

Confronting Fear to Reality : Analysing the European Union TTIP Negotiating Positions and the Criticisms Raised by Civil Society

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ANNEX

INTERVIEW TO DR. STEPHANIE DANIELLE ROTH, ORGANISER OF THE EUROPEAN INITIATIVE AGAINST TTIP.

(01/07/2016)

Which is the NGO you work with?

I work with a German NGO called 'Mehr Demokratie'. This NGO existed already at the time when Europe was divided in Western and Eastern part. It has been very important in driving the democratic process through a bottom-up approach putting citizens at the centre of the process. In Germany it is strongly present in the side of German citizens, mobilising people through referenda on the local level, national level and beyond. It was also a driving force in helping to design the European Citizens' Initiative (ECI) set up by the European Commission. So, it is very much involved in democracy and participation issues.

Mehr Demokratie is the NGO who is hosting 'STOPTTIP' European Initiative, within which there are several NGOs: there are some NGOs who are the founding members of the Initiative such as Mehr Demokratie, Friends of the Earth Germany, Compact, Umwelt Institut, Attac; then there are other 526 NGOs which are supporting or have been supporting the European Citizens' Initiative since its start and helped to collect the 3,284,289 million signatures. The StopTTIP European Initiative was registered on July 2014 and existed until October 2015 when the signatures have been submitted to the European Commission.

Which are the main criticisms that NGOs arise against the TTIP?

Let's say that there are not main criticisms, rather we talk about issues which are equally important. There are NGOs, among those I previously mentioned, which work more on democracy issues, other focused more on environmental issues and there are also trade unions which work more on employers rights etc. Our arguments come from all these directions and reflect the diversity of our alliance. I would not say that some argument is more important than the others, rather they are equally important one another. We have to give a weight to the singular argument, taking into account also the cumulative impact of all these arguments.

Amongst the arguments, of course the most contentious one is the Investor-to-State dispute settlement, the private tribunal, including also the reform proposed by European Commission: the Investment Court System that is, according to us, the same as the ISDS. Indeed, the arguments the NGOs raised against ISDS are reflected again in the ICS, since the majeure issues have not yet been resolved. The ISDS has a lot of problem, such as the presence of a private tribunal that allow the expansion of sentence courts which override democratic decisions of those countries where it will be applied . For example, the so-called 'regulatory chill' is used for indicating the threat of an ISDS case which discourage governments to enforce laws in the public interest: in fact, as it is happening right now, the Romanian Ministry of the Environment would like to ban the use of cyanide, a toxic substance used in the II World War in the

concentration camps and it is still used in tons in the modern mining. Since Romania has a lot of goldmines in Transylvania, the Western part of the country, the Environmental Ministry wanted to prohibit the use of cyanide in mining: something that Romanian civil society has been calling since a long time because of the many cyanide accidents which caused the death of many people. At the moment, in Romania there are many Canadian mining companies that are exploring and would like to mine gold there in the future. These mining companies have encountered the Environmental Ministry menacing him to initiate an ISDS case if he bans the cyanide for mining in Romania. Therefore, afraid of that, the Ministry of the Environment hesitates to pursue this law otherwise the Romanian government will be sued by Canadian mining companies and risk to pay a lot of money for this. In general, we call this regulatory chill, that is when the likely ISDS case threatens governments which cannot enforce good legislation for the environment or the social in the public interest because the regulation are being chilled, put on ice. This issue is of course related to ISDS.

Another important issue, linked to the ISDS, is the regulatory cooperation which is optional in CETA but mandatory in TTIP. Even if it is optional in CETA, it does not mean that companies will not be able to help easily to write laws, they will do it anyway. Thus, closely related to ISDS issue, regulatory cooperation means that the EU or Member States need to invite the US counterpart when developing their own laws to come and check if their law proposals are in line with the American legislation, otherwise there is the threat of the ISDS. For example, let's take the case of the EU preparing a law to curb down legal logging rendering it criminally prosecutable, which is a big priority of the EU. This would go against the interests of Canada (CETA) and US (TTIP) who have invested moneys in forests such as in Bulgaria or somewhere else, thus seeing it as a danger for their businesses. Therefore, as I said before, regulatory cooperation being linked to ISDS system permits the US to put pressure on the EU, warning it that it can be sued by some American companies for pursuing that law.

