



EUROPEAN PARLIAMENT

2014 - 2019

Committee on International Trade

2014/2228(INI)

5.2.2015

DRAFT REPORT

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

Committee on International Trade

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Unofficial preliminary draft - subject to linguistic verification and modifications

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PRELIMINARY DRAFT

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

The European Parliament,

- having regard to the EU directives for the negotiation on the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the US adopted by Council on 14 June 2013¹, that were declassified and made public by the Council on 9 October 2014,
- having regard to the Joint Statement of the EU-US Summit of 26 March 2014²,
- having regard to the European Council conclusions of 26-27 June 2014³,
- having regard to Jean-Claude Juncker's Political Guidelines for the next European Commission of 15 July 2014 entitled 'A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change'⁴,
- having regard to the Joint Statement of 16 November 2014 by US President Barack Obama, Commission President Jean-Claude Juncker, European Council President Herman Van Rompuy, UK Prime Minister David Cameron, German Chancellor Angela Merkel, French President François Hollande, Italian Prime Minister Matteo Renzi and Spanish Prime Minister Mariano Rajoy following their meeting in the margins of the G20 Summit in Brisbane, Australia⁵,
- having regard to the Council conclusions on TTIP of 21 November 2014⁶,
- having regard to Commission's 'Communication to the Commission concerning transparency in TTIP negotiations' of 25 November 2014 (C(2014)9052), as well as Commission's Decisions of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals (C(2014)9051) and on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals (C(2014)9048),
- having regard to the Joint Statement EU-US Energy Council of 3 December 2014⁷,
- having regard to Commission report of 13 January 2015 on the online public consultation on investment protection and investor-to-state dispute settlement (ISDS) in

¹ <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>

² http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/141920.pdf

³ <http://data.consilium.europa.eu/doc/document/ST-79-2014-INIT/en/pdf>

⁴ http://ec.europa.eu/priorities/docs/pg_en.pdf

⁵ http://europa.eu/rapid/press-release_STATEMENT-14-1820_en.htm

⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/145906.pdf

⁷ http://europa.eu/rapid/press-release_IP-14-2341_en.htm

the TTIP (SWD(2015)0003),

- having regard to EU's textual proposals tabled for discussion with the US in TTIP negotiating rounds, in particular those which have been declassified and made public by the Commission, inter alia EU position paper entitled 'TTIP regulatory issues - engineering industries'¹, EU position paper entitled 'Test-case on functional equivalence: proposed methodology for automotive regulatory equivalence'², EU position paper entitled 'Trade and sustainable development chapter/labour and environment: EU paper outlining key issues and elements for provisions in the TTIP'³, textual proposal on technical barriers to trade (TBT)⁴, textual proposal on sanitary and phyto-sanitary measures (SPS)⁵, textual proposal on customs and trade facilitation⁶, textual proposal on small and medium-sized enterprises⁷ (SME), textual proposal on possible provisions on competition⁸, textual proposal on possible provisions on state enterprises and enterprises granted special or exclusive rights or privileges⁹, textual proposal on possible provisions on subsidies¹⁰, and textual proposal on dispute settlement¹¹,
- having regard to the Final Inception Report of 28 April 2014 by ECORYS for the Commission entitled 'Trade Sustainability Impact Assessment (Trade SIA) in support of negotiations of a comprehensive trade and investment agreement between the European Union and the United States of America'¹²,
- having regard to the 'Detailed Appraisal of the European Commission's Impact Assessment on EU-US Transatlantic Trade and Investment Partnership' of April 2014 by CEPS for the Parliament,
- having regard to its earlier resolutions, in particular the resolution of 23 October 2012 on trade and economic relations with the United States¹³, of 23 May 2013 on EU trade and investment negotiations with the United States of America¹⁴, of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs¹⁵, and of 15 January 2015 on the annual report on the activities of the European Ombudsman 2013¹⁶,

¹ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153022.pdf

² http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153023.pdf

³ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153024.pdf

⁴ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153025.pdf

⁵ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

⁶ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153027.pdf

⁷ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153028.pdf

⁸ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153029.pdf

⁹ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153030.pdf

¹⁰ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153031.pdf

¹¹ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153032.pdf

¹² http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152512.pdf

¹³ OJ C 68 E, 7.3.2014, p.53.

¹⁴ Texts Adopted, P7_TA(2013)0227.

