

A Transatlantic Trade and Investment Partnership (TTIP) That Can Make Atlantic Citizens Proud

Remarks by Steve Charnovitz at an Ecologic Institute Dinner Dialogue in Berlin on 19 June, 2014

An Atlantic trade agreement stands as an extraordinarily good idea. The economies on both sides of the Atlantic could use some help from their governments in boosting economic growth and sustainable development.

Yet despite these benefits there seems to be little enthusiasm for the agreement among citizens on either side of the Atlantic.

True, there is support in the business community. But no one else seems to show passion for the agreement.

One reason for this non-enthusiasm is that the two governments have been too narrow in their aspirations. Instead, both sides ought to strengthen their ambition for a cutting edge, dynamic, deep integration agreement worthy of the 21st century

The fountainhead for the TTIP is the Atlantic Charter of 1941 drafted by the United States and UK and later agreed to by other allies.

One of the points in the Atlantic Charter is that the two shores of the ocean “desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security.” One important fruition of the Atlantic Charter was the Marshall Plan.

Now, in the 21st Century, it is time for a new Atlantic Charter to rekindle the aspirations of the 1940s to achieve the fullest collaboration between trans-Atlantic nations in economic and social fields.

We should perhaps not be so impolitic as to call it a Transatlantic Association or a Community. But perhaps a transatlantic space, or a transatlantic Neighborhood would not be so frightening.

What did I mean when I said that TTIP was not ambitious enough? I mean that its agenda is too narrow, particularly regarding the rights of individuals. Also I mean that TTIP is too top down rather than bottom up. And that TTIP is being poorly explained to the public.

At this point, some of you might be thinking, the TTIP is not an economic association agreement - it is just a trade and investment agreement. But the negotiating mandate for both sides already includes issues that go beyond trade and investment, such as intellectual property and competition policy, and also regulatory convergence. So I would start with the proposition that every major transatlantic economic or social issue could be discussed and negotiated in the TTIP.

The challenge is to come to an agreement upon issues on which current policies on one or both continents are suboptimal and on which the existing policy coordination mechanisms are inadequate.

Let me briefly address some of the important issues that should be included or if they are being discussed now, how they should be discussed in a more prominent way.

The core of any free trade agreement, of course, is free trade.

Now you have heard it said that tariffs are not the problem in transatlantic trade. But that's really true. Many high tariffs persist that hurt consumers and reward rent seeking behavior.

For example, consider these high US tariffs:

20% on certain milk

20% on certain cheese

26% on certain meat and veal

15.95 on men's overcoats

28.2% on certain jackets of synthetic fibers

32% on certain men's shirts

25% on certain heavy motor vehicles

These are just the Most Favoured Nation tariffs. The US also imposes countervailing duties and antidumping duties on imports from the EC. This can be legal under the WTO but note that the US does not impose such duties on internal US trade. For example, if a product in California is dumped in New Jersey, there is no antidumping duty. The same is true for internal European trade.

I think the TTIP negotiators ought to be considering a mutual truce on trade remedies between the EU and the US. If that is too politically difficult, then a narrower proposal would be to stop imposing trade remedies on trade in goods with significant positive externalities, such as environmental goods like solar panels.

For investment, the goal ought to be the free movement of investment between the US and Europe. Right now, investment is generally open but there are still significant restrictions in many countries. For example, the US has its notorious Committee on Foreign Investment in the United States that can recommend prohibitions on deals that take control of a US business. CFIUS is a group of bureaucrats with no public members or European representatives. Moreover, CFIUS is a political process to review so-called "national security" concerns. France's system for monitoring inward investment is even broader than the US system as it provides for protection for so-called strategic businesses.

Other investment restrictions include national and subnational discrimination against would be purchasers of real property.

A TTIP worthy of its name would be addressing such investment restrictions and providing for international dispute settlement should there be a disagreement.

Another key component of TTIP is services. For services, the problem generally is not tariffs but rather non-tariff, regulatory barriers. The WTO GATS Agreement provides the basic

rules but governments in a regional trade agreement can commit to greater openness to trade. Some of these areas are now being negotiated in the TTIP, but because of intransparent negotiations, I don't know the details.

Let me address a few key service areas that have not received enough attention in the TTIP debate.

The WTO provides for "Labour Markets Integration Agreements" which the GATS defines as the right of free entry to the employment market of the other parties. That ought to be our goal in TTIP: The free movement of EU or US persons seeking employment or providing services in the transatlantic labor market.

A related issue is rules on travel and tourism. The US imposes travel barriers against foreign persons, although these burdens have lessened in recent years. In my view, a TTIP initiative on travel facilitation would capture the attention of the public. My proposal would be to make travel easier across Atlantic borders consistent with anti-terror programs. I would also forbid discrimination in museums and public facilities. We should also do away with practices of collecting passports of visitors in hotels.

A travel chapter in TTIP should also address airline landing rights which are excluded from the GATS Annex on Air Transport Services. More open competition for landing rights would improve efficiency and recapture the consumer welfare lost in rent-seeking behavior.

Transportation services should also be liberalized. At present, the US has an old law discriminating against foreign carriers in cabotage, that is, domestic port to port travel. This old law is grandfathered into the WTO but Europe ought to be pressing the US to delete it.

Now earlier I said that generally the problem in services trade is not tariffs, but rather the regulatory environment. But there is one prominent recent exception to this, the ongoing EU proposals for a worldwide financial transaction tax. As far as I know, the proposed tax is not discriminatory, but it would impose a costly burden on transatlantic finance. Quite apart from the question of whether the Community should impose this tax over the opposition of the UK, there is another question of whether such a new economic policy should be decided unilaterally without closer coordination with the US. The TTIP should contain principles addressing tax coordination problems such as this.

