

Trade, Trust and Interest Protection after the Comprehensive Economic and Trade Agreement (CETA)

A Citizen's Perspective

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The author reflects on the impact CETA may have on the reputation of the governments that negotiated it and the trust of their citizens in them. The idea is that citizens' trust may weaken if they have the impression that this agreement is mainly to the benefit of big business and the interests of ordinary people are not adequately protected. In light of the shortcomings of the agreed text and other issues reported by scholarly comment, it is suggested that the impact on citizen's confidence could well be a negative one, because many citizens have good reasons to be worried about certain aspects of the agreement. If this is the case and if no lessons are drawn from this for the next transatlantic Treaty, TTIP, the public may well be dissatisfied with that trade deal as well. Transparency, or rather the lack of it, is part of the problem. It is an aggravating aspect that comes on top of all the other real or perceived issues the agreements raise from the perspective of a citizen. Thus, it is argued, CETA and TTIP pose real challenges for leaders on both sides of the Atlantic.

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INTRODUCTION

The Comprehensive Economic and Trade Agreement between the EU and Canada (CETA)¹ is hailed as an international agreement of a new generation, surpassing the subject of trade in goods and services and impacting on a wide variety of issues that directly affect people's lives. For this reason, in order for CETA to be truly successful, a range of interests need to be taken into account, not only those of States and those of industry, but also those of consumers and, indeed, citizens. This evaluation will reflect upon the merits of CETA and also the ongoing TTIP negotiations from the point of view of the citizen, with a view to assessing whether there are any lessons to be learnt for dealing with such trade and investment treaties in the future. For the purpose of this article, the point of view of the negotiating Parties and of industry will be taken for granted. Their interest essentially revolves around the creation of trade opportunities through increased access to markets for goods and services and also, to rule out discrimination in government procurement at all levels of government to allow for unhindered competition in this area. The idea is that with the new market opportunities and the attraction of new investments, collective welfare will increase, or at least not decrease dramatically in comparative terms in light of emerging new economies. This is of tremendous importance, especially given rising public debts² in many of the countries involved. However, that is

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1. The consolidated, signed text of CETA is available at: < http://trade.ec.europa.eu/doclib/docs/2014/September/tradoc_152806.pdf > (accessed June 5th, 2015)
 2. See Eurostat on public debt and its structure in the EU, Eurostat communiqué de presse 101/2015, of 10 June 2015, available at: <<http://ec.europa.eu/eurostat/documents/2995521/6873570/2->

not the issue here. This article starts from the hypothesis that, quite independently from what economic theorists may hold, in the EU and perhaps also to some extent in North America, the ordinary citizen is often wary of such innovations.³ Below I shall suggest some of the reasons as to why this may be the case. For citizens, the issues are quite different than for states or the industry in general, as the agreement may interfere with many aspects of their daily lives, impinge on their livelihoods, their social and environmental context, their welfare and even their human rights. They need reassurance that their interests and that of their families are taken into consideration.

Arguably, this aspect is not handled well enough and the citizen's concern is being brushed aside from time to time – to such an extent that it becomes an important issue for many parliamentarians.⁴ As we shall see, the non transparent nature of the negotiations adds to the problem, to such an extent that the citizen is disconcerted, and loses trust in the government that represents him or her. Is a lack of transparency unavoidable, and, one may ask, what is the role of parliaments in this context? These issues are of great importance, and they may provide lessons for future bilateral negotiations, including the TTIP.

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- [10062015-AP-FR.pdf/f3fd4f36-79bb-4ccf-8034-35668b01023d](#)> (accessed June 10th, 2015)
3. The Council of Canadians, Digging beneath the surface of Canadians' 'solid support' of CETA, 24 Jul 2014, <<http://canadians.org/blog/digging-beneath-surface-canadians-solid-support-ceta>> (accessed June 10th, 2015). Pew research center. Global attitudes and trends. Faith and Skepticism about Trade, Foreign Investment 16 September 2014, available at: <http://www.pewglobal.org/2014/09/16/faith-and-skepticism-about-trade-foreign-investment/> (accessed June 10th, 2015). Eurobarometer suggests that 58 percent of EU citizens are in favour of a trade agreement with the US, one quarter of the population is against, and 17 percent do not know. Borderlex, 6 January 2015 <<http://www.borderlex.eu/eurobarometer-whos-ttip-eu/>> (accessed June 10th, 2015). Three countries with particularly low support for TTIP are Austria (39% in favor vs. 53% against), Germany (39% vs. 41%) and Luxembourg (40% vs. 43%). Bruce STOKES, "Is Europe on board for a new trade deal with the U.S.?" Factank news in the numbers, 29 January 2015, available at: <<http://www.pewresearch.org/fact-tank/2015/01/29/is-europe-on-board-for-a-new-trade-deal-with-the-u-s/>> (accessed June 10th, 2015). An ongoing petition against TTIP and CTA collected more than 2 million signatures. See *Petitie tegen TTIP breekt record met 2.000.000 handtekeningen*, available in Dutch at: <<http://www.11.be/artikels/item/petitie-tegen-ttip-breekt-record-met-2-000-000-handtekeningen>> (accessed June 10th, 2015)
 4. For instance, on 16 September 2014, in the European parliament, GUE/NGL MEPs criticized the CETA for not taking into account public opinion in a debate with Karel De Gucht, the European Commissioner in charge of the negotiations. EurActiv, 17 September 2014, available at: <<http://pr.euractiv.com/pr/eu-canada-trade-deal-not-tune-public-opinion-119705>> (accessed June 2nd, 2015)

