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# Global Trade with an Epistemic Upgrade

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**Abstract:** This paper takes a social epistemology perspective on markets in general and trade deals in particular. Normatively, it is based on considerations of democratic accountability and contestation. Empirically, it is based on the assumption that all markets are embedded in institutional frameworks. Knowledge plays an important role in the institutional framework of markets: it matters both at the level of *content* – which knowledge has to be processed in what way, according to the market rules? – and at the level of *process* – whose knowledge counts in setting the rules? While these considerations apply to both domestic and international markets, there are good reasons to allocate certain epistemic tasks to the frameworks of international markets, for example trade deals. While the TTIP and CETA negotiations fell short of democratic standards about transparency, the debate about them indicates growing public awareness of the importance of the institutional frameworks for international trade.

**Keywords:** markets, embeddedness, trade deals, social epistemology, political epistemology, TTIP, CETA

## 1 Introduction

Trade deals such as TTIP and CETA have been a matter of much public debate in recent years. In the fall of 2015, at the height of the discussion about TTIP, the planned ‘Transatlantic Trade and Investment Partnership’ between the US and the European Union, a Pan-European petition against it collected 3,28 million signatures (Rürup 2015). Many critical voices came from the political left: they rejected the idea that free trade is good *per se*, and questioned whether the deal was really in the public interest, or rather in the interest of multinational corporations. Other criticisms, however, came from nationalist and right-wing corners, and when Donald Trump was elected President of the United States, the TTIP negotiations were put on hold. In contrast, CETA, the trade agreement between Canada and the EU, has been provisionally applied in 2017 and is in the course of being approved by

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national parliaments of EU countries.<sup>1</sup> For those interested in the constitution of our globalized world, trade deals continue to deserve attention – such deals can, after all, have a massive impact on how the benefits and burdens of global trade are distributed.

In this paper, I discuss markets in general, and trade deals in particular, from a perspective from which they have rarely been considered so far: a perspective of social or political epistemology (see, e.g., Goldman 1999; Haddock et al. 2010; Althaus et al. 2014; Friedman 2014). These relatively young fields explore the ways in which knowledge<sup>2</sup> is generated and processed in social contexts (social epistemology), and the interrelations between such processes and political processes (political epistemology). Thus, I take the recent debate about TTIP and CETA as an opportunity to explore the political-epistemic dimensions of trade deals. This topic may seem counterintuitive to some readers, especially to those from libertarian camps: after all, trade deals are about markets, and markets are often taken to be the optimal institutions for processing decentralized knowledge through the price mechanism (e.g., von Hayek 1945). So why should one worry about the epistemic features of markets at all? But as I hope to make clear in the course of this paper, this picture is too simplistic. All markets are embedded in institutional frameworks, and these frameworks co-determine their epistemic qualities, which in turn co-determine the resulting distribution of benefits and burdens. The construction of such frameworks – as exemplified in negotiations about trade deals – happens in political processes that deserve to be scrutinized with regard to their epistemic features, both with regard to *content* and with regard to *process*.

Why is it worth exploring the epistemic dimensions of trade deals? One might argue that the topic is interesting in itself, as one instance of broader questions of how the creation of institutions is intertwined with epistemic processes. But my main motivation stems from concerns about democratic accountability and the possibility of democratic contestation. Global markets, as well as the processes in which their institutional frameworks, such as trade deals, are designed, often appear as ‘black boxes’ to citizens. This makes it difficult for them to criticize these frameworks and the outcomes that result from them. Hence, citizens and democratic governments need to be able to contest

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<sup>1</sup> See <http://ec.europa.eu/trade/policy/in-focus/ceta/>

<sup>2</sup> I use the term ‘knowledge’ in a non-technical sense, sometimes interchangeably with ‘information’. While there may sometimes be uncertain cases (e.g. when there is controversy among experts whether the available evidence suffices to support a causal claim), I assume – unless otherwise noted – that in most politically relevant cases, there is sufficiently certain knowledge about the matters at hand.

these frameworks, which requires sufficient transparency.<sup>3</sup> It is highly problematic if private actors, e. g. global corporations, have more access to information about these processes than citizens, civil society organizations, and even politicians. Therefore, from a perspective of democratic accountability the epistemic dimensions of trade deals deserve scrutiny.

In the next section, I set the stage by describing how markets are embedded in institutional frameworks, both on the domestic and on the international level. The term ‘embeddedness’, however, is often also used in a normative sense, describing a kind of institutional embeddedness that incorporates normative principles and shapes markets such that they serve the common good. The ways in which markets are embedded are always contested, because their institutional rules shape distributive outcomes, and hence market participants have an interest in setting the rules of the game in their own favor. In the battles around the rules of markets, knowledge matters: it matters both at the level of content – which knowledge has to be processed in what way, according to the market rules? – and at the level of process – whose knowledge counts, and how, in setting the rules? I apply these considerations to international trade deals, arguing that there are good reasons to allocate the responsibility for creating transparency not to national, but to international sets of rules.

But the realities of international trade negotiations look different: focusing mostly on TTIP as an example, I argue that both at the level of content and at the level of process, there were massive deficits with regard to the use of knowledge; CETA shows some advances in this respect, but with room for further improvement. I conclude with a summary and a modest note of hope: what the TTIP and CETA negotiations and the public debate about them have shown is that the awareness of the problems at hand has risen, and that citizens have become more aware of the epistemic dimensions of markets and their frameworks. This should make it easier to bring about progressive change in future trade negotiations.<sup>4</sup>

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<sup>3</sup> The relation between democracy, accountability, and transparency (or the lack thereof) in the international sphere is discussed in a large literature (for example the classic Grant and Keohane 2005; for a recent, sociologically informed account see Kennedy 2016; for an overview of the literature on Global Democracy see Kuyper 2016). To the best of my knowledge, however, there is no literature on the epistemic dimensions of trade deals from a conceptual perspective, a gap that this paper closes.

