://www.mg.gov.pl/Wspolpraca+miedzynarodowa/Miedzynarodowe+organizacje+gospodarcze/WTO/Porozumienie+w+sprawie+handlu+uslugami+TiSA>

3. 'FAST LEGISLATIVE PATH' IN THE USA

The idea of equipping current president Barack Obama with appropriate competences by the US Congress, primarily in the context of the end of his term in 2016, aims at the realisation of ambitious plans of quick concretion of TSAs currently negotiated by the USA. It concerns Trade Promotion Authority – (TPA), which allows the president to significantly shorten the legislative path. In the light of the TPA, the role of the Congress would be limited to the acceptance or rejection of a negotiated agreement, but without the possibility of introducing any amendments. The US Congress had already granted the president such authority in 2002 but it expired in 2007. The current situation in the Congress seems to favour this intention. In its both chambers the Republicans, who are traditionally in favour of trade liberalisation, are in the majority. They represent the middle class of American society which sees a significant lever of growth of their income in the development of unfettered trade. Of course, in their view, the terms of this trade should primarily reflect the interests of large US corporations, which have a comparative advantage on the global scale⁴³. At the same time, in the opinion of American politicians, not only employers will benefit. It is not incidental that the already mentioned US Trade Representative M. Froman at almost every step ensures that the currently negotiated TFAs, especially the TPP, sufficiently safeguard the interests of American workers and there will be no question of any export of American jobs abroad. This last argument is directed mostly to the Democrats who, for example, in the context of NAFTA criticised the policy of 'exporting American jobs in the form of FDI' to Mexico. It is worth mentioning that President Obama, Democrat representative, was fully aware of these allegations and even in 2008 he promised to renegotiate NAFTA. Now, wanting to win the democratic congressmen for TPA, the representatives of the US administration use this argument again⁴⁴. By the way, President Obama, who for obvious formal reasons cannot run for a third term, simply does not care about particular lobbying for support of his activities among the electorate backing up his democratic party. The granting of the TPA to President may be determined by many other factors,

⁴³ Cf., for example, Summers, L. 2015. Any trade deal must work for America's middle class. *Financial Times* 9 March 2015.

⁴⁴ See Obama to push for 'fast track' trade powers. *Financial Times* 19 January 2015; Donnan, S. 2015. US trade chief moves within reach of big Trans-Pacific prize. *Financial Times* 3 February 2015.

not necessarily pertaining to purely economic matters. However, the TPA may be a subject of a political game of presidential candidates, although H. Clinton, representing the Democrats, so far has not made any declaration in this respect. Probably it is still too early for such pronouncements and also the question arises if it is worthwhile today to engage her authority in the issue which is still not certain.

4. 'CHINESE BRETTON WOODS'

Observers of the dynamic growth of the role and importance of the Chinese economy in the global economy point that we can see a clear synergy of this phenomenon – on the basis of a feedback – with the political ambitions of this country⁴⁵. The fact of the establishment of the Shanghai New Development Bank under the aegis of China, which, among others, is to represent the interests of new comers in the international economy, primarily in the form of the BRICS courtiers, is perceived by some people as an alternative to the World Bank and an attempt to create a new global economic order in the form of a Chinese variety of Bretton Woods⁴⁶. China's next step in the realisation of this strategy will be the establishment of another bank, namely the Asian Infrastructure Investment Bank (AIIB). Its initial capital, which is expected to reach 50 billion USD, with the possibility of increasing it quickly to 100 billion, is intended for the implementation of investment of a global nature⁴⁷. Many countries see long-term benefits of the creation of the AIIB, the evidenced of which is, for instance, the participation of more than 50 countries, including Poland⁴⁸.

⁴⁵ As an example, China's share in global industrial production in 1990 amounted to less than 3% and now it reaches almost 25% (among others, the production of air conditioners amounts to 80% of the world production, 70% in mobile phones). See *Made in China?. Asia's dominance in manufacturing will endure. That will make development harder for others.* *The Economist* 14 March 2015; Niedziński, B. 2015. Chińczycy podbijają Amerykę. [The Chinese conquer America.] *Dziennik Gazeta Prawna* 14 January 2015.

⁴⁶ See *What China wants.* *The Economist* 23 August 2014.

