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2014: THE UNITED STATES AND EUROPEAN UNION – SOME NOTES ON NEGOTIATIONS, SANCTIONS AND PARTNERSHIP

The year 2014 was a very dynamic and challenging one to the transatlantic world. A hundred years later, after the Great War of 1914 – 1918 which paved the way to globalization as we know it today and cemented the notion of the transatlantic world as a pace-setter to the modern contractions of mankind, the two pillars of that world – the United States and the 28-member states European Union found themselves in a geopolitical situation that demanded collaboration and multilateral actions that frequently run opposite to some national interests and consideration. Thus consensus and discord became the opposite extremes in the transatlantic alliance which are the object of the analysis in this article. My noted may seem a bit chaotic and the story looking

more and more unfinished, but such were the realities and the plight of the social scientist had always been to feel a pioneer in an unplowed field where the future results seem visible, but always mainly in their outline and never in their finality.

Among the complex and interrelated events of 2014 two long-term trends which has many geopolitical similarities and a lot of specific differences come to the forefront in terms of the future of the transatlantic world. The first one was purely economic, commercial and legalistic in its technicalities and pretty much political and trend-setting in terms of its potential for the future of world trade, globalization and partnership – those were the long, secret and controversial talks (began in 2013) between the United States and its North American partners in NAFTA and the 28 nation-states of the European Union on the so-called Transatlantic Trade and Investment Partnership (TTIP). The second was the crisis in the Ukraine that started with the crisis and consequent annexation of the Crimea, the change of government in Kyiv and the armed struggle for control of Eastern Ukraine that brought about the sanctions against Russia on the part of the transatlantic community. No matter how much apart those two set of events might seem on the surface they touched upon the very notion of the transatlantic world, its security, economic prosperity and potential for future co-existence and eventual collaboration through trade, investment and collaborative partnerships. Without paying any respect to any conspiracy theories, the linkage between the two surely provokes thoughts and considerations about the interconnection of all events in the global contemporary world.

The Transatlantic Trade and Investment Partnership (TTIP) was presented to the general public in early 2013 as a “comprehensive and high-

standard”¹. On March 20th 2013, the Obama Administration informed Congress of its willingness to enter into TTIP negotiations. The U.S. side in the negotiations was led by the U.S. Trade Representative (USTR) and the EU member states – by the European Commission. Since then they have held 7 rounds of talks – the last in the fall of 2014 with each round bringing more transparency and information of their content and also more public concerns and protest of the eventual outcome. Both sides’ intention is the negotiations being concluded in a two years period from the start of the negotiations, although various trade experts put under question the timeframe’s likelihood due to the complexity of the talks.

The chronology of the talks and the content of each round was an evidence to the complexity of the negotiations and the numerous hidden obstacles. **The first round (July 8th -12th, 2013, Washington, D. C.)** centered on the key issues in the comprehensive negotiations and dealt with the identification of areas of convergence and divergence. **The second round (November 11th -15th, Brussels)** showed a more substantial engagement. Respective approaches to specific trade and investments issues were examined while potential convergence in areas such as services, investment, regulatory issues, energy and raw materials were discussed. **The third round (December 16th-20th, Washington, D.C.)** turned once again the attention to the identification of areas of convergence and divergence in the approaches to negotiating issues while for the first time starting the discussion on specific negotiating proposals.

¹ According to the GATT Article XXIV, a “high standard” FTA covers substantially all the trade between the parties, and eliminates duties and other restrictive regulations of commerce on this trade. If the agreement also covers services, the General Agreement on Trade in Services (GATS) describes “high standard” as providing substantial sectoral coverage and absence of substantially all discrimination in national treatment in the sectors covered.

Several more rounds of talks were conducted in 2014. It was interesting that **the fourth round (March 10th – 14th, Brussels)**² coincided with the crisis over the Crimea with quite a lot of major EU bodies meetings in March dedicated more to the TTIP talks and issues than the hot news coming from the Crimea. **The fifth round (May 19 - 23rd, Washington D.C.)**³ acknowledged the rising opposition to the issues discussed in various countries. As a counter-measure the participants in the talks had a pause in the mid of the discussions to address a public forum of stakeholders and try to convince its audience of the positive impact of the proposed agreements. The call of transparency became a strong point at the negotiation table and as a result – after a year of negotiations the EU delegation finally released a list of its negotiating points to convince the public that there was no hidden deal behind the curtains.⁴ **The sixth round (July 14 – 18th, Brussels)** continued with the greater transparency agenda, bringing out technical details and the policy arguments to the general public. A lot of practical legal texts in the different areas of trade and services were tabled at the negotiations with the agenda moving forward but not as fast as expected. The U.S. tried to push on some agricultural area proposal but they were not finalized in any sense.⁵