<sup>4</sup> Of course, I do not claim that these are the only relevant normative issues about trade deals. For example, they raise issues of justice between those who benefit by them and those who lose out, which need to be addressed domestically or at the supra-national level. For reasons of scope, I cannot discuss these questions in this paper.

## 2 The embeddedness of markets

My argument is based on the assumption, widely shared except by anarcho-capitalists, that markets do not arise naturally, but require certain institutional background conditions. For the sake of simplicity, it is helpful to first look at domestic markets. For them to come about, individuals need to have reasonably secure property rights, and it must be possible to legally enforce contracts. Property rights legally constitute the goods that are traded in markets and set them free from the social relations in which they had been historically embedded. As Karl Polanyi (1944) has famously argued, what was particularly crucial for the creation of modern market societies was the production of labor, land and money as market goods in the eighteenth and nineteenth century. In his memorable phrase: '*Laissez-faire ... was planned*' (1944, p. 147).

Polanyi also developed the distinction between 'embedded' and 'disembedded' economic orders. By 'embedded' markets he meant markets that were subsumed under other social orders, as was the case in tribal or feudal societies; 'disembedded' markets, in contrast, took on a life of their own. This terminology is slightly confusing, however, given that 'disembedded' markets *also* need to be created by institutions. Moreover, to have the features that textbook models describe – and that are presupposed in standard arguments about the superior efficiency of markets – the institutional framework needs to be such that market failures, for example externalities, are avoided. The ways in which markets are *de facto* embedded or disembedded by their institutional framework,<sup>5</sup> and the ways in which they *should* be embedded or disembedded from a normative perspective, thus need to be distinguished (see also Herzog 2016).

When it comes to the second, normative level, one might think that the guiding criterion is efficiency: markets are supposed to maximize social welfare. But while certainly being an important consideration, efficiency can come into conflict with other values, for example the basic rights of individuals, or the preferences or rights of different groups can come into direct conflict with each other, requiring tradeoffs that need to be made on the basis of values other than

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<sup>5</sup> On the descriptive level, one might want to add further differentiations: in addition to the institutional embeddedness in the sense of formal institutions (laws, regulations, etc.), there can be elements of embeddedness through social or cultural norms (Herzog 2016, pp. 17ff.). But in many markets, such additional elements have been eroded; moreover, a chicken-and-egg-question can be raised about the primacy of formal versus informal institutions. Hence, in what follows I focus on the institutional framework in the formal sense; for international markets, this is even more plausible than for domestic markets, because it is less likely that there are shared social norms that would embed them.

efficiency. For example, the right of buyers to revise buying decisions they had made in the heat of the moment stands in tension with the right of sellers to definitely conclude certain transactions ('what has been sold has been sold') – and the legal framework has to determine what rights both sides have, for example by defining the length of 'cooling off' periods during which buyers can revoke contracts.

From a democratic perspective, the institutional framework of markets should embody the value judgments that a society makes about such questions: it regulates the degree of protections individuals enjoy (by giving them the corresponding legal rights, e.g. through labor law), the degree of market power that is seen as morally legitimate (by legally restricting the scope of powerful market participants, e.g. through antitrust law), or the agreed-upon compromises between economic activities and other values, e.g. environmental values (by legally banning certain environmentally harmful practices, e.g. through environmental regulation).<sup>6</sup> In these and other domains, it is crucial to approach the ensuing regulatory questions with a healthy dose of psychological realism. Human beings are often far less rational, and hence more vulnerable, than the agents that textbook models of markets assume. Behavioral economics, the discipline that explores the deviations between the model of 'rational economic man' and the behavior of real human beings, has amassed numerous insights into the problems that can arise because of these deviations (see, e.g., Akerlof and Shiller 2015). When designing the framework of markets, it is necessary to take a stance on how to deal with such widespread behavioral tendencies, for example with regard to the permission of seductive advertisement targeted at vulnerable groups such as children. One metaphor that captures this thought is that the 'rules of the game' of markets need to be set in a way that makes sure that markets serve the public good while not violating the moral rules a democratic society agrees upon – and the result is what is often, as a shorthand, described as 'embedded' markets in the normative sense.

When it comes to the international sphere, the term 'embedded' is used in a similar way. Most notably, Ruggie (1982) coined the expression 'embedded liberalism' for describing the rules of the global economy during the first decades after WWII. Making explicit reference to Polanyi (Ruggie 1982, pp. 385–8), Ruggie described this regime as one in which 'multilateralism would be predicated upon domestic interventionism' (1982, p. 393). In other words, while international trade was encouraged, governments were able to prevent major disruptions in

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<sup>6</sup> Often, there can also be additional *moral* requirements on individual market participants not to exploit gaps in the legal framework (see, e.g., Heath 2014), but these will not be my main focus here.

domestic markets, e. g. through capital controls (ibid., esp. p. 399). Countries could thus address issues that arouse around markets domestically, through democratic processes of legislation. This also meant that the *epistemic* dimensions of these rule-setting processes – which I describe in more detail below – were situated mostly within national contexts, functioning more or less well, from a democratic perspective, depending on the degree of transparency and contestations that these contexts allowed. But in contrast to the international level, at which there is no equivalent to the democratic structures of nation states, there were usually rights to information, channels of communication, and possibilities of contestation that citizens or civil society organizations could use, so there were many avenues for democratic accountability.