⁴⁷ For example the realisation of the 'Silk Road' project of a rail link between China and Europe in order to reduce the cost and time of transportation of Chinese products destined for consumers in countries lying on the route of this connection. Cf. Wolf, M. 2015. It is folly to rebuff China's bank. *Financial Times* 25 March 2015.

⁴⁸ Mitchell, T. 2015. China's shift to 'soft power' brings backers to investment bank. *Financial Times* 7 April 2015.

The USA openly contests the creation of this bank. Many experts see in this approach of the United States the undisguised desire to stop the growing role of China in the international arena, both at the political and especially economic plane. Another proof of this is the matter of the adjustment within the IMF of quotas and the related voting powers of new comers in this organisation, especially of China, whose participation is inadequate to its economic potential. Formally an obstacle in this regard is the matter of ratification of changes in the IMF by the US Congress, which has all the symptoms of postponing it *ad calendas graecas*. It is not an accident, therefore, as has already been mentioned earlier, that China is not present at the negotiating table in TFAs negotiated by the United States. Americans want to continue to be a major player which establishes the rules of the game in world trade. It should be strongly emphasised once again that in the opinion of experts on China, this country will never accept such an approach⁴⁹.

5. NEW SHAPE OF ECONOMIC ORDER – SOLIDARITY VERSUS EGOISM

The changes in the existing economic order leave no doubt that there is no question of any revolution. Scientific and technological progress fundamentally transforms the conditions of operation of economic entities in the global economy. As a result, as a feedback, they try to actively create or adapt to new rules of action in order to secure optimal conditions for existence and for achieving their goals. These obvious reasons now have specific geopolitical context. Also those who so far have been treated as ‘peripheral’ actors are trying to get an opportunity to speak. As a result, various tensions and conflicts inevitably appear in this test of strength. A new political-economic order is being born which will be a reflection of the new balance of power on the global scale.

In the area of the establishment of new rules of the broadly understood international exchange there is no doubt today that the existing system based on multilateral principles is a thing of the past. The so-called plurilateralism, which is reflected in the kind of clubs of the ‘like-minded’ or ‘like-wanting or wishing’, in the form of TFAs, atomise and burst the order based on the principals of the GATT / WTO. The protagonists of the TTIP or TiSA which

⁴⁹ Cf. the statements of Singapore Foreign Minister Kausikan and Henry Kissinger in *The pacific age...*, *op. cit.*

are aware of it try to create an ideology based on the fact that if the WTO ceased to function it is necessary to find a way to give the organisation a 'new spirit'. It concerns such a set of rules which at the beginning will pertain to few, but over time it will become a new backbone of the WTO and will be a universal 'liturgy'. Therefore, this new procedure can be described as the 'order *à la carte*', or 'on demand' because it is highly selective and concerns these issues which suit those who are trying to continue dealing cards in the creation of rules in the modern global economy.

It is not an incident that intergovernmental agreements which push the idea of solidarity among all members more and more on the periphery of its activities become increasingly important in the European Union. Efforts to build separate structures within the euro area (e.g. the budget) petrify this phenomenon and inevitably deform the universal system of values and institutional solutions of the Union. Although, in the opinion of the protagonists of such a concept, it is almost a necessity in light of the challenges arising from the logic of the integration process within the EU and the geopolitical and economic situation in the global context, it does not alter the fact that as a result also in the EU a clear process of distinction between 'the equal' and 'the more equal' can be noticed. This means periferisation and marginalisation of those members who are unable, mainly for economic reasons, to become members of the exclusive club, constituting the 'hard core' of the Union. In a situation where the margin of freedom for outsiders is getting smaller or even ceases to exist, and the result of this can be either vegetation or the acceptance of accomplished facts, according the pragmatic/cynical principle of 'take it or leave it', we should take into account the long-term process of dismantling of the integration structure within the EU. Moreover, stronger and stronger centrifugal movements in the form of the growing strength of anti-union political parties or the threat of the UK's secession prove that the threat of the Union's destruction, paradoxically, mainly in its 'old' part, is building up. At the same time, it is accompanied by the process of shifting of the global economic activity to the Pacific region, which will strengthen the phenomena of specific decadence of European countries.

