

**Committee of the Regions****ECOS-V-063****110th plenary session, 11-13 February 2015****OPINION****The Transatlantic Trade and Investment Partnership (TTIP)****THE EUROPEAN COMMITTEE OF THE REGIONS**

- assumes that the TTIP could be an opportunity to boost growth and employment in the EU, in that it may provide reciprocal market access for trade in goods, services, investment and public procurement, and cut red tape and remove non-tariff barriers to trade (NTBs);
- notes, however, that an agreement of such global scope entails risks as well as opportunities, and therefore insists that democratic participation and the powers of local and regional authorities must be safeguarded;
- considers the high European standards of protection that exist for EU citizens to be an achievement worth defending at all costs, and insists that the EU Member States' existing legal standards in such areas as the protection of life, product safety, health, social, environmental, climate, foodstuff and animal protection, and consumer and data protection rights and intellectual property, as well as workers' rights, must on no account be lowered, but rather efforts should be made to raise these standards and to put public service provision on a solid footing; supports the view that the right to regulate these key areas should remain with the relevant European and national institutions alone;
- points out that the negotiations on the transatlantic free trade agreement cover areas that fall within the remit of all government and administrative levels, including local and regional authorities, and calls on the European Commission, in the light of this substantial regional and local dimension of the agreement, to include the Committee, as the EU's assembly of local and regional representatives, in the EU Commission's TTIP advisory group to ensure the timely involvement and participation of the local and regional level in the negotiations;
- underlines that TTIP amounts to a mixed agreement that is subject to approval by the European Parliament and ratification by all 28 EU Member States, which, depending on the law of each Member State, may require the approval of not just the national parliaments, but also that of the governments, parliaments and chambers representing the regional level.

Rapporteur

Markus Töns (DE/PES), Member of the North Rhine-Westphalia *Landtag*

Reference document

**Opinion of the European Committee of the Regions –
The Transatlantic Trade and Investment Partnership (TTIP)**

I. GENERAL COMMENTS

THE EUROPEAN COMMITTEE OF THE REGIONS

1. points out that the European Union is more than just an economic community, rather as a community of values that – as stated in the preamble to the EU Charter of Fundamental Rights – places the individual at the heart of its activities, and that the EU works towards fostering shared values whilst respecting the diversity of cultures and traditions of Europe's peoples as well as the national identity of the Member States and their organisation of state powers at national, regional and local level;
2. underlines that a deal on TTIP could give a much-needed stimulus to the European economy, lead to significant growth of the European GDP and the creation of new high-quality jobs;
3. recalls that the outcome of the TTIP could create binding rules on both sides of the Atlantic for all levels of the states down to local authorities and could thereby apply to around 820 million people and would pave the way for future bilateral and multilateral trade and investment agreements, including the Trade in Services Agreement (TiSA); these negotiations are therefore of utmost importance for the lives of all citizens of the EU and USA and should therefore be conducted in a fair and transparent way while bearing in mind their best interest;
4. welcomes the acknowledgement in the negotiating guidelines of the negotiators' right to "adopt, maintain and enforce measures necessary to pursue legitimate policy objectives such as protecting society, the environment and public health, ensuring the integrity and stability of the financial system, promoting public security and safety, and promoting and protecting cultural diversity";
5. points out that the negotiations on the transatlantic free trade agreement cover areas that fall within the remit of all government and administrative levels, including local and regional authorities, and calls on the European Commission, in the light of this substantial regional and local dimension of the agreement, to include the Committee, as the EU's assembly of local and regional representatives, in the EU Commission's TTIP advisory group to ensure the timely involvement and participation of the local and regional level in the negotiations;
6. regrets however that, so far, the European Commission has not included the European Committee of the Regions as a member of the advisory group as it has done with civil society representatives;
7. underlines the need to preserve both existing and future state regulatory room for manoeuvre – especially when it comes to setting protection standards and services of general interest.

