

Referat/Minutes

TTIP and Culture Conference, 1 September

Organized by the Nordic Councils of Artists

Sponsored by Kulturkontakt Nord and Nordisk Kulturfond (The Nordic Culture Point and Nordic Culture Fund)

Danish Architecture Center, Copenhagen

Moderator America Vera-Zavala, a Swedish playwright, was introduced. She explained that although the conference would focus on the TTIP (Transatlantic Trade and Investment Partnership) process and involve a number of abbreviations and experts, it was also designed for 'people who did not know all the abbreviations.' She explained that the conference would discuss the future of European culture in general and the audiovisual sector in Europe in particular in light of the ongoing TTIP negotiations between Europe and the United States. She noted that 'Borgen', the Danish TV drama series about various national ministers, was a good example of a European cultural export, and said that she was therefore happy to introduce a real Danish minister, Mogens Jensen, the Minister for Trade and Development Co-operation, who would discuss TTIP from the perspective of the Government of Denmark and the European Council of Ministers.

Jensen began his address by quoting the English journalist G.K. Chesterton, who said, "Culture, like science, is no protection against demons." He said the demon he would like to put to rest is the fear in some circles that a future free trade agreement between the European Union and the United States will somehow deliver a deathblow to Europe's creative industries and cultural diversity.

According to Jensen, critics are claiming that cutthroat competition unleashed by a free trade agreement will allow Hollywood and American media giants to gradually kill off European filmmakers and undermine public service TV and radio in Europe. In addition, Jensen said that critics fear that existing programs and national subsidies in place to support cultural diversity and artistic talent in EU-countries will disappear because of this agreement. He said the fear was that Europe would surrender to American pressure, and Europe's famous "cultural exception" will be terminated once and for all.

Jensen said such fears are unfounded, and argued that a free trade agreement between the EU and the US will not have negative consequences for Europe's creative industries. He said the EU would not abandon the "cultural exception" as it pertains to audiovisual policies, and the EU will not shy away from protecting and promoting cultural diversity.

Minister Jensen pointed out that during a meeting in June 2013, the EU Council of Ministers adopted a mandate for the European Commission on how the Commission should conduct the free trade negotiations with the US. Under the mandate, the audiovisual sector will be excluded from the negotiations. Any change to the mandate would require consensus among the 28 member states, as

well as the approval of the European Parliament. He sees this as highly unlikely, and points out that one particular member state – of which ‘the capital starts with a P’ – that would be highly unlikely to approve any change to the mandate.

Jensen said he was reluctant to speculate what the possible consequences might be for Europe’s cultural industries in the event that culture was included in the TTIP agreement at some point. But he said the potential economic benefits of TTIP were clear, and that an ambitious deal between EU and the US would increase the size of the European economy with around 120 billion Euros, and that wages of skilled and unskilled workers would be likely to rise. Consumers would also get access to cheaper products and greater variety, Jensen said.

Jensen said an ambitious free trade agreement between Europe and the US would also give a significant boost to transatlantic relations when Asia and South America were gaining power.

Moderator America Vera-Zavala asked if there was a cultural exception when it came to TTIP negotiations. Jensen said he could only be sure that audiovisual would not be part of the agreement, and that the US had accepted that. Vera-Zavala suggested that Jensen has generally been a supporter of free trade, and asked if he was therefore a supporter of the cultural exception. Jensen said he was, and that he liked that cultural financing is at the member state level, not at EU level. He said he wanted European cultural products to be produced and distributed, but suggested that if the cultural exception is not on the negotiating table from the start, Europe loses some cards from its hand, cards that could be part of its negotiating strategy.

Jensen said that it was not yet clear who the new chief negotiator would be from Europe’s side, but he hoped the agreement would be completed by the end of 2015.

Jensen was asked how transparent the negotiations process was. He responded that if everything is in the open, it is impossible to negotiate. When it comes to the key elements of negotiations, he said, that must be kept inside the negotiation room.

Moderator America Vera-Zavala then introduced Tarja Cronberg, a former Finnish member of the European Parliament, to discuss TTIP from the perspective of the European Parliament.