Moreover, in both TTIP and CETA, there are two possibilities to sue governments: foreign companies suing hosting countries if they see the investments endangered, but also the US suing the EU or MS. Thus, there are two levels of arbitration: the Investor-to-State Dispute Settlement and the State-State dispute settlement system with which also the party of the contract can sue the other party. It is very important, the regulatory cooperation allows a double case: taking the previous example about the EU acting against logging, if the US feel that the EU is breaking the obligations as stipulated in TTIP, such as 'facilitating free trade or further liberalisation of the market', then the US can sue the EU for doing that law, but it can also contact the American companies in the EU which will be affected by that law inviting them to sue also the EU. Hence, this double possibility of being sued can be expansive in terms of money in case of losing the ISDS case, implying the payment of a lot of EU tax moneys.

What do you think about the European Commission proposing the Instrument Court System as an alternative to the ISDS system which, according to the Commission, would uphold the governments' right to regulate?

They have to say that, this is their job, they have to find always stability. But it's not just because they are saying that it means that it is true. I don't think it is like that because the right to start litigation is still taken by commercial companies feeling that their profits, aiming or scopes are not being fulfilled or unacted. This is the start of the injustice: it is not just question of right to regulate, but it is also about the responsibility we need to assume that come with the right, no one has rights but responsibilities. I think it is very easy to say that the government will still have their right but this does not mean that it is how is going to be. As we can see from the proposal of European Commission, all what it did with ISDS is just a cosmetic cover up, it is not a solution to the real problem of giving to American and Canadian companies the ability to sue EU and Member States just because of a philosophy of profit or because they don't like the law that is being adopted. I don't really catch the point of the Commission, it appears to me as it would say 'have an apple, when we asked for a glass of water'.

The European Commission has been saying that it is not negotiating the European standards, which will remain as high as they are, without lowering them. What do you think about it?

It is not true. It can be already seen with the precautionary principle. Some years ago, I have written an article about it, when nobody yet talked about this principle, its title is 'If you love good food & farming Stop TTIP'. When preparing for TTIP negotiations, the US carried out some consultations where big businesses, NGOs, small businesses and other stakeholders of TTIP were invited. During these consultations the stakeholders present their position papers on different questions: I have read these position papers, whom about 90% were made by companies and about 10% if not less by NGOs. Indeed, the scope of these consultations was suggesting to President Obama what to do in TTIP, what the TTIP should contain for making business in the EU. Amongst the 90% of position papers, at least one third were related to food and farming asking to President Obama to scrap the precautionary principle because these companies regard it as the biggest obstacle to investments in Europe. For US the chapter on food and farming is one of the most important in TTIP, because they want to overcome the huge trade deficit related to food and feed stuff existing with the European Union. This is also a reason why they want TTIP: make sure that they can import feed and food which have been made from genetically modified organisms, and animals which have been fed with antibiotic and other things that at the moment are banned in EU under the precautionary principle. The US have an industrial way of producing food and farming, and, if they want to import these products into the EU, the obstacle stopping their products should be abolished, and the main obstacle is the precautionary principle. Thus, during these consultations, as explained in the article, American companies stated that this principle must be eliminated. Of course TTIP is about trade and there is no trace about the precautionary principle, because there is something that can be framed within TTIP and other things that cannot be framed within it. But it is evident on what it is happening right now with the America proposing to EU to have a science based approach which would allow their products to enter in the EU. In fact, they defend the science based approach which nullify in effect the precautionary principle. While the latter is based on common sense

and permit to ban a new product when it cannot be ensured whether it is dangerous or not until the results show its safety, the US science based approach allow to commercialise a product in the market with the presumption that it is safe and only when some people die or when some people get sick they take it off from the market. Therefore, if in the EU the presumption is that a product is 'guilty' until the test shows its 'innocence', in the US that product is innocent until itself proves to be guilty. This different approach has brought to US to ban just few chemical substances while to EU to ban about 1300 chemical substances. The difference is huge. For example, there is some issues about highly controversial substances such as the glyphosates that are banned in the EU with the precautionary principle but not in the US, and many other example like this. The European Commission is under the pressure of the American Chamber of Commerce, American companies and the American government that are trying to use TTIP negotiations to lower EU standards.

