



Remarks at the European Parliament on Investment in TTIP and Beyond

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Chairman Lange, Honourable members,

This is the third time we've been able to have a detailed discussion on major issues.

In December, in my first visit to your committee as Trade Commissioner, we spoke about the broad trade agenda.

In March we focused mostly on investment protection. And I was also able to participate briefly at your hearing on the broad benefits of TTIP.

And now today I am very pleased to be here again.

Thank you for the invitation.

And long may our close cooperation continue.

Our main item today is investment protection. But before I do that, I want to inform you – as part of our structured dialogue – about three other areas where the Commission is looking forward to Parliament's views and to our future cooperation.

First, as I mentioned in December, the Commission is now working on updating our overall trade and investment strategy. We want to ensure that EU trade policy is adapted to a changing world. That will involve looking at our bilateral and multilateral negotiations but also various themes like new technologies.

We aim to set out our ideas in a Communication to Parliament and Council in the autumn. I'm sure that you will react to that communication once it is published. But I'm happy that we will get to speak about this over the summer as well so that we can take your views on board as we finalise the text within the Commission.

Second, as announced in our work programme, the Commission is now reviewing our proposal for an International Procurement Instrument.

I know that in this House there has been some debate and some concern about parts of the original approach:

- Some were worried about the so-called decentralised procedure, under which Member State authorities would have a lot of freedom to block tenders from outside the EU.
- Others were worried that the whole approach was too bureaucratic.

But at the same time the Commission believes that the proposal has merit. Europe's procurement markets are still much more open than most of our partners. The instrument would create stronger incentives for them to follow our lead.

So we are now working to tackle the concerns. And I hope to make an amended proposal soon. I hope it will be the beginning of a good discussion on how to move forward.

Third, we are moving ahead with our ongoing review of the EU's system of export controls on dual use goods. The latest step in the process is an assessment of the economic, social and environmental impacts of the options presented in last year's communication.

We are collecting a lot of data. We aim to launch a full written public consultation in the middle of the year. And to finish the impact assessment process by the end of the year. That would allow us to make a proposal in the first half of next year. In the meantime, we are engaging with the Council and with you so that we have a full understanding of the political landscape.

Honourable Members,

Today I suspect we'll spend a little more time on my next point: the next step on investment in the Transatlantic Trade and Investment Partnership (TTIP).

Seven weeks ago I came here to present our first thoughts on a way forward on this issue.

We had a very constructive discussion at that time and you asked me to put more flesh on the bones of those thoughts.

We have now done that in the Commission. You have all, I hope, received the concept paper that we sent to you and to Member States earlier this week.

The ideas are based on the public consultation, on the conversation we had here on the 18th March, on the work being done in different committees in this House, on conversations with Member States and on other dialogue we've been having with civil society groups and experts of different types.

That input, and a lot of hard work, have now allowed us to go further. We have examined each of the proposals in more detail, thought about them and tried to provide practical answers to some of the questions raised.

Those answers are in the paper you have in front of you.

It presents two things:

It sets out the context for this reformed approach:

- the value of investment protection and the existing 1400 European agreements that already exist;
- the real need for deep reform, recognising the existing flaws in the system;
- and also the very important progress we have already made in our agreements with Canada and Singapore.

And it proposes four ways to go further, in order to fix the problems with dispute settlement that have caused such concern.

What are actually doing is trying to create a new modern system of investment arbitration.

Let me summarise our ideas to do so:

First, we propose to remove any ambiguity about sovereign governments' right to regulate, putting that in black and white. In the past, agreements have been drafted more with the protection of investment in mind than the right of governments to regulate. It will no longer be the case.

Second, we address fears of an unhealthy link between arbitrators and the parties to a dispute. This improved system would move away from individual, ad hoc cases to become much more like traditional courts. It sets out clearly that our goal is a permanent, international investment court. That, however, will take some time. So we will already make a shift in our bilateral deals, starting with TTIP, but aiming to do this for all future agreements:

- by requiring that arbitrators are from a pre-vetted list, appointed jointly by the EU and the US, in the case of TTIP.
- and by setting the qualifications requirements to become an arbitrator at the same level as those of judges.

Third, we propose to plug a significant hole in today's ISDS system: the lack of an appeal mechanism. The goal is a multilateral appeal mechanism as part of a permanent court. That will take time. But again, we will not wait to act. Instead, starting with TTIP, we propose to put a bilateral appeal process into all our agreements.

Finally, we address the relationship with domestic courts to get rid of the possibility that a company gets compensation twice and avoids the risk of parallel claims.

So with these reform proposals, my intention is to set a deep reform of the system in motion. And create a system for investment protection and arbitration that is suited for the future.

These are not cosmetic changes but rather the most significant overhaul of investment arbitration in decades. They are a serious response to a widespread, justified scepticism about what has gone before.

They are also, I believe, in line with much of the work that has been going on here in Parliament in recent weeks. I have heard and taken up many of the proposals made in this committee and in the many others in the context of Parliament's upcoming TTIP report. In particular:

- The Constitutional Affairs Committee is calling for exactly the kind of permanent system of courts and judges we are proposing.
- The Employment, Economic and Foreign Affairs Committees all want more clarity on the right to regulate.
- The Legal Affairs Committee wants it to be clear that arbitration should not replace national law or render it ineffective.
- The Agriculture Committee wants a system that doesn't undermine sovereign rights but gives a fair opportunity to investors to seek redress.
- And the Committee on Civil Liberties wants to be certain that decisions on fundamental rights are taken by ordinary courts.

Many Member States and individual ministers have also expressed similar concerns and wishes.

The Commission agrees with a great many of these ideas. And that gives me hope that we will find common ground.

The only idea I can not agree with is the notion that we should take investment arbitration out of TTIP altogether.

This just doesn't make sense, for three reasons:

The US is a functioning democracy based on the rule of law. But that does not mean there is no risk to investors.

US courts are not obliged to follow commitments that the US takes internationally. And the US does not always respect its international commitments. The US has the most WTO cases against it of any WTO member for example. Canada, and soon Japan and China, has the safety net of effective investment arbitration with the US, why shouldn't Europeans have that?

Second, simply having state-to-state dispute settlement does not do the trick. It is used when problems are serious enough to have a *systemic* impact. That means it is not suited to solving the vast majority of routine investment disputes, on licences and so on that are often brought by medium sized companies.

It is not multinationals that use investor-to-state dispute settlement the most. Research from the OECD has shown that only 8% of cases are brought by large multinationals.

And finally, and more importantly, excluding ISDS from TTIP means missing the best chance to reform the system for a generation. Member States have 1400 agreements. Those exist and will not disappear. With this we have a chance to start reform. The world's two biggest economies don't negotiate a comprehensive free trade agreement every day. We all agree that there is a problem. Let's start dealing with it now, in TTIP but also for all future agreements.

A word on process before I finish. You have the concept paper and we are discussing it today. So do Member States and I will be talking to ministers starting tomorrow.

What we now are looking for from both of parts of our legislature is broad political guidance on our ideas.

This is a concept paper not a legal proposal. That will come later.

So this is the next step in our conversation on this issue, not the end of that conversation.

The Commission is still ready to listen to all good ideas. We want a system that is more effective, more systematic and, ultimately, more responsive to the concerns of European citizens.

We can do that if we work together.

Thank you for your kind attention. I look forward to our discussion.