



**EUROPEAN COMMISSION**

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## **TTIP and the Investment Dimension: What is the State of Play?**

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Ladies and gentlemen,

We are meeting in an impressive place today, where the financial institutions in the buildings all around us in Canary Wharf fund much of the world's foreign direct investment.

And the 19th century beginnings of the Thomson Reuters news network – a carrier pigeon link between the historical capital of Europe in Aachen and today's European capital of Brussels – are an example of how multinational companies built up in the continent.

Foreign direct investment is a growing part of the economies everywhere in the world – and particularly so for the European Union:

- The EU harbours a total of almost 4 trillion euros in investment stock by third countries. Our best estimates of the annual turnover of foreign controlled companies in the European Union is somewhere in the region of 3 trillion euro.
- Conversely, EU companies' investment stock abroad amounts to a total 5 trillion and generate a yearly turnover of almost 4 trillion.

When we talk about investment in the context of the Transatlantic Trade and Investment Partnership between the European Union and the United States, it's worth reminding ourselves of these figures.

Because while we know that companies' investment decisions are complex, we also know that certainty about the safety from expropriation of their new factory, or office, or power grid is a very basic requirement.

- This is why the world's 3000 inter-governmental investment protection agreements exist.
- This is why the Member States of the European Union have signed more than 1400 of them.
- And this is why those same Member States unanimously asked the European Commission to tackle investment protection in the Transatlantic Trade and Investment Partnership.

This is my basic perspective on this question.

However, if there were only one perspective on this issue, we wouldn't be here.

And the reality is that others see this issue from a very different viewpoint indeed.

In this view investment protection agreements grant unreasonable special privileges to multinational companies. They reduce governments' freedom to make policy in the interest of their citizens and they ultimately undermine the foundations of our democracy.

It's because of this difference of views that I decided to launch a public consultation on exactly how the EU should approach these discussions:

Before we negotiate a deal it's important to understand all the points of view and – just as importantly – to use the debate to try to develop a shared set of facts about what an EU-US investment protection agreement can do, should do and should not do.

The consultation is still open. I cannot, today, prejudge the outcome.

But I do think I can make a contribution to the goal of establishing facts – about the Commission's approach to this issue so far and about the practice of investment protection to date.

The first thing to note is investment protection has become an EU competence since the Treaty of Lisbon. So, all EU nations agreed that we should complement our trade policy with an investment policy to achieve a level playing field for European companies abroad.

Accordingly, the democratically elected governments of EU Member States unanimously asked me to negotiate investment chapters in all our ongoing free trade agreements and to start self-standing investment negotiations with China.

During the process, the Council and the European Parliament will supervise any negotiations on investment protection that do take place – as they are doing with all the other parts of the talks.

Moreover, both institutions would have to approve any final deal before it became law.

So the process is extremely democratic and the public consultation is further proof of our wish for it to be open.

My second point is that investment protection is not something brand new that didn't exist before. As I have already suggested, international investment agreements – including the ones people are worried about – already exist in their thousands. And despite their existence we have been able to put in place all the regulations of the EU's Single Market.

Third, investment protection agreements are much more limited than some critics would have us believe. They do not constitute a license to print money – to use an expression coined by Roy Thomson the founder of one half of our hosts' media business.

The truth is rather that we are dealing with a narrow set – four, roughly speaking – of common sense rules. Let me explain them.

In an agreement like this, a state makes the following promise to potential investors:

If you invest in my economy:

- I will not discriminate against you, compared with domestic or other foreign companies who are in similar situations;
- I will honour specific contracts I may conclude with respect to your investment;
- I will not expropriate your assets without fair compensation;

- And I will treat you in a fair and equitable manner, for example by making sure you get basic due process in case of a problem.

I think you will agree that there is nothing shocking here. These are in fact basic principles of the rule of law. Versions of them can be found in the legislation of the EU and its Member States and also in the United States.

So there is no reason of principle why any of them should get in the way of making policy in the public interest.

However, we do need to make sure that none of these rules stops us from making necessary and justified public policy in practice.

And I strongly believe there is room for debate, interpretation and improvement in that area. Because the way you formulate the basic rules can mean real differences in outcomes.

For example, the legal concept of expropriation does not only cover the outright seizure of property rights from the investor by the state. It also covers other actions by government that would have an equivalent effect. This is called "indirect expropriation."

And here, we must take care to set very clear boundaries in order to fully protect governments' right to regulate in the public interest.

That is why I have proposed to bring more legal clarity to Europe's future investment agreements by reforming clauses like this. I also want to do so by clarifying the definition of the concept of "fair and equitable treatment".

Beyond the actual rules, I also think we can do better on enforcement through the investor-state dispute settlement mechanism. There are procedural loopholes in the current system that are creating problems. That is why I propose, to give one example, to improve the existing system on transparency in international arbitration tribunals. I also think that creating a standing appellate mechanism will improve consistency in the rulings of the arbitrators.

The public consultation is about getting help for defining our response to all of these issues.

However, my final point is clear, I do not believe we should abolish the system altogether.

More than half of the investment cases world-wide are brought by European investors. That's because governments around the world can and do undermine European companies and workers by unfair treatment.

What we have in TTIP is an opportunity to make sure those investments are protected but at the same time set a high benchmark in terms of the protection of our society's right to regulate.

Why? Because the United States and the EU have a similar understanding of the right balance between investor protection against arbitrary state measures and preserving the right to regulate in the public interest.

So what we have before us is an opportunity to establish a common approach that respects that balance – an approach that will have enormous influence around the world, as it may become the source of reference for investment treaties globally.

And we need to remember, as we proceed, that our choice is not between a world where each does as he pleases and a nightmare scenario where we are ruled directly by multinational corporations.

The status quo is that eight EU Member States are already bound by investment agreements with the United States. They do not have the clarifications and improvements we are proposing.

So what we would be doing here is improving on the present.

Ladies and gentlemen,

International agreements on investment – no matter how technical they seem – touch on a very important political issue of our time: how to reconcile our global economy with our more local political structures.

So they – and other international economic agreements – will always be about finding a balance.

The European Union needs to make the most of the economic opportunities of international investment – inward and outward. That means we have a strong interest in rules that encourage all governments, to make decisions in a fair and reasonable way that doesn't discriminate against outsiders.

But as much as we need to take account of interdependent economies, we also need to be able to use our own political structures to solve the problems our societies face.

The last few years have shown us what happens when we don't regulate the financial system properly. And other risks – to the environment or to our health and safety – are present right across the board.

I personally believe that it is possible to reconcile these two objectives in a good TTIP agreement on investment protection. But I also know that there are many other views on this.

So I look forward to reading the responses to the public consultation.

And I look forward to hearing your views over the course of our discussion now.

Thank you very much for your attention.