1. Deep trade agreements, public disclosure and democratic scrutiny

Traditionally, parliamentary scrutiny of trade negotiations used to be restricted. Because discussing the positions of the negotiating partners in public might actually influence the outcome of the negotiations, the latter were shrouded in secrecy until agreement was reached. This was acceptable as long as trade negotiations were technical, such as the lowering of tariffs on particular merchandise. However, as trade negotiations started to expand over time and social objectives (for instance relating to the environment or health) were included in trade negotiations, it became less arguable that parliamentary influence should be excluded until after the negotiations. Thus, in the EU a practice developed according to which Parliament was to be regularly informed of any trade negotiations while they were unfolding.⁵ This is, today, the regime to which CETA and TTIP are subjected. The role of European Parliament in relation to international trade has clearly increased, and the EP needs to give its approval to the treaty as a whole after the text has been signed. Parliament can vote for or against the agreement as a whole.

In addition, given that the agreement is a mixed agreement, the national parliaments will also all start the ratification process, leading Hervé Prince to observe that ‘la bataille est loin d’être gagnée’⁶ (literally: the battle is far from won). It is expected that European Union member states could begin voting on CETA in January 2016 and that the European Parliament could vote on it in April 2016.⁷ Provided EP votes in favour of the agreement and Canada does so as well, entry into force can take place at least provisionally.⁸ However, Spanish MEP Lola Sánchez Caldentey (Confederal Group of the European United Left - Nordic Green Left) for her part has issued a clear warning:

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5. By virtue of Art. 207 TFUE, During the negotiations, the Commission ‘shall regularly report to the special committee appointed by the Council to support the Commission and to the EP on the progress of the negotiations.’
 6. Hervé PRINCE, “Contributions de l’Accord économique et commercial global entre le Canada et l’Union européenne (AECG) au débat sur la contestation de l’arbitrage investisseur État”, (2015) 20-2, *Lex electronica*, XYZ, XYZ.
 7. ‘CETA could be a “casualty” in the European fight over TTIP’, 29 April 2015, available at: <<http://canadians.org/blog/ceta-could-be-casualty-european-fight-over-ttip>> (accessed June 8th, 2015)
 8. See, e.g., Peter MÜHLBAUER, “Vorläufige Anwendung“ mit völkerrechtlichen Verpflichtungen”, *Telepolis*, 25 January 2015, available at: <<http://www.heise.de/tp/artikel/43/43954/1.html>> (accessed June 10th, 2015)

“We reject this agreement because we defend the interests of the majority of people. This Parliament already rejected ACTA; we’ll do the same for CETA.”⁹

One may disagree whether European Parliament or any of its members represent the interests of the majority of people. This being as it may, both the negotiators and Members of Parliament may have issues of communication. Because the issues raised by CETA have become so very intricate and complex, it is difficult to isolate issues of concern to the citizen. Many issues are interlinked, in such a way that aspects that are perceived as less desirable can only be understood in the context of the broader picture - and that picture can be very technical and hard to explain to the public even if one is a specialist. This is well illustrated by the existing scholarly comments on the agreements, especially coming from the legal discipline such as those in the present volume. Lawyers, far from tending to question the desirability of the agreement as a whole, may propose technical improvements in one respect or another while accepting that the conclusion of the agreement is justified, as a means of overcoming economic and financial crisis or for other, political reasons.

All this does not instill trust in the European institutions. The finding that there are several shortcomings to CETA that can be qualified as technical may well be an euphemism taking into account that there are in fact many issues for the citizen that all add up to one big whole. The impact of the agreement may therefore well be more diffuse than meets the eye.

2. Growth and employment

CETA and TTIP are usually ‘marketed’ by reference to the fact that such agreements generate growth, making progress in a bilateral context where it is not possible to obtain the same in a multilateral context. This is not elaborated upon much in this special issue, but it is a well known conundrum. There is a wealth of scholarly research that corroborates the claim that CETA leads to an increase of GNP of 500 euros per year per family in the EU alone,¹⁰ and comparable figures apply to Ca-

9. ‘EU-Canada trade deal not in tune with public opinion’, *EurActiv*, 17 September 2014, available at: <<http://pr.euractiv.com/pr/eu-canada-trade-deal-not-tune-public-opinion-119705>> (accessed June 2nd, 2015). M. Bergfield is equally sceptic as the European public has ‘a mind of their own’. M. BERGFELD, “What does CETA, the ‘Wayne Gretzky of trade deals,’ hold for Europe? RT question more”, August 19th, 2014. Internet resource accessed June 4th, 2015.

