



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Legal Affairs

2014/2228(INI)

4.5.2015

OPINION

of the Committee on Legal 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: Dietmar Köster

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SUGGESTIONS

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

- A. whereas, since judicial systems both in the European Union and in the United States of America function effectively, there is no need for any private investor-state dispute settlement (ISDS) mechanisms in this agreement;
 - B. whereas the European Union and the USA have efficient national legal frameworks and are governed by the rule of law;
 - C. whereas international trade and investment agreements concluded by EU institutions are subject to the rights guaranteed by the EU and the principles underlying the protection of those rights in the EU, such as the precautionary principle, which applies to environmental, health and consumer protection;
 - D. whereas nine EU Member States have concluded bilateral investment protection agreements with the USA granting US undertakings the right to bring complaints against those Member States, and whereas numerous bilateral agreements between EU Member States contain some ISDS clauses, but Regulation No 912/2014 states that existing bilateral investment agreements to which Member States are parties are to be replaced by the inclusion of an investment chapter in the TTIP, even without ISDS;
 - E. whereas the negotiations at issue are intended to result in an ambitious agreement which will protect the European model of the social market economy, as provided for by the Treaties of the European Union which will be accompanied by a significant improvement for the public, employees and consumers and by an opening-up of the market for undertakings based in the European Union, including SMEs;
 - F. whereas international agreements are a basis for legal certainty and predictability and whereas there have been many cases in which the EU and other States have brought legal action against the USA under the aegis of the WTO because the USA was believed to have failed to comply with its international obligations;
 - G. whereas Article 1 of the Treaty on European Union provides that: ‘decisions are taken as openly as possible and as closely as possible to the citizen’; whereas Article 10(3) of the TEU provides that: ‘decisions shall be taken as openly and as closely as possible to the citizen’; whereas, under Article 218(10) of the Treaty on the Functioning of the European Union, the European Parliament has the right to ‘be immediately and fully informed at all stages of the procedure’ in the negotiation and conclusion of agreements between the Union and third countries; and whereas, in the decision closing her own-initiative inquiry OI/10/2014/RA, the European Ombudsman emphasised the need for transparency in TTIP negotiations and public access to TTIP documents;
1. Addresses the following recommendations to the Commission:
 - a. Observes that the reservations felt by the public should be reflected in negotiations on

trade and investment agreements;

- b. Observes that treating local and foreign investors equitably is not possible under the reforms incorporated in CETA for mechanisms for the settlement of disputes between States and investors;
- c. Observes that ensuring that foreign investors are treated in a non-discriminatory fashion and have a fair opportunity to seek and achieve redress of grievances can be achieved without the inclusion in the TTIP of investment protection standards or an ISDS mechanism; is of the firm opinion that any TTIP agreement should not contain any investment protection standards or ISDS mechanism as the existing level of investment protection in the EU and the US is fully sufficient to guarantee legal security;
- d. Calls on the Commission to make publicly accessible the consolidated text versions combining EU and US positions on draft chapters and thereby ensure equal access to information for all interested stakeholders during all stages of the negotiations;
- e. Observes that existing dispute settlement mechanisms display serious weaknesses in terms of both procedure and substance;
- f. Calls on to Commission to oppose the inclusion of an ISDS mechanism in the TTIP, given the developed legal systems of the EU and US and the fact that a state-to-state dispute settlement system and the use of national legal and judicial systems are the most appropriate tools to address investment disputes;
- g. Stresses that the democratic legitimacy of the EU's trade policy needs to be strengthened; calls on the Commission to take account of responses to the public consultation it conducted and especially the 97 % of responses opposed to an ISDS;
- h. Calls on the Commission to ensure that foreign investors are treated in a non-discriminatory fashion and have a fair opportunity to seek and achieve redress of grievances, while benefiting from no greater rights than domestic investors, and to oppose the inclusion of ISDS in the TTIP, as other options to enforce investment protection are available, such as domestic remedies;
- i. Calls on the Commission to ensure that, if a dispute settlement mechanism is adopted, its decisions on individual cases will not replace the national law of the contracting parties which is in force or render it ineffective, and that amendments by future legislation – provided that they are not made retroactive – cannot be contested under such a dispute settlement mechanism;
- j. Calls on the Commission to guarantee that the established regulatory systems on both sides of the Atlantic and the role of the European Parliament in the EU's decision-making procedure and its powers of scrutiny of the EU's regulatory processes will be fully and completely respected in creating the framework for future cooperation;
- k. Calls on the Commission to make clear to the negotiating partner that the precautionary principle is one of the fundamental principles of European

