

Chlorine-rinsed Chickens and Lost Autonomy

The Ethics of TTIP from a Rawlsian Perspective – from Charlotte Sophia Binder

Abstract:

Rarely has an international agreement been as controversial as the currently negotiated Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States of America. Some say, it will lead to increasing economic growth and employment. Others say, it will impair national sovereignty and undermine consumer rights and environmental protection. This paper analyses TTIP's moral acceptability by means of John Rawls's Theory of Justice. The focus lies on two specific measures currently debated: the permission of US chlorine-rinsed chicken imports to European Countries and the instalment of an investor-state dispute settlement system.

Zusammenfassung:

Kaum ein internationales Abkommen wird so kontrovers diskutiert wie das transatlantische Freihandelsabkommen TTIP zwischen der Europäischen Union und den USA. Auf der einen Seite erhofft man sich wirtschaftliches Wachstum und besseren internationalen Austausch, während auf der anderen Seite befürchtet wird, dass nationale Souveränität eingeschränkt und Konsumenten- wie Umweltrechte zu kurz kommen. Dieser Text widmet sich einer moralischen Analyse von TTIP und nutzt dabei die Gerechtigkeitstheorie eines John Rawls als ethischen Maßstab. Die moralische Analyse untersucht vor allem zwei besonders öffentlich diskutierte Gegenstände des Vertrags, zum einen die sog. „Chlorhühnchen“ und zum anderen die Debatte um die Investor-Staat-Streitbeilegung.

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Content

I.	Introduction	50
II.	The Transatlantic Trade and Investment Partnership	52
1.	The Benefits of Free Trade in Theory	52
2.	The Common Protectionist Measures and Their Effects	53
3.	The Features of the TTIP	54
4.	Expected Consequences of the TTIP	55
a.	<i>Participating Countries</i>	55
b.	<i>Third Countries and the Global Economy</i>	58
III.	Rawls's Theory of Justice	59
1.	Origin, Objectives and Features of Rawls' Theory	60
2.	The Universalization Principle	61
3.	The Difference Principle	62
IV.	Application of Rawls on TTIP	63
1.	Analysis of the Effects on Justice and Inequality	63
a.	<i>The Chlorine-rinsed Chicken</i>	64
b.	<i>Investor-state Dispute Settlement</i>	67
2.	Critical Evaluation of the Application of Rawls' Theory	69
3.	Ways of Making TTIP Morally Acceptable	70
V.	Conclusion	72

I. Introduction

The Transatlantic Trade and Investment Partnership, TTIP for short, currently negotiated between the European Union and the United States of America is subject of fierce discussion among proponents and opponents. Proponents argue that TTIP will lead to an increase in economic growth and employment while at the same time paving the way for a more elaborate multinational trade agreement (Cf. Bundesverband der Deutschen Industrie e.V., 2014). Opponents counter that will impair national sovereignty and undermine consumer rights and environmental protection (Cf. Neuscheler, 2015). Rarely has an international agreement been as controversial as the currently negotiated Transatlantic Trade and Investment Partnership between the European Union and the United States of America. Presently, the European Commission is assessing possible contractual terms and conditions on behalf of EU governments (Cf. European Commission, 2015). It is undisputable that increasing trade volumes between single nations have been the main enablers of economic growth on a global level in the last century. Hence, it does not surprise that especially representatives of

manufacturing industries have declared themselves in favour of TTIP, since it would facilitate export and import of goods and services (Cf. Bundesverband der Deutschen Industrie e.V., 2014). Nevertheless, the intended agreement has been criticised on many different levels, both concerning its contents and estimated impact, but also the procedural aspects of the negotiations.[1] The average citizen is concerned that TTIP will lower production and safety standards in the EU (Cf. Feyder, 2014). What has not been granted much public attention is the question, whether a trade liberalization program of the given magnitude would be preferable from a moral perspective. One would have to evaluate the effects of such an undertaking on inequality and justice. Would TTIP increase social and economic inequality? And, if so, can this increase by any means be justified? Would TTIP allow the participating countries to increase profits at the expense of developing, non-participating countries?

In order to provide an adequate evaluation of these questions, this paper intends to analyse TTIP's moral acceptability by means of John Rawls's (1921-2002) "A Theory of Justice"[2] It represents one of the most influential liberal theories of justice of the last century and offers criteria for an ethical evaluation of distributional inequalities.

In the first chapter, TTIP will be introduced. In order to better understand the intentions behind the agreement, the benefits of free trade in theory will be explained. Furthermore, this chapter will describe the two most common protectionist measures, namely tariffs and non-tariff barriers to trade. Thereafter, the features and expected consequences of the transatlantic agreement currently negotiated will be evaluated by means of two most prominent studies conducted on the subject. In a second part, the paper will introduce Rawls's Theory of Justice, its origins, features and objectives. Due to the complexity of the Rawlsian theory, some simplifications are needed in order to be able to apply the theory on the specific TTIP-scenario: Firstly, the theory is utilized as a metaphor for the universalization principle and secondly, Rawls's difference principle is used as a benchmark for the justification of ethically acceptable inequalities. As TTIP as a whole is an extremely complex matter and moreover, no concrete terms have yet been concluded, this paper will focus on two specific measures currently subject to negotiations: the permission of US chlorine-rinsed chicken imports to European Countries and the instalment of an investor-state dispute settlement system.[3] To assess the acceptability of these measures with regard to the effects on justice and inequality, Rawls's Theory of Justice will be applied in chapter 4. This chapter will also critically evaluate the applicability of the Rawlsian theory and, as a last step, present possible ways to make TTIP more morally

[1] Criticism has been elaborate on the fact that the negotiations are held in private.

[2] Rawls, 1971.

[3] Further explanation of these measures can be found in chapters 4.1.1 and 4.1.2, pp. 25–28.

acceptable. This paper will not deal with the political and legal consequences of the TTIP or its strategic relevance of counterbalancing shifting political power. The analysis considers only economic and social welfare effects.

II. The Transatlantic Trade and Investment Partnership

Free trade occurs whenever countries establish relations such that trade in goods and services can be conducted freely across borders, without tariffs or other forms of restrictions. Within the last century, decreasing natural trade barriers like lower transportation and communication costs and simultaneous trade liberalization have accelerated globalization (Cf. Burtless, 1995, p. 800). Nations have opened up their borders and intensified cooperation to increase trade volumes between each other. In the course of this development financial and capital markets have been liberalized as well (Cf. Dietrich et al., 2014, p. 33). It has been shown empirically that countries, which have engaged strongly in trade, have experienced higher growth, more innovation and an increase in wealth compared to economically isolated countries.[4] The most recently debated bilateral trade agreement is the Transatlantic Trade and Investment Partnership negotiated by the EU and the US.


In the following the basic economics of free trade will be presented, as well as information on and economic evaluation of the specific TTIP agreement.

1. The Benefits of Free Trade in Theory

From Adam Smith to David Ricardo and Paul Krugman, many great economists have focused on the effects of free trade. Central to all of the theories is the question: In what way does international trade affect aggregate welfare and how can it contribute to economic growth?

The benefits of free trade were first understood by the classical economist Adam Smith: “If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage.” (Smith, 1776. Chapter: IV.2.12).

[4] Cf. Wacziarg and Welch, 2008, p. 187: From 1950–98, countries that liberalized their trade regimes experienced average annual growth rates that were about 1.5 percentage points higher than those before liberalization.



