**Follow up to the European Parliament resolution containing the European Parliament's recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP), adopted by the Commission on 21 October 2015**

1. **Rapporteur:** Bernd LANGE (S&D/DE)

2. **EP reference number:** A8-0175/2015 / P8_TA-PROV(2015)0252

3. **Date of adoption of the resolution:** 8 July 2015

4. **Subject:** recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP)

5. **Competent Parliamentary Committee:** Committee on International Trade (INTA)

6. **Background of the resolution:**

The European Parliament adopted two resolutions on the TTIP negotiations before they were launched, in October 2012 (P7_TA(2012)0388) and in May 2013 (P7_TA(2013)0227).

In October 2014, INTA decided to take stock and set out new recommendations concerning the TTIP Agreement. The draft report on TTIP adopted by INTA on 28 May 2015 contained opinions from 13 Committees. The debate on the resolution containing the European Parliament's recommendations to the European Commission on the TTIP negotiations was held on 7 July.

7. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution endorses the negotiations for a Transatlantic Trade and Investment Partnership (TTIP) and recognises the political importance of TTIP for the transatlantic partnership, but also as a possible stepping stone to shape and regulate the international trade order.

The Commission considers the adoption and political endorsement of the resolution by a large majority (436/241) a very welcome development; it demonstrates the continuing support of a large majority of MEPs for the TTIP negotiations. The resolution provides clear guidelines as to the type of agreement which Parliament wishes to see negotiated. The Commission will pay close attention to the objectives and concerns set out.

The Resolution indicates that only a **high standard, comprehensive and balanced** agreement preserving the EU's high standards and values in areas such as data privacy, cultural diversity, consumer protection, public health, safety, labour and environmental legislation and animal welfare, will obtain democratic backing by the Parliament. The Parliament asks that the final agreement should grant equal importance to the three main areas of the negotiations, namely (i) market access in the field of tariffs, services and public procurement; (ii) regulatory coherence and cooperation and (iii) the development of common rules and principles on issues such as sustainable development, energy, SMEs, investment and state-owned enterprises.

On **regulatory cooperation**, the Commission is asked to ensure that TTIP promotes a transparent pro-competitive economic environment by identifying and preventing non-tariff barriers and facilitating trade and investment. Negotiators are asked to identify the technical procedures and standards which can be the subject of a common approach, the areas where mutual recognition is desirable or where regulatory cooperation should limit itself to an improved exchange of information. The Parliament also reaffirms that Regulatory sovereignty and the right to regulate must be preserved.

The Parliament's language in the resolution on **investment protection** calls for a new system for resolving disputes between investors and states to replace the traditional **ISDS** (Investor to State Dispute Settlement) instrument. It asks that the new system be subject to democratic principles and scrutiny, where potential cases are treated in a transparent manner by publicly appointed, independent professional judges, in public hearings. It also asks for the inclusion of an appellate mechanism and to ensure that private interests cannot undermine public policy objectives.

As a final point, the resolution calls on the Commission to continue its ongoing efforts to increase **transparency** in the negotiations and to reach out to the public by closely engaging with civil society, the Member States and national parliaments.

**8. Reply to these requests and outlook regarding the action, that the Commission has taken, or intends to take:**

The **Commission welcomes Parliament's support** for the negotiations for a Transatlantic Trade and Investment Partnership (TTIP). Parliament's resolution gives significant political backing to the TTIP project and provides a clear political platform to press ahead with a high standard comprehensive agreement. The political guidelines in the resolution are largely in line with the Commission's negotiating objectives and the Council mandate. The Commission will address during the negotiations the core issues and concerns expressed by Parliament and strive to make progress in all areas of the negotiations, in line with the conclusions of the G7 meeting of 7-8 June 2015 in Elmau, in which political leaders asked for an immediate acceleration of the negotiations.

On the scope and the broader context of the TTIP negotiations (point 2 (a), paragraphs (i)-(vi), the Commission fully shares Parliament's appreciation of the political importance of negotiating an ambitious, comprehensive and balanced trade and investment agreement with the United States of America, which is a political priority for the Commission as stated in President Juncker's political guidelines and more recently in the State of the Union speech of 9 September 2015. The final agreement must grant equal importance to the three main areas of the negotiations.

