July 14, 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 declaration from the December 2010 Transatlantic Economic Council that our governments would reinvigorate the U.S.-EU Investment Dialogue, and look forward to the first meeting, which we understand will take place in early Autumn .

We hope you and your colleagues can help realize the promise of the transatlantic investment dialogue. Our associations, representing millions of U.S. and European businesses in all sectors and regions of our economies, believe the depth of the transatlantic investment – over €1 trillion each way – is what makes our economic relationship unique. While in many respects this enormous volume of direct investment demonstrates the strength of the relationship, there are many pressing issues on which U.S. and EU coordination of our policy and approach is important. Specifically, the goals of our reinvigorated discussions should be:

- Coordinated efforts in promoting strong investment protections, especially in key third countries such as China, Russia, Ukraine, India and key countries in Latin America;

- Coherent approaches to inward investment from third countries; and
- Consideration of how to further improve the U.S.-EU bilateral investment relationship.

Investment Policy and Third Countries

The United States, the European Union and EU member states have long striven to build strong international standards on the treatment of investment, based on 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 the invested capital and returns; and an effective investor-state dispute settlement mechanism, all principles reflected in our respective bilateral investment agreements. The major difference between the U.S. and European approaches in these agreements is the provision in U.S. treaties governing rights of establishment. On the basis of these shared sentiments, the United States and European Union have been able to issue a number of joint statements related to investment issues, including the May 2008 Transatlantic Economic Council Statement on Open Investment, and the December 2010 Trade Principles for Information and Communication Technology Services, which provide a basis for future work.

We in the U.S. and European business communities strongly support our governments' pursuit of strong standards in all of these areas and caution against changes that would weaken the core principles, including by limiting the ability of our companies to transfer investment capital back to our home countries for reinvestment or by creating exceptions that appear innocuous, but could undermine the value of international investment treaty protections.

The Lisbon Treaty inclusion of foreign direct investment in the EU's common commercial policy means the EU now has the power to negotiate investment agreements. The members of our organizations on both sides of the Atlantic have a significant interest in the approach the EU will take toward the existing EU member state bilateral investment agreements and in future investment agreement negotiations, as these affect both the broader investment protection regime and the investment climate in the targeted countries. The Investment Dialogue should discuss all implications of the EU's new investment policy.

In the past, the Investment Dialogue discussed steps Washington and Brussels could take to help improve the investment climate in third countries, including such issues as China's "Indigenous Innovation" policy. These discussions, which should be built upon the principles listed above, should be intensified and broadened, in particular to include Russia, Ukraine, India and other major countries. In addition to reinforcing the cornerstone principles noted above, a major theme of such "third country" discussions should also be about how the United States and EU can use investment and other agreements (and instruments) to mitigate the anti-competitive effects of government supports in them for state-owned and state-favored enterprises.

Inward Investment

The U.S. and EU are both the world's largest hosts as well as the largest sources of foreign direct investment, with the vast majority of the FDI in each coming from the other. This situation is changing, as key emerging economies have begun expanding their investments in our markets. As President Obama emphasized in his recent statement on the U.S. open investment policy, and as the Commission underscored in last November's Communication on Trade, Growth and World Affairs, this inward investment should be welcomed: it provides capital for economic growth, and gives investors from these countries true stakes in our societies.

We recognize, however, that influxes of investment from non-traditional sources can lead to adverse public reactions and may raise legitimate national security and transparency concerns. Any approach to evaluating inward investment should contain safeguards to ensure it is limited only to legitimate national security concerns. Public apprehension regarding foreign investment can also be mitigated by a set of principles and rules that offer greater transparency around those investments made by sovereign wealth funds and state-owned enterprises. The Investment Dialogue should address these concerns and ensure the United States and European Union do not adopt measures that impede investment and adversely impact our bilateral relationship.

The Bilateral Investment Relationship

Investment is the critical underpinning of the transatlantic economic relationship. That investment flowed largely because both the United States and Europe traditionally welcomed foreign capital, respected private property, and upheld the rule of law for our market-based economies. But it benefits as well from a network of legal instruments; even dated Treaties of Friendship, Commerce and Navigation are still frequently called upon to remind our governments of the need to observe the international obligations between our countries.

Our associations are still considering whether, when and how the United States and the European Union should update this legal relationship, but we believe our officials can and should begin considering it in the context of the formal Investment Dialogue.

Stakeholder Input

A critical aspect of the U.S.-EU Investment Dialogue should be an active discussion with stakeholders, especially in light of the equities U.S. and EU firms own in one another's territory. Our associations will gladly host extended meetings with our officials both on the margins of, and between, meetings of the Dialogue.

Again, we support a vigorous discussion by U.S. and EU officials about investment policy, and look forward to a meeting of the U.S.-EU Investment Dialogue taking place soon.

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