10. Hylke VANDENBUSSCHE, unpublished paper discussed at the 6th Bruges European Business Conference, 18 March 2015, “Drivers of Growth”, W3: Transatlantic Trade - How to reach mutually beneficial EU/U.S. regulatory convergence”, available at: <<http://bebc.coleurope.eu/>> (accessed November 24th, 2015)

nada. Forecasts of who the people are that have an increase in income, are much harder to come by.

It is entirely in conformity with market integration theories that a number of companies stand to gain from the elimination of obstacles to trade, that others will loose, and that weaker, less efficient companies may default. There exist economic models that support the view that in a market composed of, say, 8 companies, half of which are at each side of the Atlantic Ocean, two companies are predicted to default.¹¹ Typically, the defaulting companies would be the smaller, least productive ones and those that were not yet engaging in international trade before the entry into force of the treaty.¹²

The impact of CETA on re-employment has not been the subject of much attention. The implication seems to be that workers who will be dismissed will simply find employment in another, more efficient enterprise. But there is no evidence to show that these workers will actually be able to do so. For instance, they may have settled with their family in a peripheral region, where business may not be engaged in international trade much, and where the need to export overseas may not be evident. In the view of these citizens and their families, the prospect of an average increase in GDP of 125 euros per capita for the population as a whole may not be very convincing. Even assuming they would be able to marginally increase their income by retraining and adapting to another company, they may not be keen on moving to another region (or country) and on starting a new life, or indeed a job with an employer they would not necessarily have chosen to work for. This is perhaps not a topic that gains a lot of attention, let alone sympathy, inside the European Parliament. If one treats deep trade agreements essentially as instruments furthering regional economic integration one accepts that in the 'survival of the fittest', someone has to 'take the blow', and in the interest of the populations as a whole, some people will have to make the choice of either moving or being unemployed.

True, if national GNP increases by 500 euros per capita, then there is that much more money to spend, thus increasing demand for goods and/or services, public or private. When demand for goods and services increases, there is usually a need for more workers. Historically, reductions in tariffs and other trade benefits have invariably had a negative effect on some sectors and because of that, they have always been contentious. The public at large has always benefited since it was paying less for the same goods and in theory at least, the Government is supposed to govern for the benefit of the nation and not for individuals or pressure groups, however

11. Id.

12. Id.

sincere their concern for jobs and profits. Far from denying the point that CETA makes sense from a macro-economic standpoint, however, we note that there is still a problem of sorts. Whether the problem is large enough to outweigh the benefits of growth is a political question that needs to be addressed.

3. The hidden costs of Investor/State Dispute Settlement (ISDS)

Matters become more intricate, however, if one takes into account the possible tax increases required by CETA in order to ensure investor's confidence. One of the characteristics of CETA is the Investor-State Dispute Settlement (ISDS) mechanism that is intended in essence for the protection of investments and for the reassurance of potential investors. It is based on government liability for the loss of revenue of investors as a result of retroactive or discriminatory changes in legislation or policy. Needless to say, in the eyes of the citizen, government liability implies public expenditure and ultimately, adds to the tax burden of the citizens. As the contribution by Hervé Prince demonstrates,¹³ the impact of ISDS resulting in government expenses is far from being theoretical. Millions of euros, respectively, dollars have already been disbursed as a result of investor state dispute settlement mechanisms currently in force. The unit of a million impresses some more than others. But so does the notion of trust in government. Whereas some governments need not worry about issues of trust, others are not in that unenviable position.¹⁴ Paradoxically, the inclusion of ISDS raises suspicions about the reliability of the governments concerned, the opposite of what the governments that are advocating them actually try to achieve.

In this context, the interests of contracting parties and industry on the one hand seem to be diametrically opposed to those of the ordinary citizen on the other hand. Whereas the former are keen to improve the dispute settlement system, *inter alia* by assuring consistency of decisions and transparency of the choice of arbitrators, the interest of many citizens is, squarely, to avoid liability due to wrongful or controversial government policy.¹⁵