Cronberg said she believed the European Parliament would approve the treaty, although after the recent NSA spying scandal some critics had called for the cancellation of negotiations until data protection issues were ironed out. What interests her is the legal framework surrounding the negotiations, and how transparent those negotiations are.

She pointed out that the negotiations are basically about trade, trade liberalizations, and tariffs, and since tariffs were already low, most benefits will come from a change in regulations. The most optimistic view is that the treaty

will give every European family an extra EUR 500 per year, the most pessimistic an extra EUR 40 per year.

Cronberg said that some observers thought TTIP could be used as an excuse to make reforms that were already needed. Germany would be the big winner, and France the obvious loser. She said the mobile vehicle sector would gain the most, and that agriculture would be a difficult point. Europe worries about the lowering of consumer and environmental protection, while the US says its labor protection is better than Europe's. Intellectual property is also a sticking point.

Cronberg said her main message was that the negotiations needed to be more transparent. The mandate is not publicly available now, and European Parliament members are not receiving texts of negotiations. She is also worried that if negotiations come to a deadlock, there may be compromises made, even on audiovisual services. She suggests that artists should work with NGOS to press for greater transparency.

After lunch, Ségolène Bunel of the French Coalition for Cultural Diversity was introduced. She explained that she represented several organizations, which were gathering their forces to promote cultural diversity in all its forms of in society and among political classes. Bunel was asked to give a perspective from France, which has long defended the cultural exception against US pressure, particularly in 1993 when the US wanted audiovisual products included with GATT. France stood firm, and the US gave up. She feels the idea of defending against homogenization of cultures and in particular Americanization of culture is still quite relevant.

Bunel said that GATT was based on a positive list approach, where countries would list the areas they wanted to negotiate, while the TIPP is based on a negative approach, where countries have to specify sectors they want to exclude. During GATT, Hollywood was driving the US campaign to open European markets, said Bunel, but now it is Internet multi-nationals like Google, Apple and Yahoo. Also, she feels that Jacques Delors, who headed the European Commission in 1993, was more protective of the cultural exception than Jose-Manuel Barroso, the current head.

Moderator America Vera-Zavala asked Bunel if the cultural exception exists in the TTIP, or if it is just a promise to France. Bunel said the cultural exception has no legal status in EU law or mandates. Some people think all cultural services are excluded in TIPP, Bunel says, but that's not what the mandate says: it mentions audiovisual services and cultural diversity.

A question from the floor from Jens Daalgaard, Secretary-General, Danish National Commission from UNESCO: Minister Jensen said culture was covered, but you say it is not. Who is right?

Bunel answers that it is complicated, but that the EU Commission keeps saying that audiovisual will be excluded from TIPP and states can still regulate culture.

Moderator America Vera-Zavala introduced Peter Schønning, a Danish lawyer specializing in intellectual property, who came to speak about authors' rights, copyrights and TTIP. He said the EU sees copyrights as a matter of the internal market, and not part of trade policy, and added it is extremely worrying that President-Elect of the European Commission Jean-Claude Juncker sees copyright and authors rights as barriers to digital innovation and growth. Schønning said he believes the opposite – copyright and authors rights are part of innovation and growth motor in digital world.

He noted that the US is very keen on international copyright protection, and that no country wants to be on its 301 watch list – the list of countries that the US believes does not fulfill good trade policy. He added that the Anglo-Saxon copyright tradition focuses on the industry, as compared to the French *droit d'auteur*, which focuses on the moral rights of authors. The US has not created a general rights system for composers and musicians with regards to public performance – it has only a limited system, so the US pays a small compensation to European composers every year. Schønning said one must always be vigilant when copyrights and trade rights are melded together in international negotiation. Here in Denmark, he said, the government is more interested in the export of bacon than fair remuneration to artists.

Schønning explained that ACTA, the Anti-Counterfeiting Trade Agreement, was rejected by the European Parliament in 2012 because of the worry that new digital rights would go against basic human rights. Rumors killed ACTA, not facts, Schønning said. The current negotiations around TTIP are as clandestine as ACTA, and Schønning stated that there should be more transparency in these negotiations.

