

Providing Labor with a Voice in International Trade Negotiations

Donna McGuire
Global Labour University

Christoph Scherrer
University of Kassel

Abstract

Free trade agreements among countries are currently proliferating. These trade initiatives are less about trade than about increasing the power of corporations. In this article, we not only point out some of the likely negative consequences for workers and organized labor but also draw lessons from previous campaigns against trade liberalization. For an analysis of these campaigns, we utilize the concepts of the political opportunity structure, resource mobilization, and framing capacity. To be able to influence trade negotiations, unions must prioritize trade as an issue, build up sufficient trade policy expertise and dedicate sufficient resources for mobilization.

Keywords: free trade agreement, trade unions, free trade and investment agreements, labor organizations, trade policy, trade negotiations, union protest and mobilization, movement organizations, social movement theory

Introduction

Currently, many countries are involved in concluding or negotiating a Free Trade Agreement (FTA) with one or many other countries. Most prominent among these FTA initiatives are the Transatlantic Trade and Investment Partnership (TTIP) between the United States of America (USA) and the member states of the European Union (EU), and the Trans-Pacific Partnership (TPP) among a number of Pacific Rim states such as the Philippines and the USA. Less well known is the Trade in Services Agreement (TiSA), although it is global in scope. What these trade negotiations have in common is that they go much further than reducing or eliminating tariffs. Instead, they mainly aim at reducing so-called “non-tariff barriers.” While tariffs on goods crossing borders have been imposed with an eye to foreign competition, most of the non-tariff barriers targeted by these agreements are the laws and regulations “constructed over decades of struggle by labor and social movements to protect the collective political, economic and social rights of working people” (International Union of Food Workers, 2014, p. 161). These laws and regulations cover employment, environmental protection and public health. The negotiators on both sides of the Atlantic especially target public ownership and the public provision of services as barriers to the free flow of goods, services and investments. They want to circumscribe the power of the democratically elected bodies to provide infrastructure and services according to need and not just according to the size of the citizens’ purse. The negotiators also want to grant corporations the right to sue states for compensation in case new laws or regulations might lower future profits. This so-called investor-to-state dispute settlement process will sidetrack the normal legal procedures as it will establish arbitration courts run by the business community.

The TTIP, TPP, TiSA et al. are all driven by a corporate agenda. In the preparation for drafting the negotiation positions for the main drivers of these negotiations, the United States and the European Community, trade unions and civil society organizations have had only a very marginal presence, if at all. While labor has not been invited to the fora formulating the negotiating positions, it is certain that labor will feel the impact of these negotiations once concluded. Since it is not so likely that workers will actually share in the potential benefits of these agreements, and since it is quite likely that they will have to

bear the brunt of the FTA's negative consequences, it is pertinent that labor organizations gain a voice in the trade policy deliberations and decision-making processes. Guided by the insights of social movement theory and state theory as well as drawing on experiences in recent struggles against FTAs, we will try to outline some of the opportunities for gaining such a voice and we list some issues which have to be considered when strategizing for more influence.

Our contribution starts with an introduction to the main impetus of the new free trade agreements, i.e., the protection of corporations and investors. We then point out some of the likely negative consequences for workers and organized labor. We move on to highlighting some of the past struggles against FTAs, and to drawing lessons from the campaign against the General Agreement on Trade in Services (GATS) which one of us, Donna McGuire, has analyzed in depth. The conceptual tools for this analysis are briefly summarized. We end with listing some implications for the current struggles against the TTIP, TPP, TiSA *et al.*

The New Trade Agreements: Protection for the Strong

Traditionally, tariffs have been imposed to protect economically catching-up countries against competition from early industrialized countries. In the last decades, tariffs have been reduced in most countries. At the same time, the level of protection for enterprises from the early industrialized countries has gone up. The new trade agreements aim at reinforcing this protection of the "strong." These trade agreements are about intellectual property rights, investors' protection, the liberalization of public procurement and so-called competition laws, which restrain the state from subsidizing companies. In what ways do these items on the trade negotiators' agenda strengthen multinational corporations?

Intellectual Property Rights

Intellectual property rights, i.e., patents, trademarks and copyright, are predominantly held by corporations residing in the early industrialized countries (Organisation for Economic Co-operation and Development [OECD], 2008), many of which were formerly colonial powers. This is not by accident because, for one thing, the individual inventor is

rather the exception; moreover, these corporations can make use of an expensive knowledge infrastructure that only rich nations can afford. In the current round of FTAs, for instance, trade negotiators are pushing for stronger patent protection for medicines, in relation to the development and sale of generics (Beck, 2014, p. 22).

Investors' Protection

In order to make good use of foreign direct investments for developing their own economic base, many catching-up countries require foreign investors to partner with a domestic company, to hire domestic workers or to source from local producers. The new trade agreements aim at eliminating these restrictions on foreign direct investments. In addition, the trade negotiators of the European Union and the United States want to protect investors against the risk of new business, labor, or environmental regulations diminishing prospects for future profits. If this happens, companies will gain the right to claim compensation from the state, if such state actions reduce their profit expectations. They will also be allowed to file those claims in private courts—in so-called investor-to-state dispute settlement tribunals. These private tribunals lack public accountability, standard judicial ethics rules, and appeals processes. In other words, corporations will be given their own justice system outside the democratically accountable state justice system (Eberhardt, 2014).