13. H. PRINCE, prec, note 6,

14. "Standards of governance are lower in the emerging markets of Central and Eastern Europe. When asking that TTIP include ISDS, the US doesn't have in mind Germany, the UK or France, but countries further east." «Borderlex, Investor-State Disputes in the US and the EU, Beyond the Myths », available at: <<http://www.borderlex.eu/us-eu-investor-state-dispute-settlement-isds-realities-behind-myths/?print=print>> (accessed June 9th, 2015). Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovakia currently have BITs with the US. Maya ROSTAKOWSKA, "Storm in a TTIP-Cup? The EU Debate on ISDS", (2014) 124 *PISM Bulletin* 719, available at: <http://www.pism.pl/files/?id_plik=18525> (accessed June 10th, 2015)

15. Furthermore, the lack of clarity of the level of government that is responsible for damage giving

Again, we are not doubting the intentions of the governments behind the introduction of ISDS, as it is entirely consistent with the idea of increasing foreign investments (and arguably, any investment, including domestic ones).¹⁶ A modern and reliable (even if costly) system of ISDS is more confidence-inspiring than the arbitration mechanism traditionally contained in contracts between states and foreign investors. Also, it may be invoked by either party and therefore it allows governments, at least in theory, to enforce any conditions imposed for the authorization of the activity. However when we are looking at it from the perspective of the average citizen the bottom line is, that a change in government policy that results in the government not meeting its contractual obligations leads to a cost for the tax payer. Naturally, one may want to suggest that damage to citizens via ISDS awards (or the cost of the settlement) is typically negligible as compared to what people have suffered from the policies of their governments in general, but that is beside the point. Many taxpayers are tired, today, of having to pick up the financial burden of what they consider oversight, inaction or mismanagement by politicians or officials.

The question is again, whether or not the problem of popular opinion is big enough to be taken seriously on a political level. As Dutch MEP Anne-Marie Mineur, (Confederal Group of the European United Left - Nordic Green Left) put it, speaking in EP:

“This agreement gives big companies in Canada and the EU too much power. They have been able to dictate their terms and say exactly what they want whereas the reactions from EU citizens on the ISDS mechanism have just been swept aside.¹⁷ It is clear that the population has no desire for this agreement.”¹⁸

rise to liability is an issue that may contribute to the confusion. On the legal regime regarding the responsibility within the EU (and the implications for the autonomy of the EU legal order), see Dimopoulos ANGELOS, “The Involvement of the EU in Investor-State Dispute Settlement: A Question of Responsibilities”, (2014) 51 *Common Market Law Review* 167.

16. Some commentators question the need for such clauses in agreements between developed countries. E.g., Claire PROVOST and Matt KENNARD, “The obscure legal system that lets corporations sue countries”, *The Guardian*, June 10th, 2015, available at: <<http://www.theguardian.com/business/2015/jun/10/obscure-legal-system-lets-corporations-sue-states-ttip-icsid#img-1>> (accessed June 10th, 2015). Lauge POULSEN, Jonathan BONNITCHA & Jason YACKEE, “Transatlantic Investment Treaty Protection”, *Regulatory Policy*, Centre for European Policy Studies (CEPS) Special Report No 102, March 2015, available at: <<http://www.ceps.eu/book/transatlantic-investment-treaty-protection>> (accessed June 10th, 2015)

17. This is a reference to the European Citizens’ Initiative. On September 11, 2014, the EU Commission rejected the proposed European Citizens’ Initiative (ECI) against TTIP and CETA, thus further straining relations between civil society and the European Commission. Commenting on this, B. Hoehn and B. Unmuessig note that ‘Altogether the ECI had been backed by 230 organizations from 21 countries. This rejection marks a clear break from the Commission’s efforts to reach out to a skeptical public.’ B. HOEHN and B. UNMUESSIG, “CETA and TTIP: Bringing People’s Interests Back into Focus”, September 29th, 2014.

18. Euractiv, prec. note 4.

Furthermore, German S&D MEP Bernd Lange, who chairs the international trade committee (INTA) in the European Parliament, added:¹⁹

“The rule of law and independent courts must not be questioned in trade agreements. Opaque private arbitration can only benefit those looking to make a profit and has no place in trade agreements between fully fledged democracies.”

4. Lack of transparency

The issue of transparency is an additional element in the list of issues that provoke the distrust of many citizens toward CETA, especially when they believe that CETA is all about protecting the interests of big businesses. On top of any fear that CETA risks disrupting people’s life choices and livelihood and entails public expenditure for policy choices and actions people do not necessarily support or approve of, the fact that citizens are not obtaining all the information about the (draft) agreement is frustrating indeed.

Public disclosure of the text of the agreement does not fully remedy these concerns as the impact of CETA is not spelled out in the agreement, occurring as it does through the implementing decisions of national governments and individual companies and people. Disclosure just reveals a suitably voluminous text accompanied by a great number of annexes of a technical nature, be they tariff schedules, definitions or lists of exceptions which even experts would be hard pressed to explain to the average citizen. It is for this reason that transparency is a problem even for members of parliament. Disclosure is a good practice which allows politicians, media, interest groups and think tanks to read them and to discuss them in a way that makes them more accessible. However, transparency, if taken seriously, requires much more than the making available of the text of the agreement itself. It requires a continuous dialogue with citizens, who are normally lay people, as to why certain consequences of the agreement are a reasonable price to pay for the perceived benefits. These issues are not always easy to comprehend.