Since the end of Bretton Woods, however, global trade has been ‘disembedded’ in the sense that controls were reduced and the ability of governments to protect their citizens against disruptions was weakened (this happened, in part, by creating new rules, e. g. the WTO rules – which shows, again, that one has to distinguish the normative and the descriptive senses of ‘embeddedness’).<sup>7</sup> This led to a number of problems that are, by now, well known: a ‘race to the bottom’ for regulatory standards and corporate tax rates, which undermines governments’ capacities to realize standards of social justice domestically (see, e. g., Ronzoni 2009; Dietsch 2015). Moreover, with regard to labor standards and environmental protection, the current regime is patchy at best – at least when it comes to formal institutions.

Thus, there is no direct equivalent to the institutional framework that ‘embeds’ markets domestically on the global level. Generally speaking, global trade functions by countries recognizing the property rights and contracts of each other’s legal systems (Wenar 2015). There are a number of international institutions, such as the WTO, the World Bank and the IMF, but they have specific and rather limited tasks. Moreover, these organizations are governed by a technocratic logic; their internal discussions are hardly accessible to ordinary citizens (see, e. g., Kennedy 2016). Negotiations often take place behind closed doors, and are often neglected by the media and therefore not made an issue in public discourse. The same holds for many of the activities of private companies in the transnational sphere, which have, for lack of legal regulation, acquired a high degree of ‘private authority’ (Hall and Biersteker 2002).

However, this does not mean that there was (and is) no public attention and public pressure at all – it often follows scandals such as drastic cases of environmental pollution or human rights abuses. This constellation forced transnational

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<sup>7</sup> This description holds for the period until Trump was elected President of the US. His decisions to raise tariffs might lead to the unraveling of this regime.

corporations to come up with a certain amount of governance. As Ruggie writes in a later article (2004, p. 503):

firms have created a new transnational world of transaction flows that did not exist previously, and they have developed and instituted novel management systems for themselves and for relations with their subsidiaries, suppliers, and distributors that they deem necessary given the scope, pace, and complexity of operating in those transactional spaces.<sup>8</sup>

Among these initiatives are a number of voluntary initiatives, for example the Global Reporting Initiatives or the UN's Global Compact, which try to set minimum standards for transnational firms with regard to pressing moral issues such as human rights and labor standards. Firms thereby contribute to rules for the global domain, partly compensating for the lack of governance by democratic states. But numerous criticisms have been raised against these arrangements; one central charge is their non-binding character (for a summary of the discussion see Ruggie 2004, pp. 518f.).

One important feature of this 'global public domain' (Ruggie 2004, p. 509) is worth pointing out for the purposes of this paper: its epistemic structures. Given that the agents involved in it are private entities, there are no publicity requirements with regard to many morally sensitive issues – these can be treated as business secrets, and third parties have no legal means for finding out, for example, how exactly the supply chains of a corporation function. Within well-regulated market economies, market participants often have to obey certain standards with regard to the provision of information that are equally enforced for everyone, or they have to report certain data to regulatory authorities that can, in turn, pass them on to others, e. g. politicians or civil society organizations. But such structures only exist in very rudimentary form, and often on a voluntary basis, for international markets.

The Global Compact, for example, aims at disseminating knowledge about 'best practices' among voluntary participants, and it includes a commitment by companies to report about their activities in various areas such as environmental and labor issues. This is a step forward insofar as it provides a framework that companies can use, which makes it easier for third parties to understand and compare their activities; this is also the rationale behind the Global Reporting Initiative, which provides standards for sustainability reporting. But there are no systematic reviews that would check the veracity of the companies' reports and

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<sup>8</sup> I would like to thank an anonymous reviewer for drawing my attention to this very useful survey article.

no sanctioning mechanism other than the possibility of being excluded from the Global Compact if one fails to supply the reports. Fact-checking and other activities that would hold companies responsible for sticking to their self-imposed rules are outsourced to journalists, who may or may not have an interest in reporting about problematic practices or deviations between corporate reports and corporate practices.

In fact, large parts of the efforts by NGOs and activists are directed at pressuring transnational firms to provide more information and hence to create more transparency, as a precondition for holding firms accountable (see also Ruggie 2004, pp. 512ff.). While large companies in the EU have a responsibility to provide some non-financial reports,<sup>9</sup> many other countries lack such rules. The lack of transparency not only allows transnational firms to get away with morally dubious practices – at least until some critical journalist happens to dig them up –, it probably also has a dampening effect on political efforts to raise the moral standards of global trade and to ban at least the most outrageous practices. Many of those who could throw in their weight behind such efforts – e. g. Western consumers – are less likely to be motivated to do so if they do not have access to reliable knowledge about current practices and about possible alternatives. Moreover, those who are negatively affected – e. g. producers in the Global South –, have few possibilities of making their voices heard.<sup>10</sup> The lack of enforceable structures of transparency in the ‘global public domain’ thus has far-reaching implications for the possibilities of accountability, contestability, and moral progress.

### 3 Contested embeddedness

In the previous section I have described the ways in which markets are embedded in institutional frameworks, emphasizing the importance of distinguishing between *de facto* embeddedness – which is always given, but which can take on very different shapes – and embeddedness in a normative sense – the way in which markets *should* be embedded such that they function in line with the normative convictions of democratic societies. One implication that becomes immediately obvious is that the setting of the rules of the game of markets is an eminently political, and highly contested, affair. How the rules are

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<sup>9</sup> See [http://europa.eu/rapid/press-release\\_STATEMENT-14-124\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-14-124_en.htm).