Guaranteeing room for manoeuvre is vital for public utilities in particular, since they produce services of general interest; also highlights in this connection the principle of respect for local and regional self-government enshrined in the Treaties;

8. disagrees with the proposal to introduce more far-reaching regulatory cooperation, which would give the trade and investment partner a strong voice in the pre-legislative or legislative phase of EU, Member State and local and regional authority legislative procedures, or enable it to delay legislative procedures by calling for analyses on the impact of legislation on free trade;
9. highlights that this agreement is to benefit firms of all sizes, notably SMEs that do not have the financial, legal and other resources to cope with regulatory differences and other barriers to trade;
10. assumes that the TTIP could be an opportunity to boost growth and employment in the EU, in that it may provide reciprocal market access for trade in goods, services, investment and public procurement, and cut red tape and remove non-tariff barriers to trade (NTBs);
11. points out that, given that customs duties average 2%, the stimulus for growth wished for by the European Commission in particular would primarily come from harmonising regulatory requirements and removing NTBs;
12. notes, however, that an agreement of such global scope entails risks as well as opportunities, and therefore insists that democratic participation and the powers of local and regional authorities must be safeguarded;
13. welcomes the decision by the Council of the EU to publish the negotiating mandate for TTIP. The CoR regrets that this took place several months after it has already been leaked online as well as the fact that the restrictions on the negotiation mandate remain considerably elevated. They should thus be lowered to guarantee better access to the public concerning the state of negotiations;
14. also points out that, considering the scope of the agreement between the EU and the USA, democratic control of the negotiations must be guaranteed at all times, and therefore calls on the European Commission and the Member States to ensure maximum transparency when conducting negotiations. In practice, this means that all the key documents should be published and the guidelines for negotiations should, where possible be presented in a timely, accessible and comprehensible manner to local and regional authorities, all socially relevant groups and all the citizens of the European Union; in this connection welcomes the fact that the Member States, who are adhering to a unanimous decision in the matter of publishing negotiation documents for trade agreements, asked the European Commission in early January 2015 to publish the EU's initial text proposals in several areas of negotiation;

15. underlines that TTIP amounts to a mixed agreement that is subject to approval by the European Parliament and ratification by all 28 EU Member States, which, depending on the law of each Member State, may require the approval of not just the national parliaments, but also that of the governments, parliaments and chambers representing the regional level;
16. suggests that the possibility of including a revision clause in the agreement between the EU and the USA be examined, in order, if appropriate, to be able to review and amend the agreements reached, depending on their impact;
17. calls on the Commission to work to embed a positive listing approach in the TTIP agreement, and rejects negative listing and "ratchet" clauses;
18. considers the high European standards of protection that exist for EU citizens to be an achievement worth defending at all costs, and insists that the EU Member States' existing legal standards in such areas as the protection of life, product safety, health, social, environmental, climate, foodstuff and animal protection, and consumer and data protection rights and intellectual property, as well as workers' rights, must on no account be lowered, but rather efforts should be made to raise these standards and to put public service provision on a solid footing; supports the view that the right to regulate these key areas should remain with the relevant European and national institutions alone;
19. calls on the negotiators to work towards raising these standards and, where appropriate, to adopt or recognise any higher standards of protection in the partner country, and insists that it should be possible to optimise these standards without restriction in future; a mechanism should be put in place to adjust them according to the latest scientific findings;
20. stresses that the precautionary principle is one of the fundamental principles of European environmental, health and consumer protection policy, in keeping with which measures are taken early and proactively in order to prevent both risks to human, animal and plant health and damage to the environment. Against this background, it would stress that a transatlantic free trade agreement must not result in the precautionary principle that prevails in the EU being undermined, especially in the fields of environmental, health, food and consumer protection;
21. holds that all important questions of detail regarding the agreement must be negotiated in full, and that there should be no subsequent delegation of regulatory questions – thereby circumventing the democratic legislative process – to special expert committees;
22. regrets that the global surveillance, decryption and analysis of electronic communications by secret services, including the US National Security Agency (NSA) as well as friendly secret services from EU countries, has had a lasting and negative impact on the EU public's faith in binding international data protection standards, and with this in mind calls on the parties to

the agreement to guarantee the right to privacy as well as citizens' rights and freedoms, including online;