As regards **market access**, the Commission considers that while the objective is the elimination of all tariff duties, there are a number of sensitive agricultural and industrial products for which appropriate transitional periods and quotas should be considered (point 2 (b) (ii)).

On Parliament's requests to ensure that **TTIP preserves the EU's high standards** in areas such as data privacy, consumer protection, public health, safety, labour and environmental legislation and animal welfare, the Commission wishes to stress again that TTIP will in no way lower or undermine the EU's high standards, including in the areas mentioned in the

resolution. The Commission will not accept any lowering of European standards or levels of protection or put into question the precautionary principle which is enshrined in the European treaties (point 2 (b), paragraphs (xii-xiv)), point 2 (c)(i)). Moreover, personal data protection standards will not be negotiated in, nor affected by TTIP.

The Commission can reassure Parliament that it will remain a strong **defender of the multilateral system** and the WTO process, and this will be reflected in its new Communication on the EU's trade strategy, which it will adopt in the autumn of 2015. The Commission is fully aware of the role of trade policy as part of the EU's external action and can confirm that the final agreement shall support our foreign policy and will uphold and promote the EU's values in respect of fundamental freedoms and rights. The Commission will aim at ensuring synergies between TTIP and other trade agreements currently being negotiated. TTIP will be designed in a manner which is positive for other trading partners, in particular developing countries (point 2 (a), paragraphs (v)-(vi)).

In respect of market access, the Commission wants to chart a path that allows the negotiators on both sides of the Atlantic to make progress across the different areas of **tariffs, government procurement, and services**. The Commission notes the Parliament's call for a "hybrid list approach" in respect of services (i.e. positive list approach for market access; negative list approach for national treatment (point 2 (b), paragraph (v)), and confirms that the EU offer on services is based on such a hybrid approach. The Commission confirms that it will seek further liberalisation of US restrictions in the maritime and air transport services sectors (point 2 (b), paragraph (vi)).

The Commission is of the opinion that its traditional **reservations on public services** will be fully adequate to deliver on Parliament's request that standstill and ratchet clauses allow for enough flexibility to bring services of general economic interest back into public control. The Commission further reaffirms the commitments of the joint statement by Commissioner Cecilia Malmström and US Trade Representative Michael Froman of March 2015 on public services, to the effect that no new liberalisation commitments would be taken for services considered public by the different Member States and that Member States retain policy space to bring services back to the public sector (points 2 (b), paragraph (v) and (vii)).

The Commission shares Parliament's view that market access negotiations in **financial services** are to be combined with efforts to achieve convergence in financial regulation at the highest level, while respecting at the same time EU and Member States' regulatory and supervisory sovereignty (point 2 (b), paragraph (x)). These requests of Parliament are fully in line with the Commission's negotiating objectives. The Commission can also confirm that it will strive to ensure **mutual recognition of professional qualifications** and to facilitate mobility of persons (point 2 (b), paragraphs (viii)-(ix)). It has taken due note of the Parliament's request for continued pressure on the US to provide **full visa reciprocity** and equal access conditions for EU citizens. The Commission is fully aware that this issue is important for a number of Member States. However, such issues go beyond the Commission's negotiating mandate for TTIP.

The Commission takes note of Parliament's request for enhanced cooperation between the EU, the Member States and the US with the aim to set global higher standards **against financial and tax criminality and corruption** (point (b), paragraph (xi)). Those issues go beyond trade policy but the Commission will reflect on how trade policy can be used to

advance in these areas, in particular the fight against corruption, and how this could be reflected in TTIP.

The Commission is aiming to achieve an ambitious chapter on **competition**, as requested by Parliament, which should ensure that European competition law is properly respected and which ensures that private and public companies can compete fairly (point (b), paragraph (xv)). The Commission will strive to ensure that TTIP guarantees open competition in and development of the **digital economy** and a level playing field with equal and transparent access in the field of information society and telecoms services, with an obligation for US service providers to comply with all applicable standards and consumer rights when providing services in Europe or to EU consumers (point (b), paragraph (xvii)).