While Smith argues that countries benefit from trade due to having absolute ad-vantages, his idea was later adopted and extended by David Ricardo, who developed the Theory of Comparative Advantage (Ricardo, 1817). Ricardo states, that a country can gain from trade if it specializes in the production of good A, if the opportunity cost of producing that good in terms of good B is lower than in the other country.[5]

The theory of free trade was further developed by economists, such as Eli F. Heckscher, Bertil Ohlin,[6] or Paul Krugman (Cf. Krugman, 1979, pp. 469-479).

Throughout history, economists have found that trade between countries, either developed or developing, increases aggregate welfare through more product variety, lower costs of production and raises living standards. Acknowledging these theoretical findings and evaluating global trading patterns, the following question arises: Why do most governments still protect their domestic industries and introduce artificial trade barriers, such as tariffs and quotas to inhibit imports and exports to move freely?

2. The Common Protectionist Measures and Their Effects

Even though most economists and politicians agree on the fact that free trade in-creases aggregate welfare, they are divided on the level and distribution of losses experienced by producers who suffer when trade barriers fall (Cf. Burtless, 1995, p. 800). If a country opens up to trade, it exposes its domestic industries to foreign competition. Trade liberalization might push the least productive firms out of the market. Though overall productivity increases, some firms will cease to exist (Cf. Krugman and Obstfeld, 2003, p. 247). Especially young companies have to face the drawbacks of free trade, since they often cannot compete with established global corporations.[7] Hence, protecting these industries until they can persist in the global market can be sensible. Another argument in favour of protectionist measures is the so-called “race to the bottom” argument. It describes the possibility that international institutional competition might force

[5] Ricardo, 1817, Chapter 7. A numerical example can be found in the appendix, table 2, p. 33.

[6] Their model was first established by B. Ohlin in his publication *Interregional and International Trade* (1933).

[7] This is called the “infant industry argument” against free trade. It was first articulated by Hamilton, 1791.



governments to lower social, ecological, labour or manufacturing standards in order to ensure the competitiveness of their industries.[8]

In order to restrain the negative effects of free trade, a government can set tariffs as taxes on imports. Moreover, non-tariff barriers and regulatory differences are further measures of trade policy, which impede trade through restrictions on import and export quantities or country-specific regulations and standards.

3. The Features of the TTIP

Based on the aforementioned theoretical findings, it does not surprise that industrialized nations seek to facilitate trade by establishing bilateral trade agreements and customs unions. This chapter will deal with the possible content and impact of the Transatlantic Trade and Investment Partnership. As opposed to a customs union, which implies a total elimination of tariffs within a trade bloc and a common external tariff, the TTIP is envisioned as a free trade agreement. This means, in addition to tariffs, non-tariff barriers to trade in investment are also to be removed.[9]

The ambitious idea of a joint economic area between the US and the EU first surfaced in 1995. The vision was not actively pursued until Britain's Commissioner for Trade, Peter Mandelson, signed the 'Framework for Advancing Transatlantic Economic Integration' in 2007 (Cf. Felbermayr and Larch, 2013, p. 49). Since then, various studies have been conducted, analysing the economic potential of such an endeavour.

In view of missing progress in the negotiations for a multilateral trade agreement (Cf. Felbermayr et al., 2013b, p. 2), the slow growth in international trade volume since 2007 and the need for structural reforms that became evident during the financial crisis in 2008, the EU and the US have begun negotiating the terms of TTIP in July 2013 (Felbermayr and Kohler, 2015, p. 26). The parties involved have already long-established relationships on economic and political levels and their markets are intensively intertwined through large bilateral trade and investment flows (Cf. Plaisier et al., 2012, p. 9). They are mutually each other's largest trading partners. In 2013, US imports and exports made up for 14% of extra EU-trade, while 16,8% of the US's trade was conducted with the EU (Cf. Dietrich et al., 2014, p. 14). In 2010, mutual investment was as high as €1,200 bn on both sides of the Atlantic (Cf. Fontagné et al., 2013, p. 6). The agreement aims at increasing welfare, stimulating economic growth as well as creating new jobs.

[8] The concept was first described in the early 20th century by Louis Brandeis. For further reading see e.g. Vogel, 1995.

[9] Whether the TTIP will include a common external tariff is unknown at this point in time.



Furthermore, TTIP is supposed to strengthen the common values and the existing relationship between the participating countries and push forward the stagnating negotiations on a multilateral trade agreement conducted by the WTO (Cf. Dietrich et al., 2014, p. 9).

Along with the elimination of tariffs and non-tariff barriers to trade, the measures most likely to be determined by the negotiators include the improvement of regulatory consistency and the development of common rules on foreign investment, intellectual property rights, labour standards and the environmental protection. Both sides envision TTIP as “a comprehensive and high standard Free Trade Agreement” (Akhtar and Jones, 2014, p. 1).

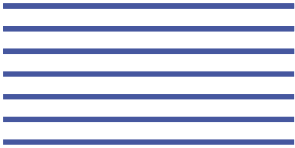
Currently, representatives of the parties involved are negotiating the exact details of the agreement in camera. Consequently, it is quite difficult to estimate the exact potential and impacts of the endeavour.

4. Expected Consequences of the TTIP

To assess the exact consequences of the liberalization of transatlantic trade, much research has been conducted in recent years. In the following chapter, the findings of two influential studies, one conducted by the Centre for Economic Policy Research (CEPR) (Cf. Francois, J. et al. (2013)) and the other by the ifo-Institute (Felbermayr, G. et al. (2013a)), will be presented. Both studies examine the potential effects of TTIP on the EU, the US, as well as non-participating countries.^[10] However, their methodologies differ. The ifo-Institute estimates the effects of TTIP based on empirical findings on the outcomes of established, comparable preferential trade agreements within a computable general equilibrium (CGE) model (Cf. Felbermayr et al., 2013a, pp. 12-15). The CEPR-Study calculates the costs of the NTBs as a percentage of tariff costs, embedded also in a CGE model of global world trade (Cf. Francois et al., 2013, pp. 21ff.). Since the scope and dimension of the trade liberalization resulting from the TTIP is still unknown, the studies presume different, long-run TTIP-scenarios. Both evaluate a limited liberalization scenario where the agreement would only contain the elimination of tariffs but also more comprehensive, ambitious scenarios, which vary in the degree of regulatory alignment.

a. Participating Countries

As mentioned in Chapter 2.3, the EU and the US share long-standing trade and investment relationships. Thus, existing tariffs on goods and services are already relatively low on average. The weighted average tariff on manufactu-



red goods in 2007 was as low as 2,8%.^[11] Some industries however, for example textiles or agricultural products, are still sheltered by extremely high tariffs.^[12] The studies coincide in that a mere elimination of tariffs would only imply very small changes in the level of transatlantic welfare. While GDP is expected to rise by 0.5% and 0.4% in the EU and the US respectively according to the findings of the ifo-Institute, the CEPR-Study solely estimates an increase of 0.1% in European and 0.04% in American GDP. Transatlantic trade may increase by 5.8% (Cf. Felbermayr et al., 2013a, p. 17). Nevertheless, in those industries, where tariffs are still high, the impact would naturally be more significant than in those, where tariffs are already close to zero. The sole elimination of tariffs would also not have significant effects on structural unemployment, neither in the US nor the EU.^[13]

According to both studies, the much more desirable and momentous impacts on wealth and employment within the transatlantic economies could be achieved through the reduction of non-tariff barriers (Cf. Felbermayr et al., 2013a, p. 11; Francois et al., 2013, p. 44). Today, in order to enter the US market, a European firm often has to deal with complex regulatory issues and may, in the worst case, not even be allowed to sell its products due to differences in safety or production standards. Of course, the same applies vice versa. TTIP could facilitate trade through matching standards and formulating common rules in areas like investment, consumer protection and environmental issues. However, in contrast to tariffs, removing NTBs may involve constitutional changes or laborious legislative or technical amendments (Cf. Francois et al., 2013, p. 19). Furthermore, most of the existing regulations serve the purpose of product safety or consumer protection specific to one country (Ibid., p. 7). Especially German citizens are very critical about the alignment of standards.^[14] Hence, while it can be assumed that an agreement could lead to an alignment of regulations, the total integration and unification of standards within the considered markets seems highly unlikely.^[15] Dealing with regulatory divergence and the removal of NTBs thus is a very complex matter. The degree of liberalization through reducing NTBs and its impact on welfare can only be estimated.