23. Insists that negotiations on TTIP should be linked to the conclusion of a comprehensive agreement on data protection between the EU and the USA;
24. notes that the *acquis communautaire* includes binding provisions in the field of International Labour Organization (ILO) standards as well as labour protection and product safety, and in this connection underlines its expectation that the ILO core labour standards and the OECD Guidelines for Multinational Enterprises will be complied with, including in further TTIP negotiations;
25. objects to existing and future employee protection rights, such as the right to co-decision in workplace labour relations and other employee protection rights, being deemed non-tariff barriers to trade by TTIP; the labour market regulation, social security systems, free collective bargaining, freedom of association, right to strike, minimum wages and collective agreements of an EU Member State must also remain the responsibility of the individual Members States;
26. welcomes the fact that, according to the EU's negotiating mandate, "the high quality of the EU's public utilities should be preserved in accordance with the TFEU and in particular Protocol No 26 on Services of General Interest, and taking into account the EU's commitment in this area, including GATS", but refers in this connection to the common provisions of the Treaty on European Union (TEU), according to which "the Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, *inclusive of regional and local self-government*" (Article 4(2) TEU);
27. underlines as a matter of principle that the powers of self-organisation of local and regional authorities must be guaranteed as a core part of the right to local self-government, and that the re-localisation of public services, i.e. the provision of public services by these authorities' own public bodies at all times, even after privatisation of such services, in keeping with local circumstances and the wishes of local voters must remain an unrestricted possibility;
28. emphasises that the Commission's negotiating mandate does not extend beyond the constitutionally established framework, which means that Member States' protection for matters deemed to be of general interest must be respected;
29. notes that, according to point 20 of the EU's negotiating mandate, services supplied in the exercise of governmental authority are excluded from the negotiations, and calls for clarification that this excludes from the negotiations services deemed in the case law of the parties to the agreement or of each member to be supplied in the exercise of governmental authority;

30. seeks clarification whether the public services referred to in point 19 of the EU's negotiating mandate are those that, under the case law of each party to the agreement or of each member, are subject to specific regulatory regimes or characterised by specific obligations imposed on the service providers at national, regional or local level in connection with the general interest; these include, for example, water and energy provision, waste and sewage disposal, emergency services, public health and social services, public transport, housing, urban planning measures and urban development;
31. calls on the Commission to apply a horizontal exemption for public services referred to in point 19 of the EU's negotiating mandate from all obligations entailed by the principle of market access and national treatment, and, with respect to public services, calls for a restriction to be introduced for all sectors and all existing and future measures by the parties to the agreement, for the number of services and service providers to be limited, for specific obligations to be imposed on service providers, and for the provision of these services to be regulated in accordance with the general interest;
32. considers it unnecessary to further open up, *inter alia*, pre-school, school, higher, adult and continuing education services with mixed public-private financing, since the multilateral GATS agreement already contains numerous commitments to liberalisation;
33. welcomes the report issued by the European Commission on the public consultation which it launched on the investor-state dispute settlement (ISDS) mechanism, and considers this a further important contribution to the efforts of both the USA and the Commission to ensure more transparency in the TTIP negotiations and to allow the views of a wide range of stakeholders to be heard; strongly recommends that the Commission take the results of the consultation into account without fail in its final evaluation of this provision of the agreement, given that the 150 000 replies demonstrate, *inter alia*, that there is widespread opposition to the mechanism; also welcomes the fact that the new Commission would not accept EU Member States' case law being restricted by special arrangements for investor disputes, and that the rule of law and equality before the law must also apply in this context;
34. strongly supports the Commission in putting forward further proposals for improving transparency and fairness in ISDS;
35. warns that investor protection provisions and dispute settlement mechanisms governing investor-state relations between the EU and the USA (ISDS) which circumvent the ordinary courts entail significant risks, and can therefore be dispensed with. The laws of the Member States must not be undermined by a transatlantic trade agreement. The Committee expects the European Union's room for manoeuvre, and that of its Member States' parliaments and governments, to be maintained, thus also safeguarding the public's democratic opportunity to exert influence here, and investment disputes to be settled before the national courts;