The Parliament also requests a **legally binding clause on cultural and linguistic diversity**, media freedom and media pluralism, educational and cultural services (point (b), paragraph (xvii)), and a general clause ensuring that Member States may adopt or maintain measures supporting educational and cultural services working on a non-profit basis and/ or receive public funding and to ensure that privately funded foreign providers meet the same quality and accreditation requirements as domestic providers (point (b), paragraph (xxi)). The Commission will ensure that TTIP in no way undermines the capacity of the EU and its Member States to promote cultural or linguistic diversity, fundamental values in respect of media freedom and pluralism. Regarding audiovisual services, no market access commitments will be entered into in TTIP, in line with the negotiating mandate.

On **public procurement**, the language in point (b)(xxii)-(xxvi) makes the case for an ambitious outcome, stressing the huge interest on the part of European companies, including SMEs, in obtaining non-discriminatory access to public contracts in the US both at federal and sub-federal level with a view to remedying, in line with the principle of reciprocity, the large disparity that currently exists in the degree of openness of the two public procurement markets on both sides of the Atlantic. The Commission can confirm that it considers it necessary to achieve substantial new market access for European companies, both at the federal and sub-federal level.

The Commission acknowledges the importance of effective and coherent **rules of origin** in TTIP (point (b)( xxvii)).

With respect to Parliament's recommendations on regulatory cooperation, coherence and non-tariff barriers to trade (NTBs), (point (c), paragraphs (i)-(ix)), the Commission aims to achieve a high standard agreement with tangible outcomes. The regulatory chapter should promote a transparent pro-competitive economic environment by identifying and preventing non-tariff barriers and facilitating trade and investment. The overarching premise for regulatory cooperation is that regulatory autonomy will be fully safeguarded and levels of protection will not be lowered. Established regulatory systems on both sides of the Atlantic must be respected. The **right to regulate** by EU and Member States' regulators will not be put into question. The European Parliament's role within the EU decision-making process and its democratic scrutiny will be preserved; the Commission will for its part not accept any changes in its right of initiative, which is enshrined in the EU treaties.

The Commission can confirm that it will not agree to negotiate changes to areas where EU and US legislation or standards are very different, e.g. public healthcare services, on GMOs,

the use of hormones in the bovine sector, REACH and its implementation, or the cloning of animals for farming purposes.

It is to be noted that the **Better Regulation** package adopted by the Commission earlier this year already addresses a number of the US demands with respect to regulatory practices, including the provision for increased stakeholder consultations through the EU's regulatory cycle.

The Commission agrees that negotiations on technical barriers to trade (**TBT**) and sanitary and phytosanitary measures (**SPS**) are to be based on multilateral agreements on TBT and SPS and should protect EU standards and procedures. The Commission intends to press for an intensification of negotiations on SPS, in order to resolve some long-standing barriers to our food exports.

The Commission will give careful consideration to Parliament's request for a binding and enforceable **sustainable development** chapter (point (2)(d)(ii)-(iv)), and recalls that the latest position paper it has issued in this area addresses topics highlighted in the resolution. The resolution makes reference to ensuring enforceability of the chapter and subjecting it to the general dispute settlement mechanism. The Commission considers it important to design an effective dispute settlement mechanism and to weigh the advantages and disadvantages of proposals made to this end once substantive provisions will be established.

With respect to **sustainability impact assessments** (SIA), the Commission takes careful note of the elements set out in point (2)(d)(vi)); the Commission's view is that well established methodologies, which focus on calculating GDP and trade effects (including sectoral effects at EU level), provide a sound analytical tool which has been shown to work well in previous trade negotiations. Given the importance of TTIP, the Commission will in addition provide analysis of aggregate impacts at Member State level. The SIA for TTIP is being carried out on this basis.

The Commission also takes very careful note of concerns expressed over **adjustment costs**. The Commission's objective is to negotiate an agreement which is beneficial to the European economy and only under these circumstances would it give a positive recommendation to ratify TTIP to EU Member States and Parliament. That being said, the Commission is fully aware that trade also involves structural change that – while helping prepare the economy to reap benefits in the future – can involve temporary disruptive impacts for some regions, companies and workers. Even if the overall benefits to the European economy are clear, the Commission does take these potential impacts into account in trade negotiations, for instance by ensuring adequate transition periods or using safeguard clauses. In addition, the Commission is determined to make the best use of the already existing instruments (like the EU Structural Funds, the European Social Fund, the European Regional Development Fund as well as the European Globalisation Adjustment Fund) to ensure that the benefits of globalisation are fairly distributed. This approach also applies to TTIP.