Public procurement: In most nations, the government sector's demand for goods and services is substantial (almost 20% of the GDP of the European Union). This market power can potentially be used for industrial policy, ecological or social objectives. This sometimes misused power will be significantly restricted. Market access to public procurement is to be expanded at all levels. Foreign bidders are to be put on an equal footing with local ones, and barriers to access such as local content clauses, production requirements or exemption rules are to be dismantled. Transnational corporations are well positioned to make use of this new access to public monies (Beck, 2014).

Competition Policy

In addition, the new agreements shall contain competition policy provisions on state aid, monopolies and state enterprises. To minimize

state influence on competition, the forms of state influence or of favorable treatment of individual firms, sectors or regions are to be broadly defined. It will be difficult to evade such categorization—or else the legitimate exceptions will be tightly defined. State enterprises or those granted favorable treatment are to be obliged, beyond the tasks concerned here, to adopt a commercial orientation, and cross-financing in non-monopolistic markets is to be prohibited (similar to GATS Art. VIII). Finally, transparency rules for subsidies, which go beyond the existing regulations of the World Trade Organization (WTO), are intended to have a demonstration effect on other countries and speed up progress on equivalent global regulations (Beck, 2014; for TPP, see Wallach & Beachy, 2015).

Channels of Impact on Trade Unions

A deeper division of labor facilitated by trade across borders is a fountain of material wealth for societies. The more efficient execution of tasks frees up labor for the production and delivery of more products and services. It also potentially allows for more leisure time. However, deepening the division of labor across borders does not come without costs. Some costs are just of a short-term nature, a product of adjustment to new competitive circumstances. However, for some categories of workers within countries and for some working populations of whole countries, the costs can become quite permanent. Workers with low skills in capital-rich countries have seen their living standards eroded in the last decades thanks to globalization (and technological change), and in some capital- and skill-poor countries, most of those of working age have met a similar fate (e.g., Sub-Saharan Africa). In other words, while the liberalization of trade and investments may contribute to the “Wealth of Nations”, the distribution of the spoils can be highly uneven, to the point of outright losses for parts of the working population or even for whole countries.

As mentioned above, the new FTAs cover many aspects of economic life, not just the traditional lowering of tariffs. They will, therefore, have an impact on many sectors. While not all trade unions are directly affected by the TTIP, TPP and TiSA, indirectly, however, the whole labor movement will feel the impact of increased corporate power. In the following section, we will briefly sketch the various channels of impact.

Public-sector unions and their members are most directly in the focus of the new FTAs. As mentioned above, these agreements aim to open up the public sector for private competition by very narrowly defining public services that are to be exempted from the agreement, and by lowering the threshold for open competitive bidding in the public procurement market (Fritz, 2014). These measures will lead to further privatizations, which on average have undermined collective bargaining in fields previously covered by the public sector. Employees with scarce qualifications will particularly suffer income losses and harsher working conditions (Schmelzer-Roldán, 2014, p. 21-36). The TTIP *et al.* will also affect privately delivered services, especially in retailing and in the health sector. Lower standards for data protection will accelerate online shopping, and fewer possibilities for municipalities to restrict big-box retailing will push smaller chain stores to the margins. Limits on public health services and, again, lower data protection, will increase the concentration in the hospital sector, among pharmacies and, if online medical consultation spreads, among physicians.

Members of trade unions in small-scale agriculture will come under severe pressure. Even proponents of the TTIP have calculated job losses for smaller farms (Bureau et al., 2014). In manufacturing, the impact will vary according to competitive strength and size. Members of trade unions in large companies that are highly competitive, such as German auto companies, can expect that the output of their companies will expand and overall employment levels within their companies will increase. However, it is not guaranteed that the additional employment will accrue in those factories where the trade unions have a strong presence. The TTIP *et al.* are very much investment agreements that facilitate cross-border investment, and thereby also increase the discretionary powers of management to allocate work across borders. This increased leverage will not strengthen the bargaining position of the trade unions in the “winner” industries of “free” trade. Furthermore, trade liberalization logically implies a larger market, and a larger market means more room for scale economies, which in turn will lead to further concentrations. Therefore, employees in smaller manufacturing companies, except where these companies command a technological lead, are likely to feel the competitive pressure from the big companies. In addition, some of those benefits from harmonized standards through FTAs, such as safety requirements in relation to lights and brakes on automobiles mentioned by the European Commission

(2013, p. 3), might actually lead to fewer jobs because fewer tasks are necessary to adapt the product to local regulations.