environmental, health and consumer protection policy and is the basis for prompt, proactive negotiations to avoid putting the health of people, animals and plants at risk and damaging the environment, and to ensure that the negotiations do not result in the diluting of the precautionary principle which operates in the EU, particularly in the areas of environmental, health, food and consumer protection;

- l. Calls on the Commission to ensure that the adoption of national legislation continues to be performed exclusively by legitimate legislative bodies of the EU, promoting the highest standards of protection for citizens, including in the areas of health, safety, the environment, consumer and workers' rights, and public services of general interest; considers it vital to preserve the sovereign right of the Member States to claim a derogation for public and collective services, such as water, health, education, social security, cultural affairs, media matters, product quality and the right of self-government of municipal and local authorities, from the scope of TTIP negotiations; urges the Commission to ensure that any procedures in the context of regulatory cooperation fully respect the legislative competences of the European Parliament and the Council, in strict accordance with the EU Treaties and do not delay directly or indirectly the European legislative process;
- m. Stresses that, while neither EU Member States nor the European Union have taken a decision on comprehensive harmonisation of the right to intellectual property, including copyright, trade marks and patents, the Commission ought not to negotiate on these interests in CETA or the TTIP;
- n. Considers it to be of great importance that the EU and the US remain committed and engaged in global multilateral patent harmonisation discussions through existing international bodies and thus cautions against attempting to introduce provisions on substantive patent law, in particular with regard to issues relating to patentability and grace periods, into the TTIP;
- o. Calls on the Commission to ensure that the TTIP negotiations also address the need for enhanced recognition, and to preserve the protection of, certain products of which the origin is of high importance; points out, therefore, that effectively ensuring the application of the EU geographical indication is essential in order to be able to enforce those rules; calls on the Commission, in this connection, to ensure that the cultural exception rules continue to be excluded from the negotiating mandate;
- p. Calls on the Commission, with regard to market access, to ensure adequate provisions to exclude sensitive services such as public services and public utilities (including water, health, social security systems and education), allowing national and local authorities enough room for manoeuvre to legislate in the public interest; observes that, for these services, an explicit exception, based on Article 14 of the TFEU in conjunction with Protocol 26, must be incorporated in the agreement, irrespective of who provides them and in what form and how they are financed; notes that a joint declaration reflecting the negotiators' clear commitment to exclude these sectors from the negotiations would be very helpful in this regard;
- q. Calls on the Commission to ensure in particular that all matters benefiting European artists and producers are included in the cultural exception rules;

- r. Calls on the Commission to give guarantees regarding inclusion of the publishing sector in the cultural exception;
- s. Observes that, in the field of public procurement, social and ecological procurement criteria and their possible extension must not be called into question;
- t. Calls on the Commission to ensure that both contracting parties undertake, in particular, to respect and implement core ILO labour standards and the OECD Guidelines for Multinational Enterprises; considers that compliance with labour and social standards must be effectively secured in case of conflict;
- u. Stresses that under no circumstances may the right to codetermination, works constitution and free collective bargaining or other protective rights for workers, the environment and consumers be interpreted as ‘non-tariff trade barriers’;
- v. Observes, furthermore, that unclear definitions of legal terms in CETA and the TTIP such as ‘fair and equitable treatment’ or ‘indirect expropriation’ must be rejected.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	16.4.2015
Result of final vote	+: 12 -: 11 0: 2
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Daniel Buda, Angel Dzhambazki, Jytte Guteland, Heidi Hautala, Constance Le Grip, Angelika Niebler, Virginie Rozière
Substitutes under Rule 200(2) present for the final vote	Inês Cristina Zuber