CHAPTER 3. THE TTIP OR EUROPE?

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"Yet this is the crux of the argument against TTIP: one must choose between Europe and TTIP" (Defraigne, 2014, p.14).

Overview

The title of the conference organised by CIDOB last May 27th, ‘TTIP negotiations: caught between myth and reality’, is a very good reflection of one of the main elements that have marked the debate on the TTIP throughout the last two years. As the European Commission states in its publication ‘The top 10 myths about TTIP’, there has been a will to present the debate for or against the treaty as a disagreement between two points of view, in which one of them is technical, scientifically elaborated and based on real facts and the other is the result of prejudices as well as mythologisation and is therefore of a fictitious nature (European Commission, 2015). The claim of holding a “realist” or “true” position on an agreement that is in the course of being negotiated and whose real effects in the mid- and long-term remain unknown is speculative. When the difference between reality and myth is the amount of information and the latter is being provided in dribs and drabs by those who defend the TTIP, it seems obvious that the accusations of “mythologising” the debate, when made about those who lack this information, entails a certain degree of manipulation.

In one of his many speeches, the former European Commissioner for Trade, Karel de Gucht, expressed it clearly: “My role as the main political negotiator of TTIP is to listen, to persuade, and where necessary to provide information, so that the debate is based on facts, not fear or hyperbole” (De Gucht, 2014). If we take into account that the first meaning of “persuade” is “to induce, urge, or prevail upon successfully” and that its second meaning is “to cause to believe, convince” then we understand the extent to which for de Gucht the use of information is strategic and unidirectional.¹ The fact that the European Commission reserves for itself the role of “the one that persuades” to the European citizens, does not seem to correspond, however, to the understanding of the regular rule of law and ends up disregarding the fundaments of European democratic culture. If the intention is the destruction of the “mythical” substrate in which the debate over the TTIP is being developed, there would be no better way than providing free access to the information. However, this would just limit both the capacity “to per-

¹. Collins English Dictionary. Available at:www.collinsdictionary.com
suade” and the selective use of information by those who, despite a willingness to complain about the tendency for “myth-making” on the side of those who scrutinise the TTIP, are perhaps willing to limit their argumentative capacity.

In fact, TTIP defenders themselves do not lack myths in the arguments they raise. Besides those who are of an “ideological” nature taking for granted the “efficiency of the markets” and thinking that “free trade is a win-win proposition” or that “growth creates jobs” although “the disparity between the economic and financial sectors makes it possible for growth to be experienced purely in financial terms without any visible benefit in the ‘real economy’ dimension…” (Skrzypek, 2014, p.10), there is a series of preconditions that, according to us, can be put into question. We will analyse them below. In our view, the negotiation of the TTIP is characterised by opacity, rashness (“one tank of gas”) and distance with regard to the immediate interests of European citizens. The TTIP agreement by itself is unnecessary. It consolidates a dynamic that we consider contrary to the logic of the EU and makes use of a means that do not satisfy our democratic expectations, both in argument and treatment of information. It is regrettable that the top representatives of European citizens are treated as “criminals or spies” (Urtasun, 2015) when they attempt to exercise the right to information. It is deeply troubling that a European MP, once he/she has finally managed to access the information that transforms “myth to reality”, states that “I left without any sense of reassurance either that the process of negotiating this trade deal is democratic, or that the negotiators are operating on behalf of citizens” (Scott Cato, 2015).