<sup>10</sup> This issue can also be considered from a perspective of epistemic justice (Fricker 2007); see below for some brief reflections.

set determines, to a great extent, how the benefits and burdens of markets are distributed. For example, companies that use production processes that are potentially dangerous for the environment have a lot to gain or lose when environmental regulations change. Similarly, the regulation of advertisement can have a massive impact on the sales of certain products and is, hence, of great interest for the industries in question. Even what may seem to be merely technical details when seen from a distance can turn out to be highly contested, for example when the thresholds of toxin exposure that are included in safety regulations make certain production processes more or less costly, or even decide about their feasibility altogether.

This is why all countries that combine a democratic political regime and a market economy have to grapple with a crucial question about how the rules for markets are set: is this done in genuinely democratic political processes, for the sake of the public good, or are these processes marred by detrimental forms of lobbying or other forms of influence, so that decisions end up being made for the sake of private interests? Often, powerful market participants play a dual role: on the one hand, they act in markets, on the other, they try to influence the rules by which they have to play. And there is usually an imbalance between the abilities of different groups to influence the setting of rules: professionally organized corporate associations or corporately funded lobbying groups have greater capacities than consumer organizations or environmental protection groups (for recent examples see, e. g., Reich 2015). All these well-known phenomena have made the ‘primacy of politics’ (Berman 2006) – the ability of democratic politics to keep the upper hand over economic interests and to set the rules of the economic game for the public good – precarious.<sup>11</sup>

When it comes to negotiating the rules of international trade, the constellation is similar: transnational corporations often have different interests than societies as a whole, and they use their power trying to bend the rules in their own favor. For example, when it comes to the international rules for intellectual property rights, i. e. copyrights and patents, Western companies have gone to great lengths to protect their own interests (see Drahos and Braithwaite 2002). As I will discuss in more detail below, corporate influence on recent trade deal negotiations has gone in a similar direction: corporations pushed for a design of rules that would favor their interests, while consumer associations or environmental groups did not even

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<sup>11</sup> A related question, which is difficult to measure empirically, is the degree to which political actors anticipate reactions by companies and therefore refrain from even bringing forward certain policy proposals. This issue has been discussed under the headline of ‘structural power’ (see e. g. Culpepper and Reinke (2014) for an empirical case study concerning the power of banks after the Great Financial Crisis).

have a place at the table. This is all the more deplorable as trade deals could, in theory, be a useful instrument for democratic countries to re-embed international markets, as I will also explore in more detail below. Before, however, it is worth exploring in some more detail how knowledge comes to bear on the processes of embedding markets.

## 4 The role of knowledge in embedding markets

In what follows, I focus on the role of knowledge in embedding markets. To do so, and to clear possible misunderstandings, it is helpful to briefly comment upon a widely held picture about the relation between markets and knowledge. It is widespread among economists and libertarians, and has been famously described by F.A. von Hayek in his 1945 paper ‘The Use of Knowledge in society’.<sup>12</sup> As he argues there, markets can process ‘dispersed bits of incomplete and frequently contradictory knowledge which all the separate individuals possess’ (1945, p. 519). They do so through the price system, without the need for a central planner. Price changes pass on information about the relative scarcity of goods, allowing individuals to adapt their consumption decisions accordingly. To producers, they send signals about the relative demand for different goods, stirring them towards the most profitable use of materials and production capacities.

I here assume that Hayek’s picture is correct as far as it goes: prices can indeed pass on *certain* kinds of information and thereby enhance efficiency. Hayek did not quite share the vision of the ‘primacy of politics’ that I have described above, but one can nonetheless combine these two approaches: one of the reasons for including markets within the institutional framework of a society is precisely their ability to process certain forms of decentralized knowledge, which contributes to economic efficiency (see, e. g., Sen 1985 for such a defense of markets). Hence, *certain* kinds of knowledge, namely knowledge about the preferences for and the availabilities of goods, can indeed be left to markets.

Nonetheless, this picture should not blind us to the fact that the epistemic dimensions of markets are much more multifaceted. For markets to function well and for holding market participants – especially the producers of goods and services – accountable, it is often crucial that information above and beyond market prices is passed on to consumers or processed in other ways. Especially

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<sup>12</sup> Hayek is only one of many economists who have drawn such a picture; his text is here quoted as the most famous example of that line of argument.

in the domestic context, this often happens by *other* institutions processing relevant forms of knowledge. For example, in well-regulated market economies, information about whether or not hygiene standards have been obeyed in the production of food is processed not by market prices, but by specialists working in regulatory authorities, who put the rules that have been democratically legislated into practice. This creates a level playing field with regard to hygiene standards, allowing buyers to focus on the price and quality of products. This way of dividing the labor between markets and other institutions saves transaction costs and makes sure that competition runs along the right lines.<sup>13</sup>

When it comes to international markets, such epistemic support by other institutions is often patchy, or only takes place at the entry point into certain markets, and only with regard to certain pieces of information. For example, Western countries can make it a requirement on imported products that they contain information about all ingredients or that they are subjected to the same tests (e. g. for hygiene standards or pollution with allergens) as domestic products. But there are no epistemic requirements with regard to other issues; for example, there are no requirements to provide end customers with information about the exact location of production and the working conditions in the factories. As described above, there are voluntary agreements such as the Global Compact or the Global Reporting Initiative, but the information provided there is usually on a different level, e. g. concerning aggregated figures for a company's environmental activities, and as noted, there are no independent fact-checking mechanisms.