Another example concerns the European 'clean fuel directive' which in evaluating the impact of energy resources like fuels takes into account the energy spent in producing it, that is to say that it includes the ecological costs for producing fuels to understand its impact and convenience in terms of ecological impact, e.g. in the case of petrol this directive does not see only the CO₂ or the impact of it when buying it in the gas station but it also includes the carbon footprint that was used to produce one litre of petrol. Nowadays, the dirtiest way of producing energy is tar sands since it costs an incredible amount of energy to produce one unit of it, rendering it not economically viable to sell it. Therefore, the clean fuel directive permitted to envisage higher taxes for tar sands, qualified as dirty fuel. But it has not been possible because under the CETA negotiations the European Commission was put under pressure by Canadian government and companies interested in selling tar sands vehicle and menaced to stop the negotiations if the EU would have taxed the tar sands, thus asking to scrap the tax. Consequently, the EU scrapped the tax in a completely unfair way. This is exactly what happened, 'why should it?', 'it was an issue in the CETA negotiation!?'.

The EU is doing it again with many other things: indeed some days ago the European Commission approved glyphosate for 18 months without having the support of Member States, maybe because after this time CETA will be already signed and everything will be fine!? Glyphosate is very dangerous and detrimental for our life since ever it exists. Which is the connection between glyphosate, CETA and TTIP? It is not a conspiracy theory, it is very simple: Canada is the second largest GMO producer in the world, it wants and needs to sign CETA to sell its GMO feed and food containing glyphosate in Europe which, in banning the use of this substance, could impede their product to be sold in the EU. In the same way, since every seven years the directives have to be renewed, the European Commission published a new road map planning a revision of the law concerning endocrine disruptors, which are dangerous and affect people life and nervous system and which until now have been regulated under the precautionary principle as for the glyphosate. Indeed, the latest European Commission's roadmap propose that endocrine disruptors will not anymore be regulated by the precautionary principle but by a strictly science based assessment that is extremely weak and benefit those that want to use this substances. It

means that they will be able to use this substance until somebody dies. The roadmap shows how the European Commission is already adopting the American science based principle. This is very worrisome.

I remember when I was young and when I was starting to work on these issues, one of the reasons why so many people believed and still do believe in Europe was because for the first time we were all discovering environmental issues. It was pretty young and new to us and the fact that the precautionary principle was at the end enshrined as a legal principle within the framework of the European Union was an incredible victory for us that have fought very hard for this. Nowadays things are taken for granted, but for me and for many other people with common sense is better to be safe than to be sorry. Thus, I think it is better to ban the substances suspected to be dangerous, then test them and after having seen its impact decide if to ban it or not. For us, the way in which the Commission is acting on the precautionary principle is unacceptable. Doing what it is doing in order to make themselves famous for something called TTIP or CETA is unacceptable. Whatever the Commission says about whether the treaties will not affect the precautionary principle, it's true: TTIP and CETA don't mention it neither once. But as I said, the US wants to use the science based approach on the codex alimentarius and this is the killer of the precautionary principle. Of course there are many ways to roam!

The TTIP negotiations are also aiming at liberalising public services and public procurement. What do you think about it? Do you think it will affect negatively them? What are the risks?

In CETA the whole procurement market will be open up for liberalisation, this means 100%. Public Procurement differs from a country to another depending on the government organisation: for example, in Germany where there is a decentralised system, public procurements are in the hand of local governments which tend to make local tenders to boost local economy, especially in the peripheral areas. Concretely, if in a little village in Italy there is a school that need the food at lunch it makes absolutely no sense if every day the food is being brought from a Nestlé subsidiary of Rome. It would be much nicer if every day the food would be cooked by a local lady from the village, it would be better for the children eating local food made by local producers, and it would also be good for up keeping the culinary culture of the village. Moreover, it would benefit to the lady who would not be unemployed and does not need to claim unemployment money, she could even send the daughter to university etc. Thus, there are many chains of people who benefit from one local procurement contract, sustaining the local economy.

