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FDI 19
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SERVICES 79

PARTIAL DECLASSIFICATION

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Subject: Recommendation from the Commission to the Council on the modification of the negotiating directives for an Economic Integration Agreement with Canada in order to authorise the Commission to negotiate, on behalf of the Union, on investment

Delegations will find attached the partially declassified version of the above-mentioned document.



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee (part 2) / Council
No. Cion prop.: 18201/10 WTO 412 SERVICES 60 CDN 27 FDI 27 RESTREINT UE

Subject : Recommendation from the Commission to the Council on the modification of the negotiating directives for an Economic Integration Agreement with Canada in order to authorise the Commission to negotiate, on behalf of the Union, on investment

1. In April 2009, the Council authorized the Commission to negotiate an Economic Integration Agreement with Canada on behalf of the European Union and its Member States ¹. Negotiations between the two parties have been on-going since June of that year.
2. On 20 December 2010, the Commission submitted to the Council the abovementioned Recommendation for the modification of the negotiating mandate to include investment.
3. The Recommendation was examined in several meetings of the Trade Policy Committee (both at Full Members' and Services and Investment experts' level). These discussions resulted in a large measure of agreement around the Presidency compromise text, set out in Annex I to this Note.

¹ doc. 9036/09 RESTREINT UE

4. The Permanent Representatives Committee is, therefore, invited to recommend that the Council and the Representatives of the Member States meeting within the Council, as an "A" item on the agenda of one of the Council's forthcoming meetings:
- modify the negotiating directives for an Economic Integration Agreement with Canada as regards investment by inserting, after paragraph 26, Title 3A Investment Protection, as set out in Annex I to this Note;
 - decide to enter in the Council's minutes the declarations set out in Annex II to this Note.
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TITLE 3 A : INVESTMENT PROTECTION

26a. **Objective:** In accordance with the principles and the objectives of the Union's external action the respective provisions of the agreement shall

provide for the highest possible level of legal protection and certainty for European investors in Canada,

provide for the promotion of the European standards of protection and seek to increase Europe's attractiveness as a destination for foreign investment,

provide for a level playing field for investors in Canada and in the EU

and shall be without prejudice to the right of the EU and the Member States to adopt and enforce, in accordance with their respective competences, measures necessary to pursue legitimate public policy objectives such as social, environmental, security, public health and safety in a non-discriminatory manner. The agreement shall respect the policies of the EU and its Member States for the promotion and protection of cultural diversity.

Its respective provisions shall be built upon the Member States' experience and best practice regarding their bilateral investment agreements.

The aim is to include into the investment protection chapter of the agreement areas of mixed competence, such as portfolio investment, dispute settlement, property and expropriation aspects.

26b. **Scope:** the investment protection chapter of the agreement shall cover a broad range of investors and their investments, intellectual property rights included, whether the investment is made before or after the entry into force of the agreement.

26c. **Standards of treatment:** the negotiations shall aim to include in particular but not exclusively the following standards of treatment and rules:

- (a) fair and equitable treatment, including a prohibition of unreasonable, arbitrary or discriminatory measures,
- (b) unqualified national treatment,
- (c) unqualified most-favoured nation treatment,
- (d) protection against direct and indirect expropriation, including the right to prompt, adequate and effective compensation,
- (e) full protection and security of investors and investments,
- (f) other effective protection provisions, such as “umbrella clause”,
- (g) free transfer of funds of capital and payments by investors,
- (h) rules concerning subrogation.

26d. **Enforcement:** the agreement shall aim to provide for an effective and state-of-the-art investor-to-state dispute settlement mechanism. State-to-state dispute settlement will be included, but will not interfere with the right of investors to have recourse to the investor-to-state dispute settlement mechanism. It should provide for investors a wide range of arbitration fora as currently available under the Member States’ bilateral investment agreements (BIT's).

26e. **Relationship with other parts of the agreement:** the chapter on investment protection shall be a separate one, not linked to the market access commitments taken elsewhere in the agreement. These market access commitments may include, when necessary, rules concerning performance requirements.

26f. All the sub-federal or local entities and authorities (such as provinces or municipalities) shall effectively comply with the investment protection chapter of this agreement.

NOT DECLASSIFIED

Declaration by the Commission to the Council Decision on the modification of directives for Canada, India and Singapore, regarding the apportionment of financial liability in the event of investor-state dispute settlement against the EU.

The Commission recalls its view that the issue of apportionment of financial responsibility arising from investor-state dispute settlement directed against the EU requires to be addressed (COM (2010) 343). The Commission will continue to address this issue as a matter of priority with the European Parliament and Council and confirms that it is currently preparing a legislative proposal on this issue which will be proposed to the legislator for adoption. The Commission intends to adopt this legislative proposal in time so as to allow a discussion and adoption by the legislator concurrent with the discussion on and negotiation of future EU level agreements including investment protection. It will be up to the legislator to process the proposal such that the arrangements for liability are established in time in light of the date of signature and conclusion of the agreements under consideration.