[11] Cf. Felbermayr et al., 2013a, p. 15. In comparison, weighted average tariffs on manufactured goods in the Republic of Congo in 2007 were 14.07% (C.f. World Bank (2014). Accessed on 22.03.2015: <http://wdi.worldbank.org/table/6.6>).

[12] Cf. Felbermayr and Larch, 2013, p. 52: Peak tariff rates may reach 350% in the United States and 74.9% in the EU.

[13] Structural unemployment is caused by fundamental shifts in an economy.

[14] Recent debates have revolved mainly around fracking, genetically modified organisms and the safety of meat imports from the US.

[15] However, as both regions are high income with similar standards, neither should regulatory alignment be seen as an insurmountable obstacle.



In the most ambitious trade liberalization scenario[16], the CEPR-Study estimates the increase in GDP at 0.48% (€119,2 bn) and 0.39% (€94,9 bn) for the EU and the US respectively (Ibid., p. 46). According to the ifo-Institute, the effects in the NTB-scenario amount to an increase in GDP of 1.3% for the EU and 4.8% for the US as compared to a basis scenario without a TTIP (Cf. Dietrich et al., 2014, p. 21). The CEPR-Study finds that, in an ambitious scenario, wages for skilled and unskilled labour would rise by roughly 0.5% in the EU and about 0.37% in the US (Ibid., p. 71). Furthermore, it suggests that growing industries will pull away jobs from those industries that do not grow, by offering higher wages. These movements will be very limited.[17] Furthermore, it suggests that growing industries will pull away jobs from those industries that do not grow, by offering higher wages. These movements will be very limited. The ifo-Study estimates that a substantial reduction of NTBs could lead to the creation of up to 400,000 new jobs in the EU alone (Cf. Felbermayr et al., 2013b, p. 8). Both studies find exclusively positive long-term economic effects for all participating countries, their magnitude depending on the degree of trade liberalization.[18]

The dispute over TTIP revolves mainly around its social and environmental impacts. Opponents fear that interests of firms will be placed above those of citizens (Cf. Carrington, 2015) and consumer protection will be weakened as a result of trade liberalization. Furthermore, concerns about environmental issues are being raised. TTIP might loosen pollution control and allow the use of more aggressive chemicals in the European agricultural industry as well as genetically modified foods (Cf. Kwasniewski, 2015). Another strong apprehension amongst critics is the possible instalment of Investor-state Dispute Settlements. Companies investing in a foreign country could sue its government if they suffer losses from regulations introduced by it. More elaborate explanation and evaluation of these effects are given in chapter 4.1.

Critics of the TTIP not only point to ambiguous social and legal effects on the participating countries, but also raise concerns regarding the effects of the free trade agreement on third countries. The question that arises is, whether the increase in welfare can be ascribed to trade creation or whether the TTIP simply evokes trade diversion. Are the EU and the US enriching themselves at the expense of the developing countries and other trading partners excluded from the bilateral agreement?

[16] Cf. Francois et al., 2013, p. 28: 25% elimination of NTBs of goods and services, 98% elimination of tariffs, 50% elimination of procurement NTBs.

[17] Ibid., p. 78: In the EU less than 0.7% of the labour force could be expected to move between sectors over the course of 10 years.

[18] In order to interpret the results correctly, one must bear in mind that these raises in income and wealth are relative to the alternative non-TTIP equilibrium in 2027 (CEPR) and 2035 (ifo).



b. Third Countries and the Global Economy

Together the EU and the US generate 50% of world GDP with only 11,8% of the world's population (Cf. Felbermayr et al., 2013b, p. 2). Due to the sheer size of the free trade area that would emerge from a completion of TTIP, it seems obvious that it will not be without consequence for other trading partners and for aggregate world trade. According to the ifo-Study, TTIP would unfold an effect on value creation of approximately 45% and on trade worldwide of 30% (Cf. Felbermayr and Kohler, 2015, p. 26). In 56% of non-participating countries, trade volumes could increase if a comprehensive TTIP was realized (Cf. Felbermayr et al., 2013a, p. 16). But would global net welfare effects be positive as well? On the one hand, liberalizing transatlantic trade would affect the structure of world trade through trade diversion and preference erosion. Trade diversion occurs when firms from third countries forfeit relative competitiveness in the EU and US markets due to higher relative market access costs (Cf. Felbermayr et al., 2014, p. 25). As a result, imports from third countries are replaced by imports from partners within the free trade area, as they are cheaper and more easily available.[19] Today, EU-trade accounts for more than 20% of the export revenue of 40% of all third countries (Cf. Felbermayr and Kohler, 2015, p. 27). This indicates how dependent many countries are on their trade relations with the EU. Preference erosion describes the dilution of the value of already existing bilateral trade agreements and customs unions that the US and the EU have established with other countries.[20] Many developing countries export goods, which are usually heavily tariffed but currently free of duty in EU countries.[21] Eliminating tariffs between the EU and the US would erode such preferential treatment and could lead to a loss of market shares for the developing countries (Cf. Felbermayr and Kohler, 2015, p. 27).

On the other hand, proponents argue the rise in income and welfare in the participating countries will lead to an increase in demand for the products from non-participating countries as well. This is called the income effect. Furthermore, the TTIP is not about prohibiting market access for non-members, but rather about converging standards. Proponents put forward the importance of spill-over effects: direct spill-overs imply that exporters based in non-TTIP countries benefit from the improved regulatory conditions between the member states and enjoy enhanced access to the US and EU markets. Indirect spill-overs arise if a third country adopts some of the common regulations agreed upon by the EU and the US and thereby lowers the non-tariff barriers to trade for both

[19] This is called the substitution effect.

[20] Cf. Felbermayr and Larch, 2013, p. 50: The EU currently has 35 bilateral trade agreements with multiple partners, the US has 14.

[21] This is called the Generalized Scheme of Preferences (GSP), which allows developing country exporters to pay less or no duties on their exports to the EU.



domestic exporters and foreign importers. Such effects could, in the long run, lead to an increase in global welfare gains from TTIP and encourage third countries to open up to trade and reap the benefits (Cf. Felbermayr et al., 2014, p. 28). Depending on the magnitude attributed to the positive spill-over effects and the intensity of transatlantic trade liberalization, the researchers come to different conclusions about the effects of an exclusive TTIP on third countries.

The ifo-Study finds that a comprehensive design of TTIP would divert trade from previous large export and import channels to bilateral trade between the EU and the US. The main losers would be Canada, Australia and Mexico, facing a decrease in real income of 9.48%, 7.41% and 7.24% respectively (Cf. Felbermayr et al., 2013a, p. 76). Real per capita income is expected to shrink by up to 2.14% in the countries of the Pacific Alliance^[22] (Cf. Felbermayr et al., 2015, p. 37). However, the overall impact on global welfare is estimated to be +3,3% (Ibid., p. 16). The CEPR comes to similar conclusions: the welfare gains for third countries in the less and more ambitious scenarios are estimated to be 0.07% and 0.14% of world GDP (excluding US and EU) respectively (Cf. Francois et al., 2013, p. 81). The differing results can be accounted for by the differences in methodology employed by the studies.