Members of trade unions are not only producers but also consumers. As consumers, they might profit from lower prices thanks to trade-induced efficiency gains. However, since most of the significant changes are to be expected in the public sector, members of trade unions living in countries with currently rather efficient public sectors are likely to experience limited access to these services if they have to live on a small budget, as well as deteriorating quality of services, especially when the services depend on large physical infrastructure such as public transportation or water supply and disposal, as private investors tend to neglect maintenance in favor of short-term profits (Cheow, 2003). Lower standards for food quality and data protection have been highlighted in the media. There is one area where US negotiators are pushing for higher standards, and this is the protection of intellectual property, especially for pharmaceutical companies. While this may benefit these companies, and may even trickle down to their employees (if the monopoly rent is not solely used to uphold the stock market price), it will increase the medical bills of most ordinary people (Love, 2014).

Workers are also tax payers. The TTIP et al. will lead to lower tariffs, and therefore to lower income for states (see Raza et al., 2014). Of even greater importance could be the greater ease for cross-border investments, and thereby for tax avoidance. The possibilities for corporations to file compensatory claims for forgone income due to new government regulations can—if present trends are any indication—lead to very hefty expenses for government entities (Eberhardt, 2014).

Finally, workers are also citizens, with the right to participate in the political process. Many of the clauses foreseen in the new trade agreements are targeted toward making the agreed upon liberalizations irreversible. The investor-to-state dispute settlement process in particular will limit policy space, since municipalities or higher levels of the state will face costly lawsuits and high claims for compensation in *ad hoc* arbitration courts outside the normal legal processes in case they decide on new regulations protecting workers, consumers, and the environment (Eberhardt, 2014). The introduction of a minimum wage or raising the minimum wage may trigger such lawsuits by foreign investors (or the foreign subsidiaries of domestic investors) claiming

that the resulting higher wage bill will lower their profit expectations. The same may hold true for providing workers with more rights or better protection at the workplace (Compa, 2014). In sum, the broad scope of the FTAs means that their impact will not be limited to the export and import businesses, but will affect workers as producers, consumers, citizens and as collective actors.

Past Struggles against FTAs

The introduction of so many new issues into trade agreements and the encroachment of external trade rules into more and more aspects of daily life have broadened the potential scope for engagement and mobilization against such agreements. Increasingly, international trade and investment agreements have become major “condensing” or “symbolic” issues for broader discontent with existing neoliberal policies (McGuire, 2013, p. 4).

In the last three decades, unions have participated in some of the biggest and most divisive international civil society protests against free trade and investment agreements including the protests against the Multilateral Agreement on Investment (MAI) in 1998 (Laxer, 2003); the protests against the launch of a new millennial round of trade negotiations in the WTO, culminating in the so-called “Battle of Seattle” in 1999 (Smith, 2002); and subsequent protests against the negotiations for the General Agreement on Trade in Services (GATS), which started in 2000 despite the failure of the WTO-Ministerial in Seattle (see below); and the Non-Agricultural Market Access (NAMA) negotiations, which formed part of the Doha Development Round of the WTO (Busser, 2009). At the Hong Kong WTO-Ministerial in 2005, trade unions, especially those from Asia, waged a high-profile campaign against a new round of trade liberalizations. Unions have also joined civil society campaigns against major bilateral and regional agreements, such as the North American Free Trade Agreement (NAFTA), which came into force in 1994 (Cowie, 1997), the Free Trade Agreement of the Americas (FTAA) (Hachman, 2009),¹ the South Korea-U.S Free Trade Agreement (KORUS FTA) (Kim, 2009b), the Japan-Philippines Economic Partnership Agreement (JPEPA) (Viajar, Serrano, & Certeza, 2009b), and various EU Economic Partnership Agreements (EPAs) in Africa and the Caribbean (James & Odigie, 2009; Deane, 2009b).²

Both the failure of the proposed MAI in 1998 and the breakdown of negotiations at the 1999 Seattle Ministerial have been regarded as symbolic victories for civil society, and subsequently used as “proof” that civil society had the power to defeat or influence trade negotiations, despite the forces arrayed against them (McGuire, 2013). The failure of the FTAA and the stalled WTO negotiations at successive WTO-Ministerials have been framed in the same way although, of course, conflicts between the negotiating governments have also played a major role. (For the FTAA, see Prevost, 2005; for the WTO negotiations, see Kelsey, 2008.)

Nevertheless, labor organizations face considerable constraints in making their voice heard in trade policy deliberations and decision-making. Union movements in many countries suffer declining power due to structural, economic and political changes. In addition, except in a few cases, unions at both the international and national level face quite limited access to the trade policy and negotiation process due to institutional limitations and exclusion from policy and political processes. Moreover, union organizations frequently lack trade policy expertise and the capacity to mobilize members in relation to trade issues (McGuire, 2013; McGuire & Scherrer et al., 2010).

Nonetheless, despite these limitations, research we have carried out on trade union attempts to influence the outcome of trade negotiations shows that there are opportunities and avenues for organized labor to make its voice heard (generally as part of a broader civil society movement). The first study, which was a collaborative effort with alumni from the Global Labor University, looked into the capacity of unions to develop a voice in trade policymaking at the national level. While this research found great variety in the countries studied, in terms of institutional opportunity to intervene in trade policy processes and sufficiently developed policy expertise and mobilizing capacity, on the whole, there appeared to be more opportunities to intervene in the trade policy process at the national level than unions are generally aware of. For example: following the announcement of planned negotiations; at the point of initiation of formal negotiations; during negotiations, especially in the lead up to deadlines and during negotiation meetings; at the point of signing the agreement, which usually requires some form of parliamentary approval; and during ratification and/or implementation of required legislation. In some cases, trade agreements may also have

mandatory review processes (McGuire & Scherrer et al., 2010; for the Philippines, see Viajar, Serrano & Certeza, 2009a).