¹⁵ Texts Adopted, P7_TA-PROV(2014)0230.

¹⁶ Texts Adopted, P8_TA-PROV(2015)0009.

- having regard to Rules 108(4) and 52 of its Rules of Procedure,
 - having regard to the report of the Committee on International Trade and the opinions of the Committee on Foreign Affairs, Committee on Development, Committee on Economic and Monetary Affairs, Committee on Employment and Social Affairs, Committee on Environment, Public Health and Food Safety, Committee on Industry, Research and Energy, Committee on the Internal Market and Consumer Protection, Committee on Transport and Tourism, Committee on Agriculture and Rural Development, Committee on Culture and Education, Committee on Legal Affairs, Committee on Civil Liberties, Justice and Home Affairs, Committee on Constitutional Affairs, and Committee on Petitions (A8-0000/2015),
- A. whereas an ambitious agreement with the US may support the reindustrialisation of Europe and help achieve the 2020 target for an increase of the EU's GDP generated by industry from 15 % to 20 %; whereas it has the potential to create opportunities especially for SMEs, who suffer more from non-tariff barriers (NTBs) than larger companies; whereas an agreement between the two biggest economic blocks in the world has the potential to create standards, norms and rules which will be adopted at a global level, which would serve to the advantage for third countries as well;
- B. whereas, given the growing interconnectedness of global markets – up to 40 % of European industrial products are manufactured from imported upstream products – it is crucial that policy makers shape the way these markets interact; whereas proper trade rules are fundamental to creating added value in Europe, since industrial production takes place in global value-chains;
- C. whereas we are faced with an unregulated picture of globalization and a well-designed trade agreement could contribute to harnessing liberalization, it should not only focus on reducing tariffs and NTBs but also be a tool to protect workers, consumers and the environment; whereas a strong and ambitious trade agreement is an opportunity to create a framework by strengthening regulations to the highest standards on a global level in order to prevent social and environmental dumping;
- D. whereas even though common high standards are in the interest of the consumers, it should be noted that they also make sense from an economic perspective, as the higher costs stemming from higher standards are compensated by increased economies of scale in a market of 850 million consumers;
- E. whereas many economic impact studies on TTIP should be taken with caution as they are built on computable general equilibrium economic models with very optimistic predictions about the capacity of the EU and the US to reduce regulatory barriers to trade; whereas the TTIP alone will not resolve economic problems in the EU and no false hopes and expectations should be raised in that respect;
- F. whereas the well-being of ordinary citizens, workers and consumers has to be the benchmark for a trade agreement; whereas TTIP should be a model for a good trade agreement responding to these requirements;
- G. whereas the secret character of negotiations as they have been conducted in the past has

led to deficiencies in terms of democratic control of the negotiation process;

- H. whereas President Juncker has clearly reiterated in his Political Guidelines that – while EU and US can go a significant step further in recognising each other's product standards and working towards transatlantic standards – the EU will not sacrifice its safety, health, social and data protection standards or our cultural diversity, the safety of food we eat and the protection of Europeans' personal data is non-negotiable;
- I. whereas President Juncker has also clearly stated in his Political Guidelines that he will not accept that the jurisdiction of courts in the Member States is limited by special regimes for investor disputes; whereas now that the results of the public consultation on investment protection and ISDS in the TTIP are available, a reflection processes – taking account of the critical and constructive contributions – is needed within and between the three European institutions on the best way to achieve investment protection and equal treatment of investors;
- J. whereas many critical voices in the public debate have shown the need for the TTIP negotiations to be conducted in a more transparent and inclusive manner, taking into account the concerns voiced by European citizens; whereas the Parliament fully supports the decision of the Council to declassify the negotiating directives and the Commission's transparency initiative;
- K. whereas since July 2013 talks between US and EU are going on, until now no common text is agreed and it is just the right time to make a reflection of the state of play;
- 1. Addresses, in the context of the ongoing negotiations on TTIP, the following recommendations to the Commission:
 - (a) regarding the scope and the broader context:
 - (i) to ensure that TTIP negotiations lead to a deep, comprehensive, ambitious, balanced and high standard trade and investment agreement that would promote sustainable growth, support the creation of high-quality jobs for European workers, directly benefit European consumers, increase international competitiveness and open up new opportunities for EU companies, in particular SMEs; the content of the agreement is more important than the speed of the negotiations;
 - (ii) while the TTIP negotiations consist of negotiations on three main areas – ambitiously improving reciprocal market access (for goods, services, investment and public procurement at all levels of government), reducing NTBs and enhancing the compatibility of regulatory regimes, and developing common rules to address shared global trade challenges and opportunities – all these areas are equally important to be included in a comprehensive package; TTIP should be ambitious and binding on all levels of government on both sides of the Atlantic, the agreement should lead to lasting genuine market openness on a reciprocal basis and trade facilitation on the ground, and should pay particular attention to structural ways of achieving greater transatlantic cooperation while upholding regulatory standards and preventing social and environmental dumping;

