

European Commission

Directorate-General for Trade



Press release

INVESTMENT Brussels, 21 January 2014

Commission to consult European public on provisions in EU-US trade deal on investment and investor-state dispute settlement

EU Trade Commissioner Karel De Gucht today announced his decision to consult the public on the investment provisions of a future EU-US trade deal, known as the Transatlantic Trade and Investment Partnership (TTIP). The decision follows unprecedented public interest in the talks. It also reflects the Commissioner's determination to secure the right balance between protecting European investment interests and upholding governments' right to regulate in the public interest. In early March, he will publish a proposed EU text for the investment part of the talks which will include sections on investment protection and on investor-to-state dispute settlement, or ISDS. This draft text will be accompanied by clear explanations for the non-expert. People across the EU will then have three months to comment.

EU Trade Commissioner Karel De Gucht said: "Governments must always be free to regulate so they can protect people and the environment. But they must also find the right balance and treat investors fairly, so they can attract investment. International investment agreements like TTIP should ensure they do both. But some existing arrangements have caused problems in practice, allowing companies to exploit loopholes where the legal text has been vague. I know some people in Europe have genuine concerns about this part of the EU-US deal. Now I want them to have their say. I have been tasked by the EU Member States to fix the problems that exist in current investment arrangements and I'm determined to make the investment protection system more transparent and impartial, and to close these legal loopholes once and for all. TTIP will firmly uphold EU member states' right to regulate in the public interest."

In June 2013 EU governments instructed the European Commission to negotiate a new EU-US trade and investment agreement, the TTIP, on their behalf. This included measures on the treatment of investors known as investment protection and investor-to-state dispute settlement (ISDS).

The Commission wants to use the opportunity to improve investment provisions already in place to protect investments by EU-based companies in the US, and vice versa. In practice this would mean referring explicitly in the deal to states' right to regulate in the public's interest. It would also see new and improved rules, including a code of conduct, to ensure arbitrators are chosen fairly and act impartially, and to open up their proceedings to the public.

No other part of the negotiations is affected by this public consultation and the TTIP negotiations will continue as planned.

Since June 2013 the Commission has held three rounds of stakeholder consultations, both before and during talks on the agreement, to gather the views and wishes of the public and interested parties across Europe. The Commission has also done public consultations before the start of the TTIP negotiations.

Background

The EU is the world's largest foreign direct investor and the biggest recipient of foreign direct investment (FDI) in the world. Investment is essential for growth, for jobs and for creating the wealth that pays for our public services, our schools, our hospitals and our pensions.

So the EU must ensure our companies are well protected when they invest in countries outside the EU, including the US. Most investments go ahead smoothly and benefit both the state where the investment is made and the investor. But sometimes investors face problems in the country in question. The government might seize the company's property without compensating it. Or it might give local businesses an unfair advantage, or stop foreign companies from using the justice system when things go wrong.

For such cases, companies count on bilateral investment agreements. These offer them protection, including the chance to use another option – Investor-to-State Dispute Settlement (ISDS) - if they haven't been able to find an amicable solution with the government of the country concerned.

European Union (EU) countries already have some 1400 such agreements in place with countries outside the EU, including the United States. Some date back as far as the 1960s. These include investment protection provisions and ISDS. They are an important protection against these unfair actions by governments. And they can be necessary: European companies were behind every second investment case launched in 2012.

The EU's international investment policy, including its policy with the US, seeks to retain the value of the current system for protecting international investors. But it also aims to make these rules clearer, more transparent and impartial than they are today. That means ensuring that non-discriminatory regulation in the public interest will not be subject to successful challenges.

So since 2010 the European Commission has been working on clarifying and improving the international investment protection system – the rules themselves, and the way they're enforced. In future, all EU investment agreements, including the TTIP, will set out new rules, including a code of conduct, to ensure arbitrators are chosen fairly and act impartially. And they'll open up arbitration proceedings to the public.

The EU-US negotiations for the Transatlantic Trade and Investment Partnership (TTIP) started in July 2013 and aim at removing trade barriers in a wide range of economic sectors to make it easier to buy and sell goods and services between the EU and the US. The third round of negotiations took place in Washington DC in December 2013 ([press release](#)) and the next round is scheduled for March 2014.

Further information

This [factsheet](#) summarises the EU's changes to existing investment protection rules and the ISDS system.

[For more information on the Transatlantic Trade and Investment Partnership \(TTIP\)](#)

[Public consultations by the European Commission's DG Trade](#)

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