



European-American  
Business Council



November 16, 2011

Mr. Karel De Gucht  
Commissioner for Trade  
European Commission  
B-1049 Brussels

Mr. Michael Froman  
Deputy Assistant to the President  
The White House  
Washington DC

Dear Commissioner De Gucht and Mr. Froman:

We welcome the reinvigoration of the US-EU Investment Dialogue. The October meeting of U.S. and EU investment policy officials, the first since 2008, clearly re-established that the European Union and the United States share a common agenda on investment issues, as outlined in our July 14 letter as well as the May 2008 Joint Statement. We look forward to further active and substantive efforts by you as TEC Co-chairs and your administrations in this area.

One of the results of that meeting was agreement to develop a Statement of Principles by the European Union and the United States on the Treatment of Foreign Direct Investment, as early as the November 29 Transatlantic Economic Council.

Our associations, representing millions of businesses in all sectors and regions of our two economies, support having such a Statement, which would send an important signal to third

countries about the need and value of adopting strong protections for, and providing greater openness to, foreign investment. Our governments should have a coordinated approach toward third countries based on these agreed principles, including with respect to improving market access and addressing competitive distortions that may arise with state-owned enterprises.

We urge the United States and the European Union, as the largest sources of and hosts to foreign investment, to adopt a Statement of Principles that embodies the highest possible standards of treatment for such investment. As stated in our July 14<sup>th</sup> letter, we believe such a Statement should reaffirm the cornerstone principles of non-discriminatory national and most-favored-nation treatment; fair and equitable treatment and full protection and security; prompt, adequate and effective compensation in the event of an expropriation; free transfers of invested capital and returns; respect for contracts between foreign investors and host governments; and an effective investor-state dispute settlement mechanism -- all principles reflected in our respective bilateral investment agreements. A Statement should also address the importance of eliminating competitive distortions between foreign investors and state-owned and state-favored enterprises. You will find attached, as a contribution by the transatlantic business community to this important exercise, some key elements that we believe such a statement should include.

Again, we appreciate your active support for and encouragement of the EU-US Investment Dialogue, and hope that the attached proposed principles can be adopted by the November 29 meeting of the Transatlantic Economic Council.

Yours Sincerely,

**American Chamber of Commerce to the  
European Union  
BUSINESSEUROPE  
Emergency Committee for American Trade  
EUROCHAMBRES  
European-American Business Council**

**National Association of Manufacturers  
Organization for International Investment  
TransAtlantic Business Dialogue  
U.S. Chamber of Commerce  
U.S. Council for International Business**

**Key elements proposed by the Transatlantic business community for a  
Joint Statement of the United States of America and the European Union Concerning  
Principles on the Treatment of Foreign Investment**

The European Union and the United States, as the largest sources of, and hosts to, foreign direct investment, reaffirm our unequivocal conviction that foreign investment, like domestic investment, should be welcomed as a source of capital, growth, jobs, technology, innovation and productivity. These benefits are demonstrated repeatedly by the \$2.34 trillion of foreign direct investment in the United States and €2.7 (\$3.6) trillion in the European Union; indeed, the unique nature of our bilateral economic relationship stems in part from the fact that two-thirds of this investment is represented by the \$1.93 trillion that U.S. firms have invested in the EU and the \$1.48 trillion European firms have put into the United States.

Our openness to foreign investment is based on the fundamental principle that investors and their investments should be treated equally under the law regardless of nationality. Countries that adopt and adhere to this principle, as well as those that we propose herewith, will significantly assuage investors' natural concerns about putting capital into a country with which they are not familiar, thereby increasing the capital that country has available to generate growth.

Complementing the principle of non-discrimination are the measures needed to establish a favorable climate for domestic as well as foreign investment: the rule of law, transparency and predictability in government administration, regulatory fairness, the sanctity of contracts and private property, respect for intellectual property rights, and sound macro-economic policies. Governments should, therefore, ensure a minimum standard of treatment consistent with international law for all investments, including fair and equitable treatment, avoiding any semblance of arbitrary and capricious action by government officials. They should also ensure that public services such as law enforcement and fire prevention are available to provide constant protection and security for investments. Laws, regulations, judicial decisions and administrative rulings of general application should be made publicly available in a timely fashion, and domestic law should provide an effective means of enforcement of rights.

This general approach should apply to the widest possible definition of investments, including all forms of assets and tangible and intangible property; property rights such as leases, mortgages, liens and pledges; intellectual property rights; rights conferred by law or contract, such as licenses and permits; business enterprises and equity and other forms of participation in them; claims to money and to performance; and returns.

Host governments should welcome foreign investors and their investments by guaranteeing they will provide treatment no less favorable than that which they provide to their own investors and investments, and those of any third state. These basic principles of non-discriminatory national and most favored nation (MFN) treatment should apply both to the making of investments and to the subsequent management, maintenance, use, enjoyment and disposal of those investments. Key personnel employed by investors and investments should be permitted to enter and remain temporarily in the host country to engage in activities related to the management, maintenance and other requirements of the investment. Investments should have non-discriminatory access to public procurement on all levels, and a host government should not require investments, on establishment or subsequently, to purchase, sell, transfer or provide preferences to goods, services, intellectual property, other proprietary knowledge or technology in its territory.

Where governments have delegated (formally or informally) regulatory, administrative or other authority to a state enterprise or other body, those agents should be explicitly required to uphold the host government's commitment to provide non-discriminatory treatment and other core protections to foreign investors. Governments should also seek to ensure that they take steps to eliminate competitive distortions that may be created when state-owned enterprises engage in commercial activity. In particular, in their purchase and sale of goods and services, state-owned enterprises should provide national and most-favored nation treatment to investments.

Any exceptions to these principles of non-discrimination based on the nationality of the investor should be as limited as possible, for clear public purposes, and spelled out explicitly and publicly in law and regulation.

Host governments should guarantee investors the freedom to transfer funds related to an investment into and out of their country, including capital, returns, payments, earnings, remuneration and other financial flows related to the investment, including the proceeds from its sale or liquidation.

Governments should guarantee that investments will not be expropriated, nationalized or subjected to measures having equivalent effect except when done for a public purpose, under due process of law, in a transparent and non-discriminatory manner, and with prompt, adequate and effective compensation. Compensation should reflect the fair market value of the investment before the expropriatory action became publicly known. Where an investment suffers harm from war, civil disturbance, natural disaster, state of emergency or a similar event, the host government should provide compensation or other similar benefits to the investment in a manner similar to that granted to domestic and other third country investments.

To ensure that investors are confident in their ability to enforce these rights, host governments should provide investors with the right to enter into investor-state arbitration, whether through the International Convention on the Settlement of Investment Disputes (ICSID), or any other similar neutral arbitration forum. Investor-state dispute settlement should apply as well as to enforce contracts and other agreements between foreign investors and host country governments. Host governments should also become parties to the Convention on the Recognition and Enforcement of International Arbitral Awards (the "New York Convention") to assure investors that arbitral awards can be enforced.

Countries willing to commit to these principles will significantly lower the political and legal risk investors perceive when considering bringing capital to a foreign country, and will thus benefit from additional growth, jobs, innovation and technology flows. Countries that are the sources of foreign investment also benefit greatly from the jobs and productivity enhancements overseas investments can bring.

Believing deeply in these simple but essential core values, the European Union and the United States governments should agree to work, individually and in concert, to ensure their adoption and respect by other governments.