Since an important role can be played by national parliaments, it is important to keep them in the loop. The institutions were reminded of this by the Conference of Parliamentary Committees for Union Affairs (COSAC), conference that from time

19. Victoria MARTIN DE LA TORRE, “Socialists and Democrats restate objection to private tribunals in trade deals”, 4 March 2015, available at: <<http://www.socialistsanddemocrats.eu/newsroom/socialists-and-democrats-restate-objection-private-tribunals-trade-deals#contact>> (accessed June 11th, 2015)

to time brings together the EU affairs committees of national Parliaments, as well as Members of the European Parliament:²⁰

« COSAC welcomes the transparency initiative for TTIP negotiations launched by the European Commission in November 2014 which upholds and promotes openness and information sharing with all stakeholders; COSAC believes that information on the progress of negotiations needs to be delivered in a more detailed and transparent way than has hitherto been the case while striking the right balance between the provision of information to Parliaments, their involvement in the negotiation process and ensuring the necessary confidentiality of the negotiations. »²¹

In addition, however, COSAC recognized that there is a task for national governments themselves:

« COSAC urges the governments of EU Member States to step up their communication on the opportunities and challenges of TTIP and other free trade agreements currently being negotiated, thus keeping their citizens informed on the potential economic impact of TTIP on their respective economies. »²²

The transparency initiative referred to above included the establishment of a register of lobbyists.²³ On this, Daniel Freund, Policy Officer for EU Integrity at TI-EU remarked:

“The lack of a mandatory register of lobbyists at the EU-level undermines the assurance that EU law-making is adequately protected from vested interests or abuses by the estimated 15,000 lobbyists in Brussels.”²⁴

20. For more information see: <<http://www.europarl.europa.eu/webnp/cms/pid/9>> (accessed June 5th, 2015)

21. Section 3.11, Contribution of LIII COSAC, Riga, 31 May –2 June 2015, available at: <www.parleu2015.lv/files/cosac_plenary/final-contribution_riga_02-06-en.pdf> (accessed June 10th, 2015)

22. Id., section 3.10.

23. See: “Commission launches transparency initiative for TTIP and lobbying”, *Euractiv*, 24 November 2014, available at: <<http://www.euractiv.com/sections/justice-home-affairs/commission-launches-transparency-initiative-ttip-and-lobbying-310183>> (accessed June 10th, 2015)

24. Id.

5. Corruption, fraud, abuse and lack of law enforcement

One of the issues that can most frustrate the ordinary citizen is the possible collusion between governments and companies in matters of corruption. The question raised in this special issue,²⁵ whether trade enhancement gives rise to less or more corruption, and if it is the latter, whether that finding is actually good or bad, must be puzzling from the viewpoint of the citizen, who bears the negative consequences of this behaviour, be they inferior goods or services, higher prices, loss of benefits, damage or tax liability. In the mind of the average, law abiding citizen, corruption is simply bad and the idea that it might be considered otherwise by some potentially contributes to the alienation of the citizen from the society or the persons who preach or practice otherwise. The author of the article on corruption in the present volume rightly denounces the absence of a clause in CETA reiterating the commitment of parties to the fight against corruption. The acceptance of bribes by national or local governments amounts to fraud and abuse of power that contributes to a negative image of both democracy and market liberalization, and especially of the combination of the two. It is true that there exist international conventions and guidelines against corruption. These can be found on the website of the OECD (www.OECD.org). However, none of these deal with transnational corruption. In addition, it would not have cost much to include a clause in the agreement referring to such instruments and reiterating the commitment of parties to fight against corruption also in transatlantic relations. In 2012 seventy four per cent of the citizens of the European Union felt that corruption was a major problem in their country.²⁶ Judging from this figure alone it seems worthwhile to take action.

However this may be, equally damaging is the practice where public authorities, even without being bribed to do so, refuse to enforce the law (for instance on minimum standards for the provision of services) on the assumption that it may be in the interest of economic advantage of a country. An example is where service provision (e.g., in the construction business) is subject to certain conditions (such as the payment of minimum wages) which are not being fulfilled, and the host state refrains from inspecting the adherence to those conditions in the hope of attracting the company concerned to the country on a longer term basis. Such practices are ill

25. Amissi MANIRABONA, “L’intégration économique entre le Canada et l’Union européenne: L’introuvable, mais nécessaire clause anticorruption dans l’AECG”, (2015) 20-2, *Lex electronica*, XYZ, XYZ.