Since for the American Companies this kind of making business represents local trade barriers, as well as the precautionary principle it has to be eliminated, liberalising public procurement. For us, it is very bad because it will bring big companies to participate to local tenders and this, as I have seen in my lifetime already, could also have other bad consequences: for example, before the water was privatised, if someone had some problems when getting the water, he could go to the local man from the same town who could fix it; after the water was privatised, if one have a problem in getting the water, he has to call

the phone number which is a call centre in India and maybe somebody comes back two weeks later and tells him that there is still a problem, so he needs to wait other four weeks the specialist etc. Thus having a bad impact on the efficiency and efficacy of the services.

As I said, without liberalising public procurements more jobs and more economic stability can be ensured by local procurements which permit to assign contract to local enterprises rather than assign them to multinational companies whose scope is just to maximise shareholders' profits. I mean, Nestlé is a company with many shareholders whose aim is to increase shareholders' values, and it is the only aim that they have. So, they will carry out every kind of economic activity in order to increase these values. As mentioned in the previous example, the lady who has a procurement contract to prepare food for the school of the little village, she has completely different aims rather than maximise the shareholders' value, those aims make the entire things different.

According to the European Commission, the TTIP will boost economic growth and create jobs. What do you think about these supposed effects? According to NGOs, what is the reality?

When I have seen the figures made by the European Commission showing that TTIP will create many jobs and boost the European economy, it was like being in a Kafkaesque story because there is not a way it can assess the impact of TTIP. TTIP is something that they are propelling into the future and the effects depends on many things. There are so many factors depending on the things, the European Commission cannot propel any kind of trade deal showing such figures and saying that it will be successful, it is like affirming that it will be successful because 'there is no war' or 'the weather is good'. This is outrageous, I found it very arrogant because they assume that people are stupid. This is a lie, and it is crazy!

According to you which are the real aims of such controversial agreement?

If you look at the history of mankind, in 2000 years, it has not changed so much. It has always been about votes: politicians wants to have votes, because this is how they can control people and how they can have power. It is the same with the Commission and the Member States working together on TTIP, they need to explain, to promise people security, money and jobs. How do you get votes? It is like the Lenin thesis, 'give them peace, bread and land', but in the modern terms 'give them security, money and jobs'. So if they promise people 'you will be reach and safe' then of course people will like it, these are two things that they can promise. Of course they are saying TTIP will bring money and jobs: this is what a politician has to do if he wants to be re-elected, have power and control people. The Commission has just invented some figures lying to people and pursuing only political aims centred on its own political interests and not in the interest of people. The European Commission is intentionally manipulating the figures and the people. The figures it showed about how many jobs and growth the TTIP will bring is a proof of this intentional manipulating process, because this is senseless.

Since the European Parliament has the power of the last word, do you think it will approve the TTIP at the end of the negotiating process? Do you think it could still stop it?

It depends on many things. The TTIP is a mixed agreement, that is to say that in addition to the European Parliament it have to be approved individually by all the parliaments of the Member States. Therefore even if the European parliament should approve it, it can still be stopped with the contrary vote of one country. Actually, there are already good reasons for several countries to not approve it. For example there is the VISA issue: countries such as Poland, Bulgaria, Romania and some other countries, even if belonging to EU are treated unfairly, since they need VISAs to enter in the US. Moreover, this is not reciprocal because if the Americans come in Europe they can travel everywhere without needing VISA. Thus, these countries are being discriminated. How can they make businesses if they cannot go to the US to promote their products easily? To say it in EU terms, it should be all about free trade and mobility. So, there might be good reasons why the parliaments of these countries could at the end vote down TTIP and if just one of them votes down the TTIP then all will be frozen. This is one scenario.

The second scenario is related to the European Parliament. In July 2015 it passed a TTIP resolution laying down the red lines for the Commission to negotiate TTIP, enouncing what the Commission must do for having TTIP parliament approval. But as we can already see now some of these red lines have already been crossed over. What will happen before the vote comes at the European Parliament it that civil society will go to members of the European Parliament and will speak to them trying to explain and remember them the conditions that the European Parliament itself laid down for TTIP and that have not been respected by the Commission. Therefore, under these conditions the MEP should not support TTIP when it will be submitted in the parliament for the vote. Of course we will also try to mobilise the public opinion because there are many people which are against TTIP, such as the majority of people in Germany, France, Austria and others. Moreover, something that will complicate much more the situation are the elections of next year in these countries. I am sure that the Chancellor Merkel will sing a different song from the next year if she wants to be re-elected again, since there are many people opposed to TTIP who will not vote for her if she supports TTIP. Thus, she has to sing a different song as well as President Holland and others. Never underestimate the power of people, look at the history: it is the power of people that has shaped the history, like the French Revolution which was not started by Louis XVI but by people. So I think that next year will be fascinating.