Conceptual Tools for Analyzing Campaigns

The abovementioned collaborative study laid the groundwork for a more in-depth study of the trade unions' campaign against the GATS negotiations (McGuire, 2013, 2014). McGuire's analysis focused mainly on the global campaigns of Public Service International (PSI) and Education International (EI), as they were the major global union organizations engaged in campaigning against the GATS, at least initially. Other Global Union Federations (GUFs), including Union Network International and particularly its Asian and Pacific Regional Organisation (UNI Apro), were active in the lead-up to the Hong Kong Ministerial.³ McGuire's study included attempts by PSI and EI to involve their national affiliates, with a comparative case study of union action in Australia and South Africa. We will draw on the insights of this study in the following.

In order to understand the emergence and effectiveness of union protest and mobilization against the GATS, McGuire utilized three core conceptual tools drawn from social movement theory (SMT): 1) the nature of the political opportunity structure (POS); 2) the mobilization and organizational capacity (MOC) of movement organizations; and, 3) their capacity to influence the subjective consciousness of potential activists so as to mobilize them to take action (framing capacity). These are explained briefly below before discussing the outcome of union actions and the implications of the broader research findings.

Political Opportunity Structure (POS)

POS refers to the "openness" of a system or organization to external demands, whether through social movements or trade unions (Meyer, 2004; Sikkink 2005). This is not static and can vary, depending on the issue, the policy field, the country context, and the time frame in which action takes place. To map POS, one must look at the specific structures of the political system and the particular issue field to be influenced.

Important factors for influencing trade policy appear to include: a) who controls the trade policy process; b) the formal and informal

mechanisms and procedures for civil society inclusion and participation that exist, including unions; c) policy legacy, receptivity and consensus within relevant ministries and government departments; and d) the willingness of the state to repress mobilization versus its vulnerability to protest.

Beyond these more general factors of POS, “windows of opportunity” such as elections or key junctures in the policy process can provide “Situational Opportunities” (SO) for union intervention, as it may be easier to raise the level of media attention and public debate during these times, and governments are likely to be more responsive and/or sensitive to criticism (McCarthy, Smith, & Zald, 1996, as cited in McGuire, 2013).

Mobilizing and Organizational Capacity (MOC)

To take advantage of openings in the political process, movements must be willing and able to provide sufficient resources (e.g. staff, time, money, member networks, etc.). The mobilization of these resources requires effective mobilization structures and organizational capacity (McAdam et al., 1996; Rucht, 1996, as cited in McGuire, 2013). For union movements, mobilization structures include its formal affiliate and delegate structures, its engaged membership, and its external and non-union networks and alliances. While organizational capacity is not easy to define, it can be understood as the capability of unions to assess opportunities for intervention, develop coherent policies and strategies, and effectively organize and mobilize resources so as to achieve desired outcomes (Hyer, 2007, p. 198, as cited in McGuire, 2013).

Beyond making the issue a priority, one important factor for MOC appears to be sufficient specialist knowledge and expertise, as these capabilities are necessary for understanding the impact of issues on members and where to intervene in the policy process, and for framing and legitimizing claims (Hyman, 2007, as cited in McGuire, 2013; McGuire & Scherrer et al., 2010).

Framing Capacity

Social movement theory tells us that opportunity and capacity are not sufficient. Successful mobilisation also requires a consensus about the

issue (i.e., shared value orientations, problem descriptions and solutions), and a willingness to take action. Where these do not exist, they must first be created. This can be done by framing specific problems in a way that resonates with constituents (e.g., union members), alliance partners, and the general public. To do this, movements frequently draw on existing sets of interpretive ideas about what is considered an injustice or violation of rights (Rucht, 1996, as cited in McGuire, 2013).

The main tasks of framing are to: a) identify an issue as a problem and assign blame (diagnostic frames); b) suggest solutions and strategies to deal with the problem (prognostic frames); and, c) provide a rationale for taking action (mobilizing frames) (Bedford & Snow, 2000, p. 614, as cited in McGuire, 2013).

The Achievements of the Anti-GATS Campaign

In 1994, with the conclusion of the General Agreement on Trade in Services (GATS), national laws and regulations governing services became the object of an international trade regime. At the time, it was agreed that negotiations for further liberalization of trade in services be continued because many countries had committed themselves only to a cautious opening of their services, in particular their public services. The new round of negotiations commenced in 1999, reached a high point in 2003, and was discontinued in 2008 when the multilateral Doha-Round seemingly broke down for good.

