16.4.2015

OPINION

of the Committee on Constitutional Affairs

for the Committee on International Trade

on Recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) (2014/2228(INI))

Rapporteur: Esteban González Pons
SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on International Trade, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

– having regard to the case-law of the Court of Justice of the European Union (CJEU), in particular Case C-350/121 and Opinions 2/132 and 1/093,

A. whereas the Lisbon Treaty extends the scope of the Common Commercial Policy to include foreign direct investment, and whereas it significantly increases Parliament’s powers in the field of international trade agreements by strengthening its right to be informed regularly, and by enhancing its decision-making competence by requiring its consent at the end of negotiations, thereby providing for the direct representation of the citizens in the adoption of international trade agreements;

B. whereas in its Opinion 2/13, the CJEU stated that the competence of the EU in the field of international relations, and its capacity to conclude international agreements, necessarily entail the power to submit to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions; whereas the Court nevertheless also declared that an international agreement may affect its own powers only if the indispensable conditions for safeguarding the essential character of those powers are satisfied and that, as a consequence, there is no adverse effect on the autonomy of the EU legal order:

1. Addresses, in the context of the ongoing negotiations on TTIP, the following recommendations to the Commission:

(d) regarding the rules:

(i) to evaluate the implications of TTIP in order to ensure policy coherence, namely with regard to the consistency between the different areas of EU’s external action, and between these and its other policies;

(ii) to specify the role and powers of the Regulatory Cooperation Council as well as the legal quality of its findings, taking into consideration that the regulatory cooperation should respect the EU’s current constitutional and institutional framework as well as the competence of European, national and local authorities to legislate their own policies, in particular social and environmental policies, and that any direct application of its recommendations for the relevant EU instances would imply a breach of the law-making procedures laid down in the Treaties, and would therefore undermine the democratic process as well as the European public interest;

(iii) to ensure that no standards are lowered inside the European legal framework;

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1 Case C-350/12, Council of the European Union v Sophie in’t Veld.
2 Opinion 2/13, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms – Compatibility of the draft agreement with the EU and FEU Treaties.
3 Opinion 1/09, Draft agreement – Creation of a unified patent litigation system – European and Community Patents Court – Compatibility of the draft agreement with the Treaties.
(iv) as TTIP is expected to be a ‘living agreement’, to which additional sectorial annexes may be added in the future, to ensure that this mechanism guarantees the possibility for parliamentary oversight such that Parliament and the US Congress are kept informed and can initiate, shape and control the regulatory dialogue foreseen by the TTIP, respecting the legislative parliamentary rights;

(v) considers the very high level of protective measures and standards that exist in the EU, and that have been agreed upon through democratic processes, to be an achievement worthy of protection to the highest degree, and demands that the legal standards that exist in the EU and its Member States, such as with regard to product safety, health, the social sphere, the environment, climate, foodstuff and animal protection, and consumer and data protection rights, may in no way be lowered;

(vi) to oppose the inclusion of an ISDS mechanism in TTIP, given the EU’s and the US’ developed legal systems, and given the fact that a state-to-state dispute settlement system and the use of national courts are the most appropriate tools for addressing investment disputes;

(vii) taking into account the fact that the US and EU jurisdictions are not at risk of political interference in the judiciary or of denying justice to foreign investors, an investor-state dispute settlement, based on private arbitration, may undermine the right to regulate in the public interest of the European Union and of the Member States’ national, regional and local authorities, in particular with regard to social and environmental policies, and would therefore not respect the constitutional framework of the EU; to propose a permanent solution for resolving disputes between investors and states, where potential cases are treated transparently by professional judges in public trials subsequent to which at least one appeal may be lodged;

(e) regarding transparency, civil society involvement and public outreach:

(iii) while a certain extent of confidentiality is admissible and comprehensible during negotiations on a trade agreement of such high economic and political importance, to continue and strengthen its effort to render the TTIP negotiations more transparent and accessible to the public, inter alia by making public all the EU negotiating texts that the Commission already shares with Member States and Parliament, as the European institutions should be at the forefront of promoting transparency;

(iv) to inform Parliament immediately and fully of all steps in the procedure, in accordance with the CJEU’s judgment in Case C-358/11; to ensure that all MEPs have access to all restricted documents and to include the consolidated texts in the list of documents that can be consulted by MEPs;

(v) to implement the recommendations of the European Ombudsman from 6 January 2015 to further enhance the legitimacy and transparency of the negotiating process by fully complying, proactively and comprehensively, with the rules on public access to documents in all the official languages of the EU on its website, and by ensuring balanced and transparent public participation by Member State parliaments;

(vi) calls, therefore, on the Commission to support and continue negotiations with the Council to unblock the amendment to Regulation (EC) Nº 1049/2001 regarding public
access to documents;

(vii) to check the legal implications of a mixed-type agreement; to fully involve national parliaments in the debate on the specifics of TTIP and keep them regularly informed on the course of negotiations, paying attention to their feedback, especially since this agreement will most likely end up as a ‘mixed-type’ agreement, requiring ratification by national parliaments;

(viii) to create without delay a mandatory transparency register to be used by all European institutions in order to ensure full overview of the lobbying activities associated with the TTIP negotiations.
RESULT OF FINAL VOTE IN COMMITTEE

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<th>16.4.2015</th>
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| **Result of final vote** | +: 13  
| | -: 9  
| | 0: 2  |
| **Members present for the final vote** | Mercedes Bresso, Elmar Brok, Fabio Massimo Castaldo, Richard Corbett, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Ramón Jáuregui Atondo, Constance Le Grip, Jo Leinen, Petr Mach, Maite Pagazaurtundúa Ruiz, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Claudia Tapardel, Kazimierz Michał Ujazdowski, Rainer Wieland |
| **Substitutes present for the final vote** | Max Andersson, Gerolf Annemans, Marcus Pretzell, Helmut Scholz |
| **Substitutes under Rule 200(2) present for the final vote** | Rosa Estaràs Ferragut, José Inácio Faria, Gabriel Mato, Ramón Luis Valcárcel Siso |