The last so far - **seventh round (September 29th – October 3rd, Chevy Chase, Md., USA)** was dedicated mostly to regulatory mechanisms and standards and trade liberalization in the field of services, chemical industry and the digital economy. It outlined the increased amount of specific, technical work

² CRC Report R43387 “Transatlantic Trade and Investment Partnership (TTIP) Negotiations” by Shayerah Akhtar and Vivian Jones, p. 1

³ USTR, “Statement by U.S. Trade Representative Froman on the conclusion of the Fifth round of TTIP Negotiations,” press release, May 23, 2014 - <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2014/June/Remarks-USTR-Froman-at-Council-Foreign-Relations-Strategic-Logic-of-Trade>

⁴ “TTIP Negotiations Pick Up Again in Washington” - http://www.germany.info/Vertretung/usa/en/___pr/P__Wash/2014/05/19-TTIP.html

⁵ Sixth Round of TTIP talks begin in Brussels - http://www.germany.info/Vertretung/usa/en/___pr/P__Wash/2014/07/14-TTIP-Sixth.html

underway and some difficulties arising in the field of standards.⁶ The information coming out of the talks fueled some further protests and mobilization of anti-TTIP forces.

Obviously, on the U.S. side, the Obama Administration has been the leader in the negotiation process. At the same time, the U.S. Congress has a vested interest there as well as it is the one institution with the constitutional authority “to regulate commerce with foreign nations”. Thus it has an important legislative, oversight, and advisory role in the negotiation and the implementation phase of trade agreements. It includes the shaping of the U.S. trade negotiating objectives and the consideration of subsequent related legislation in case of a final TTIP agreement entering into force.

The importance of the U.S. – EU trade and investments relationship derives of various factors. The “transatlantic economy” is a mutually beneficial and globally significant relationship. It is the largest in the world as it comprises 45% of the global gross domestic product, 12% of the global population, 30% of global trade and 17% of global investment.⁷

The idea was put forward also by a certain prehistory existing on the efforts of trade and investment liberalization. In 1995 certain preparatory negotiations started on a “Transatlantic Free Trade Agreement” (TAFTA) as a complement to the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements which resulted in the formation of the World Trade Organization (WTO). A special stimulus was the idea that, after the end of the Cold War, the U.S. and the EU might be drifting apart.⁸ TAFTA did not materialize because of criticism that such an arrangement might manifest certain

⁶ Opening Remarks by U.S. and EU Chief Negotiators for T-TIP Round Seven Press Conference, October 3rd 2014 - <http://www.ustr.gov/about-us/press-office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference>

⁷ CRC Report R43387, p.2

⁸ WTO is a successor to GATT, which was established in 1947

transatlantic lack of confidence in the newly-formed WTO multilateral trade system. The proposal however continued to re-emerge periodically.

Another factor for the recent round of talk was the global financial crisis of 2008-2009 and especially the crisis of the Eurozone and the very slow U.S. economic recovery with the increased competition from emerging market economies. On that background different stakeholders such as policymakers, private business, financial institutions became very keen on reducing the stall existing U.S.-EU investment and trade barriers as a method of achieving transatlantic economic growth. The free trade area is becoming more and more considered as a “low-cost” or “deficit-free” instrument for economic advancement. Here come the objections of some experts, that trade liberalization indeed can contribute to economy-wide gains but the costs can be concentrated on specific economic sectors or particular social groups.

In many respects the TTIP talks are largely a U.S. initiative based on the long-term U.S. policy of promoting free trade worldwide on the basis of a more opened, rules based trade and investment through the establishment of bilateral and regional free-trade areas. Being a part of a long-term policy however the TTIP is much different from similar such proposals in the past. On one side, if the TTIP achieves its goals it will turn out to be the largest FTA ever negotiated in terms of its size, demography and investment potential. Meanwhile, the talks aim at broader agreements on such issues as regulatory coherence and some unforeseen “21st century issues” not discussed at all in previous FTA talks – especially in the field of standards, regulations, intellectual properties and environmental issues. Interestingly enough, similar issues were raised in the simultaneously ongoing Trans-Pacific Partnership (TPP) – an FTA negotiated currently between the U.S. and 11 other states from the Pacific-Asia region.⁹ And lastly, the TTIP could have a direct effect on the multilateral trade system.