26. Laurence COCKROFT, “Corruption in Europe, What Can Be Done? Cicero Foundation”, Great Debate Paper, No 13/03, April 2013, available at: <http://www.cicerofoundation.org/lectures/Laurence_Cockcroft_Corruption_in_Europe.pdf> (accessed June 8th, 2015)

perceived on a human level and undermine the trust in the good faith of all parties concerned.

6. Privacy

From the viewpoint of the law-abiding citizen, it is as if the burden is all on him and the benefits and freedoms those of others, including people whom one cannot always trust. This applies in the context of the right to privacy. CETA does nothing to boost this individual freedom. Both European and Canadian citizens must be appalled by the excessive data retention obligations that EU law imposes on telecommunication service providers,²⁷ and that appear to be tolerated under CETA in spite of the fact that they restrict the business of service providers by imposing additional costs – these are likely to be passed on to the customer anyway. Again, the burden is on the ordinary citizen, whose individual freedoms are being trampled on²⁸ without his or her knowledge.²⁹ This shows that even in developed countries, the legal context of the parties to the agreement needs to be scrutinized before the conclusion of the trade deal, to see if the citizen who picks up the telephone or an electronic device is suitably protected against infringement of his personal rights or loss of security.³⁰

Privacy protection is complicated enough to regulate on in a European context. In a transnational context it is even more complicated. Yet as Vera Jourova, EU Commissioner for Justice states, it is worthwhile because “the way [companies] pro-

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27. Chris JONES and Ben HAYES, “The EU Data Retention Directive: a case study in the legitimacy and effectiveness of the EU counter-terrorism policy”, available at: <<http://secile.eu/wp-content/uploads/2013/11/Data-Retention-Directive-in-Europe-A-Case-Study.pdf>> (accessed May 13th, 2015)
 28. Judgment of the Court (Grand Chamber) of 8 April 2014. Joined cases *C-293/12* and *C-594/12*, *Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others (C-293/12)* and *Kärntner Landesregierung and Other (C-594/12)*, available at: <<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-293/12&td=ALL>> (accesses on May 13th, 2015). A. CHRISTOFI, “Arrêt *Digital Rights Ireland*”, 2014 *Revue du droit de l'Union européenne* 399. Marie-Pierre GRANGER and Kristina IRION, “The Court of Justice and the Data Retention Directive in *Digital Rights Ireland*: Telling Off the EU Legislator and Teaching a Lesson in Privacy and Data Protection”, (2014) 39 *European Law Review*, 837, available at: <http://www.ivir.nl/publicaties/download/1456> (consulted on 14 May 2015)
 29. Nicolas Vermeys, “Fostering Trust and Confidence in Electronic Commerce: Will the EU-Canada Comprehensive Economic and Trade Agreement Really Effect Change?” (2015) 20-2, *Lex electronica*, XYZ, XYZ.
 30. See further on this Frederik ZUIDERVEEN BORGESIOUS, and Axel ARNBAK, “New Data Security Requirements and the Proceduralization of Mass Surveillance Law after the European Data Retention Case” (October 23, 2015). Amsterdam Law School Research Paper No. 2015-41, available at SSRN: <<http://ssrn.com/abstract=2678860> or <http://dx.doi.org/10.2139/ssrn.2678860>> (accessed June 10th, 2015)

tect data is a sign of how trustworthy they are, and trust is something that drives the business.” While the regulation of privacy is very much on the EU’s agenda,³¹ cross-border issues are not at all excluded, so that, as the Commissioner states: “If the person infringing my privacy is in another country, I can bring my complaint in my own country, in my own language.”³² A common position by the EU institutions on this aspect is expected to be reached for the end of this year.³³ How this will affect the TTIP negotiations, if at all, remains to be seen.³⁴

7. Quality issues and standards

Quality issues and standards also strike a chord with many people. In Europe and North America different standards apply regarding, for instance, agricultural and food regulation (GMOs, pesticides, meat glue) etc.

Quality issues can be dealt with in various ways, most notably through exclusion from the agreement, through mutual recognition of standards, and through harmonization. Needless to say, the latter options raise concerns about democracy, transparency, and parliamentary and judicial oversight. In relation to TTIP, the so-called “regulatory cooperation” is viewed with suspicion. This is the ongoing cooperation, after the conclusion of the agreement, for the elimination of regulatory obstacles to trade. The idea of regulatory cooperation is seen as a threat to acquired standards in the domestic level, and the effects of such cooperation are reported already to take place before an agreement has been concluded. Arguably, environmental and health standards are already being lowered so as to avoid obstacles being placed in the way of the negotiations.³⁵ Further quality issues arise in relation to corruption and possible non-enforcement of regulations in relation to market newcomers, as pointed out above.³⁶

31. Christopher Oliver, “EU members poised to back online privacy rules”, *Financial Times*, 14 June 2015, available at: <<http://www.ft.com/cms/s/0/842d1c98-1129-11e5-a8b1-00144feabdc0.html#axzz3d8lcw6ff>> (accessed June 14th, 2015)