**The main issues around the TTIP**

**The negotiation process is “not transparent”**

The “commercial” framework in which the negotiation is being developed allows a degree of opacity that does not correspond to the nature and scope of the decisions entailed by the TTIP, which happen to be, to a large extent, of a deregulatory kind. The extent to which this opacity is deliberate has become evident on at least two issues. On the one hand, in the refusal by the European Commission to publish the list of the interest groups and lobbies with which it has been and still is holding meetings. As can be seen in the list of contacts compiled throughout the preparations of the negotiating mandate, there is evidence of a special complicity with a specific kind of actors who represent interests that are essentially corporate (European Commission, 2013a). On the other hand, there is little will to provide the required transparency to the process, as became clear with the refusal to publish the negotiating mandate initiated in July 2013. This mandate, considered secret, was not declassified until October 2014 when the pressure exerted by civil society as well as the specific request of the European Ombudsman became decisive (European Commission, 2013b). These two, moreover, drew the attention to some curious aspects, such as when Mr. Reilly asks Mr. Barroso if “the Commission (could) explain whether it has a policy of sharing certain negotiating documents selectively with privileged stakeholders” (O’Reilly, 2014).
With regard to the texts that maybe consulted, no access to the consolidated texts is foreseen before the process ends, neither is it to the proposals made by the commission relating to key questions such as the opening up of the European market to issues as significant as services, public tenders or investment. As Joseph Stiglitz reminds us, this lack of transparency is worrying: “All over the world, trade ministries are captured by corporate and financial interests. And when negotiations are secret, there is no way that the democratic process can exert the checks and balances required to put limits on the negative effects of these agreements” (Stiglitz, 2014). In this sense, the TTIP is an opaque treaty and has been so since its very beginning, as shown, for example, by the letter sent by the head of the European negotiation team, Ignacio García Bercero, to his US counterpart, Daniel Mullaney, in July 2013, in which he guaranteed the strictest confidence: “Finally, when persons or groups other than those specified above, seek access to documents described in paragraph (a) [negotiating texts, each side’s proposals], the exception to public access set out in Article 4 of Regulation 1049/2001 apply as long as the protection is justified on the basis of the content of a document, up to 30 years” (Garcia Bercero, 2013).

The TTIP is “not necessary”

The urgency that exists to close the TTIP is justified by the need to act as soon as possible in a geopolitical context in which the EU and the US are obliged to “protect themselves” from the “emergence” of countries that are threatening their worldwide hegemony and their deeply-rooted values. Nevertheless, this interpretation of the “West against the rest” presents as a “defensive” attitude what in reality is an “offensive” one, in order to take advantage of economic, military and political domination so as to impose new regulations on a global scale regardless of multilateral institutions. The position of the two “allies” on each side of the Atlantic Ocean, though, has been very different for decades and it still is, at least in commercial terms. In May 2015, the trade balance in the eurozone rendered a surplus of €18.8bn, whereas that of the USA suffered a deficit of $41.9bn. EU exports are strong and the continent attracts enough foreign investment. There is therefore no need, in the European case, to attract private investment, and regarding public investment, the growing problem is fraud and tax evasion which represented, for the ensemble of the EU in 2012, a loss of income of approximately €1 trillion (Oxfam Intermon, 2015), which invariably ends up determining growth and employment.

As Defraigne says, “we have let hyper-financialisation flourish at the expense of the non-financial sector and we have let it generate instability through over indebtedness and speculation. Low inflation and high unemployment are the result of policy failures as much as they are of market failures” (Defraigne, 2014, p.2). The EU’s main problem lies in the shortcomings of its institutional architecture and the lack of correspondence between a common monetary policy and economic and social policies in the hands of the member states. The investment that fails is not from outside, but the inward investment between European countries that are more and more distant, not only in terms of their economic indicators but also regarding their mutual trust. In this sense, the TTIP implies “[a] dangerous distraction for Europe” which does not respond

2. Trading Economics. Available at: http://www.tradingeconomics.com/country-list/balance-of-trade

RICARD BELLEA
to any economic or commercial need (Defraigne, 2015, pp.46-7). It actually responds to the interests and push of a number of multinational corporations that have taken advantage of the weaknesses of the European construction in the field of taxation. Now they wish to make good use of this opportunity and of the lack of leadership to force new advancements in the deregulatory agenda.

**The TTIP is “not advantageous”**

Some are trying to “persuade” us that the energy that the TTIP “injects into our economies is measured in the millions, billions and trillions – of jobs, trade and investment flows” (De Gucht, 2013). On the scientific front, however, the benefits rendered by the TTIP do not seem so evident. The four studies that the European Commission is using when it wants to establish its ex ante judgement have their predictions in common, which are not so ambitious. Even though they foresee an increase in transatlantic commercial flow, in the case of the EU this increase takes place to a large extent thanks to inner commercial flow (up to 30%) which results in modest growth of the gross domestic product (GDP) (Raza et al., 2014, p.IV), ranging only from 0.3% to 1.3% in ten years. With regard to incomes, the study is more optimistic (Berden et al., 2009), and foresees an increase of €12,300 in per capita terms in the period from now to 2027, even though it is convenient to remember that the increase in GDP does not automatically imply a balanced increase in income, whether in capital and labour income, or, in the latter case, at the different salary levels. In relation to employment, the Bertelsmann study states a job creation range of between 2 million and just 124,000 (Felbermayr and Heid et al., 2013a), with the latter being the most plausible scenario in the most detailed version (in the Ifo study).