When the rules for international trade are negotiated, knowledge plays a crucial role. As already noted, epistemic questions arise at two levels. The first is the level of *content*: the rules of the game determine which knowledge has to be provided, and in what form, to market participants (or to regulatory agencies). The second is the level of *process*: how is knowledge processed *in the negotiations* about the rule of the game? Who knows what, at which point in time, and who can define which knowledge is decisive? Of course, these two levels are intertwined, because of the contestedness of the rules of markets that I have described above: those who want certain information (not) to be included as mandatory in the rules of markets will often try to use knowledge in certain ways during the processes of rule setting, in order to support their own position.

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<sup>13</sup> Some market radicals propose that markets themselves would 'weed out' producers that do not keep up hygiene standards, because they would lose customers. But it is not at all clear whether this is the most efficient solution, let alone one that can be normatively justified, given that it exposes individuals to enormous risks and basically sacrifices the well-being (or even life and health) of some to the epistemic benefits of others.

It is not surprising that market participants, especially corporations, make great efforts to influence the setting of these rules. Once such rules are in place, they shape the behavior of millions of people, who often give very little thought to how these rules came about. All that is then visible is what Hayek described, namely the interplay of supply and demand, apparently self-regulating by the movement of prices.

In order to safeguard accountability and contestability, democratic societies need to pay attention to both the *content* and the *process* of rule-making of international trade negotiations. With regard to the *content*, different rules can make it easier or more difficult for citizens (or consumer protection associations) to understand what it is that they are buying. If democracies want to enable individuals to lead autonomous lives, they need to make sure that they can know what they are doing when acting in markets, and this requires the provision of sufficient information. In cases in which other market participants, e. g. companies, would not provide such information voluntarily, mandatory rules are needed. At the level of *process*, it is, again, the ‘primacy of politics’ that is at stake: is the information on which the processes of legislation are based provided by reliable, unbiased sources? Ensuring this requires, in turn, that the processes themselves are transparent and can be monitored by independent observers, e. g. an independent press and consumer protection associations.

An interesting example of the fights around the epistemic requirements embedded in the rules of markets – this time at the level of the European Union, but in a way that could also have taken place elsewhere – is described by Crouch (2016, pp. 43f.). It concerned the European proposal to introduce a ‘traffic light’ scheme for signaling the health impact of food to consumers. The proposal concerned the *content* of the rules of the market: information about products – which already had to be mandatorily provided, but only in small print – would be presented in a more buyer-friendly way. Such a system, pioneered in the UK, would have distinguished a number of categories (e. g. fat, sugar, total calories), and put the contents of food products in proportion to the daily intake recommended by nutritionists. Green, yellow and red circles would signal lower or higher percentages. Providing information in this way was supposed to allow consumers to make better decisions when buying food.

But on the level of *process* – the setting of the rules – things did not go as planned: the food industry lobbied heavily against this proposal, and it was eventually dropped. This is of course no unusual event. In fact, in the battle over the rules, different interest groups often fight with epistemic weapons as well, in the sense that they try to present the facts in ways that strengthen their own position. One strategy that has been extensively documented is what Oreskes and Conway (2010) call the ‘Tobacco strategy’, because it was pioneered by US

tobacco companies: if evidence is gathered that certain practices, such as smoking and passive smoking, are harmful, companies find the few scientists who disagree, fund them generously, and argue in public that there is no scientific consensus. And given that the burden of proof is often on those who argue *for* regulation, this strategy has, time and again, delayed urgently needed regulation, as Oreskes and Conway document. The weightiest case, which is still ongoing, concerns the regulation of CO<sub>2</sub> emissions to curb anthropogenic climate change. If those who are supposed to *play by* the rules have so much power over how *the rules are set*, via the distortion of the information on which public discourse is based, it cannot come as a surprise that markets are no longer beneficial to societies as a whole.

In her seminal 2007 book, *Epistemic Injustice: Power and the Ethics of Knowing*, Miranda Fricker has introduced the notion of ‘epistemic injustice’ for describing phenomena in which some groups are listened to and believed, while the knowledge of other groups is discounted. While her main focus was on sexist and racist prejudices and on the intrinsic wrongness of such unequal treatment, it seems not too far-fetched to also use the notion of ‘epistemic injustice’ in contexts in which some voices are systematically neglected, while others are amplified, as it often happens during the processes of rule-setting for markets. For example, companies often have the resources for spreading their version of certain contested facts – by paying for advertisements, printing brochures for policy makers, paying researchers who hold similar views to support their research, using commercial services to spread news in social media etc. – whereas private citizens, NGOs or consumer associations command far smaller pots of money for similar activities. Thus, there is often no level playing field in the ‘battle of ideas’ of public discourse; those who have an interest in continuing certain practices are often more influential than those who are negatively affected by them.<sup>14</sup>

As with other forms of epistemic injustice, the ones concerning the embeddedness of markets also have material implications, which can in turn be described as unjust. For example, by obfuscating the scientific state of the art about the environmental impact of certain toxins, chemical companies might prevent environmental regulation from being put into place. A famous historical case, documented in detail by Oreskes and Conway (2010, ch. 4), concerned the role of chlorofluorocarbons in destroying the ozone layer. By publicly questioning the

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<sup>14</sup> This problem can be exacerbated by the fact that those negatively affected live in different countries and do not even know about each other’s fate and about the possibility of forming an alliance. The less transparent global supply chains are – a topic to which I come back below –, the less likely it is that they can find each other and join forces in these battles.

scientific findings on the connection between these substances and ozone depletion, and by confusing the political debate by suggesting other possible explanations, chemical companies hoped to prevent regulation, which they managed to delay for years. This was a classic case of private profits that came at the cost of the environment and the broader public, a distribution of benefits and burdens that can be described as unjust. It is just one example that shows that controversies about knowledge with regard to the setting of the rules are also fights about very concrete material outcomes.