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INTERNATIONAL TRADE À LA CARTE

Summary

The new economic order emerging before our very eyes, resulting from the departure from the multilateral principles in favour of selective solutions is a consequence of the implementation of philosophy based on the domination of particular elements over the common ones. Therefore, such solutions are selected which could be called *à la carte*, because their choice from the universal menu suits own interests of those who still have the most to say in determining global rules. It concerns TFAs which join countries which sometimes have quite divergent approaches to socio-economic philosophy and practical solutions in the field of economic policy. What binds them firmly, however, is the belief that they should abandon the burden of commitments within the WTO and follow a new path demarcated by the TPP, TTIP or TiSA. The fact that it is really determined by the one who currently has the greatest bargaining power is of course another issue that can also be considered in terms of the balance of benefits and costs of accepting such a situation by weaker partners. As a result, we are dealing with the atomisation of the world exchange in both subjective and directional terms. This last issue in particular, in the context of the increasing role of the Pacific region in the global economy, is a good starting point for further considerations.

HANDEL MIĘDZYNARODOWY Á LA CARTE

Streszczenie

Rodzący się na naszych oczach nowy ład ekonomiczny, będący efektem odchodzenia od zasad o charakterze multilateralnym na rzecz rozwiązań wybiórczych, jest konsekwencją realizacji filozofii opartej na dominacji pierwiastków partykularnych nad powszechnymi. Wybiera się zatem rozwiązania, które można by określić *à la carte*, bo ich wybór z uniwersalnego *menu* najbardziej odpowiada własnym interesom tych, którzy mają nadal najwięcej do powiedzenia w określaniu reguł o charakterze globalnym. Chodzi tu o TFAs, które łączą kraje mające niekiedy dość rozbieżne podejście do filozofii społeczno-ekonomicznej i praktycznych rozwiązań w zakresie polityki ekonomicznej. To, co je jednak mocno spaja, to przekonanie, że powinny porzucić dotychczasowy багаż zobowiązań w ramach WTO i iść nową drogą, wytyczoną w TPP, TTIP czy TiSA. To, że określa go w istocie ten, kto aktualnie dysponuje największą siłą przetargową, jest oczywiście kolejną kwestią, którą również można by rozpatrywać w kategoriach bilansu korzyści i kosztów akceptacji takiej sytuacji przez partnerów słabszych. W rezultacie, mamy do czynienia z atomizacją wymiany światowej w kategoriach zarówno podmiotowych, jak i kierunkowych. Ta ostatnia zwłaszcza kwestia, w kontekście rosnącej roli rejonu Pacyfiku w gospodarce światowej, jest dobrym punktem wyjścia do kolejnych rozważań.

МЕЖДУНАРОДНАЯ ТОРГОВЛЯ Á LA CARTE

Резюме

Зарождающийся на наших глазах новый экономический порядок, будучи результатом отступления от принципов многостороннего характера в пользу избирательных решений, является следствием реализации философского учения, основанного на доминировании конкретных элементов над общими. Выбор в результате останавливается на решениях, которые можно было бы определить, как *à la carte* (ставить всё на карту), так как их выбор из универсального *menu* (меню) более всего отвечает собственным интересам тех, кому по-прежнему принадлежит право первого голоса в определении правил глобального характера. Речь идёт о TFAS (Фонды Американских Исследо-

ваний), объединяющих государства, для которых когда-то были характерны расхождения в подходах к общественно-экономической философии и практическим решениям в сфере экономической политики. Однако их достаточно прочно сплачивает убеждение в том, что необходимо отказаться от прежнего багажа обязательств в рамках ВТО и идти по новому пути, обозначенному в TPP (Транстихоокеанское партнёрство), TTIP (Трансатлантическое торговое и инвестиционное партнёрство), либо TiSA (соглашение о торговле услугами). То, что по существу его определяет тот, кто обладает самой большой рыночной властью, разумеется, является очередной проблемой, которую также можно рассматривать в категориях баланса пользы и затрат, связанных с принятием данной ситуации более слабыми партнёрами. В результате мы имеем дело с атомизацией мирового обмена в категориях как субъекта, так и вектора. В особенности этот последний вопрос, в условиях возрастающей роли Тихоокеанского региона в мировой экономике, является хорошей точкой отсчёта для очередных решений.