It can be stated that among the developed countries mainly those, who already have well-established trade relations with either the US, the EU or both are at a disadvantage, while among the developing countries the losses are greatest where the highest trade barriers exist (Cf. Felbermayr and Kohler, 2015, p. 31). Generally, the studies find a large degree of heterogeneity in the effects on third countries. The direction and size of the impacts will depend on the countries' level of adoption of the EU/US-standards and on the effort made by the negotiators to incorporate the interests of other countries into their agreement.

III. Rawls's Theory of Justice

So far, this paper has evaluated the mechanisms, background and impact of the free trade agreement at issue. As stated, it is the aim of this paper to determine the acceptability of the TTIP from a moral perspective. Before attending to this matter, John Rawls and his Theory of Justice will be introduced in the following chapter.

[22] The Pacific Alliance is a trade bloc including Peru, Chile, Mexico and Colombia.



1. Origin, Objectives and Features of Rawls' Theory

John Rawls, born in 1921, is known today as one of the most influential philosophers of the twentieth century. In his main work "A Theory of Justice", which can be attributed to social contract theory within political and moral philosophy (Cf. Kersting, 2001, p. 31), Rawls took an opposing position against the hitherto predominant utilitarian ideas.[23] Like all social contract theories[24], "A Theory of Justice" deals with the moral principles of individuals, the rational foundation of social order and justification of political systems (Cf. Kersting, 2001, p. 31). According to these theories, every social contract is established starting from an original position, negotiated by individuals who want to lay down rules under which they can peacefully coexist (Cf. Gärtner, 2012, p. 109). The set of rules to choose from are all pareto-efficient, which means, all options would lead to a situation in which at least one member of the society is better off, while no person is worse off.[25] Central to the contractual model is the initial situation in which the agreement is reached, rather than the contract itself (Cf. Kersting, 2001, p. 33). Rawls's initial situation is characterized by conflicts of distribution of the primary social goods[26], which are scarce "resources" (Cf. Lehning, 2009, p. 20). This initial situation is defined as the original position, which can be viewed as a fair starting point from which the constitutional decisions for a society are made (Cf. Kersting, 2001, p. 43). It is often spoken of as a "thought experiment", as it describes a purely hypothetical situation (Cf. Rawls, 1971, p. 120). The original position is subject to a number of assumptions about social and economic conditions.[27] Moreover, Rawls places the decision-makers behind a veil of ignorance. The veil of ignorance deprives them of all knowledge that would be necessary to pursue a selfish strategy and allow them to maximize their own advantage. Rawls requests that "[...] no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like." (Rawls, 2009, p. 11). More than this, Rawls assumes that the parties neither have

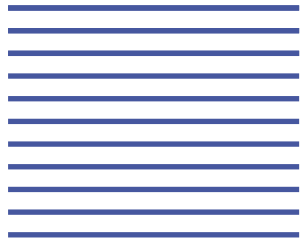
[23] Cf. Lehning, 2009, p. 17: In utilitarianism, the terms of social cooperation are settled by whatever will achieve the greatest sum of utility for the individuals concerned.

[24] For an overview, see Kersting, 1994.

[25] All options have to be pareto-efficient, otherwise an agreement could never be reached.

[26] Cf. Rawls, 2009, p. 54: Rawls defines primary goods as all „things that every rational man is presumed to want“.

[27] Cf. Gärtner, 2012, pp. 111–114: i.e. scarcity of primary social goods, individuals have a formal sense of justice, individuals are equal, mutually disinterested and rational.



any knowledge of the circumstances of their society nor its economic or political situation. Furthermore, the individuals do not know which generation they belong to (Ibid., p. 118).

However, the veil of ignorance is not completely opaque. The parties do “[...] know the general facts about human society. They understand political affairs and the principles of economic theory” (Lehning, 2009, p. 29). In fact, they are allowed to know all general information necessary to adjust the principles of justice to the characteristics of the social system, which they are to regulate.[28] The veil prevents the individuals from knowing in what way their decision about a social constitution will affect their own lives “and they are obliged to evaluate the principles on the basis of general considerations” (Rawls, 1971, pp. 136f.). Rawls comes to the conclusion that individuals would agree upon two justice principles.[29]

To sum up, principles of constitution and basic order are justified if they correspond with the principles, rational, equal, mutually disinterested and de-individualized members of a society would agree upon (Cf. Kersting, 2001, p. 50). This paper distinguishes between two variants of Rawls’s theory. Both are commonly applied in economics.

2. The Universalization Principle

The first stage of Rawls’s argumentation deals with the issue of how justice principles can be developed in general. Hence, it addresses the formal justification of those principles within a society. Rawls constructs the original position and the veil of ignorance to establish a vindication for the conciliation of rational individuals on specific principles of justice. It does not yet provide a material norm for judgement. In the original position, the fictional parties cannot follow a selfish strategy to maximize their own welfare and have to take into account the position of any other individual in the society (Cf. Müller, 2000, p.

[28] Ibid.

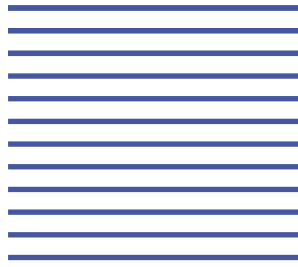
[29] Ibid., pp. 60&302:

1st Principle: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

2nd Principle: Social and economic inequalities are to be arranged so that:

(a) They are to be of the greatest benefit to the least-advantaged members of society, consistent with the just savings principle (the difference principle).

(b) Offices and positions must be open to everyone under conditions of fair equality of opportunity.



58). From behind the veil, equal individuals would not agree on principles that would allow single groups of individuals to be exploited or treated unfairly to the advantage of others.[30] The parties come to an unanimous[31] conclusion to distribute the social goods in a pareto-optimal way. Rawls uses the metaphor of the veil of ignorance to depict the Kantian categorical imperative.[32] Hence, the selfish utility-seeking individuals are forced to act according to the universalization principle.[33] By depriving the decision-makers of any information on their future position within the society, Rawls pre-sets a standard of justice, namely the categorical imperative, which should have been the result of the negotiations in original position (Cf. Müller, 2000, pp. 68f.). To put it differently: instead of assessing, which rules individuals would lay down in a fictional contractual situation with certain conditions concerning available information, one could simply, and more straightforwardly ask, what ground rules a society would set according to the universalization principle.[34] It is important to note, that this is solely a formal maxim that serves the purpose of vindicating certain principles and norms as just.[35] It does not yet provide the content of those principles.

3. The Difference Principle

On the second stage of his argument, Rawls's deducts specific justice principles that serve as concrete moral guidelines chosen by the decision-makers in the original position (Ibid., 2000, p. 59). According to Rawls, they would first and foremost agree upon an equal distribution of income and wealth.[36] However, as the decision-makers are rational, reasonable and also mutually disinte-

[30] This is called the "Fairness Function" of the veil of ignorance.

[31] As they are all equal, rational individuals they are hence in the same decision situation. This is called the "Consensus Function" of the veil of ignorance.

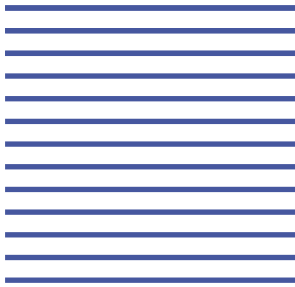
[32] Cf. Kant, 1994, p. 30: "Act only according to that maxim by which you can at the same time will that it should become a universal law."

