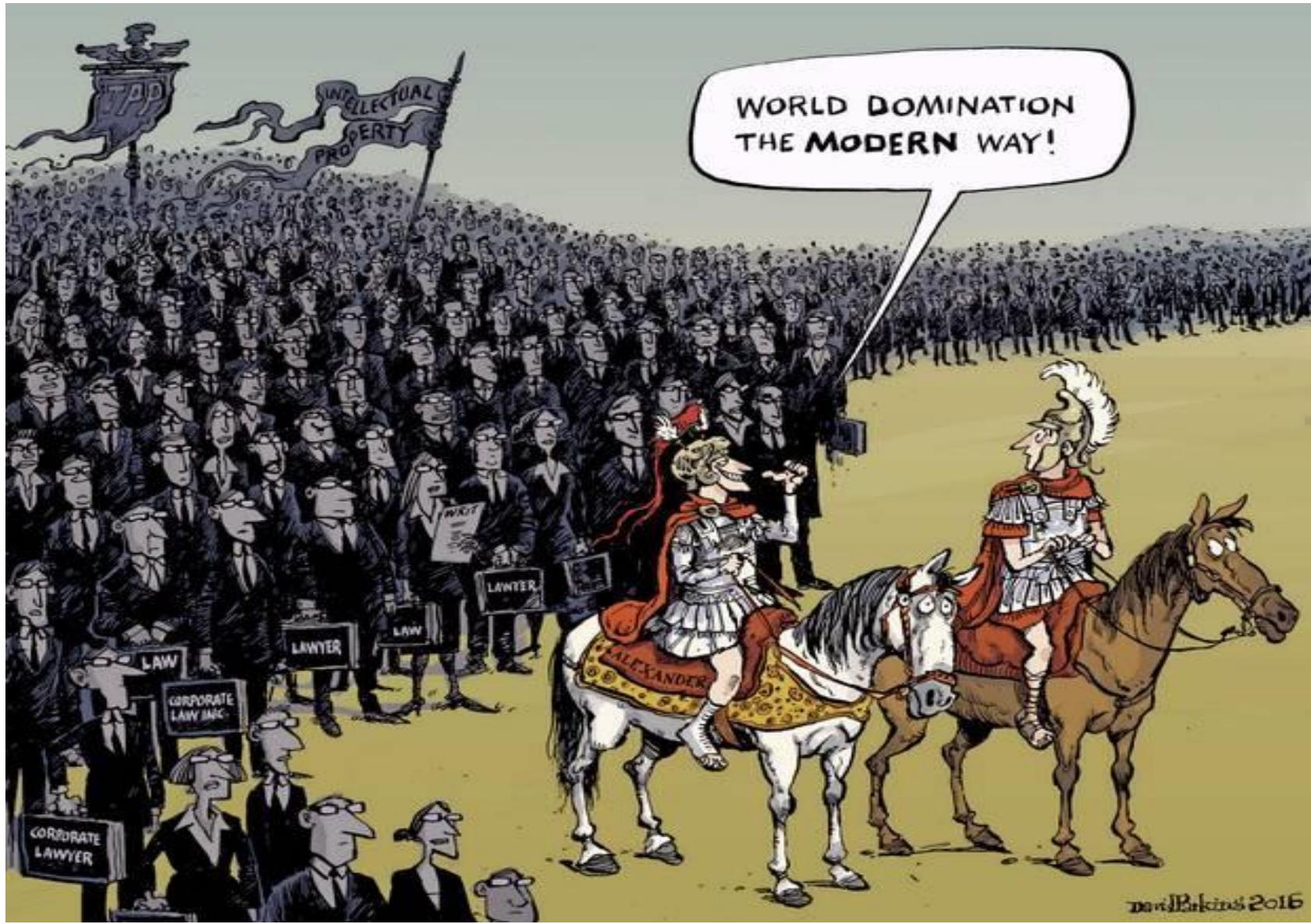


# **Re-thinking the Trans-Pacific Partnership: A Deal Too Far**

**Howard Mann, Senior International  
Law Advisor, IISD**  
[hmann@iisd.ca](mailto:hmann@iisd.ca)  
[howardlmann@gmail.com](mailto:howardlmann@gmail.com)

# What do “gold plated trade agreements” mean?



# Objectives



**Is this view correct? If so, domination by whom?**

- **What are gold-plated “trade” agreements about?**
- **More more more = better better better?**
- **What isn’t measured**
- **“More more more” in today’s sustainability challenged world**
  - Income inequality
  - Inclusive growth
  - Who’s opportunity?
  - The environment
- **If not this, then what? Redefining trade negotiation objectives**