32. Id.

33. Id.

34. See further the comment of the judgment of 6 October 2015 invalidating the so-called ‘Safe Harbour Agreement’ by Scott SHACKELFORD, “Seeking a Safe Harbor in a Widening Sea: Unpacking the EJC’s Schrems Decision and What it Means for Transatlantic Relations”, (2016) *Seton Hall Journal of Diplomacy and International Relations*, forthcoming, available at SSRN: <<http://ssrn.com/abstract=2680263>> (accessed November 24th, 2015æ)

35. Vincent HARMSSEN, “EU stopt verbod pesticiden vanwege TTIP”, *OneWorld*, 10 June 2014, available at: <<http://www.oneworld.nl/wereld/eu-stopt-verbod-pesticiden-vanwege-ttip>> (accessed June 10th, 2015)

36. see section 5, above.

In addition, however, there is the issue of consumer's trust. One of the contributors to this volume³⁷ suggests that the creation of a trust mark goes a long way towards overcoming the reticence of the transatlantic customer, by providing a quality guarantee that is recognized on both sides of the Atlantic. Such a trust mark does not imply regulatory harmonization, and there is no standardization of products and services, although producers and providers may be inclined to gravitate towards the norms being used as criteria certified as trustworthy. Arguably, certification may imply extra administration and costs, but it pays off in terms of consumer confidence. On top of that, the citizen may see it as a plus for the ordinary man, an advantage that is more than just symbolic as it affects his everyday life in a positive way.³⁸ From this view, the fact that a trust mark is not foreseen is another missed opportunity, especially but not only in relation to e-commerce.

8. Legal protection of consumers

Even if one looks upon the citizen mainly as a consumer, his position can still be improved. Strangely enough, consumers are protected less than investors. This is remarkable even from the economic viewpoint, because everyone is a consumer, and in the day and age of the Internet, many of us are potentially transnational consumers, concluding transnational contracts without even leaving our homes.³⁹ Protecting such consumer transactions would pay off. Is CETA, as one of the contributors to this volume seems to argue, a missed chance of catering for the cyber consumer?⁴⁰ Nicolas Vermeys rightly argues that the trust of cyber consumers in Internet purchases could be enhanced by the creation of a reliable online dispute settlement mechanism common to the comprehensive trading area. As we have pointed out elsewhere, transnational trade is demonstrably boosted by providing an affordable, user friendly and swift transnational dispute settlement mechanism that enhances the security of common, down to earth contractual transactions.⁴¹ In that respect,

37. N. VERMEYS, prec., note 29.

38. This being said, consumers do not necessarily want to buy from strangers, not because of xenophobia, distrust of protectionism because they are familiar with what (and who) is near. Commerce is therefore in part based on traditions and local customs. The availability of after sales service and the reward for customer loyalty are also elements that can be taken into consideration.

39. It has even been shown that buyers over the Internet often do not know where the purchased goods come from.

40. N. VERMEYS, prec., note 29.

41. Nanette NEUWAHL, "The European Small Claims Procedure and the Philosophy of Small Change", concluding chapter, in : Nanette Neuwahl and Said Hammamoun (ed.), *The European Small Claims Procedure and the Philosophy of Small Change / La Procédure européenne des petites créances ou la gestion d'un changement progressif*, Montreal, Les éditions Thémis, 2014, pp. 249-270.

CETA has indeed missed an opportunity in this field that potentially affects anyone. It could apply to goods and services alike (covering substantial sectors including entertainment and internet services themselves). Arguably, the fact that this opportunity was missed is another illustration as to how little the ordinary individual is taken into consideration, even as a consumer, and even if gaining his trust would pay off in terms of boosting cross-frontier commercial transactions.

9. Cultural diversity

The most successful move of the contracting parties from the viewpoint of the citizens is perhaps the one excluding the cultural industry, in particular, audiovisual services from the remit of the agreement. The trade in audiovisual services is among the most sensitive issues in commercial negotiations. Among the economic activity, audiovisual services are odd animals. More than just being capable of providing entertainment and enabling the dissemination of information, culture, and civilization, audiovisual media can be formidable instruments of overt or covert propaganda.⁴² In open societies like Canada and the countries of the European Union this is normally tolerated as there is freedom of choice, expression and debate, and it is this freedom of choice and diversity itself that is protected.

It is not surprising that in the framework of CETA the EU and Canada were able to reach agreement on the treatment of audio-visual services, because, as Lucia Bellucci so well explains in her article,⁴³ the former was keen in this respect to protect its (newly termed) cultural diversity and that objective could be attained by the exclusion of the cultural industry as advocated by Canada. None of the parties had to make a special sacrifice to arrive at this solution. Apart from being entirely compatible with the identity and self-conception of the parties, it is a nod to small cultural businesses and service provider which many citizens will appreciate on both sides of the Atlantic, and hardly anyone would disapprove of the result. This is no doubt one of the useful lessons to retain for TTIP.