We tend to look TTIP from a European centric perspective but there is also the other side of the deal, the US who think always to rule the world and are not open for concessions. They have already said that they will not give VISAs to Polish, Romanian and Bulgarian people; they have already said also that they want to abolish the precautionary principle; they want GMOs; they want the agriculture market; etc. They want the best deal, they are not interested in Europe, but only interested in making maximum business profits for the US. But In Europe we have different culture, we negotiate and take account different aspects not only the profit. The America doesn't want to negotiate at all because it is used to

be the chief of the world and to get everything it wants, and this is why they are now astounded because they are not getting anywhere as they wish. At the moment they can't get it, not because the Commissioner Cecilia Malmström is a tough commissioner who, having good principles, refuses to 'sleep with the enemy', rather because she can't do it since civil society is putting pressure on the national politicians, like Mrs Merkel, Mr Holland, Mr Calenda etc. Citizens are putting pressure on national rulers, sitting also in the Council of Minister, who then curb the commissioner Malmström who cannot do all the things she wants to do. For this reason, at the moment, they are keeping out all the 'contagious' things, articles and issues until the very end of TTIP, in the true negotiating stile of the European Commission. They first take all the sweets things out and then the other issues, making difficult to get at the end of TTIP. Now, Commissioner Malmström cannot push them through because she knows that citizens' eyes are watching them. At the end she will try to do the bad person trying to push through because that is her job, but this will be very difficult because of the elections and all the things that are happening right now. This is also why President Junker said some days ago that the EU will go forward anyway, stating that CETA is not a mixed agreement as Member States claim, but an agreement concerning only the EU, trying to push for it because they want CETA as quick as possible. They will do the same things also for TTIP, but then it depends on politicians and on citizens like us to raise our voices and to say 'no'. The European Commission has to follow its 'raison d'être', it is not there to make a good trade deal, rather for making a trade agreement with Canada and US trying to get the most out of it for Europe and to put it in place. Therefore, they have to do what they are doing and have to say what they are saying, this is not controversial but normal things.

There is some points where NGOs and European Commission could converge, reaching a compromise and accepting the TTIP? What is your strategy for the future?

No. I mean, I can only talk about myself and the NGOs who are around me: we are asking to stop TTIP negotiations and to not ratify CETA. This is what we want, we are reacting to a very concrete proposal that is called 'Transatlantic Trade and Investment Partnership'. We are not against trade, if the Commission wants to propose another trade agreement, we will formulate a position after evaluating it. I cannot invent 'what if', I can only say that TTIP is a very bad idea and we oppose it, since it is already a very concrete proposal with many pages and many concrete things.

I will not tell you what our strategy is because it is something secret.

You have raised many claims about the lack of transparency in TTIP. What do you think about the negotiation process, about the way how the TTIP is being negotiated?

Another reason why civil society is against TTIP concerns the negotiation process which are being conducted in complete secrecy. Of course the Commission claims that they provided even a reading room and that they are uploading all the negotiated papers on the website and this kind of things. But I would like to argue back that we would not have neither reading rooms if there wasn't civil society

insisting to have greater transparency, because on the beginning of TTIP negotiations this transparency did not even exist. The transparency that we have today is the result of civil society pressure. So it is very interesting to see that when it comes at 'light' issues such as the transparency, the European Commission can listen the civil society and when it comes at important issues it tends to make civil society organizations look bad or judging them as extremists. I think, and I hope, that even the European Commission is intelligent enough to appreciate the fact that today if a lot of things are much better for them and for the procedures is thanks to civil society. But despite all these transparency initiatives civil society is still claiming that the Commission is not being transparent. For this reason we receive many criticisms about shouting always and being never satisfied despite the Commission's transparency initiatives. The reason is that the Commission publishes only the texts that have been already negotiated, but what is really important for civil society is to see those document that can be still influenced. This is the transparency we want to see: we want to see the documents that are being negotiated. Usually there are treaty texts which show the proposal of each party, and there are also the tracks change mode with corrections made by all the stakeholders involved it. We want to see these 'consolidated texts'. It is really interesting to read these documents because we can see also what the parties want to get. This is what we want to see and not what it is already negotiated and done that cannot be changed anymore. If the European Commission wants to involve civil society into the decision making process then it should do it at the moment when the civil society can still influence the decision and not afterwards. That is why we want to have the consolidated texts and not just the final texts published in the website at the end of the process, pretending in this way to be transparent. This is why civil society is not happy.