Schønning added that the time was right for Europe to demand that the US stop depriving creators of their moral rights, and that EU and the US should have reciprocal agreement to respect the moral rights of the creators.

Moderator America Vera-Zavala asked: Is there or is there not a cultural exception in TIPP? Schønning said there is an exception for the audiovisual industry, but not a general cultural exception.

A question from the floor: We have so many different rules about remuneration in EU. How can we impose them on the US? Schønning said he didn't think remuneration rights should be part of TIPP. But he added that he believes remuneration rights should be respected, and long as we have such different systems, it is difficult to balance the two rights.

After a musical break featuring Simona Abdullah, Ludvig Laher, an author and member of the Austrian Commission for UNESCO, took the floor to speak about the UNESCO Convention on Cultural Diversity.

Laher said he was an Austrian poet who had been involved in the shaping of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions in the late 1990s. In those days, Laher said, most European artists

still felt comfortable in what he would later call the subsidiary trap. They thought that there was a clear distinction between policy fields under national sovereignty and others subject to EU legislation or global treaties. Far from promoting nationalist approaches and provincialism there were rational and emotional reasons for keeping up national sovereignty in these fields, Laher said.

But with the General Agreement on Trade in Services (GATS) entering into force in 1995, the country liberalized certain printing and publishing services, entertainment services and even libraries, archives, museums and other cultural services in a way almost unnoticed by artists and cultural professionals in Austria. The clandestine negotiations of a multilateral agreement on investment (MAI) starting in 1995 became an important topic only in 1997, when a draft of the agreement was leaked. The MAI attempted to establish a global framework for a radical free market economy aimed at minimizing the diverse state regulations governing the conditions under which foreign corporate could take place. Laher said it finally failed, to a certain degree because of the pressure of many then emerging NGOs.

Laher said that according to the WTO logic and that of certain governments, culture and art should be treated like ordinary goods and services in free trade negotiation contexts. He said the effects on established structures would have been dramatic, if subsidies, quotas, and laws in support of art and culture had been considered mere violations of competition.

He said Canada had proved a strong partner in the fight for cultural diversity, and Canada had worked together with NGOs to strongly influence the final UNESCO convention.

Laher emphasized that it was an important task to convince national parliaments not to agree to any commitments in trade negotiations like TTIP that would make cultural diversity measures or state support for them illegal. Since TTIP would not only effect EU regulations, but also national laws, the parliaments in the member states will have a decisive role in the process. Furthermore, he said the secrecy of the negotiations was in violation of the UNESCO convention, and cultural groups should mention the convention when demanding to be part of the negotiations.

He also pointed out that the convention offers preferential treatment to developing countries, and that this was currently being contradicted by the common denial of visas to artists from the Southern Hemisphere.

Moderator America Vera-Zavala noted that the US had not signed the UNESCO convention. Laher agreed that it was not binding for the U.S, but the EU had, and could include parts of the convention into the preamble for TTIP.

Ségolène Bunel noted that 2015 will be the 10th anniversary of the UNESCO convention, and asked Laher if that had any significance for the current negotiations.

Laher said the convention had been influential in some countries, like Austria, where it has opened debates with local politicians.

Moderator America Vera-Zavala introduced Guenaëlle Collet from the European Broadcast Union (EBU) and Pascal Albrechtkirchinger of Germany's ZDF, both speaking on behalf of the EBU. Collet said that she felt the TTIP negotiations were not transparent enough. She said the US had asked the Commission if audiovisual services could indeed be part of the negotiations, and had later asked exactly what would be covered under audiovisual services. Collet said the convergence of platforms and devices needs to be taken into account in the negotiations, and that streaming should be covered, with an explicit statement in the agreement ensuring that both EU and member states can continue to develop audiovisual policies in full sovereignty. Albrechtkirchinger added that it is worth organizing a public debate about the issue. He noted strong support from the German *länder*, who are in charge of cultural policies, but not the federal government, which is in charge of trade policy, although there are signs of that it's position is being reconsidered.