The divergence between the different studies shows us how, as opposed to the profits resulting from the reduction or removal of customs duties, the calculation of profits corresponding to deregulation is much more complex. Along with the difficulty of predicting which regulations can be eliminated in the course of a negotiation swings between the removal of 50% or 25% of existing regulations (Francois, 2013), there is the difficulty of establishing the impact of deregulation in the short- and mid-term, taking into account the costs that this entails in the social, labour and environmental areas. In turn, the difficulty of quantifying the effects of a deregulation in a macroeconomic framework which is global and dynamic must be added as well. The four studies use a methodology similar to the CGE one, which accepts that all liberalisation automatically entails a macroeconomic balance. This way, the idea is that the more competitive sectors absorb the resources of those that suffer more pressure, so avoiding the consequences caused by the readjustment in terms of domestic demand. The pattern that is applied at commercial level is a bilateral one and does not incorporate the diversity of global flows. Other analysis models, such as the United Nations’ Global Policy Model, yield very different results.

For example, Tufts University states that, despite the increase in commercial volume, the TTIP would imply a net loss of incomes for

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European economies, with a decrease in economic activity, particularly in low added value sectors (Capaldo, 2014). This way, 600,000 jobs would be lost from now to 2025 and per capita wages would lose between €165 and €5,000. This loss of activity would result in a reduction in tax revenue and therefore in higher pressure on social security systems. On the one hand, the disappearance of customs duties would entail a loss of €20bn in 10 years, to which the cost resulting from increased unemployment would have to be added, both as regards the payment of benefits (between €5bn and €14bn) as well as the loss of incomes from tax (between €4bn and €10bn) (Raza et al., 2014). On top of that, incomes from other regulations would also be lost, as well as the possible compensations that the TTIP would entail in the framework of protection for investors.

In general terms, the UN model confirms the ex post results of other previous treaties such as the North American Free Trade Agreement (NAFTA). Despite the good ex ante predictions, this treaty, signed in 1994, led to the loss of a million US jobs and a significant fall in wages (Scott, 2006). In Mexico, the increase in productivity reduced the foreseen increase in manufacturing jobs, and at the same time destroyed a million jobs in the agricultural sector. The benefits of this kind of treaty are not so evident with regard to real growth and employment, and they do not even guarantee an increase in investment, at least if we take into account the historical balance of the bilateral investment treaties (BIT) or the investment dynamics in countries that have not subscribed to any BITs (such as Brazil). In any case, even though the clash of figures and models may look very thrilling, it is of a secondary nature, among other things because the volume of trade has no economic significance. As Dani Rodrik states, “one dollar of output that is exported is no more (or less) valuable to the home economy than one dollar of output that is consumed at home”. The real issues lie elsewhere: “in the broader social/political consequences of regulatory harmonization and the appropriateness of an ISDS regime in the North Atlantic region. I have serious concerns in both areas” (Rodrik, 2015).

In the case of Europe, the possible impact of the TTIP may be very different depending on the kind of economic and business network affected. In the case of Catalonia and Spain the historical tendency to a deficit in trade balances is not a good precedent. The low degree of investment in research and development (R&D) (1.24% of Spanish GDP versus 2.94% in Germany or 3.32% in Finland), the lack of technological specialisation, the reduced productivity and the medium size of companies (4.7 workers on average, versus 11.7 in Germany) imply a model in which, traditionally, competitiveness is not generated through added value but from low wages and production costs. The austerity policies applied in the framework of European economic governance, with cuts to public investment, lack of credit in companies, brain drains and more precarious employment in the framework of the labour reform, have reinforced this tendency. Some countries, due to their high productivity and specialisation, can adapt their supply to the flows in global demand in a dynamic way and can, therefore, have some opportunities; in the case of Spain, the TTIP may reinforce the current tendency towards impoverishment of the productive model, deindustrialisation and tertiarisation of its economy.
The TTIP is “not without harm”

As is widely acknowledged, 80% of the profits from the TTIP will not come from removal of customs duties but from regulatory convergence. The European Commission has been repeating that this does not mean that the minimum standards in fundamental aspects, such as working rights or environment, will not be respected. But, beyond this promise, it has not described the mechanism by which in an environment of competition higher standards will be maintained. The US has signed 14 of 189 ILO conventions, of which only two form part of the eight fundamental ones. Among the latter, those corresponding to collective bargaining, trade union freedom, and discrimination are absent.