⁹ CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress*, coordinated by Ian F. Furgusson, 2014

Although the TTIP is not envisaged as an “open” agreement that other trading partners can join, the TTIP can suggest common approaches to be used in terms of globally relevant rules and standards for future trade talks – Canada, Mexico and Turkey have expressed already an interest of their countries to participate in the TTIP talks.

Being a byproduct of the work of the High-Level Working Group on Jobs and Growth, established in November 2011 by the U.S.-EU Summit Meeting under the auspices of the Transatlantic Economic Council¹⁰, the TTIP considered several outcomes in three areas. First was the elimination or reduction of market access barriers, including barriers related to good, services, and investment, including tariff and non-tariff barriers to trade. Second was the enhancement of the compatibility of regulation and standards. And last was the cooperation for developing rules on global issues of common concern such as intellectual property rights, the environment and labor, as well as in other globally relevant trade-related areas (e.g. state-owned enterprise, localization barriers to trade, trade facilitation, raw material and energy, small- and medium-sized enterprises, and transparency).

The several rounds of the TTIP talks showed a rising awareness of the local public on the talks going on and on the decisions already achieved. Due to the complex legalistic nature of the issues discussed and the professional competence needed to understand them those talks started with slim interest in them in different countries across the Atlantic. With their progress however the negotiation process became more and more open and transparent, newspapers and TV broadcasts started analyzing the first results and the issued raised and thus in the summer and fall of 2014 the TTIP became more and more present in the news with substantial across borders opposition emerging – mainly from leftist radical anti-globalization groups. It should be noted that the European

¹⁰ Being established in 2007, the Transatlantic Economic Council is the primary vehicle for government to government economic cooperation in the transatlantic community.

side opposition was much more vocal with even street marches organized to oppose certain of the issues and mechanisms discussed. Many new propaganda myths started building up that somehow blurred the clear image of what was going on at the negotiation table.

The main objections were focused on multiple directions, each one having to do with the economic effectiveness of the proposed agreements, their social and environmental costs, and such “eternal” issues like liberty, sovereignty and human rights (intellectual property rights included).

Differences emerged in the analysis of the economic impact of the proposed arrangements. TTIP Proponents stated that the results will boost economic growth and job-creation by terminating or reducing impediments such as costly tariff and non-tariff barriers, which they considered as the basic reason for the low and slow economic growth on both sides of the Atlantic. The opponents, however, stressed the fact that trade liberalization can lead to very unequal distribution of costs and benefits, including import competition for specific economic sectors and adverse effects in employment.

Other points of friction came from the expected outcome on the transatlantic relationship. On the one hand, an eventual successful negotiated conclusion of the talks and the signing of the TTIP agreement, especially done in the course of two-three years will be an immense boost to the transatlantic community because it will commit the United States much stronger to Europe in general and especially with acknowledging the role of the EU as the critical and key U.S. partner in the international community. That will satisfy some European critics that are much concerned President Obama’s “rebalancing” toward the Pacific-Asia area as a symbol of the relative decline in importance of the transatlantic relationship.¹¹ For some experts, the Ukraine crisis reinforces the need for a larger U.S.-EU collaboration, including the TTIP talks as well.

¹¹ The Obama Administration rejected this view – see Brookings Institution, “The Transatlantic Partnership: A Statesman’s Forum with Secretary of State Hilary Clinton,” November 2012.

On the other hand , the risk exists of the talks stalling or producing meager results that might be considered small, ineffective thus raising again the suspicions in the strength of the transatlantic link.

Different approaches exist on the impact of the eventual agreement on multilateral trade liberalization. TTIP supporters consider the talks as a possible alternative path to rules-based trade liberalization in view of the lack of progress within the WTO. They state that an eventual common thinking and arrangements on controversial issues such as agriculture could influence a break in the stall at the remaining issues at the WTO Doha Round talks. Others argue that such type of bilateral and regional FTA influence in a negative sense trade liberalization channeled through the WTO.