The same is true for excessive claims for regulatory jurisdiction regarding sanctions. The ongoing US BNP case is a good example. To the extent that the jurisdiction for the criminal case is based only on the fact that the transactions were in dollars, that seems to me to be an unreasonable claim of extraterritorial jurisdiction.

Another regulatory challenge is upgrading consumer law. Consumer law harmonization is not covered by the WTO but could be covered by the TTIP. Here the goal should be to ascertain the best practices in consumer protection law and to try to harmonize upward the laws of the TTIP countries. Having such a consumer rights chapter could increase the public interest in the TTIP negotiations.

Another regulatory issue is data privacy. I don't know what is on the negotiating table on data privacy but there have been transatlantic disputes and so attention to individual privacy rights is a good idea.

How should the TTIP address the so-called “right to be forgotten”? Here the best instrument may not be a rule, or even a principle, but rather a transatlantic dialogue.

Given the participants in tonight’s dinner, let me also say a few words about the TTIP’s environmental chapter.

To start with, perhaps we should not call it an environmental chapter. Maybe it should be several chapters such as a Clean Energy Chapter, a Sustainable Fisheries Chapter, a Pollution Chapter, and a Human Health Chapter.

Next we should take this opportunity to solve coordination problems. In the NAFTA of 1993, the US, Canada, and Mexico agreed to set up an independent environment commission. The Commission in doing its job has irritated all three governments and hence its budget has been kept small. Since 1993, the US has negotiated 17 FTAs. Yet not one of them features an independent commission. Sadly, both Republican and Democratic US Presidents have left behind what was the most innovative part of the NAFTA environmental model.

I would like to see Europe pushing for the creation of a new independent transatlantic environmental commission. The Commission could take on many tasks such as holding public hearings on key transatlantic ecological challenges. The Commission could also seek to coordinate US and EU Member State positions in forthcoming MEA conferences. This would fit the EU goal of having a global governance dimension to TTIP.

The TTIP Commission could also make recommendations for new scientific cooperation between the EU and US and on how to reduce governmental subsidies to carbon energy.

I have similar nomenclature worries about labor. Don’t call it a labor chapter. Instead, name the chapter Job Creation. Or to use the ILO term, Decent Work. I would like to see such a TTIP Job Creation chapter promote greater cooperation on worker retraining and adjustment, education, and pension rights. Another challenge would be to improve the harmonization of product labeling systems on issues of corporate social and environmental responsibility.

The TTIP should also take on a high profile trade-related social issue and address it. For example, sex slavery, where the US and Europe are both trafficking destinations and in some instances origin countries.

Earlier, I noted that the public is not particularly enthusiastic about the TTIP despite the explanations of the governments of the benefits to the participating economies. Maybe the TTIP of some of the world’s richest countries should do something that no other free trade agreement has done. That is, including a Social Justice chapter addressing poverty in the US and Europe. To channel the philosopher John Rawls, should we not judge the TTIP by what it will do for the poorest of our citizens rather than our richest?

With that quick overview of substantial law, let me now say a few words about legal procedure. Free trade agreements generally contain four modalities – rules, principles, committees, and dialogues. In a longer lecture, I could discuss each modality. But here let me just briefly discuss committees and dialogues.

The pattern in US FTAs is to establish bilateral committees of bureaucrats. Sometimes, advisory committees are used but when they are domestic only with the one exception of the NAFTA. A domestic-only vertical advisory structure is too narrow in my view.

The TTIP negotiations have featured dialogues with negotiators and that represents progress as compared to the ongoing dialogue-less WTO Doha negotiations.

But I would like to see the TTIP institutionalize public dialogues on, say, a half dozen ongoing or looming transatlantic challenges, such as promoting and adapting to new technology.

Such dialogues should consist of representatives of business, labor, environment, consumers, religious groups, and other stakeholders from both Europe and the US rather than merely from one domestic polity.

In other words, rather than calling on each treaty party to set up their own domestic advisory committees mechanisms as US FTAs do, the TTIP should call for transnational advisory committees.

Last month, there was a letter to the EU and US negotiators from about 250 civic society groups asking for more transparency in the negotiations. Obviously, greater transparency is needed. But the stakeholders should be asking for more inclusiveness in addition to more transparency.

The goal should be to create what Professor Jürgen Habermas calls communicative or deliberative space. To be sure, the democratic character of the TTIP itself remains contested. In my view, lawmaking space at the international level needs to be striving to be as democratic as lawmaking space at the national or Union level. That is a difficult challenge, but transatlantic dialogues are a step in the right direction.

I would also favor cross-border dialogues among parliamentarians and among judges. This feature has been absent from all of the US FTAs. As far as I know, such dialogues are absent from EU FTAs also.

Lastly, the TTIP should build in robust, dynamic mechanisms for its own renewal and reform. The NAFTA was cutting edge when it was written in 1993, but the governments have not been able to amend it since then. Obviously, international institutional paralysis is a broader problem than just FTAs, but I would like to see the negotiators and civil society giving attention to how to make the TTIP a continuing reform machine.

So let me conclude. The economic logic of the TTIP should be that it will make workers more productive and markets more efficient. The Eco-logic of the TTIP should be that it will promote sustainable development and social justice. The current plans for the TTIP do not inspire much passion in favor of it to match the passion of those who oppose it.

To phrase it more eloquently, let me borrow the words of my favorite American city planner, Daniel Hudson Burnham, who died in Heidelberg in 1912. Burnham famously said:

“Make no little plans. They have no magic to stir men's blood.”

I urge you to plan for a visionary TTIP.