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Committee on Legal Affairs

2014/2228(INI)

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DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on International Trade

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

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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 investment protection provisions and investor state dispute settlement are an essential tool in international economic relations and are very important for investment activity, and whereas a balanced relationship between the necessary and effective protection of investors, the right of States to regulate and an appropriate dispute settlement procedure is fundamental;
 - B. 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 bilateral agreements between EU Member States contain numerous ISDS clauses;
 - C. 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;
1. Addresses the following recommendations to the Commission:
 - a. Considers that the Commission's proposals for reform initiatives relating to investment protection accord with the European Parliament resolution on the future European international investment policy (2010/2203(INI)); observes, however, that the reservations felt by the public should be taken into account in these reforms;
 - b. Observes that the reforms incorporated in CETA for mechanisms for the settlement of disputes between States and investors represent the right approach and must be developed further for TTIP;
 - c. Observes that existing dispute settlement mechanisms work well but also display weaknesses and that therefore improvements are needed and they must be modernised in order to improve their legitimacy and the institutionalisation of mechanisms for the settlement of disputes between States and investors, so that they can then also be taken as a model for other partnerships;
 - d. Calls on the Commission, in this context, to take account of and to supplement, firstly, the constructive contributions made by the public consultation on TTIP, and, secondly, the dispute settlement mechanisms incorporated in CETA, in order to establish clear structures, impartial procedures, a lawful pool of judges selected by States and a code of conduct for judges, to increase the transparency and legitimacy of such dispute settlement procedures, to limit the scope for legal action in order to prevent forum shopping, to maintain the democratic legitimacy of national and European legislatures for amendments to legislation with defined standards and levels and to assess the feasibility of establishing a permanent court and a

multilateral appeal system in TTIP;

- e. Calls on the Commission to ensure that investors from the EU are not disadvantaged in the USA, including in relation to investors from other third States (such as Canada, Mexico, China, India and TPP States), which already now, or in future on the basis of negotiations currently under way, enjoy investor protection and have access to mechanisms for the settlement of disputes between States and investors;
- f. Calls on the Commission to ensure that in the future dispute settlement mechanism in TTIP it is guaranteed that 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;
- g. Calls on the Commission to ensure that clearly defined rules on regulatory coherence are comprehensively incorporated in TTIP;
- h. Calls on the Commission to ensure that the adoption of national legislation continues to be performed exclusively by legitimate legislative bodies of the EU and the USA and that the Regulatory Cooperation Body is not assigned any legislative powers but serves purely for purposes of cooperation, information exchange and supervision of the implementation of TTIP provisions;
- i. Notes that TTIP gives contracting parties the option of increasing protection of intellectual property, including in relation to third States.