Some other policy implications are also causing disputes and concerns. TTIP proponents assert that the eventual success will bring a wider U.S. – EU cooperation in establishing rules and mechanisms that address the challenges linked with the expanding role of emerging markets in the global economy. Opponents criticize that globally relevant rules within the TTIP framework may affect in an adverse fashion civil society, consumer, Internet freedom, public health, and other issues. They oppose also the effect of the arrangements on national sovereignty, including already regulated areas (especially by the EU countries) or infringing the ability to regulate newly emerging issues in health labor, environmental and other standards.

An even stronger potential for a rift in the transatlantic community came with the evolution of the Ukrainian Crisis of 2014. The crisis involved civil unrest in favor of the future pro-EU orientation of the country that started in the main square in the capital city of Kyiv and eventually brought about the abdication from authority of Ukrainian President Yanukovitch and the regime change that skyrocketed to authority the pro-Western liberal forces (predominantly the majority in Western Ukraine). Then came the pro-Russian

movement in the Crimea that culminated in the annexation of the peninsula by Moscow and the further turmoil in the pro-Russian dominated Southern and Eastern Ukraine.

As already pointed out, the 4th round of TTIP talks in Brussels coincided in time with the culmination of the indignation in the transatlantic community over the Russian annexation of the Crimea and the pending the decision on joint sanctions against President Putin and his government's position on the hot Ukrainian issues. Both the U.S. and the 28-member European Union adopted similar policies in response to the Ukrainian crisis. Both provided financial aid to Ukraine to aid its transition, strongly opposed the Crimean annexation and demanded the end of Russian support for the pro-Russian inhabitants of Eastern and Southern Ukraine. The United States and the EU followed similar paths in isolating diplomatically Moscow and imposed targeted economic sanctions in their efforts to influence a change in Russia's policy and eventually bring the conflict to an end.¹² Many challenges however remain and the full potential is not reached yet.

The Ukrainian crisis due to its geopolitical significance put to the surface differences even larger than those provoked by the TTIP talks. EU officials in Brussels and especially some member-states' representatives were more hesitant than the U.S. officials in promoting sanctions against Russia because of important trade links and investment interests between the EU and Russia, as well as because of the overdependence of some member states on the gas and oil imports from Russia.

Those differences came out during all phases in their formulation and implementation. In the early phase (March –early July 2014) the EU and the United States introduced visa bans and assets freeze on several dozen Russians and Ukrainians. While the United States included President Putin's "inner

¹² For additional information see: CRS Report RL33460, "Ukraine: Current Issues and U.S. Policy" by Steven Woehrel, September 4, 2014

circle” of advisers and associates, as well as the representatives of some influential banks and companies, the EU did not follow suit because of the strong considerations of not antagonizing Russia.

In the summer of 2014 certain discord became noticeable between Washington and Brussels as influential policy-makers in the U.S. capital became quite dissatisfied with the reluctance of certain EU countries to adopt more tough sanctions. Acting almost unilaterally, President Obama announced on July 16th 2014 wide-ranging U.S. sanctions on several financial, energy and defense companies¹³.

Because of the events that followed – especially the downing of the Malaysian Airlines Flight MH17 manned mainly with Dutch tourists and the increased Russian involvement in the conflict brought about a tougher EU position. July 17th 2014 was a crucial day in the European response to the crisis as the crash over Eastern Ukraine of the MH17 airplane and the death of 298 civilians (mostly EU citizens) forced a new wave of sanctions against Russia as U.S. intelligence asserted that the plane was brought down by the separatists in Eastern Ukraine acting with a Russian-supplied surface-to-air missile. The tragic event brought about calls for a thorough investigation and a stop to the flow of weapons and supplies to the separatists by the Russians.

By late July the Russian incomppliance to the terms of the sanctions prompted a new wave of harsher sanctions. On July 22nd the lists of people and companies subjected to the EU sanctions became longer, including for the first time members of Putin’s “inner circle”. On July 29th in Brussels an agreement was reached on sanctions at Russia’s financial, defense and energy sectors.