## 5 The epistemic dimension of trade deals – potentials and realities

What implications do these considerations have for trade deals? Trade deals are one of the many international arenas in which such battles are fought, and where the imbalance of power between corporations on the one hand and civil society organizations and democratic politics on the other is very visible. As Ruggie summarily puts it: ‘corporate influence on global rulemaking is well documented,’ whereas ‘rules intended to promote equally valid social concerns, be they labor standards, human rights, environmental quality or poverty reduction, have not kept pace’ (2004, p. 511). Hence, there is a governance gap with regard to these social concerns. Trade deals could, at least in principle, help to close this gap, replacing the patchy voluntary frameworks created by corporations with agreements between democratic states for which the citizens could hold their governments accountable. They could create common ground between countries, making sure that their economic practices obey at least minimal standards, and stopping the detrimental regulatory rat races between governments in their attempts to attract (or prevent from leaving) transnational corporations. In this way, trade deals could constitute an improvement, both at the level of *content* and at the level of *process*. Democratic accountability could be strengthened and the ‘primacy of politics’ reaffirmed.

However, one here runs into a question about the division of moral labor<sup>15</sup> between institutions: which institutional level should be responsible for which

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<sup>15</sup> On the notion of the division of moral labor see, e. g., Nagel (1995, ch. 6); he uses the term ‘moral division of labor’, but in a sense that is equivalent to what others call ‘division of moral labor’. Nagel focuses in particular on the creation of social roles that ‘can engage in a realistic way with structures of individual motivation’ (ibid., p. 61). I here use the term in a general sense for describing the allocation of responsibilities for different normative concerns to different institutions.

concerns? Which responsibilities should lie with states, which ones should be addressed at the level of global rules? One here runs into a well-known tension between the autonomy of states to set the rules for their markets in line with their own preferences, and the need for shared standards in order to avoid distortive effects on global markets or rat races (for a discussion of this constellation, in the context of taxation, see Dietsch 2015). This tension is a real one, and I cannot here provide a strategy for how best to address it, especially since such strategies might have to be different for different policy areas. Instead, I want to draw attention to the epistemic conditions of the possibility of embedding markets – in the normative sense – in individual countries, given that markets have become global. The argument is simple: without knowing what is going on in markets, democratic legislation cannot know which normative concerns might be in need of regulation – and because markets are transnational, the flows of information also need to be regulated on the transnational level. This would create better conditions for countries to address normative concerns at the national level, strengthening their democratic ‘primacy of politics.’

Thus, there are good reasons to include epistemic conditions in the rules of international markets: these rules should make clear which information market participants have to provide to other parties. If markets are made more transparent, this can raise awareness of the normative issues at stake: their ‘moral salience’ would thus become greater.<sup>16</sup> More detailed information – not only at the aggregate level, as required by the Global Compact, but also for specific products and supply chains<sup>17</sup> – would mean that consumers are provided with more autonomy in their decision-making. Better epistemic conditions would allow conscientious consumers to opt for more reliably sourced products, not only with regard to products such as coffee or fruits for which voluntary labels

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**16** On the concept of ‘moral salience’ see Jones (1991), quoted in de Bruin (2015, pp. 256f.).

**17** I would like to thank an anonymous reviewer for suggesting the idea to include the Global Compact directly into a trade deal; one might, as another example, consider including the Global Reporting Initiative. Although coming from private, voluntary agreements rather than democratic politics itself, these initiatives provide valuable tools for presenting information, and democratic politics could amend them where necessary, and make their adoption mandatory for all companies that want to trade between the countries in question. This is an interesting proposal; my focus, however, is on providing information *about the details of the supply chain*, rather than the kind of aggregate information that these initiatives suggest (although one might, of course, also do both). My proposal goes further than including the Global Compact in a trade deal: it would allow activists and NGOs to demand far more detailed information from companies, for example about the precise use of certain chemical substances or the precise working hours in supply firms.

exist, but with regard to all products in global markets.<sup>18</sup> Moreover, it would help those who want to build momentum for changing institutions in order to address urgent normative concerns: NGOs and activists would have to spend less time on finding information about, say, global value chains, and could focus on holding transnational corporations accountable. Thus, by increasing accountability and contestability, the conditions for bringing about progressive change with regard to labor standards, environmental protection or other normative concerns would be improved. It would become easier to put pressure on companies to adopt ‘best practices,’ or to find creative ‘second-best’ solutions in situations in which ‘first-best’ solutions are currently not feasible. And last but not least, it would become easier to mobilize citizens on the *political* level, i. e. to hold *governments* accountable for creating legal rules in order to curb corporate activities where necessary.