Unions have consistently argued that the potential of the GATS to escalate the liberalization and privatization of essential and other basic services will aggravate social disparities, and that WTO rules and disciplines will jeopardize the capacity of governments to regulate services and meet universal service provisions that guarantee equitable access. As a result, between 1999 and 2006, unions at the global and national levels joined a broad “counter movement” against the GATS, and the institution and policies underpinning it. Since the multilateral Doha-Round was suspended, the negotiations on services have been continued among a smaller group of countries under the new acronym TiSA.

The analysis shows that, despite a relatively closed political opportunity structure and limited resources to dedicate to trade, unions at both the international and national level were able to have an impact on the GATS negotiations and, to a limited extent, on the political opportunity structure—not so much on the institutional aspects but on the negotiating environment. Union actions had a significant chilling effect on negotiations, and built resistance to future demands. Unions also built proactive relationships and alliances with key national trade negotiators, and achieved some recognition, if not formal acknowledgement, that they are significant actors in the international trade negotiation process.

The campaign against the GATS had a sensitizing impact, leading to widespread awareness of the issue within unions, international institutions, parliamentarians, the media, and the general public, and successfully framed the GATS as a threat and a shared social problem. This had a cautionary impact on governments at all levels. The campaign significantly changed the negotiation environment by delegitimizing the negotiation process and undermining claims about the benefits of liberalizing services, thus forcing the WTO and pro-service negotiators on the defensive.

The union struggles against the GATS also built substantial internal union capacity. It increased the level of knowledge and expertise about trade policy and the negotiation process within the union organizations involved. Such knowledge and expertise is important for scrutinizing future trade agreements, monitoring government action, and identifying opportunities to intervene. It also added legitimacy to trade union claims. The campaign action against the GATS built bridges between unions, NGOs and social movement networks—in some cases resulting in long-standing alliances. Unions honed their framing capabilities and adopted a wide range of new strategies, which can potentially be adapted to other campaigns. The campaign action also built up a layer of knowledgeable trade activists within the union movement. However, this layer of expertise and activism is relatively thin and confined to key individuals within the union movement. Therefore, it remains to be seen whether it is sustainable in the long term. (For further details of outcomes, see Chapter 6 of McGuire, 2013.)

Lessons to be Learned from the Anti-GATS Campaign

There are a number of lessons to be drawn from the Anti-GATS campaign for trade unions attempting to influence trade negotiations.

The Multilevel Nature of the Political Opportunity Structure

The multilateral nature of the GATS trade negotiation process forced unions to operate at both the international and national levels in trying to influence the negotiations, thus creating a multilevel political opportunity structure. This encouraged the development of innovative multilevel strategies.

Faced with a closed political and institutional system at the international level, international union organizations used the national level to leverage their demands, in a type of “reverse” boomerang effect (Keck & Sikkink, 1998, as cited in McGuire, 2013, p. 186). At the national level, the GATS negotiations were strongly linked to the existing trend of privatization of public services. In Australia, activists used two forms of “scale shift,” as identified by Tarrow (2005), to strengthen domestic claims and mobilization. They reframed ongoing domestic privatization as endangering public services by exposing them to further liberalization through the GATS (global framing). In addition, they framed the enforceable WTO and GATS rules and regulations as an encroachment of external power into the domestic realm (internalization) and as thus a threat to domestic policy space and regulation.

The Global Union Federations (GUFs) also linked activists on either side of the request/offer process of the negotiations, with the aim of sharing information, including leaked texts and demands, and thus putting simultaneous pressure on governments at either end of the process—on the *demandeurs* to withdraw their requests in sensitive services areas, especially of developing countries, and, for countries facing the pressure of requests, not to give in to demands to open up sensitive services areas for further liberalization.

The Importance of Situational Opportunities (SO)

Even in relatively closed political systems, contingent situational opportunities provided openings for action. At both the international

and national levels, key junctures in intergovernmental policy and trade negotiation processes (e.g., WTO ministerial meetings, agenda setting, and negotiating deadlines) provided “windows of opportunity” for articulating grievances, forming alliances, attracting media attention, and mobilizing protest action. The GATS negotiations themselves created meetings and deadlines, which activists could organize around. Frequently, the negative actions of authorities or elites in the lead-up to or during these meetings created new grievances that triggered further protest and mobilization by challenger groups, thus creating a type of “opportunity/threat spiral” (Tarrow, 2005; Karapin, 2011, as cited in McGuire, 2013). However, while such situational opportunities can provide valuable opportunities for mobilization and internal capacity-building, “events-driven” campaigning can have its downside. Being too event-focused can lead to reactive strategies rather than more long-term strategic planning, which ensures that people understand the issue—that they have done the local educating, the awareness raising, the policymaking, the lobbying work, etc. (McGuire 2013, p. 175).

Knowledge and Expertise

The multilevel strategies used by the GUFs and national unions relied heavily on the development of sufficient knowledge and expertise about the GATS. Despite the lack of resources generally devoted specifically to trade in both international and national union organizations,⁴ both PSI and EI, as well as key national unions, developed considerable trade policy expertise, although in most cases, this was concentrated in the hands of a few key experts. Unions also drew on additional expertise through alliances formed with civil society groups. Unions were able to use their knowledge and expertise to understand the likely impact of the GATs on members, and to produce high quality briefing material and policy analysis for educating members and the general public, and for lobbying developing country trade delegations and negotiators. Expertise increased the legitimacy and credibility of the claims that unions made about the problems that the GATs posed, and made it hard for these claims to be dismissed. It also enabled unions to actively monitor negotiations, to refute claims made by the WTO and GATS negotiators, and to make convincing counterclaims. Knowing that their actions were being closely scrutinized and monitored by people with expertise and technical understanding of the WTO and of the GATS negotiations acted as a cautionary brake to liberalization measures

in sensitive services. Expertise was also crucial for strategic framing and the exercise of discursive power.

