

# Trans-Atlantic Business Dialogue

An Executive Advisory Group within the Trans-Atlantic Business Council (TABC)



TRANS-ATLANTIC  
BUSINESS COUNCIL

October 17, 2014

Dear Mr Juncker:

In the past months a broad public debate about investment protection in the Transatlantic Trade and Investment Partnership (TTIP) has evolved. In particular, the investor-state dispute settlement (ISDS) mechanism has been the subject of criticism. Although we support the discussion over the substantive provisions of the TTIP, we are of the view that current criticisms of ISDS ignore its crucial function: to ensure adequate protections for foreign investment from arbitrary government behaviour.

The mere fact that individuals (according to OECD about 22 % of ISDS cases stem from individuals and small companies) and large corporations alike have resorted to ISDS in close to 600 cases in the past demonstrates that foreign investors do encounter problems that cannot be resolved in domestic courts. Outlying cases construed as threats to national sovereignty and countries' right to regulate make for convenient bogey men. Research has shown that the majority of ISDS cases result not from objections to legislation but to actions taken by the executive branch of states. Further research of past cases has found that, even when successful, most compensation awards granted to corporations under such procedures amount to less than USD 10 million.

The rights provided by international investment agreements cover a limited number of specific actions which impact a foreign investor's operations such as direct or indirect expropriation without compensation, denial of access to justice, denial of national treatment, and denial of the ability to transfer capital. There are facets of the ISDS instrument that could become better attuned to considerations of transparency, independence of arbitrators, openness to third party input, and the general right of states to legislate in the general interest. Such improvements could be addressed in the TTIP negotiations.

To discard this possibility of remedy in cases of unjust government expropriation seems to us a misguided approach, and one that would have negative consequences for future EU trade and investment negotiations with third countries. Any decisions taken on ISDS now would also pre-empt the thoughtful and comprehensive review now underway by the Commission which sought and received broad input from the public. We urge you to carefully consider the findings of this public consultation before proceeding with any actions regarding ISDS in TTIP.

As you well know, inclusion of an ISDS mechanism in the TTIP would not limit the ability of the EU or its Member States to regulate in their national and public interest. We urge you to carefully consider the implications of the removal of a fundamental element of the TTIP agreement. Such an exclusion will have major consequences for the continuation of the negotiations and would significantly weaken the final result which was aimed to set a gold standard for 21<sup>st</sup> century trade agreements.

Sincerely,

Hans Stråberg

TABD Europe Chair  
Chairman of the Board, Atlas Copco AB;  
Member of the Board, Investor AB

Dave Ricks

TABD U.S. Chair  
President, Lilly Biomedicines/SVP Lilly

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+  
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TRADE)

**From:** Io (TRADE)  
**Sent:** 18 October 2014 08:10  
**To:** ; SCHLEGELMILCH Rupert (TRADE);  
**Subject:** (TRADE)  
**Attachments:** Fwd: TABD Letter to Mr. Juncker re ISDS  
 image001.png; ATT00001.htm; Letter to Mr. Juncker re ISDS Oct 17, 2014.docx;  
 ATT00002.htm

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Begin forwarded message:

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**Date:** 17 Oct 2014 21:18:15 GMT+2  
**To:** "Io (TRADE)" <[Leopoldo.Rubinacci@ec.europa.eu](mailto:Leopoldo.Rubinacci@ec.europa.eu)>, [@ec.europa.eu](mailto:@ec.europa.eu)>  
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Begin forwarded message:

**From:** Tim Bennett <[tbennett@transatlanticbusiness.org](mailto:tbennett@transatlanticbusiness.org)>  
**Date:** 17 Oct 2014 20:56:26 CEST  
**To:** "Ignacio.garcia-bercero@ec.europa.eu" <[ignacio.garcia-bercero@ec.europa.eu](mailto:ignacio.garcia-bercero@ec.europa.eu)>, [@ec.europa.eu](mailto:@ec.europa.eu)" <[@ec.europa.eu](mailto:@ec.europa.eu)>  
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**Subject:** TABD Letter to Mr. Juncker re ISDS

Attached please find a letter sent today by the TABD Co-Chairs to Mr. Juncker emphasizing the importance of including strong investment protection provisions, including ISDS, in any TTIP agreement. The chairs have also called upon their TABD colleagues to express similar support to Member State officials and industry organizations.

Kind regards,

Tim Bennett

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