# What are gold-plated “trade” agreements about?



- Very little actually about trade
  - Estimated GDP impact of TPP =
  - under 1% total over 15 years on average/state (WB) (~.06%/yr)
  - Under .3% total over 10 years (Tufts)(~.03%/yr)
- Much more today about other economic rights and obligations.
  - Investors
  - Intellectual property rights
  - Service industry
  - E-commerce
  - Common approach: growing rights for economic actors, growing restraints on government regulatory capacity



# More more more = better better better

- “trade” as a value; liberalization as a “value”
- So more more more becomes a value-based argument
- Assumption that trade = growth = development
- Assumption that more FDI flows = growth = development
- Assumes that development benefits flow from economic liberalization
- 1980s trickle down, Washington Consensus model prevails still
- “Made in America TPP”



# What isn't measured?

- But assumption that more = better is not tested
- Better for whom, and worse for whom, is not asked
- Is growth inclusive?
- Links between investment and sustainable development or trade and SD not measured
- Analyses tend to stay at macro levels of investment flows and trade balances
  - Non-macro-level impacts never seem to be analyzed or valued
  - Based on old, flawed methodologies
  - Who benefits and who pays is never assessed beyond the trade part of the agreements



# “More more more” in today’s sustainability challenged world

## 1. Trade:

- Lowering of rules of origin thresholds adds pressures to wages
- In favour of “value chain” owners

## 2. Investment

- Access to investment market with no constraints, limiting governments ability to maximize value of inward FDI, maximizing investor’s legal rights to profit at expense of other actors
- Rights post-access
- Remedies that are opaque and inconsistent
- No Investor obligations (in most cases)

## 3. IPR

- Longer and longer periods
- Evergreening
- Extended remedies (ISDS)



# “More more more” in today’s sustainability challenged world

## 4. E-commerce

- Loss of data security by states
- Net neutrality jeopardized by reduced ability to control for neutrality

## 5. “Domestic regulation”

- More in CETA than TTP
- Limitations on how government can regulate market entry in any sectors of the economy

## 6. Environment chapters/Sustainable development chapters

- Never legally binding
- Massively limited impact



# “More more more” in today’s sustainability challenged world

- Look at it from key SD challenges today:

- Income inequality
  - WEF: World’s leading economic challenge today
  - Credit Suisse: imbalance getting worse every year
- Inclusive growth
  - Who’s opportunity?
  - Investment produces the goods that are traded
  - But constraints on regulating investment preclude governments being able to maximize domestic value of that investment
    - Local purchasing
    - Downstream beneficiation
    - R&D
  - Profit of Investor a higher value



# **“More more more” in today’s sustainability challenged world**

- **Look at it from key SD challenges today:**
  - **The environment always the first impact**
  - **ISDS weighs heavily against environmental regulation**
    - Direct challenges (**Bilcon the poster child**)
    - Regulatory chill
    - Impact of “domestic regulation” type chapters totally unknown here
    - Safety valves of “right to regulate” and Art. XX type exceptions for non-trade issues have no track record of utility to date
    - Environment chapters never binding
    - TPP: no anticipated environmental gains for decades if ever.



# If not this, then what?

- Redefining trade and economic negotiation goals for the 21<sup>st</sup> Century
- Understanding these agreements as the core of international law on globalization
- It cannot continue to reflect the primary interest of one type of economic actor
- This continues to be at the expense of other economic actors and government policy space



# If not this, then what?

- Must end view of “trade” and of “liberalization” as a value based approach
- Trade as a means to an end, not an end
- Economic law in support of SD, not in opposition to government measures to support SD
- SDGs as the guidepost: what economic policies will support SD
  - Economic development
  - Social development
  - Environmental Protection



# If not this, then what?

- Cannot be anti-trade or anti-investment
- Both are essential needs for achieving SD
- But simply repeating and deepening what was done before is not an answer to what should be done in the future
  - But have to be regulated to support goals of SD
  - Not just private wealth purposes
- Need to revise negotiating process
  - All stakeholder engagement, not just business
  - Deals public before final texts, not after



# A final word

- Trade Minister Chrystia Freeland, 29 February, 2016 on announcing revised CETA text: “Our dispute resolution process is brought up in this agreement to the 21<sup>st</sup> century democratic standards that Canadians demand”.
  - Have many doubts the changes to investment chapter have done so, but it is for certain that by her own measure of the need for these changes to CETA that the TPP does not meet 21<sup>st</sup> century democratic standards that Canadian demands.
  - Even more so when the full text is considered
  - Truly, A Deal Too Far.



# Thank You

**Howard Mann**

**Senior International Law Advisor**

**IISD**

**[hmann@iisd.ca](mailto:hmann@iisd.ca)**

**[howardmann@gmail.com](mailto:howardmann@gmail.com)**