- (iii) to keep in mind the strategic importance of the EU-US economic relationship in general and of TTIP in particular, inter alia as an opportunity to promote the principles and values that the EU and the US share and cherish and to design common approaches to global trade, investment and trade-related issues such as high standards, norms and regulations, in order to develop a broader transatlantic vision and a common set of strategic goals;
 - (iv) to ensure, especially given the recent positive developments in the World Trade Organisation (WTO), that an agreement with the US will serve as a stepping-stone for broader trade negotiations and will not be seen as an alternative to the WTO process; bilateral trade agreements are always the second best option and must not prevent improvements on the multilateral level;
- (b) regarding market access:
- (i) to ensure that the market access offers on the different areas are equally ambitious and reflect both parties' expectations, as market access for industrial goods, agricultural products, services and public procurement are equally important and a balance is needed between the different proposals for these areas;
 - (ii) to aim at the elimination of all duty tariffs, while respecting sensitive products on both sides;
 - (iii) to keep in mind that there are important offensive interests for the EU in the services sector, for instance in the area of engineering, telecommunication or transport services;
 - (iv) to increase market access for services according to the "positive list approach" whereby services that are to be made open for foreign companies are explicitly mentioned and new services are excluded while ensuring that possible stand-still and ratchet clauses only apply to non-discrimination provisions and allow for enough flexibility to bring services back into public control;
 - (v) the negotiations should meaningfully address the current US restrictions on maritime and air transport services owned by European businesses, including in relation to foreign ownership of airlines and reciprocity on cabotage, as well as maritime cargo screening;
 - (vi) to ensure an adequate carve-out of 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; a joint declaration reflecting negotiators' clear commitment to exclude these sectors from the negotiations would be very helpful in this regard;
 - (vii) to combine market access negotiations on financial services with convergence in financial regulation on the highest level, in order to support the introduction of necessary regulation to prevent financial crises and in order to support on-going cooperation efforts in other international forums, such as the Basel Committee on Banking Supervision;

- (viii) to ensure that the EU's *acquis* on data privacy is not compromised through the liberalization of data flows in particular in the area of e-commerce and financial services; to ensure that no commitments on data flows are taken up before European data protection legislation is in place;
 - (ix) to ensure that European competition law is properly respected particularly in the digital world;
 - (x) to keep in mind that the agreement should not risk prejudicing the Union's cultural and linguistic diversity, including in the audio-visual and cultural services sector, and that existing and future provisions and policies in support of the cultural sector in particular in the digital world are out of the scope of the negotiations;
 - (xi) to ensure that account is taken of the discrepancies in the openness of public procurement markets on both sides of the Atlantic and the huge interest on the part of European companies in obtaining access to public contracts in the US both at federal and state level, for example for construction services, traffic infrastructure and goods and services while respecting sustainability criteria for procurement on both sides, *inter alia* the new EU procurement and concession package entering into force in 2016;
 - (xii) to promote EU-US cooperation at the international level in order to promote sustainability standards for public procurement among others in the implementation of the recently revised Government Procurement Agreement;
 - (xiii) to ensure that federal states are included in the negotiation process in order to achieve meaningful results in opening up US public procurement contracts to EU companies;
 - (xiv) the negotiations on rules of origin should aim at reconciling the EU and US approaches, and given the conclusion of the negotiations for the Comprehensive Economic and Trade Agreement (CETA) between EU and Canada and the potential upgrade of the EU-Mexico free trade agreement, the possibility and scope of cumulation will need to be considered;
- (c) regarding the NTBs:
- (i) the regulatory cooperation chapter should promote an effective, pro-competitive economic environment through the facilitation of trade and investment while developing and securing high levels of protection of health and safety, consumer, labour, environmental legislation and cultural diversity that exists within the EU; negotiators on both sides need to identify and to be very clear about which regulatory measures and standards are fundamental and cannot be compromised, which ones can be subject of a common approach, areas where mutual recognition based on a common high standard and a strong system of market surveillance is desirable and areas where simply an improved exchange of information is possible, based on the experience of one and a half years of ongoing talks;