[33] Cf. Habermas, 1983, p. 103, Universalization Principle: A moral norm is valid just in case the foreseeable consequences and side-effects of its general observance for the interests of each individual could be jointly accepted by all concerned without coercion." [own translation].

[34] Ibid., p. 69.

[35] Ibid., p. 69: Whether it really does, can be questioned. The veil of ignorance can be seen as a metaphor for the Universalization principle, but not necessarily as a justification.

62 [36] This constitutes Rawls's 1st principle of justice.



rested (Cf. Rawls, 2009, pp. 467f.), whenever inequalities in the distribution of income and wealth occur, these inequalities should be permitted, “so long as these improve everyone’s situation, including that of the least advantaged, provided that these inequalities are consistent with equal liberty and fair equality of opportunity” (Rawls, 2009, p. 131). This constitutes the difference principle: starting from equal division of social goods, the advantaged are not to be better off at any point to the detriment of the less well off (Lehning, 2009, p.46). This principle has often been interpreted as a maximum-principle, in order to make it accessible for welfare economics;[37] in economic game theory, the maximum-strategy describes a decision under uncertainty, where the player chooses the alternative with the best of the worst pay-offs.[38]

IV. Application of Rawls on TTIP

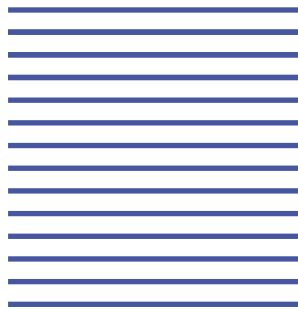
From an aggregate economic perspective, the desirability of the bilateral trade agreement is undisputable, as global net welfare effects are expected to be positive. But what about the moral point of view? This chapter will combine the two foregoing chapters in an attempt to analyse TTIP in terms of Rawls’s Theory of Justice. It will answer the question: “From a Rawlsian perspective, would different aspects of TTIP be acceptable?” Moreover, the chapter will analyse possible ways to improve the design of the agreement in order to make it more “just”. As establishing a free trade area of the given size is an extremely complex and lengthy project, only two specific measures intended to be taken as part of TTIP will be evaluated. These measures were chosen, as the public has granted them a lot of attention.

1. Analysis of the Effects on Justice and Inequality

Before Rawls’s theory can be applied to the actual scenario as a “grid” to assess its fairness, its specific features need to be identified. The negotiating parties in the original position are representatives of all individuals, who will be affected by TTIP. Thus, not only representatives of the EU and US governments, but also of citizens from third countries will decide upon the TTIP policies. In a first step, they are assumed to be rational and reasonable individuals, who are

[37] Note that Rawls carefully avoided this terminology in his revised theory. Cf. Rawls, J. (1999). *A Theory of Justice*. Revised Edition. Cambridge, MA: Harvard University Press, pp. 72 f.

[38] Cf. Wald, A. (1945). Statistical decisions functions which minimize maximum risk. *Annals of Mathematics* 46, pp. 265-280.



mutually disinterested and do not know their future position in the TTIP-world, hence their individual interests. The primary social goods are the utilities that originate from the trade and investment agreement, i.e. income and economic welfare. Furthermore, environmental impacts need to be considered: a well-ordered society should care for environmental protection, as all dimensions affected by environmental issues are primary social goods that should be distributed by social institutions (Cf. Manning, 1981, p. 158). Possible effects of TTIP on public health will also be assessed, even though health is not one of the original primary social goods defined by Rawls.[39] The paper will not evaluate the fairness of the distribution of civil and political rights.

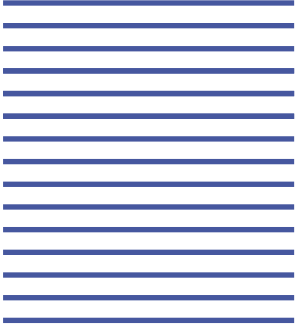
Rules and regulations established within the scope of TTIP will govern the distribution of the social goods between all individuals affected by the treaty. In this scenario, those affected are all generations of European and American citizens, but also all other humans living in the rest of the world. To put it more precisely: the TTIP-policy makers behind the veil of ignorance do not know, whether they represent an American steel exporter in 2015 or an Ethiopian farmer in 2027. Moreover, analysing the given scenario by means of the difference principle requires the identification of the least-advantaged in a TTIP-world. Rawls defined the least-advantaged as “all persons with less than half of the median income and wealth” (Cf. Rawls, 1971, p. 98). In this case, however, it makes most sense to define the segment of the least-advantaged as people living in all least developed countries (LDCs) affected by TTIP. Here, the definition of a least developed country used by the United Nations is adopted. At present, the list of LDCs includes 48 countries.[40] The criteria used to identify them are per capita income, human assets such as nutrition and health and economic vulnerability. The possible negative effects of a TTIP on developed and industrialized non-members like Canada or Mexico will not be taken into consideration, as their citizens are already relatively well off in global comparison.

As stated, from a Rawlsian point of view, the goods to be distributed are represented by the possible gains in income and wealth but also the negative externalities that would originate from the trade liberalization. Would the distribution of these goods be just?

a. The Chlorine-rinsed Chicken

The subject at issue here is the alignment of standards of production for chicken meat as a means to facilitate trade. It was shown in section 2.4 that in order to create desirable welfare effects, TTIP must be more than a mere elimination of tariffs and focus on reducing NTBs, such as differences in regulatory standards.

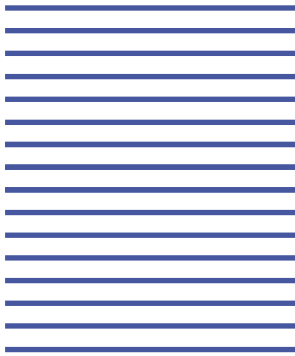
[39] Cf. Rawls, 2009, pp. 78f. For a more elaborate discussion, see Daniels, N. (2008). *Just Health: Meeting health needs fairly*. New York: Cambridge University Press.



Regulatory cooperation is aimed at a variety of products ranging from cars to information on the properties of chemical substances and upper limits to the concentration of pesticide residues. Of course, the consequences of these different measures vary and need to be evaluated case-by-case (Cf. Fontagné et al., 2013, p. 4). Critics fear that TTIP may cause a “race to the bottom”^[41] of health and food safety standards in the EU and US markets and lead to delays in regulatory action (Cf. Gerstetter et al., 2014, p. 5). There is a general perception in public opinion that Europe is more precautionous, more inclined to governmental regulations and more risk averse than the US. While Europeans have an *ex ante* control culture (precautionary principle), Americans would wait for evidence of actual harm before taking regulatory measures (risk principle) (Cf. Fabry and Garbasso, 2014, p. 1). The most prominent example of an unwanted consequence of converging standards is the possible permission of US chlorine-rinsed chicken imports to the EU. The practice of washing chicken meat in chlorine baths to kill germs is common in America but not permitted in the EU. Here, chickens are treated with antibiotics to prevent infection. European citizens fear that permitting US-chicken in the EU might damage public health (Cf. Bryne, 2014). The chlorinated chicken is a symbol for other food products, pharmaceuticals and cosmetics; all of which are products where consumer sensibility regarding safety and health is especially high. They raise concerns related to negative externalities, e.g. health and environmental issues.