Given the trend towards lower wages in Europe it is likely that the TTIP will not change this tendency. In its studies on impact, the European Commission states that “still against this background, there are legitimate concerns that labour is not sufficiently mobile between sectors and across Member States in the EU. As a consequence, there could be prolonged and substantial adjustment costs…” (European Commission, 2013, p.53); with this in mind, it can be understood that with the TTIP not only may strong adjustments in employment be foreseen but also the quality of contracts may be considered an obstacle. In some studies, such as the Ecorys one, labour legislation is regarded as an element that directly affects competitiveness: “The most important measures affecting competition include: (v) labour legislation and in particular collective labour agreements…” (Berden, 2009, p.111). Despite the fact that this only relates to the postal sector, it can be extrapolated more widely. The possibility of establishing common standards (ILO) or introducing clauses for intangibility or regressive policies that may guarantee the non-alteration of labour status does not seem to be considered in the negotiation.

The economies of scale and regulatory convergence promoted by the TTIP could possibly have negative effects on the quantity and the quality of employment, but also on other aspects that affect us not only as workers, but also as consumers and citizens. In this context, for instance, several things, like the removal of the precautionary principle, the legislation on transgenic items, the hormonal or chemical treatment of meat, or labelling legislation may turn out to be relevant to our food chain. Beyond this, with regard to the environment, if environmental regulations — whether related to CO2 levels or the protection of diversity — are identified as obstacles to company competitiveness and as “political” inhibitors of corporate profits, some elements of sustainability that are identified as hallmarks of the European project may be lost.

As a transversal element, the impact that the TTIP may have on public services must also be considered. In this case, no matter how the European Commission argues that the TTIP will carry a clause on the exclusion of services “provided in the exercise of the governmental authority”, the US Government has already announced that it “will put into question the functioning of any designed monopoly” (Marantis, 2013). Considering the state a monopoly is one of the elements of most evident contrast between the US and EU: the US values companies’ rights to profits at the same level as those of states to endow themselves with the policies they consider necessary. The loss of democratic legitimacy this entails is crudely shown by two mechanisms, the ISDS and the Regulatory Cooperation Council.
It is imperative that the failings of the NAFTA are not replicated, let alone aggravated, by any future TTIP. This applies in particular to investor rights. We oppose the inclusion of an investor-state dispute settlement provision in the agreement, ETUC (2013).

In contrast to those who present the negotiation of the agreement as a process that ends in its signature and originates a new “commercial” dimension, we believe that the TTIP has started to change Europe since the very beginning of the negotiations, by accelerating and orientating regulatory convergence in the European framework. The signature of the treaty would not mean its finalisation and ratification, since instruments such as the ISDS and the RCC may make the TTIP a “living” treaty that will constantly interfere in the judiciary and legislative sovereignty of European Union states. Further, the privatisation of justice and the meddling of corporate interests in legislative dynamics imply a cession of political sovereignty that turns out to be absolutely unjustifiable.

The TTIP “does not” reinforce the European Union

The European Commission is entering a “mythical” domain when trying to put the TTIP on the same level as the European internal market. De Gucht asked, rhetorically: “After all, what is the Single Market, if not the world’s most advanced, most revolutionary experiment in regulatory cooperation?” (De Gucht, 2013, p.3). We have been trying for years to spread information on the European project by highlighting our complex architecture, which includes a Parliament, a Council, a Commission, a Court of Justice, a Central Bank, an Economic and Social Committee, a Committee of the Regions, and a budget which is considerable albeit reduced. For us, this simplification by the European Commission turns out to be malicious and unfounded. The TTIP has is a significant issue for the European Union, given that its achievement may cause the EU to suffer a strong and permanent identity crisis immediately after the blow that the impact of fiscal consolidation policies has meant for its feasibility. Once the social model, which used to be the hallmark of Europe in the world’s eyes, has been knocked about, and once its internal market has been diluted in the oceanic tide of the TTIP, what would then be the element that would endow the European project with a certain identity? As Jeronim Capaldo rightly points out, the proposed treaty “leads the European Commission, TTIP’s main advocate in Europe, into a paradox: its proposed policy reform would favour economic disintegration in the EU” (Capaldo, 2014).