- (ii) to base negotiations on SPS and TBT measures on the key principles of the multilateral SPS and TBT agreements; to aim in the first place at increasing transparency and openness, strengthening dialogue between regulators and strengthening cooperation in international standards setting bodies; to recognize, in negotiations on SPS and TBT measures, the right of both parties to manage risk in accordance with the level it deems to be appropriate in order to protect human, animal or plant life or health; to respect and uphold the sensitivities and fundamental values of either side, such as the EU's precautionary principle;
 - (iii) with regard to the horizontal regulatory cooperation chapter, to give priority to fostering bilateral cooperation between regulatory bodies through enhanced information exchange and to promote the adoption, strengthening and timely implementation of international instruments, based on successful international experiences as for instance the ISO standards or under the United Nations' Economic Commission for Europe's (UNECE) World Forum for Harmonization of Vehicle Regulations (WP.29); to establish that the prior impact assessment for the regulatory act, as defined in the horizontal provisions on regulatory cooperation, should also measure the impact on consumers and the environment next to its impact on trade and investment; to handle the possibility of promoting regulatory compatibility with great care and only without compromising legitimate regulatory and policy-objectives;
 - (iv) to define in the context of future regulatory cooperation clearly which measures concern TBT and redundant administrative burdens and formalities and which measures are linked to fundamental standards and regulations and should not be altered;
 - (v) to fully respect the established regulatory systems on both sides of the Atlantic and the European Parliament's role within the EU's decision-making process and its democratic scrutiny over EU regulatory processes when creating the framework for future cooperation while at the same time being vigilant about a balanced involvement of stakeholders within the stakeholders consultations included in the development of a regulatory proposal;
- (d) regarding the rules:
- (i) to combine negotiations on market access and regulatory cooperation with the establishment of ambitious rules and disciplines inter alia on sustainable development, energy, SME's, investment and intellectual property;
 - (ii) the sustainable development chapter should aim at full and effective ratification, implementation and enforcement of the eight fundamental conventions of the International Labour Organisation (ILO) and their content, the ILO's Decent Work Agenda and the core international environmental agreements; provisions should be aimed at improving levels of protection of labour and environmental standards; an ambitious trade and sustainable development chapter should also include rules on corporate social responsibility based on the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) and a clear structured civil society involvement;

- (iii) labour and environmental standards should not be limited to the trade and sustainable development chapter but equally be included in other areas of the agreement such as investment, trade in services, regulatory cooperation and public procurement;
- (iv) labour and environmental standards should be made enforceable, by building on the good experience of the EU-Korea free trade agreement and good and effective practices in the US' free trade agreements and national legislation;
- (v) employees in Transatlantic companies should have access to information and consultation in line with the European works council directive;
- (vi) the economic, social and environmental impact of TTIP should be examined by a thorough trade sustainability impact assessment on TTIP with clear involvement of stakeholders and civil society;
- (vii) in course of the negotiations the two sides should examine ways to facilitate natural gas and oil exports, so that TTIP would abolish any existing export restrictions on energy between the two trading partners, thereby supporting a diversification of energy sources;
- (viii) the right of either partner to govern the exploration and exploitation of energy sources shall remain untouched by an agreement, but non-discrimination applied once exploitation is decided; the access to raw materials as well as energy should also be granted on a non-discriminatory basis for companies from either the EU or the US and quality standards for energy products have to be respected;
- (ix) TTIP should support the use and promotion of green goods and services, thereby tapping into the considerable potential for environmental and economic gains the transatlantic economy offers;
- (x) TTIP should serve as a forum for the development of common sustainability standards for energy production, always taking into account and adhering to existing standards on both sides;
- (xi) TTIP should include a specific chapter on SME's and should aim at creating new opportunities in the US for European SMEs, for instance by eliminating double certification requirements, by establishing a web-based information system about the different regulations, by introducing "fast track" procedures at the border or by eliminating specific tariff peaks that continue to exist; it should establish mechanisms for both sides to work together to facilitate SMEs' participation in transatlantic trade, such as for instance through a common SME "one stop shop";
- (xii) TTIP should contain a comprehensive chapter on investment containing both provisions on market access and investment protection; the investment chapter should aim at ensuring non-discriminatory treatment for the establishment of European and American companies in each other's territories, while taking account of the sensitive nature of some specific sectors;