However, it might be objected, that trade deals between relatively rich countries – such as TTIP and CETA, the examples I started out with – are not most relevant when it comes to such concerns. The markets in these countries are relatively well-regulated to prevent negative externalities, such as environmental pollution, or races-to-the-bottom with regard to issues such as labor standards. Compared to other countries, the level of transparency is relatively high and there are many possibilities of raising issues if one suspects misconduct on the part of companies, e. g. by starting a petition or dropping a hint to an investigative journalist. In contrast, many poorer countries have democratic deficits and weak governance structures, and many of the most pressing moral problems caused by transnational corporations happen there. Therefore, the trade deals that have recently been under discussion, such as TTIP or CETA, might not appear to be the right target of criticism when it comes to their epistemic dimensions and the lack of democratic accountability.

To some degree, this is correct, especially since the debate about CETA has shown that public criticism *can* be effective in changing the details of trade deals, a point to which I come back below. Nonetheless, this objection focusses too much on the short-term perspective, overlooking the potential for broader, more long-term effects that well-designed trade deals could have. If they managed to establish new ‘best practices’ with regard to transparency and accountability, they could become templates for other trade deals and international treaties. And given that many transnational corporations are active in, or even have their seats in, Western countries, it is not inconceivable that such trade

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<sup>18</sup> See, e. g., Beck (2010), who bases his discussion on interactional and institutional global responsibilities, or Goff (2016), who argues for such responsibilities both from duties of assistances and from the duty to avoid participation in exploitative practices.

deals could put pressure on them to adopt the same transparency standards for all their operations worldwide. Put differently: the best strategy for improving democratic accountability for global trade might well be for those countries in which democratic standards are relatively high to lead by example, also when concluding trade deals among themselves.

Another objection that is sometimes put forward against trade deals is that they amount to a form of protectionism in the interest of ‘insiders’ against ‘outside’ competitors from third countries. Can one raise similar concerns with regard to the epistemic requirements I have discussed so far? This charge concerns the *content* of the rules of a trade agreement, which might include, for example, requirements of documentation, e. g. with regard to labor standards. These can constitute additional burdens, and it might be said that these are easier to shoulder for transnational corporations than for small companies in poor countries. A first reply to that objection is that with new technologies, this burden has become much smaller. Even small traders in relatively poor countries often use smartphones and the internet, and one could develop apps or find other technical solutions for passing on information down the value chain without any additional efforts, by simply adding information to the documentation that companies need to do anyway, simply in order to conduct their business (for an ethnographic study of these logistics see, e. g., Çalışkan 2010).

Secondly, the pressure would be first and foremost on transnational corporations – whose products cross borders –, which would hence have incentives to offer support to their suppliers with regard to requirements of documentation. The logic would be similar to that of the Global Compact, i. e. requiring powerful transnational corporations to take responsibility for what happens down their value chains. This would, hopefully, gradually raise normative standards on a global scale. It is the task of national governments to attend to specific local challenges and to manage the adaptation process, e. g. away from child labor, without doing injustice to those hit by the transitions. But richer countries might have additional duties of assistance towards these countries from whose injustices they had benefitted in the past.

Unfortunately, however, this optimistic picture stands in stark contrast to the realities of international negotiations as we have seen them in recent years. A naïve observer might expect that in cases like TTIP and CETA, i. e. trade deals between rich countries that call themselves democracies, the epistemic standards would be relatively high. In what follows, I focus on TTIP, coming back to CETA below. Both on the level of process and on the level of content, the TTIP negotiations flew in the face of any expectations that one might have had based on the principle of the ‘primacy of politics.’ With regard to the *process*, the few facts that were known at all were sufficient to raise red flags. The negotiations

took place behind closed doors, but with very uneven access for different stakeholder groups. EU officials had numerous talks with the representatives of employer associations, while the representatives of consumer associations, environmental protection groups, unions, or public providers were not invited. This led to sharp criticisms even by commentators who are otherwise very much in favor of free trade (see, e. g., Rürup 2015; Pauly 2016).<sup>19</sup>

From a democratic perspective, this is obviously problematic. While full publicity may not be a good strategy for the early drafts of trade deals – or so defenders of secrecy would argue, and we can grant it for the sake of argument –, access for a broad array of groups is a matter of epistemic justice and of the equal treatment that democratic institutions owe to their citizens. It seems a minimum requirement for ensuring that citizens can, with good reason, trust those who construct the institutional framework, epistemic and otherwise, for something as impactful as an international trade deal between the US and the EU.

With regard to the *content* of the rules and the way in which they would have shaped the epistemic dimensions of the new EU-US-trade zone, relatively little was made public, which makes it difficult to arrive at an evaluation. But it seems that more transparency about corporate practices was not an explicit item on the agenda. Rather, markets were supposed to be opened up for products with features that the regulatory authorities of the different countries had not considered safe for consumption. One notorious case that made it into newspaper headlines in Europe concerned chicken treated with chlorine, which is a standard practice in the US, and apparently no threat to human health, but which has, so far, been banned in the EU. TTIP would have allowed imports of US chicken treated with chlorine, a fact that was picked up by anti-TTIP campaigners (see, e. g., Ebtsch 2014). In a sense, this was a weird target; other issues, for example the hormonal treatment of animals bred for consumption, might have made more sense from a scientific perspective, in terms of risks to consumers (*ibid.*). What this example shows, however, is that those who protested against TTIP were very

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<sup>19</sup> An issue that is here relevant as well is the moral responsibility of experts, e. g. economists or legal experts, to provide unbiased, neutral information and to understand themselves as accountable to the general public rather than to certain interest groups, especially in an age of ‘hyperspecialization’ (Millgram 2015). This is a broader issue, which raises not only questions about individual responsibility, but also about professional standards, transparency, and the role of private funding in research. Insofar as experts play a role in setting the rules for the economic game, by helping to design the institutional framework on which the latter depends, questions about moral and political responsibilities become unavoidable – and with the move towards ‘market design’ economists have made a decisive step in that direction, in addition to their general role as policy advisors (see, e. g., Mirowski and Nik-Khah (2017) on the development of ‘market design’ theory in economics).

much aware of the powerful impact of defaults with regard to knowledge in markets. Arguably, concerned consumers could always look up the origin of chicken and choose to buy only the ones from countries whose regulatory framework coheres with their own preferences and values. But they probably anticipated, quite realistically, that this is an epistemic task that should be outsourced from markets to their frameworks, because once products are admitted to markets, consumers will assume that they will be safe and base their decisions on quality and price only, not on other, unobservable features.

