



World Investment Forum 2014: Investing in Sustainable Development

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The EU is the largest source of and the largest destination for FDI in the global economy. According to UNCTAD's World Investment Report 2014, the EU accounted for some 17% of world's investment flows (both inward and outward) in 2013. The EU's inward FDI stock represents a third of world's total inward FDI stock, while its outward FDI stock is 40% of the world's total.

The EU's economic development model is heavily based on openness to trade and investment. In this context, our commitment is to ensure a high level of protection for European investors abroad, as well as to preserve and promote an open investment regime at home. We believe that investment agreements are an important element of a stable, predictable and friendly investment climate. This conviction is based on a long-standing tradition of investment treaty negotiations by EU Member States. Indeed, since the 1960s when the first bilateral investment treaty (BIT) was signed by Germany, EU Member States have concluded more than 1400 BITs with third countries, representing about a half of all the BITs in the world.

At the same time, however, we need to take into account the lessons learned from past treaty practice, from the international case-law on investment and from the fact that investment flows are now truly global. We agree with UNCTAD that there is scope for reform, and that the question is not if improvements are needed, but rather how such improvements should be made.

More precisely, some core investment protection provisions, such as fair and equitable treatment, indirect expropriation or umbrella clause, were sometimes formulated in a too broad or vague manner, which has fuelled divergent interpretations by arbitral tribunals. This lack of clarity was detrimental to both investors and States, and has created a climate of uncertainty. Furthermore, concerns emerged with regard to transparency in ISDS proceedings, independence and conduct of arbitrators, frivolous or parallel claims. In formulating its communication "Towards a comprehensive European international investment policy"¹, and in the implementation of its investment policy, the European Commission took into account these concerns, with the overall aim of strengthening the balance between investment protection and the host States' right to regulate.

¹ COM(2010)343

For the EU, the exclusive competence on investment introduced by the Treaty of Lisbon in 2009 has opened the way for a new approach in investment negotiations. Such negotiations are now pursued at the EU level, as part of a broader policy context that integrates not only investment protection, but also investment liberalization and a wide range of related issues, such as sustainable development, competition or capital movements. This allows us to maximize the positive relationship between trade and investment, as well as between liberalisation and protection of investment. It also allows increased coherence by covering all aspects related to investment in a comprehensive manner. Finally, it allows us to build on the synergies between investment policy and other policies (e.g. sustainable development) which are traditionally reflected in EU trade agreements.

In this context, the Commission has opened negotiations on investment protection with a number of countries, such as Canada, Singapore, India, Vietnam, Japan, Morocco, China and the United States of America. Our agreement with Canada, recently concluded, contains modern and innovative provisions and represents in our view a good example of improvement compared to the traditional BIT approach. We have introduced precise and detailed provisions clarifying the content of the main investment protection standards and the ISDS rules, such as: an annex with guidelines on the interpretation of the concept of indirect expropriation; a list of the main elements of the fair and equitable treatment standard; various exceptions and clarifications to preserve the host States' right to regulate in sensitive areas or in times of crisis; a stronger mediation mechanism; increased transparency in line with UNCITRAL rules; a code of conduct for arbitrators; or the possibility to use an appeal mechanism.

Most of the EU's negotiations on investment protection are integrated into comprehensive free trade agreements. Once adopted, the EU agreements containing provisions on investment protection will replace any bilateral agreements on investment previously concluded by EU Member States with the same countries. This will allow a progressive modernisation of the EU investment system.

In implementing the investment policy, the Commission works with other EU institutions, such as the Council and the European Parliament, as well as with the civil society. We see this policy as a dynamic tool that needs to be regularly updated account taken of the developments in the international arena and of the feedback that we receive from various stakeholders. Therefore, the approach that we propose in our negotiations is set to continue to evolve in the future. This is also the reason why we decided to launch a public consultation on our approach to the investment negotiations (investment protection and ISDS) with the US, in the Trans-Atlantic Trade and Investment Partnership (TTIP), which has attracted a lot of attention in the EU. If concluded, TTIP would create the world's largest free trade area, and it would cover half of world's investment flows.

We are aware that many countries pursue various efforts to reform investment protection and ISDS, and different approaches and solutions are chosen in this respect. On the one hand, we are glad to see a degree of convergence towards the objective of improving the system. On the other hand, we believe that this diversity of approaches should not make us lose sight of the multilateral perspective. To the contrary, we should try to build as much as possible on the work being done in this respect. In particular, we would like to congratulate UNCTAD for its constant and valuable work in the field of international investment agreements. We would like to encourage UNCTAD to pursue this work and continue to act as a source of expertise and platform for exchanges for all the countries engaged in the process of improving their investment regime.