- (xiii) investment protection provisions should be limited to post-establishment provisions and should focus on non-discrimination and fair and equitable treatment; standards of protection and definitions of investor and investment should be made in a precise manner; free transfer of capital should be in line with the EU treaty provisions and should include a prudential carve-out in the case of financial crises;
- (xiv) foreign investors have to be treated in a non-discriminatory fashion and should have a fair opportunity to seek and achieve redress of grievances, which can be achieved without the inclusion of an ISDS mechanism; such a mechanism is not necessary in TTIP given the EU's and the US' developed legal systems; a state-to-state dispute settlement system and the use of national courts are the most appropriate tools to address investment disputes;
- (xv) it is important that TTIP includes an ambitious Intellectual Property Rights (IPR) chapter that includes strong protection of precisely and clearly defined areas of IPR, including enhanced protection and recognition of European Geographical Indications (GIs), and reflects a fair and efficient level of protection such as laid out in the EU's and the US free trade agreement provisions in this area, while continuing confirming the existing flexibilities in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), notably in the area of public health;
- (xvi) the IPR chapter should not include provisions on criminal sanctions as a tool for enforcement which were previously rejected by the Parliament;
- (e) regarding transparency, civil society involvement and public outreach:
 - (i) to continue on-going efforts to increase transparency in the negotiations by making more negotiation proposals available to the general public;
 - (ii) to translate these transparency efforts into meaningful practical results, inter alia by finding with the US side meaningful arrangements to improve transparency, including the access to all negotiating documents, in order to allow the Members of Parliament and the Member States to develop constructive discussions with stakeholders and the public;
 - (iii) to promote an even closer engagement with the Member States with the aim of forging their active involvement in better communicating the scope and the possible benefits of the agreement for European citizens and in order to ensure a broad, fact-based public debate on TTIP in Europe with the aim of exploring the genuine concerns surrounding the agreement;
 - (iv) to reinforce its continuous and transparent engagement with a wide range of stakeholders, including business, environmental, agricultural, consumer, labour and other representatives, throughout the negotiation process; encourages all stakeholders to actively participate and to put forward initiatives and information relevant to the negotiations;

- (f) to seek even closer engagement with the Parliament, which will continue closely monitoring the negotiating process and engaging on its part with the Commission, Member States, the US Congress and Administration as well as stakeholders on both sides of the Atlantic in order to ensure an outcome which will benefit citizens in the EU, the US and beyond;
- 2. Instructs its President to forward this recommendation to the Commission and, for information, to the Council, the governments and parliaments of the Member States, and the US Administration and Congress.

PRELIMINARY DRAFT

EXPLANATORY STATEMENT

When the EU negotiates an international agreement, such as TTIP, the European Parliament is entitled to express its position on the agreement at any stage of the negotiations, based on Rule 108; 4 of the Rules of Procedure. Your rapporteur would like to use this opportunity to assess the main results of the negotiations after over one and a half years of discussions and to express the Parliament's views on the main areas of a potential TTIP agreement. The Parliament's report should contribute to a fresh start of the negotiations, now that the new Commission is in place and after the midterm elections in the US.

This report is a follow-up of resolutions adopted in the previous parliamentary term on trade and investment negotiations with the United States in October 2012 and May 2013. The aim of the rapporteur was to be as comprehensive as possible and to allow Members of different committees within the Parliament to make a reflected contribution to the process. The Parliament has the last word in the ratification of trade agreements between the EU and third countries: An agreement may enter into force only with the consent of the Parliament. The rejection of ACTA (protection of intellectual property inter alia in the digital domain) has proven that the Parliament takes its role in trade policy very seriously.

Given the many critical voices from the European public and given the weak public acceptance of the agreement under negotiation, the Parliament will continue to push for the highest possible level of transparency and will guarantee that only a good agreement will be adopted, an agreement which respects European values, stimulates sustainable growth and contributes to the well-being of all citizens.