Strategic Use of Framing

The results of this research also demonstrate how framing can be used as a contentious strategy in the exercise of discursive power (for a description of discursive power McGuire, 2013, p. 34-37). As part of a broader movement against the GATS (and the WTO), unions deliberately constructed meaning about the GATS as a way to exercise influence, not just on the GATS negotiations themselves but also on various domestic issues, including the ongoing deregulation and privatization of public and social services. As mentioned above, through the processes of “global framing” and “internalization” (Tarrow, 2005, p. 32), unions co-opted potent global themes to add ammunition to their domestic battles to protect public services.

By claiming that existing privatization and commercialization policies imperiled public services by exposing them to international trade rules through the GATS, unions and civil society actors reframed what was essentially an existing domestic issue in global terms (global framing). This enabled unions to reinforce claims about the essentially social nature of public services, as opposed to them being tradable commodities, which could be “sold off.” At the same time, unions framed the GATS negotiations as the intrusion of a set of powerful external trade rules into the domestic realm (internalization). Unions argued that the GATS effectively shifted elements of domestic regulatory power to an undemocratic external institution, which had the power to determine whether domestic regulations related to services consisted of a barrier to trade, thus potentially restricting, or at the least undermining, current and future government policymaking and regulatory power. This effectively amplified the threat of the GATS into an attack on national sovereignty and democracy, thus broadening and deepening the level of threat and thus mobilization potential (McGuire 2013, p. 171).

Coalition-building

Unions drew on coalition-building and strategic framing (discursive power) to compensate for the lack of institutional power and to leverage weakened associational power.⁵ Coalition-building and networking

with NGOs and other social movement groups opposed to the GATS were particularly important for broadening unions' support base, strengthening the legitimacy of their claims, and providing additional resources, knowledge, frames and possibilities for joint action. Where they lacked institutional and political access (and thus power) in the labor domain, unions in Australia shifted their demands to the citizenship domain where they could draw on their legislative rights to call for public inquiries, lodge submissions, and exercise both their symbolic and institutional power as citizens.

Transnational and Cross-border Action

There were attempts to link countries at the horizontal level by connecting the countries involved in the request/offer process of services negotiations. However, there was no evidence of any sustained transnational or cross-border coalition-building between unions in countries that shared similar grievances related to the GATS. While this was theoretically possible, it would probably have required the formation of a coalition of like-minded countries working together to resist demands to liberalize public and social services, as happened later in the Non-Agricultural Market Access (NAMA) negotiations, also negotiated in the WTO. In this case, the demands made of developing countries during the negotiation process led to the formation of a coalition of developing countries known as the NAMA 11. This subsequently opened an opportunity for the formation of a parallel cross-border coalition of NAMA 11 trade unions, who then played a major role in bolstering the position taken by the NAMA 11 countries and holding the coalition together. (For a full account of the formation of the NAMA 11 trade union coalition, see Busser, 2009. For the union campaign in the Philippines, see Castro, 2009.)

The Relationship between Opportunity and Capacity

Another interesting finding was that opportunity and capacity shape mobilization but not as directly as expected. A limited or relatively closed POS and limited MOC do not prevent mobilization on a particular issue. On the other hand, an open political system and good mobilization and organizational capacity do not necessarily lead to mobilization. In fact, the lack of institutional and political power in Australia encouraged unions to take advantage of their powers as citizens through the

parliamentary process to run a campaign against the GATS, whereas the very access of labor to institutional and political power in South Africa appeared to lead them to utilize more “insider” strategies, which were backed up by the potential for mass mobilization.

Acting on the Challenge of the New Trade Agreements

Liberalization of trade can be wealth-creating. The new trade initiatives such as TTIP, TPP and TiSA, however, are less about trade than about increasing the power of corporations. Since corporations are already powerful and have been able to line up the governments of the participating countries in favor of the FTAs, labor faces an uphill battle in preventing the most egregious power-grabbing aspects of these very complex agreements. In this uphill battle, fortunately, labor is not alone. Many organizations of civil society have become aware of the dangers of these agreements should the current agenda of the chief negotiators be realized. Therefore, campaigns on the issues of the FTAs also offer the opportunity to strengthen organized labor’s ties to civil society.