After the protests against trade deals, the negotiators of CETA realized that more transparency about the content of the rules would be needed. In particular, one issue that had been a focal point of public criticism was reconsidered. It concerns the content of the rules, but also has a process component in the sense that it determines future processes of adjudication and their transparency: investor-state dispute settlement mechanisms. Such mechanisms allow corporations to sue states in front of arbitration tribunals. They are the paradigm of non-public institutions, and their proceedings often contain confidentiality clauses. They had not been invented by the TTIP or CETA negotiators, however, and are already in operation between many countries. They have attracted massive criticism both from a public and from an academic perspective (see, e. g., James 2017). Why, after all, should foreign investors deserve special legal protection, rather than use the public court system of the countries in question if they see their rights violated?

The plans for including investor-state dispute settlements into TTIP and CETA contributed to the overall picture of the planned treaties as including many details that would not look good when put under public scrutiny. Public courts are, after all, a core historical achievement of democratic societies, and it was not perceived as a positive signal as to the democratic credentials of TTIP and CETA that investor-state dispute settlements played a central role in the early drafts. However, with regard to CETA the public protest proved effective: instead of using *ad hoc* tribunals, CETA now includes plans for a permanent multilateral investment court with more transparency and the possibility of legal appeals.<sup>20</sup> One might still question the need for the creation of a new institution, but compared to the previous plans this constituted an improvement. It also showed that the negotiators were not completely immune to public criticism – democratic accountability was still alive.

Nonetheless, CETA could have done more, from an epistemic perspective. As a minimum, TTIP's and CETA's rule should have contained a clear message about the information that producers from all countries would have to include

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20 See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1468>

with products, and the form in which this information has to be presented so that consumers can grasp it easily. Ideally, it could also have included broader provisions about the duties of corporations to make information about their value chains and production conditions available to third parties. The trade deal negotiations were a missed opportunity to improve the epistemic structures of global trade – or at least, as a starting point, the trade between the EU, Canada and the US – by providing it with an ‘epistemic upgrade.’

## 6 Conclusion

In this paper, I have discussed the epistemic dimensions of the institutional framework of markets, based on a perspective of democratic accountability, and applied this analysis to the issue of trade deals. If one accepts the fact that markets depend on institutional frameworks, it follows that there are epistemic questions that are not resolved by the processing of decentralized information by market prices. Rather, both for the *content* of the rules of the market, and for the *process* of setting these rules, knowledge matters, and it is highly contested. These problems mar trade deals as well. Trade deals have the potential to contribute to greater transparency, strengthening the ‘primacy of politics’ and fueling progressive change with regard to other issues such as labor standards or environmental protection. Given that transparency is a precondition for democratic accountability and for countries to regulate such issues, it makes sense, in a division of moral labor, to allocate this task to the level of international rule-setting.

The latest round of trade negotiations, however, and especially the TTIP negotiations on which I have here focused as a case study, were a sobering reminder of the realities of today’s international politics: both on the level of content and on the level of process, there were considerable deficits with regard to the epistemic standards one would expect for trade deals concluded by democratic states. CETA, recently provisionally applied between Canada and the EU, has higher standards in some respects, especially with regard to investor-state dispute settlement, but with some room for improvement as well. And while the epistemic dimension is certainly not the only one that matters from a normative perspective, nor even the most important one, it is worrying to see the degree to which corporate interests have received disproportionate attention compared to other social interests.

The fact that the TTIP negotiations have been put on ice is due to other reasons: the rise of nationalistic agendas, especially the ‘America first’ policies of Trump. One might, of course, raise many questions about this form of ‘repoliticization’ of questions of international trade; it would be difficult to argue that there

is an improvement with regard to democratic accountability, not least because it remains unclear to what extent Trump's decisions are motivated by corporate interests. But be this as it may, it is probably better not to have a deal than to have a deal that has been negotiated behind closed doors and that would have been far from ideal with regard to both epistemic and other issues at the level of the content of the rules.

Nonetheless, there is a silver lining. The massive wave of protest against the way in which TTIP and CETA had been negotiated shows a growing awareness of the importance of how the rules of international markets are set. Rather than seeing markets as natural phenomena, their man-made character, and the contestedness of their institutional framework, have become a matter of public debate. In the course of the discussion, an underlying theme was the fact that consumers often behave in less-than-fully-rational ways, and that the rules of markets should, where possible, protect them against the attempts by other market participants to exploit their weaknesses. Hence, it seems that a more nuanced understanding of how markets function, of how interest groups try to influence their rules in their own favor, and of what it would take to embed them in a way that truly serves the public good, has developed. Seeing these matters more clearly, and understanding why they are contested and require democratic accountability, may seem a small piece of progress compared to the hopes that one might have had about the moral qualities of an ideal trade deal. But in this case, as in many others, knowledge and understanding are the preconditions for political change to the better.

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