36. stresses that political and administrative measures taken in a democratically legitimate and constitutional way must not be challenged by arbitral tribunals especially in respect to retrospective claims for damages, and that the investor protection clauses contained in TTIP must on no account directly or indirectly undermine states' right to regulate;
37. points out that legislation on the public administration of savings banks and regional public banks must not be undermined by the TTIP or other EU trade agreements. Such legislation presents neither a barrier to market access nor any other form of discrimination;
38. notes that, at the moment, 85% of public tenders in the European Union are already open to US suppliers, while only 32% of US tenders are open to EU suppliers, with this imbalance further exacerbated by an "opt-in" system for US states. The agreement should therefore promote equal opportunities for the two parties, given that this will help European SMEs in particular to access US public procurement;
39. stresses that the standard-setting aspects of European public procurement law must not be challenged – particularly as applied in a regional and local context, for example in connection with compliance with labour law, social and collective agreement standards, green procurement, or inclusion of small and medium-sized enterprises (SMEs); these ensure that criteria in addition to price, such as social and sustainability considerations, can also be taken into account when determining the successful bidder;
40. would remind the Commission to monitor health and safety at work standards closely in negotiations in the Transatlantic Trade and Investment Partnership (TTIP);
41. believes that exemptions from EU public procurement legislation, as provided for in the various public procurement and concessions directives (threshold values, in-house, cooperation between local authorities, sectoral derogations – for example for the water sector or emergency services), should be safeguarded;
42. welcomes the fact that, for the first time, a dedicated chapter on SMEs will be included in an EU free trade agreement, and also welcomes the TTIP's objective of facilitating SME access to both markets and their ability to do business and invest on both sides of the Atlantic, especially by removing non-tariff barriers, which are particularly burdensome for SMEs; improving legal certainty, particularly for SMEs in the services sector, and strengthening and protecting intellectual and industrial property rights, which will also benefit small companies;
43. is concerned that as a result of differences in standards concerning, for example, the environment, social protection of employees, public aid, patent procedures and energy, there could be an outflow of production and other activities of individual companies from EU regions to the USA due to the lower costs of such things as energy, subsidised renewable resources, CO₂ emissions and social standards for employees, but also in terms of research and development, given the quicker patent procedures and so on;

44. stresses that for SMEs especially, tariffs, excessive administrative requirements and expensive testing and compliance procedures involve disproportionate effort and cost, often preventing them from trading with US partners. There are more than 20 million SMEs in the European Union, providing jobs for two thirds of all private sector employees. The planned dismantling of tariff and non-tariff barriers to market entry and trade would open up increased export opportunities to SMEs, and with them more job opportunities;
45. notes that in Europe the majority of Member States reject the cultivation, import and processing of genetically modified organisms (GMO);
46. calls for a guarantee that special arrangements are planned for the agricultural sector banning the import of certain products into the EU; this concerns first and foremost products that do not comply with the EU labelling directive; products consisting of, or produced using, GMO; animals treated with growth hormones; and the placing on the market of foods made from cloned animals. The same applies to foods treated with substances that are banned in the EU and foods whose ingredients are not adequately listed on the label;
47. emphasises that agricultural biodiversity is the basis of food production, and underlines that the planned TTIP agreement must not lead to a restriction of traditional seeds or the depletion of our traditional crops, or interfere with high-quality and environmentally friendly agriculture;
48. calls for a specific chapter on geographical indications (GIs) with the aim of maintaining European standards and of establishing rules protecting GIs in both jurisdictions and a system of mutual recognition of EU and US designations , *inter alia* through specific indication of the generic use of a product name and/or its place of production;
49. underlines that Member States and local and regional authorities must still be able to take any regulatory or financial measure necessary to protect or promote the cultural diversity, freedom and pluralism of the media and to preserve or develop audio-visual and other similar services in order to meet the democratic, social and cultural needs of each society, irrespective of which technology or distribution platform is used. The cultural and media sovereignty of the Member States must be safeguarded by means of a clear exemption for culture and the media in the negotiating mandate;
50. hopes that the negotiators, bearing in the mind the global repercussions that the free trade agreement will have, support fair and sustainable trade rules that do not run counter to the mutual development policy efforts of the EU and the USA aimed at improving the situation of developing countries, but are rather managed in a spirit of global responsibility and solidarity towards those countries;

51. underlines the need to collect, analyse, evaluate and manage extensive and comparable data predicting or illustrating the impact of TTIP on the regional and local level, *paying particular attention to the outermost regions*, so as to be in a better position to make statistical projections and economic forecasts in future, and the need to publish a research-based study on the topic.

Brussels, 12 February 2015

The President
of the European Committee of the Regions

Markku Markkula

The Secretary-General
of the European Committee of the Regions

Jiří Buriánek

II. PROCEDURE

Title	The Transatlantic Trade and Investment Partnership (TTIP)
Reference(s)	N/A
Legal basis	Article 307, 4th paragraph
Procedural basis	Own-initiative opinion - Rule 41b) ii
Date of Commission letter	N/A
Date of Bureau decision	12 September 2014
Commission responsible	Commission for Economic and Social Policy (ECOS)
Rapporteur	Markus Töns (DE/PES), Member of the North Rhine-Westphalia <i>Landtag</i>
Analysis	20 October 2014
Discussed in commission	17 December 2014
Date adopted by commission	17 December 2014
Result of the vote in commission (majority, unanimity)	By a majority
Date adopted in plenary	12 February 2015
Previous Committee opinions	-
Date of subsidiarity monitoring consultation	N/A