The EU imposed even stronger sanctions in mid-September in light of the enlarging Russian engagement in Eastern Ukraine. Despite the ceasefire reached the EU started implementing on September 12th harsher measures that were very

¹³ President Obama Announces New Sanctions on Russia – National Journal, July 16, 2014

carefully worked out in order to safeguard certain EU interests and to share the economic burden more equally among all of its 28 members. The whole package, approved in the period July – September included:

- **Measures to restrict Russia’s access to EU capital markets** – the buying and selling debt, equity and other financial instruments issued by five Russian state-owned banks with a maturity of over 30 days were prohibited. Related services (e.g. brokering) were also banned as were most loans. Those measures were very controversial in the U.K. because financial markets there had attracted much Russian investment, as well as in Cyprus and some East European countries that have close links with Russian banks. Those restrictions applied also to three major Russian energy companies (Rosneft included) and three key defense firms. European subsidiaries of the targeted entities were exempted.
- **Banning future EU exports and imports of arms and related material.** France wanted this measure to apply only to future deals – because of the two-Mistral type helicopter carriers delivery, as did some Central European countries that rely on Russian companies to serve Soviet-era military hardware.
- **Prohibition on the sales of dual-use goods and technology for Russian military end-users.**

Sales of dual-use goods to 9 mixed defense companies were also prohibited. The EU discussed a general prohibition on dual-use exports to civilian end-users, but some states opposed – it would have particularly hit Germany’s engineering and manufacturing firms.

- **Banning the sale of certain oil exploration equipment and technology.** EU companies were banned from exporting to Russia special goods linked with arctic, deep water or shale oil exploration. Related services like drilling, logging and well-testing were also banned. It is interesting that similar ban was not introduced to Russia’s gas sector – Germany and other EU countries dependent on Russian gas export feared counter-sanctions.

The latest EU sanctions were implemented in close coordination with the United States, which also announced new sanctions on July 29th and September 12th. They included restrictions on capital markets, oil exploration equipment and related services. There was some wedge between the transatlantic partners – e.g. the restrictions to oil equipment applied only to future deals, while the U.S. companies had to stop their projects by September 26th.

In conclusion, we can sum up that two quite opposite in their pragmatic content issues – the TTIP talks and the reaction to the Ukrainian crisis outlined the scope and the limitations in the transatlantic partnership. Obviously, issues of peace and international security provoked more and intense emotions on

behalf of the general public and serious geopolitical considerations and calculations on the part of policy-makers. A quarter of a century after the end of the Cold War and in a hundred of year after the Sarajevo assassination that triggered the First World War the transatlantic link has proven to be one of the major factors in world politics. However, that factor has serious limitations in the possibilities for pro-active policy because the world around is quite dynamic and guided by multipolar interests. Living in such a world, the red line between “hard” and “soft” power becomes quite blurred with new factors arising on the non-European horizon. In order to get in such stormy waters, the ship of the world needs captains who are 24 hours firmly on the wheel. Another requirement is a vision. The Ukrainian crisis is an event of global significance but the end it will reach a end-of-state situation when it will come to and depend of the goodwill of the two neighbors – Ukraine and Russia. Turning our back to the likelihood of a nightmarish scenario of a profound war, any final solution should be reached at the negotiations’ table and a final settlement on the borders of the two countries (preferable with the consent of the international community) – including the status of the Crimea. In this sense sooner or later the present crisis will be over. That is why, if successful, the TTIP has a greater potential for influencing the wellbeing of the transatlantic family of nations, which has a big stake in trading and investing not only in their area of partnership but beyond as well – in the Eurasian and Pacific region as well.

In this sense we can understand and share the hopes, expressed as recent as November 16th 2014 by President Obama in the following words: “We, the Leaders of the United States and the European Union, and the United Kingdom, Germany, France, Italy and Spain meeting in the margin of the G-20 Summit reaffirm our commitment to comprehensive and ambitious negotiations, in a spirit of mutual benefit, leading to a high standard Transatlantic Trade and Investment Partnership agreement. We remain committed, as we were when we launched these negotiations in June 2013, to build upon the strong foundation of

our six decades of economic partnership to promote stronger, sustainable and balanced growth, to support the creation of more jobs on both sides of the Atlantic and to increase our international competitiveness. Underlining the strategic importance of this agreement, we see it as an opportunity to promote the principles and values that we, as citizens of open economies and societies, share and cherish, including transparency and joint approaches to global trade challenges.”¹⁴

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¹⁴ Statement on the Transatlantic Trade and Investment Partnership – *The White House, Office of the Press Secretary*, 16 November 2014, <http://www.whitehouse.gov/the-press-office/2014/11/16/statement-transatlantic-trade-and-investment-partnership>