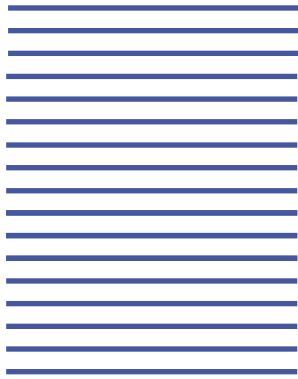
Examining the topic from a Rawlsian perspective requires the identification of the possible advantages and disadvantages resulting from such an alignment. Chicken is one of the United States’ most important agricultural products and they are the world’s second largest exporter, just behind Brazil (Cf. Super, 2014). By facilitating EU market entry for US poultry exporters, exporting firms will experience increasing economies of scale and scope and thus a decrease in production costs. As a consequence, firms are able to lower their prices, causing real income of consumers to increase. Furthermore, consumers in the EU are able to choose from a larger variety of products, which increases their utility. Considering negative effects, consumers fear that chicken washed in chlorine may not only cause negative health implications but also environmental damages. The expansion of production and transatlantic trade may lead to an increase in pollution, for instance CO₂-emissions. Moreover, increasing trade liberalization will lead to additional competitive pressure for smaller, less efficient EU-firms (e.g. German chicken farmers). Those producers may be forced to exit the market, leaving their market share for multinational corporations. Considering third countries, producers from non-TTIP nations, e.g. Brazilian chicken producers will most likely suffer large losses: their products lack competitiveness in the EU market due to higher trade barriers. Unless they are able to intensify trade with other non-TTIP countries, their economies might be hampered.

According to Rawls’s first stage of argumentation, the application of the veil of ignorance and hence the universalization principle, would the convergence of EU and US production standards in the poultry industry be desirable? First of



all, placing the TTIP negotiators behind a veil of ignorance is not unproblematic: would the individuals in this scenario agree upon any rule or regulation that would make a single individual worse off, even if everybody else benefitted? Does an increase of utility for some ever justify the losses experienced by those forced to exit the market and those exposed to negative environmental and health implications? Applying Rawls's assumptions consistently, only those policies could be agreed upon that all members of society at any point in time would vote for. This implies that only a pareto-efficient scenario would be able to reach consensus. In this particular case, the mere economic and efficiency-driven nature of the trade agreement implies that there will be winners and losers. As some people would obviously be worse off after the alignment of standards, the agreement would have to be rejected. A decision-maker under the veil of ignorance has to assess this aspect of TTIP from the perspective of an American producer of poultry as well as that of a Brazilian or Nigerian farmer. Whilst the former would profit from the agreement, the latter would probably not. They would veto such a resolution and an alignment would not be achieved. Furthermore, as the parties have no knowledge as to which generation they belong to, the ambiguous effects on safety, health and environment would also prevent the permission of US-chicken in the EU.

Judging the alignment by means of the difference principle, the argumentation, as well as the result, differs. The negotiators are deciding upon the alignment of regulations under uncertainty and assume, they will end up as the least-advantaged members of the society. Thus, only the outcome for those members is taken into consideration, when deciding upon a just distribution. According to the maximum-principle there is no point in addressing the utility, health or safety of US or EU citizens or the welfare of Brazilian chicken exporters, as they are already relatively well off. The question rather has to be: Will the alignment of standards benefit the LDCs? Or will the reduction of those NTBs allow industrialized countries to exploit and exclude developing nations? The effects of single alignments, such as the import of chlorine-rinsed chicken, have to be examined case-by-case. It is expected that the LDCs will benefit from the convergence of some production standards and suffer losses from the alignment of others. With converging standards between the EU and US poultry industries, the majority of LDCs are likely to benefit – at least in the short run. The reason might not be obvious. Looking at the structure of international trade in chicken meat, it becomes evident that most LDCs, especially in Africa, are large importers of EU or US-chicken. Their domestic industries are unable to produce enough meat to cover the demand. Demand in those countries is relatively high, as chicken is cheap compared to pork or beef. Two of the largest African poultry importers, who are also LDCs, are Benin and Angola (Cf. Veauthier, 2014; Agritrade, 2014a). For such countries, a decrease in prices of imported poultry meat due to higher output of American producers could be beneficial for domestic welfare. This requires, of course, that American producers pass on their efficiency gains in the form of price reductions to all consumers equally and not just US and EU citizens. However, critics argue that the export of cheap poultry to developing countries will not be beneficial, especially not in the long run. It is estimated that poultry demand in sub-Saharan countries will multiply in the next decade (Cf. Agritrade, 2014b). If no effort is made to protect and en-



hance domestic production, these countries will become increasingly dependent on foreign imports. The local poultry industry will not be able to grow and further develop. The opponents are of the opinion, that the cheap imports from the US would deprive those countries of the chance to establish strong local industries and operate self-sufficiently.[42]

It can be concluded, that the effects of the “chlorine-rinsed chicken permission” on LDCs are twofold: in the short run, most LDCs are likely to benefit from the reduction in EU trade barriers for US imports of poultry, provided global prices decrease as a result. In the long run however, the cheap prices may prevent the establishment of self-sufficient poultry industries in the LDCs. The long run net effects would have to be estimated. Would the positive welfare gains realized in the short run outweigh the negative effects of missing domestic growth in the long run? If so, the measure could be approved. If not, the decision-makers would either decide against the permission of US-poultry in EU markets or change the design of the regulatory alignment in a way that would benefit the least-advantaged in the short, as well as the long run. This option will be addressed in section 4.2.

b. Investor-state Dispute Settlement

The impact of the TTIP agreement protecting foreign investment against the regulatory and democratic sovereignty of national governments has also been the subject of heated public debates (Cf. Krajewski, 2014, p. 4). Regarding the size of transatlantic investment flows, their regulation and protection plays a vital role in the negotiations and will be an important part of TTIP, if conducted.[43] Investment protection is often regulated by Investor-state dispute settlement (ISDS) systems. ISDS allows investors, i.e. private companies, to directly sue a host state for violating an international investment contract between that state and the company’s country of origin (Cf. Gerstetter and Meyer-Ohlendorf, 2013, p. 4). Originally, the system is meant to prevent unjustified expropriation and open discrimination, especially in treaties between developed and developing countries. Critics fear that, if included in TTIP, it will impair parliamentary decision-making and give investors’ interests undue weight in regulatory debates (Cf. Gerstetter et al. 2014, p. 5). They argue that democratic principles could be levered, if companies were able to put foreign governments under pressure. Foreign investors may prevent beneficial environmental, health or labour protection regulations by thre-

[42] This is also known as „Dependency Theory“, established in 1949 by Hans Singer and Raúl Prebisch. They observed that resources flow from a „periphery“ of poor and underdeveloped states to a „core“ of wealthy states, enriching the latter at the expense of the former.

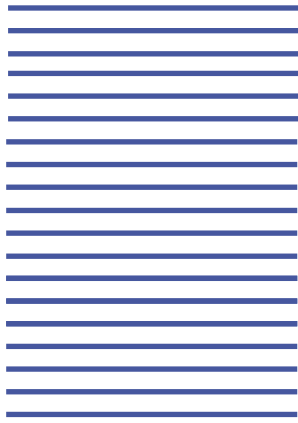
[43] Cf. Cooper, 2014, p. 7: In 2012, an estimated net \$150.0 billion flowed from U.S. residents to EU countries into direct investments, while an estimated net \$105.9 billion flowed from EU residents to direct investments in the United States.

atening to file a complaint against the host state.[44] This is called the “regulatory chill” effect. Investors’ claims could be used as instruments to affect administrative proceedings in favour of the investor. Moreover, as domestic investors would be denied the right to file direct complaints, ISDS would place them at a structural disadvantage (Cf. Krajewski, 2014, p. 7).