Håkan Bjerking, a Swedish Film Director and President of the Federation of European Film Directors, delivered a passionate speech about the negative consequences of open trade with the US. He said that the EU would be offered Chloride chickens from US, and would be forced to consume and sell, and people have to buy, no matter what. Bjerking said US has created a monopoly situation where they control the orchestra and Europe is reduced to playing the triangle. He said the US was like an octopus, and that during trade negotiations, European politicians will sit around the table and it will be like Winston Churchill and Joseph Stalin, with many politicians more like Stalin, with no understanding the meaning of culture.

The day ended with an informal panel featuring several members of the audience.

Anders Hovind, of the Artists Network in Norway and the Norwegian Musician's Union. Norway is not a member of EU, so it must influence the negotiations through member states. He is worried about the ISDS mechanism, in which an investor could sue a state for its laws and feels this is a real threat to democracy.

Kolbrun Halldorsdottir, speaking for the Federation of Icelandic Artists, is concerned that when the Danish trade minister Mogens Jensen spoke that he was not talking about an exemption for cultural goods and services, only an exception for audiovisual services. She believes the scope should be wider.

Janne Giese, a Danish film producer and director, would like to encourage a resolution covering all the Nordic countries to tell all the politicians involved in the treaty that the cultural exception is non-negotiable, and that we need more transparency.

Jonas Nordling, President of Swedish Union of Journalists, feels that TTIP has not been discussed enough in public. Lack of transparency makes it very difficult.

Sweden and Swedish unions generally believe in free trade, except for the ISDS mechanism, which he sees as unacceptable. He is surprised by the lack of attention to parallel negotiations with Canada.

Alfons Karabuda, president of the European Composer and Songwriter Alliance, said the artists of Europe need a unified voice surrounding TTIP. He notes that trade negotiations require having something to trade. Why not say, we would like to help Hollywood make more remakes of the movies sourced from the cultural diversity in Europe? He added that without strong local films, you will never have any blockbusters.

Mats Söderlund, Head of Swedish Council of Artists, said he was deeply worried when the first speaker said arts and culture is no guarantee against demons. He says he thinks it's the best weapon we have. He believes copyright questions should be completely in the hands of the each country's culture minister.

Tarja Cronberg suggests that we keep up the pressure about transparency in TTIP negotiations, as she knows the Italians are onboard. She says that the EU Commissioner will tell you that subsidies will not be touched. This is not true, she says, as subsidies are always seen as a barrier to free trade in trade discussions. She adds that European politicians are worried that the attention to the Pacific takes American away from Europe – a lot of politicians in the European parliament want to keep America in Europe and therefore make concessions that they should not.

Ségolène Bunel says that if ISDS is something you're really worried about, you can fight it and find allies. She says there is already wide opposition, even from Angela Merkel. She added TTIP was a big issue in the electoral campaign in France, but it was used by the National Front to object to the EU in general.

Peter Schønning noted that when the EU recognized the UNESCO Convention on Cultural Diversity, they agreed to a paragraph that suggests that when they enter into new trade agreements, they must take into account the UNESCO convention. It is not legal for the EU to enter into a bilateral agreement that does not accept the convention. The US has not ratified the convention, but the fact that the EU has ratified it is enough. It's important for all European organizations to emphasize this when discussing with trade reps.

Ségolène Bunel says this might be a good way to get attention to TIPTIP, to point out if it violates the UNESCO convention.

Sally Altschuler of the Council of Danish Artists, asked How do I use this? If there is violation of the convention, is there a court that I can go to?

Peter Schønning says that the European Parliament will look into whether treaty obligations are respected. If not, you could appeal to the European Court of Justice, saying that the free trade agreement violates the obligations of the committee.

Ludvig Laher added that it would also be possible to approach the national parliaments, since all of them will have to say yes to the TTIP treaty. All of us have the opportunity to influence our national parliaments, he said.

America: We started with demons and ended the day with very positive notes on what we can do. Thank you to everyone who helped arrange the conference.