The Commission welcomes the Parliament's language on the idea of a dedicated chapter on trade and investment in **energy and raw materials**, the lifting of US export restrictions and the fact that Parliament shares the Commission's assessment of the importance TTIP could have on the emergence of global rules in this area (point (2)(d)(vii)-(viii)). The Commission fully shares Parliament's view that the energy chapter itself must guarantee that the EU's **environmental standards and climate action** goals are not undermined. This is fully in line

with the Commission's negotiating objective that no provision in TTIP may undermine the EU environmental standards, objectives and levels of protection.

The Commission fully shares Parliament's view on TTIP's potential to create benefits for **SMEs**, which find it harder than large companies to engage in transatlantic trade due to their size but also because of trade barriers that will need to be tackled through TTIP. The resolution's call for a dedicated SMEs chapter is broadly in line with what the Commission is negotiating (point (2)(d)(xii)). The Commission supports Parliament's suggestions to develop a website with comprehensive information on customs and regulatory requirements and its call for this tool to be developed in cooperation with SMEs stakeholders and on the basis of their needs. The Commission considers that tariff peaks that affect SMEs must be substantially eliminated in the discussions on market access and that TTIP should simplify customs procedures for all operators, which should benefit SMEs.

The Parliament's language on **investment protection** ((point (2)(d), paragraph (xv)) calls for a new system for resolving disputes between investors and states, subject to democratic principles and scrutiny, where potential cases are treated in a transparent manner by publicly appointed, independent professional judges, in public hearings. It also asks for the inclusion of an appellate mechanism and to ensure that private interests cannot undermine public policy objectives.

These ideas present many commonalities with the Commission's own proposals, put forward in the concept paper published on 5 May 2015 ("Investment in TTIP and beyond – the path for reform"), and presented to the INTA Committee of the European Parliament by Commissioner Malmström. There are two main objectives for the reform as set out in the Concept Paper. The first is to ensure that the **right to regulate** to pursue public policies is not curtailed. The second is to move away from current ad hoc arbitration under the "ISDS" system, towards **a new court based system for resolving investment disputes** presenting the requisite guarantees of impartiality, democratic scrutiny and transparency. In parallel, the Commission will move to propose the creation of a **permanent multilateral investment court**. Such an initiative would ensure global coherence, as well as consistency with the principles and objectives of the Union’s external action.

This concept paper has since been fleshed out and EU textual proposals were presented on 16 September 2015. These proposals translate the policy objectives into legal language and they are in line with the recommendations addressed by the European Parliament to the Commission in the Resolution. In particular, the standards of protection are drawn up in a precise legal manner; the right to regulate is explicitly guaranteed and protected; dispute resolution takes place in a new system where potential cases are treated in a transparent manner by independent professional judges appointed by the contracting parties, in hearings accessible to the public and with a possibility to appeal.

On **Intellectual Property Rights (IPR),** the Resolution asks for the exclusion from TTIP of issues to be included in the EU copyright reform; substantive patent harmonisation or ACTA like measures regarding ISP liability and criminal sanctions (point 2 (d), paragraph (xviii)). Access for the public to **affordable medicines** is requested. The Parliament also wants TTIP to fully recognise and protect EU **geographical indications** (GIs) for agricultural products (point 2 (d), paragraph (xix)). The Parliament's recommendations are in line with the Commission's negotiating objectives. The Commission would oppose any attempts to re-open ACTA discussions as it would oppose any proposals which could have an impact on the

affordability of medicines. The Commission will press for an intensification of negotiations on GIs (Geographical Indications), which is an EU priority.

The Commission broadly agrees with Parliament's recommendations on **transparency**, **civil society** involvement, public and political outreach (point 2 (e)(i)-(vii), and is committed to maximising transparency wherever this can be done without undermining core elements of confidentiality considered essential for our negotiating partner at certain stages of the discussions. On this basis, the Commission has significantly increased transparency in trade negotiations, particularly in respect of TTIP. Many trade documents, including the trade negotiating mandates that were secret in the past are now publicly available. The Commission's future Communication on trade strategy will confirm this trend and will move further on transparency, with more dialogue and consultation with the European Parliament, national parliaments and civil society. The Commission is open to consider and discuss with the European Parliament its suggestions to ensure that TTIP is accompanied by a deepening of transatlantic parliamentary cooperation.

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