Judging the system from behind the veil of ignorance, and hence by means of the universalization principle, an establishment must not be part of TTIP. Although it can be argued that the large investment flows between the countries need to be protected in some way, an ISDS regulation might not be the just way to go about it. The regulatory and legal systems on both sides of the Atlantic provide sufficient legal protection for businesses and there is no widespread disregard of the rule of law in either of the systems (Ibid., p. 8). Furthermore, the size of present investment flows can serve as evidence that in the past, US investors have not been discouraged by a lack of investment protection in the EU and vice versa. The possible advantages from including ISDS in TTIP, namely progress in reforming the investment regulatory regime in light of the financial crisis in 2007/08 and the justification for the inclusion of such a system in trade agreements with countries like India, cannot outweigh the risks (Cf. Krajewski, 2014, p. 8). With an ISDS system in place, large companies may be able to put pressure on governments and influence legislative decision-making (Cf. Krajewski, 2014, p. 24). If a foreign company won the lawsuit against a government, its taxpayers would be paying the compensation payment. De-individualized decision-makers would not be willing to risk democratic autonomy by voting for an ISDS system. With an ISDS system in place, private stakeholders would be able to impact the distribution of economic output in the form of potential compensation payments or negative externalities in the form of pollution or health damages. According to Rawls, the institutions distributing the benefits, rights and duties within a society should not be influenced by self-interest or individual economic reasoning. Yet, ISDS would allow for exactly this scenario. Thus, in Rawls’s original position, the ISDS system as a means to protect foreign investment flows would not be accepted.

As the introduction of ISDS between the EU and the US in itself would not affect LDCs, it cannot explicitly be rejected with the difference principle. It can only be argued that amongst the participating countries, those which are least-advantaged, i.e. poorer EU-countries like Romania and Bulgaria would be at a higher risk of being put under pressure by multinational corporations, as their governments do not have the negotiating power of Germany or France. However, for this paper, the least-advantaged segment is defined as the LDCs. ISDS does not allow for the US or the EU to enrich themselves by directly exploiting developing countries, as its implementation would not affect trade flows or politics related to them (Cf. Felbermayr and Kohler, 2015, p. 27). The introduction of ISDS does not benefit the LDCs either. In conclusion, the decision-makers applying Rawls’s difference principle should be indifferent as to include ISDS in the TTIP. Considering the

[44] Ibid., p. 5: e.g. revoking a permit for a polluting facility may be considered as a violation of the investment treaty.



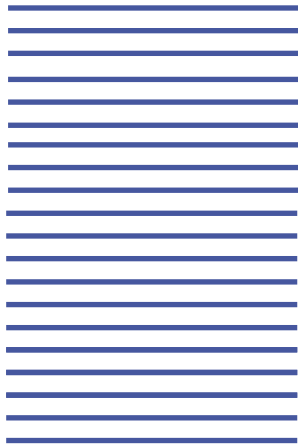
long-term effects of such an agreement, the developing countries will of course be affected by ISDS. Sooner or later, direct or indirect, all measures concerning trade and investment between two partners of given size will have an impact on third countries. In this case, multinational corporations might be able to influence regional politics in ways that would benefit them to the detriment of environmental protection. For example, American firms may sue the French government, should it one day decide to increase environmental charges. If, as a result, the government decides not to make certain decision beneficial to the environment, all future generations all over the world, including the LDCs would be negatively affected. These effects are hypothetical and cannot be estimated at this point in time. Yet, the possibility of such a development must be taken into account, especially as the individuals in the scenario are expected to be extremely pessimistic and risk-averse. The negotiating parties would have to consider every possible negative consequence of ISDS procedure on LDCs, however small it may be.

To sum up, the instalment of ISDS can neither be explicitly accepted nor rejected judging by the difference principle. While it is likely that there will not be any short-term effects on LDCs, the long-term effects of such settlements cannot be estimated.

2. Critical Evaluation of the Application of Rawls' Theory

Applying Rawls' theory of justice on the specific economic measures intended to be taken as part of TTIP has shown that neither the universalization nor the difference principle can be used to fully evaluate the fairness of such an agreement. What is the reason for this conclusion? Individuals behind the veil of ignorance cannot pursue selfish strategies and hence only accept rules and regulations of TTIP, which either benefit everyone equally or will lead to a pareto-efficient outcome where some individuals might be made better off but at the same time nobody suffers losses. However, basic economic theory states that free markets create winners and losers. A rise in aggregate welfare can only be achieved through elimination of inefficient market participants. It is therefore difficult to apply such a broad, non-specific guiding principle to a specific economic process. Consistently applied, the universalization principle prohibits all social and economic contracts, as someone will always be worse off, and would veto such a resolution even if overall welfare increases and would veto such a resolution. The formal norm to decide, as if one were affected by the results in any given position within a society is not helpful in assessing fairness of economic and social regulatory measures of the complexity of the transatlantic free trade agreement.

Looking at the differing results from applying the two principles, it becomes clear that the deduction of the difference principle from the original position is not as obvious as Rawls might have anticipated. Why would the decision-makers ignore the welfare-effects of TTIP on some third countries (e.g. Canada) and only focus on the beneficial impact on the least developed? It seems unre-



asonable for a de-individualized decision-maker to anticipate the outcomes for a Gambian peanut exporter but not those for a Brazilian chicken-farmer, who might suffer much more significant losses resulting from TTIP.[45] Hence, it does not imperatively follow from the universalization norm that solely the outcome for the least-advantaged must be considered; it merely forces the decision-maker to put himself into the position of every member of society and assess whether he would accept the principle from those points of view. It does not say anything about a varying weighting of those different interests. In this scenario it is not necessarily reasonable to assume, the decision-makers are pessimists, only expecting the worst outcome, ignoring the possibility distribution of the outcomes. This fact also contradicts Rawls's deduction of the contentual difference principle from a formal maxim for action.

3. Ways of Making TTIP Morally Acceptable

Hereafter, possible different ways to make the liberalization agreement morally more acceptable shall be presented. As the position behind the veil of ignorance, and hence the universalization principle, takes every living human on the planet at any point in time, into consideration, an exclusive TTIP between the EU and the US would have to be rejected in any form and design. It is impossible to create a bilateral free trade agreement that solely has positive effects on all countries and industries, participating and non-participating.

First of all, de-individualized parties would not vote for an agreement which would deprive certain countries of the preferential treatment of facilitated market access. TTIP could be made more attractive, if it would included all countries willing to participate and no country would be discriminated. However, in order to enhance economic growth and social welfare, efficiency must be raised and this can only be achieved through market exit of non-efficient firms. Thus, there will always be certain groups facing losses. Strictly speaking, veiled individuals would prevent all social and economic contracts if they did not accept any inequalities in distribution of economic welfare. It is assumed that the individuals in Rawls's original position are aware of these mechanisms and would vote for a global free trade area, if the opportunities to participate and gains from it were distributed fairly. Furthermore, all countries would have to be given the chance to participate in the negotiations on the exact terms and conditions of such an arrangement. A global free trade area could only be accepted if it allowed for special needs and treatment of certain countries, e.g. protectionist measures to shield infant industries in developing countries or the protection of certain product names specific to a region. In reality, such negotiations have

proven to be extremely difficult. The WTO has been unsuccessful in reconciling the interests of its member-countries for many years.[46]