The European Commission has replied stating that this secrecy is functional to the negotiating process, what do you think about that?

We don't need to talk about the Commission, because it is a waste of time. Of course they have to say what they say, because this is their job. But we also know that the TTIP leak of Greenpeace was a huge danger for them, since they are now having a criminal case in order to find out who was the leaking entity behind this leak. So, why would they start a criminal prosecution if the Commission thinks that they are super transparent and that everything is fine? The TTIP leak was a huge danger for them because these documents are texts under negotiation and not what the Commission published before concerning only the texts already negotiated. It is like drugging people.

It is said that TTIP will have a negative impact on Small And Medium Enterprises. What do you think? Why TTIP would have negative effects on them?

For the same reasons that we already said when talking about public procurements. This is one aspect, of course there are many other reasons, but if we look at public procurement contracts throughout Europe, those who benefit most from these contracts are SMEs. Thus, if public procurements will be liberalised these companies will lose out: going back to the previous example about the lady cooking food for the children of a school in a little village, let's say that the food is becoming very good and now another school wants the same lady cooking also for them. Since she cannot do it on her own she calls

her family to help her and since they are now more people who want to make money they decide to create a small company such as a SME. Now, what would happen to them if public procurements will be liberalised, allowing big companies like Nestlé or others who get the food not from the market of the little village but from their own plantations throughout the worlds? They will compete with the SME of the lady in local tenders. This is an example of how procurement is a huge threat to SMEs.

SMEs are under threat also for two other reasons. In Europe we have culture in contrast to the US. We have many products like Rockford, Champagne, and other typical products constituting our culinary heritage. It comprehends things like films, books, museums, food, drinks and other products that are part of our cultural heritage which is also an important part of the economy: cheese producers, champagne producers, food and farming producers, etc., are to a large extent SMEs. So, TTIP has two aspects threatening this kind of products that I would call 'based in our cultural heritage': the Geographical Indications (GIs) and the risks for them because of the increase of American products import. Firstly, with TTIP we will not be allowed anymore to call our products with their name, to take some basic examples the wine Chianti then we will be called as 'Italian red wine from the northern costs', or the wine Bordeaux then will be called as 'French wine from the eastern cost; Parmigiano cheese then will be called 'cheese from a region in Italy'. This is a huge problem. If now when I go into a supermarket and I see the wine Bordeaux, I know what there is behind a Bordeaux and same things for other names such as champagne etc. They are related to a particular region, only these regions and the people who live there or who made that receipt can produce them and not others. But the US regard GIs as local trade barriers because it gives unfair advantage to the producers of that region. America is young and does not have any of these cultural and culinary heritage, so they regard them as simply trade barriers to abolish. This is also why Mr Holland is in favour to sign CETA but against TTIP, defining it as an undemocratic and bad treaty which is not for the people: this can be explained through the fact that in CETA the French government was able to negotiate really important exceptions about geographical indications, keeping their typical products out of CETA; but is is not able to do it in TTIP and that's why they are against it. If the US will remain inflexible over this important issue, as they don't want to change the VISA policy for those countries I mentioned before, continuing to think they are the sheriff of the town, then countries like France will oppose TTIP.

Secondly and most general aspect which will not benefit SMEs is the increase of American goods import into EU market which will put pressure on European producers in facing multinational companies. First of all because the US provide the import of stable products, such as feed, food, meat, soy, etc. while EU provides products such as Rockford cheese and other high quality products to buy which people need a lot of money. This will reduce the infra-trade in the EU between European Member States, killing many businesses and farmers that are already almost in bankrupt. Just imagine if the trade will still be reduced because of TTIP.