Any campaign has to start with the members, since trade unions are not primarily advocacy organizations but membership-based mass organizations. Issues of trade are usually far removed from the shop floor and, quite naturally, seldom on the minds of the members. It is therefore essential that unions analyze the likely implications of the demands put forward by the negotiators for the workplaces and daily lives of the respective trade union members. This analysis should not rely on the standard models used by economists. These models rest on dubious assumptions and completely neglect any social benefit arriving from regulation (Raza et al., 2014). Instead, the analysis should rely on a careful reading of previous experiences, an assessment of the current and projected competitive position of their respective company or industry, and an awareness of the company or industry labor relations strategy. Even if this analysis comes up with a positive balance in terms of employment perspectives, the respective trade union should consider the impact of the TTIP *et al.* on the broader labor movement and society. If labor is weakened overall, it is quite likely that even the lucky workers will eventually see their position vis-a-vis capital eroded. And if social standards and services are eroded, this impacts directly on

the “social wage” of workers. Without solidarity from other workers, even workers with a strong market position will lose out to capital in the end. Capital commands not only market power but also political power, and the more of the latter, the weaker the labor movement is overall. And capital will make use of that power, as we have seen in the attacks on the last bastions of US trade unionism, the public sector, in the wake of the financial crisis (Paul, 2015).

Jobs and working conditions are dearest to trade union members, but these work-related issues do not define them. To various degrees they are also interested in consumer and citizen issues. Since the new trade agreements cover so many areas of concern to workers—not only as employees but also as citizens and consumers—it should not be too difficult to mobilize the membership with a context-sensitive framing of the issues. Nevertheless, without understanding the avenues available to influence the outcome of the trade negotiations, trade campaigns will likely be limited in their capacity to direct this mobilization. As has been shown in other international trade negotiations, there are many routes for trade unions and civil society organizations to influence trade negotiations. These differ from country to country, and have to be carefully but also creatively identified. In order to take advantage of these opportunities, unions must prioritize trade as an issue, build up sufficient trade policy knowledge and expertise, and dedicate sufficient resources for mobilization.

Success in using the many routes available also rests on the ability to reach out to trade unions and civil society in the other member states and countries impacted by the FTAs, and to frame the issues broadly in terms of injustice. If the campaign is seen mainly as being carried out by just one or a few countries on the grounds of narrow self-interest, it is not likely to resonate with the rest of countries involved in the trade and investment negotiations. Joint activities might help the campaigns avoid the stigma of national chauvinism, which corporate lobbyists love to use in order to delegitimize anyone who criticizes liberalizing trade and investments across borders.

Endnotes

- ¹ The Free Trade Area of the Americas (FTAA) was an attempt to create a neoliberal free trade agreement that expanded the North American Free Trade Agreement (NAFTA) to every country in North America, Central America, South America and the Caribbean, except Cuba. Negotiations began after the completion of NAFTA in 1994 and were supposed to have been completed by January 1, 2005.
- ² For details of the campaign case studies against FTAs by Hachman (2009), Kim (2009b), Viajar/Serrano/Certeza (2009b), James and Odigie (2009), and Deane (2009b), see McGuire and Scherrer et al. (2010).
- ³ The International Union of Food and Allied Workers (IUF) was also quite engaged, and the International Trade Union Confederation (ITUC) played a significant role in coordinating and issuing joint trade union statements (McGuire 2013: 110-11).
- ⁴ South Africa is something of an exception. Here unions developed considerable trade policy expertise so as to take advantage of their institutionalized access to the trade policy process through NEDLAC. (See McGuire, 2013, ch. 4.6.)
- ⁵ For a description of the various forms of union power referred to, see McGuire (2013, ch. 2.2)

References

- Anner, M. (2001). The international trade union campaign for core labor standards in the WTO. *Working USA*, 5(1), 43–63.
- Beck, S. (2014). TTIP: Possible negotiating outcomes and consequences. In C. Scherrer (Ed.), *The transatlantic trade and investment partnership: Implications for labor* (pp. 10-40). Mering, Germany: Rainer Hampp Verlag.
- Bureau, J.C., Disdier, A.C., Emlinger, C., Fouré, J., Felbermayr, G., Fontagné, G., & Jean, S. (2014). *Agriculture and rural development risks and opportunities for the EU agri-food sector in a possible EU-US trade agreement* (Study for the Directorate-General for Internal Policies Policy, Department B: Structural and Cohesion Policies). Brussels: European Union.
- Busser, E. (2007). Why NAMA is a trade union issue: Negotiations, policy implications and trade union response. *Labor, Capital and Society*, 40, 161-186.
- Busser, E. (2009). *The NAMA 11 trade union group: Overview and achievements* (Internal Paper, ITUC, 20 February).
- Castro, A. (2009). Actions on NAMA in the Philippines. In *Selections from: Trade*

unions 2009 - strategies for confronting the global crisis, multilateralism and trade and investment agreements. GURN. Retrieved 18 January 2010 at <http://www.gurn.info/en/gurn-special-publications-1/gurn-special-publications-1/chapters/actions-on-nama-in-the-philippines>