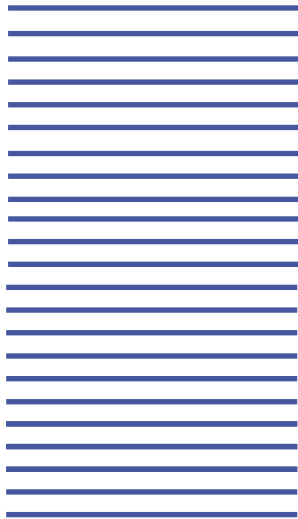
Secondly, the environmental impact of the undertaking would need to be accounted for. The universalization principle demands that intergenerational justice is ensured. Consequently, a system that allows for the environment to be exploited to the detriment of future generations, cannot be seen as just. TTIP-negotiators would have to ensure a sustainable design of the agreement. This may include restrictions on CO₂-emissions for EU and US companies equally or even the retention of financial profits gained from the additional economic growth that could later be spent by future generations. TTIP in its currently anticipated form would not be acceptable judging from behind the veil of ignorance. Regarding the two specific measures, it could be made morally acceptable if a global alignment of production standards for chicken was concluded while at the same time efforts were made to encourage LDCs to build up self-sufficient industries. The ISDS system could not be justified, even if it were modified. Rather, an independent and public institution, possibly administered by the WTO, could be created to settle investment disputes between the participating countries and private investors.

Applying the difference principle as a concrete, material-justice principle, TTIP could be made morally acceptable, if the negotiating parties consciously considered its effects on the least developed nations. In order to set up a system that works to the advantage of the least well off, their specific needs, interests, as well as economic aims need to be consulted. LDCs can benefit from a trade agreement, as long as the positive income effects outweigh negative substitution effects. As long as the increasing demand from EU and US citizens stemming from their growth in disposable income outbalances the negative effects of a replacement of LDC-imports with US or EU imports in the EU and US respectively, net welfare increases (Cf. Felbermayr and Kohler, 2015, p. 27). The magnitude of the losses and gains also depends on the willingness and ability of those countries to adopt the common EU-US standards and thereby allowing domestic producers to keep competing in those markets.[47] Many LDCs export goods, cannot be produced in either the US, or the EU. Examples include Coffee or Cocoa. Here, the positive income effects would prevail. However, there are some LDCs whose economies rely on the production and export of textiles, e.g. Bangladesh. Those countries are likely to suffer significant losses, as their competitiveness in EU and US markets would decrease as a consequence of a reduction of transatlantic trade barriers. Even though those expected losses in economic welfare are not significant[48], and the effect on aggregate welfare is likely to be positive, TTIP could not be justified.

[46] Currently, the WTO is trying to conclude the DOHA-round of negotiations on a multilateral trade agreement. Cf. World Trade Organization, 2015.

[47] See Spill-over effects, Chapter 2.4.2.

[48] Cf. Felbermayr and Kohler, 2015, p. 29: cumulative over 10-12 years less than 1% reduction of per capita income.



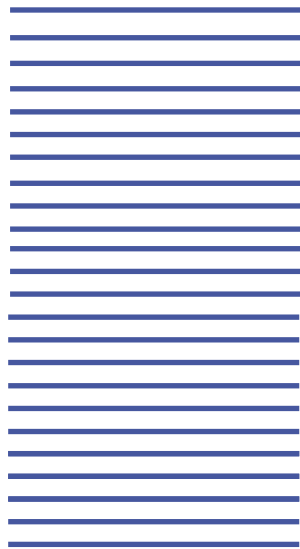
Several ways of designing TTIP as a building brick for a fair free trade agreement, from which LDCs could profit, can be identified (Ibid., pp. 33ff.). Trade diversion could be minimized through including developing countries in the negotiations. It is important to ensure that LDC's political and economic interests are heard in global negotiations. Felbermayr and Kohler suggest the WTO should take the role of a representative for small and poor countries in TTIP negotiations (Ibid., p. 36). An independent inspecting authority could be set up to examine, whether the agreed upon standards are met. This would prevent discrimination of third country products. Furthermore, the negotiating parties should focus on maximizing the effects of trade creation for developing countries. Necessary to that end is the integration of developing countries into the global value chain. This could be achieved through eased and intensified trade with the EU or the relaxation of visa requirements for skilled labour (Cf. Felbermayr and Kohler, 2015, p. 34).

V. Conclusion

To Rawls, "Justice is the first virtue of social institutions (...)" (Rawls, 1971, p. 3). Those social institutions are to govern the distribution of primary social goods in a way that is fair and accepted by the members of society. This paper has evaluated the fairness of the distributive effects of a free trade area between the EU and the US. It was shown that TTIP would indeed lead to an increase in inequality. Some countries could expect an increase in GDP and employment. Others might face a deterioration of their current account balance and a loss of economic welfare. Would rational individuals behind the veil of ignorance nonetheless vote for TTIP?

It has become clear that the plans to facilitate transatlantic trade in their present form are not morally acceptable. On the first level, Rawls's theory requires a system to be admissible from every perspective within the society: TTIP would have to be beneficial to a German car manufacturer, as well as to a Brazilian leather manufacturer and to a Bangladesh primary school pupil. TTIP could only be accepted, if it were pareto-efficient as compared to the present non-TTIP world. As it is not, individuals behind the veil of ignorance would make serious alterations to its design before coming to a mutual conciliation. However, it is highly unlikely and unrealistic that a trade agreement, which benefitted every member of society, could ever exist in reality. As complex as international relations and trade patterns are today, each party would have to be willing to compromise, hence accept non-optimal terms and conditions in order to make an agreement possible. It seems that putting the negotiators in Rawls's original position does not assist in evaluating moral justice in this particular case, as there is no way that everyone could be made better off.

If the difference principle is applied, a trade agreement, if modified to the benefit of the least-advantaged countries, could be classified as just – even if it leads



to an increase in inequality. However, as it is not the aim of TTIP to benefit LDCs, but rather to enhance transatlantic trade and investment between the EU and the US, its original purpose would have to be replaced. If all above stated efforts were made to support economic growth and welfare in LDCs, one could simply start negotiating a global free trade area or direct trade agreements with those countries. An exclusive TTIP between the EU and the US would then become redundant.

It is important to note that this paper only analysed two minor measures of a much more complex, wide-reaching transatlantic trade agreement. It also did not take into account Rawls's principle of fairness as equal opportunity. In further evaluations it would be interesting to assess the impact of TTIP on the distribution of opportunity to access the economic gains and also the effects of the agreement on equal opportunities for all future generations in terms of their access to resources. Furthermore, the evaluation of impacts of TTIP on the just distribution of civil and political rights might entail different results if analysed by means of Rawls.

It has been concluded, that in order for the TTIP to be just, it should not work solely to the advantage of its member states. Rather, the economic and social welfare and power already available in the participating countries make it their responsibility to ensure the improvement of living conditions of the least-advantaged[49] as well as the preservation of the environment. Distributive goals hence have to play a vital role in the economic analysis and the decision making process. Moreover, it became evident that apart from the least-advantaged, the fair treatment of all other non-TTIP nations also needs to be ensured, as they might suffer much more significant losses.

For these reasons, open and transparent negotiations and a flexible design of the TTIP should be of particular interest to all stakeholders and other parties involved. A just free trade agreement should be able to adapt to the ever-changing social and economic demands of the global environment, as well as individual rights and requirements of its contractual partners. However, the prioritization of the issues mentioned is a serious challenge. Unanimous resolutions on such an agreement seem highly unrealistic. Ultimately, to ensure justice, impartial institutions need to be set up after the conclusion of the specific terms and conditions, to arrange the realization and control of the measures and their consequences fairly and consistently.

Literatur

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