42. An obvious example is the one sided Russian language media in the Baltic States. But there are less mediated examples as pointed out in the recent blog by Kerry Longhurst and Quincy Cloet on the political nature of the Eurovision song festival. "Politics has always been at the heart of Eurovision", in Euractive, 2 June 2015, available at: <<http://www.euractiv.com/sections/europes-east/Politics%20has%20always%20been%20at%20the%20heart%20of%20Eurovision%20-315028>> (accessed June 2nd, 2015)

43. Lucia BELLUCCI, "Cultural Diversity' from WTO Negotiations to CETA: More than Words in International Trade Law and EU External Relations", (2015) 20-2, *Lex electronica*, XYZ.

10. Parliamentary questions on citizen's concerns

One does not need to be leftist to agree with the thesis that people matter to any democratic system, and this is true also for Europe. It has been recognized at least since the mid eighties that if anything, a European Union needed to be 'close to the citizen.' It is therefore logical that many of the issues discussed in the previous sections are picked up in Parliament. While parliaments embody democratic control within states, European Parliament, the only directly elected supranational parliament in the world, represents the interests of the European peoples. A quick inventory reveals that citizens' concerns have led MEPs more and more to questioning the European Commission, first in relation to CETA, and now, even to a larger extent, in relation to TTIP. About 25 percent of the written questions is devoted to such issues.⁴⁴ Likely, on the national level numbers will be similar.

Written questions by MEPs since 2014 (until July 2015)		
	On CETA	On TTIP
Total	28	171
On parliamentary Involvement	1	5
On transparency	5	14
On ISDS	2	15
On employment		5
On privacy/data protection		1
On quality standards		8
On cultural diversity		2

Written questions are a useful, be it blunt, instrument to gauge the engagement of parliaments with concerns of the public. Other such instruments are urgent and topical debates, oral questions, and parliamentary motions for resolutions, of which there have been a number in the period between 2014 and mid 2015. Thus, in a parliamentary debate held on 15 July 2014 with Karel de Gucht, former European Commissioner responsible for the negotiations, among the many issues raised by MEPS the question of transparency stood central. Almost one year later, on 10 June 2015, the parliamentary vote on the TTIP resolution was postponed because the president of European Parliament feared a split of the Social-Democrats on the mo-

44. Information obtained from a reading of the questions published on the website of the European Parliament, 10 June 2015.

tion for a resolution demanding amendments to the ISDS mechanism and greater guarantees for the protection of quality standards. It was the European People's Party (EPP) who voted mostly for the postponement.⁴⁵

While it is to the credit of EP to pick up on issues of concern to the citizen, it is worrisome in itself that so many remaining questions deal with transparency and democratic control. This is perhaps the greatest indicator that more should be done to increase the trust of the citizen.

45. "Fact-check: who decided the postponement of the vote and debate on TTIP ?", 10 June 2015, available at: <<http://policevan2.appspot.com/www.votewatch.eu/blog/fact-check-who-decided-the-postponement-of-the-vote-and-debate-on-ttip/#sthash.mj1PeYCE.dpuf>> (accessed June 12th, 2015)

CONCLUSION

CETA may well be a beneficial trade deal for both sides of the Atlantic, but it does little to increase the trust of citizens in their governments. All in all, the making of the deal was not the best publicity for the workings of governments of open societies on both sides of the Atlantic. There is no need to resort to sensational or disaster scenarios (such as an excessive environmental exploitation said to be encouraged by CETA) to understand that many citizens have good reasons to be disheartened by the agreement.

As we have tried to argue, trust is not just a commodity that can be bought and invested in the interest of business or growth (although it is also that). More than that, it is a non-negligible ingredient of any open society and therefore, an aspect that will have to be nurtured by the show of respect, and regard, for ordinary human beings. I am not sure governments and institutions working for the adoption of CETA have done enough so as to ensure that there will be no reminiscence based on the perception that CETA is mainly for big business and not in the interest of the ordinary citizen. In the case of TTIP, the public may well be disheartened by similar aspects of that trade, leading us to conclude that transatlantic leadership will be required to make it pass Congress and the European Union's parliaments.

Disclosure is certainly important, but is not a solution to these problems, in part because some of the issues are quite complex or even implicit in the text of the agreement. Transparency, or rather the lack of it, is an aggravating factor that comes on top of all the other real or perceived issues the agreement raises. Dialogue (even more so than public disclosure during the negotiations) is the way to go about this, not in order to explain away the issues, but in order to attenuate any possible damage done to the trust in leadership by significant parts of the society on both sides of the Atlantic.⁴⁶

46. Rebecca SHABAD, "Rand Paul demands White House release trade deal text immediately", The Hill, 6 June 2015.