The urgency with which the European Commission intends to conclude the TTIP negotiations implies a headlong rush resulting from the failure of austerity policies and the need to divert attention from the evident failings of the institutional architecture of the European Union. Instead of making progress on the political union, some states, together with big pressure groups, prefer to enrol in an Atlantic adventure that may end up being too large for Europe. Several factors, such as the lack of consolidation, the existence of eight different currencies and the clear executive impotence within the framework of the crisis, place us as the junior partner in a project for which the US is well prepared. For the North American power, this transatlantic agreement could also have a strategic value: “This agreement will have as its main goal, beyond ensuring the American commercial power, the obstruction of the path to the mere possibility of an European economic space that could be globally competitive, the prevention of relations with the emerging powers that may

4. “It is imperative that the failings of the NAFTA are not replicated, let alone aggravated, by any future TTIP. This applies in particular to investor rights. We oppose the inclusion of an investor-state dispute settlement provision in the agreement”, ETUC (2013).
not be under the regulatory control of America, and the weakening of
the weight that national sovereignties may have in a global market...”
(Nair, 2014, p. 144).

Currently, Europe faces challenges and holds potentialities that are
not necessarily to be settled in the Atlantic. “Today only domestic
policies can spark growth in the Eurozone: first, the mutualisation and
restructuring of debt through a transfer union with fiscal discipline
would prove very effective; second, massive innovation investments [r]
anging from research and development as well as education to trans-
european networks would boost both long-term competitiveness and
short-term job creation; third, fighting inequalities through national
social policies would be eased by EU tax harmonisation” (Defraigne,
2014, p.8). At an economic level, the TTIP does not help Europe due
to the diversion it causes with regard to the immediate challenges, as
well as due to the fact that it places the continent in a disadvanta-
geous position given the existent “institutional asymmetry”. In this
sense, regarding the “cultural”, “political” and “social” identities,
there are also strong differences with the USA. This way, for exam-
ple, the proximity between company and government (lobbies...), the
use of raw materials (fracking), the prioritisation or not of the fight
against climate change (Kyoto), the culture of privacy (the Snowden
case) or the centrality that the respect for “cultural” diversity occupi-
ies in Europe, suggest that some approaches that are not necessarily
complementary or potentially “convergent” with those of the USA.

The TTIP’s global dimension

The European position against the TTIP has sometimes been present-
ed just as an anti-American position. This is not in line with reality,
because the rejection of the agreement is not rooted in the alienation
towards the culture and the citizens of the USA, but in the opposition
(which is also transatlantic) to the fact that the TTIP results in a trans-
fer of sovereignty from the state to big transnational corporations.

“The question is whether we should allow rich corporations to use
provisions hidden in the so-called trade agreements to dictate how
we will live in the twenty-first century. I hope that citizens in the USA,
Europe and the Pacific answer with a resounding NO” (Stiglitz, 2015).
Also this strategy is complemented by a geopolitical vision that we
cannot share, summarised by Hillary Clinton perfectly well when relat-
ing the TTIP to something similar to an “Economic NATO” (Brzezinski).
The renewed polarisation of the world into economic blocs by means
of the instrumentalisation of commercial policy does not seem to be
an optimal solution. The attempts to limit the economic rise of the
emerging countries with treaties such as the TTIP or the TPP (Trans-
Pacific Partnership) will only result in a stronger consolidation of the
geopolitical breach which is already taking place at a global level and,
furthermore, is likely doomed to failure.

The TTIP “will neither deliver on growth nor will it make China
yield. On the one hand, the main potential source of growth in
Europe is domestic; on the other, China will simply organise its own
regional coalition in response to the ‘pincer’ strategy imagined by
Washington to contain China through the combination of TTIP and
In this manner, the TTIP represents a step backward in the process of EU construction, but it also implies a polarisation that is wrongly responding to the problems deriving from the Doha Round as well as weakening the multilateral approach as a necessary framework in order to face the distressing global problems that lie ahead of us. Poverty, violence and climate change cannot be solved from the perspective of blocs, but require a global approach and multilateral government. These three problems deserve an extraordinary effort by all of us since the series of risks they imply have such widespread importance. If we want to face the threats that put the viability of the planet into question, we do not need to empower transnational corporations and defend the supposed interests of the 800 million people that the TTIP would embrace; we must rather satisfy the fundamental rights of the 7.2 billion people who share the global project called Earth.

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