

Mr. Karel De Gucht
Commissioner for Trade
European Commission
200 rue de la Loi
B-1049 Brussels
Belgium

15 February 2012

Dear Commissioner,

In light of the new negotiating mandates for investment protection chapters in free trade agreements (FTAs) with Canada, Singapore and India, I would like to underline our strong support for a legally rigorous EU policy that takes account of Member State best practice. To ensure legal certainty for investors, EU level investment protection chapters should provide as good if not better protection than existing Member State bilateral investment treaties (BITs). If successfully pursued in this manner, the Agreements with Canada, Singapore and India could serve as useful models for future investment protection negotiations with key partners such as China, Russia and Latin American countries. In addition, these models could be used to update existing EU FTAs in the future, for example in the Neighbourhood regions.

Given the significant investment interests that the EU has in third countries, it is important to have a solid and comprehensive investment protection framework in place, which will promote European investments, create jobs and generate tax revenues, thus providing benefits for the EU as well as for third countries. Stronger investment protection will improve business climates in emerging and developing countries.

BUSINESSEUROPE would like to underline the importance of making a clear distinction between the market access and investment protection elements of the agreements. While market access provisions can include a limited number of well-defined limitations, the provisions on protection should be firmly based on Member State best practice.

Future EU investment agreements with third countries should meet the following criteria for investment protection:

- Existing Member State treaties offer a high level of protection for European investment abroad. With the transfer of competence to the EU, future EU treaties must also guarantee the same level or better protection.
- The "National Treatment" and "Most Favoured Nation" principles should be applied, along with the principle of non-discrimination, in order to ensure that

investments are covered against any discriminatory measure, whether contractual, administrative or of other forms.

- "Fair and Equitable Treatment" a current standard in BITs which includes a prohibition of any unreasonable, arbitrary or discriminatory measure, should be preserved. Full protection and security for investors should be also secured.
- All sectors of the economy and all kinds of assets should be covered and free transfer of capital, profits and other types of payments by investors should be allowed.
- Effective protection against discriminatory direct as well as indirect expropriation should be offered and full and effective compensation should be paid to investors. Moreover, for expropriation to be allowed, certain requirements need to apply: in addition to being non-discriminatory, the measure must be for public purpose and the process leading to it has to be appropriate.
- A benevolent treatment of visa and work permit applications related to investments should be agreed by the parties involved.
- In addition to state-to-state dispute settlement, provisions for an effective investor-to-state arbitration mechanism, in accordance with international standards and practices should be introduced, offering a fair and independent resolution of any dispute.

BUSINESSEUROPE appreciates your support and counts on you to advance on the adoption of a common and comprehensive EU international investment policy. This will further enhance security for European investors, maintain the EU as top source and host of FDI and significantly benefit the EU as a whole.

Yours sincerely,

Mendelije goet,

Philippe de Buck