- Cheow, E.T.C. (2003). *Privatisation of water supply* (Occasional Papers No. 8). Geneva: Friedrich-Ebert-Stiftung, 1-23.
- Compa, L. (2014). Labor rights and labor standards in transatlantic trade and investment negotiations: An American perspective. In C. Scherrer (Ed.), *The transatlantic trade and investment partnership: Implications for labor* (pp. 120-136). Mering, Germany: Rainer Hampp Verlag.
- Cowie, J. (1997). National struggles in a transnational economy: A critical analysis of US labor's campaign against NAFTA. *Labor Studies Journal*, 21, 3-32. Retrieved from <http://digitalcommons.ilr.cornell.edu/cb/28/>
- Deane, D. (2009b). *Barbados union engagement in negotiation of the CARIFORUM/ EU Economic Partnership Agreement* (Research group background paper, Part 2. No. 1.) Global Labour University.
- Eberhardt, P. (2014). Investment protection at a crossroads. In C. Scherrer (Ed.), *The transatlantic trade and investment partnership: Implications for labor* (pp. 100-119). Mering, Germany: Rainer Hampp Verlag.
- European Commission. (2013). *Transatlantic trade and investment partnership: The regulatory part*. Brussels, Belgium: European Commission. Retrieved from http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151605.pdf
- Fritz, T. (2014). *TTIP vor Ort. Folgen der transatlantischen Handels- und Investitionspartnerschaft für Bundesländer und Kommunen, im Auftrag von campact*.
- Hachmann, L.C. (2009). *Brazil: The national campaign against the Free Trade Agreement of the Americas* (Research group background paper, Part 2. No. 3.). Global Labour University.
- IUF-International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations. (2014). Trade deals that threaten Democracy. In C. Scherrer (Ed.), *The transatlantic trade and investment partnership: Implications for labor* (pp. 160-167). Mering, Germany: Rainer Hampp Verlag.
- James, E., & Odigie, J. (2009). *Nigeria: Non state actors' engagement with the*

African, Caribbean and Pacific countries–European Union Economic Partnership Agreement (ACP-EU EPA) negotiation process (Research group background paper, Part 2. No. 2.). Global Labour University.

Kim, M. (2009b). *South Korea: The campaign against the South Korea-U.S Free Trade Agreement* (Research group background paper, Part 2. No. 4.). Global Labour University (GLU).

Laxer, G. (2003). The defeat of the multilateral agreement on investment: National movements confront globalism. In G. Laxer & S. Halperin (Eds.), *Global civil society and its limits*. United Kingdom: Palgrave Macmillan.

Love, J. (2014, October 16). *New leak of TPP consolidated text on intellectual property provides details of pandering to drug companies and publishers*. Switzerland: Knowledge Ecology International.

McGuire, D., & Scherrer, C. et al. (2010, February). Developing a labor voice in trade policy at the national level (Working Paper No. 8). Global Labour University.

McGuire, D. (2013). Re-Framing trade: Union mobilisation against the General Agreement on Trade in Services. *Labor and Globalization*, 1. Munich, Bavaria: Rainer Hampp Verlag. Retrieved from http://www.global-labour-university.org/fileadmin/books/McGuire_Re-Framing_Trade.pdf

McGuire, D. (2014). Analysing union power; opportunity and strategic capability: Global and local union struggles against the General Agreement on Trade in Services (GATS). *Global Labor Journal*, 5(1), 45-67. Retrieved from <http://digitalcommons.mcmaster.ca/globallabour/vol5/iss1/3>

Organisation for Economic Co-Operation and Development. (2008). *Compendium of patent statistics*. Paris, France: OECD.

Paul, A. (2015, March 12). The right's attack on US government unions. *Equal Times*.

Prevost, G. (2005). Contesting free trade: The development of the anti-FTAA movement in the streets and in the corridors of state power. *Journal of Developing Societies*, 21(3-4), 369-387.

Raza, W., Grumiller, J., Taylor, L., Tröster, B., & Arnim R.V. (2014). An economic assessment of the claimed benefits of the Transatlantic Trade and Investment Partnership. In C. Scherrer (Ed.), *The transatlantic trade and investment partnership: Implications for labor* (pp. 41-99). Mering,

Germany: Rainer Hampp Verlag.

Schmelzer-Roldán, S. (2014). *The impact of electricity sector privatization on employees in Argentina and Brazil: A comparative institutional analysis*. Munich, Bavaria: Rainer Hampp Verlag.

Smith, J. (2002). Globalizing resistance: The battle of Seattle and the future of social movements. In J. Smith & H. Johnston (Eds.), *Globalization and resistance* (pp. 207-227). Lanham: Rowman & Littlefield.

Tarrow, S. (2005). *The new transnational activism*. Cambridge: Cambridge University Press.

Wallach, L., & Beachy, Ben. (2015, March 25). Analysis of leaked Trans-Pacific Partnership investment text. *Public Citizen's Global Trade Watch*. Retrieved from <http://citizen.org/documents/tpp-investment-leak-2015.pdf>

Viajar, V.Q.D., Serrano, M., & Certeza, R. (2009a). *Trade policy process and trade union capacity to intervene at the national level: The case of the Philippines* (Research group background paper, Part 1. No. 9). Global Labor University.

Viajar, V.Q.D., Serrano, M., & Certeza, R. (2009b). The Philippines: The campaign against the Japan-Philippines Economic Partnership Agreement (Research group background paper, Part 2. No. 5.). Global Labour University.