

All redacted passages in this document are out of scope.

BRIEFING BOOK
FOR COMMISSIONER C. MALMSTROM

16TH ACP- EU JOINT MINISTERIAL TRADE COMMITTEE

**Albert Borschette Conference Centre
Meeting room A-0**

26 October 2018, 10:00 – 13:00

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⇒ The ACP Lead Chair will pass the floor to you to give a state of play of [REDACTED]

[REDACTED] the EU's initiative on a future Multilateral Investment Court.

⇒ [REDACTED]
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SPEAKING POINTS

[REDACTED]
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b. EU initiative on a future Multilateral Investment Court

- Last year, we spoke about the initiative of a multilateral court for the resolution of investment disputes. A court that would be open to all interested countries and operate based on the principles of permanency, independence, accountability and efficiency, which underpin other respected international courts and tribunals.
- This project is moving forward. The United Nations Commission on International Trade Law (UNCITRAL) is looking into a possible reform of Investor-State Dispute Settlement (ISDS). Considering UNCITRAL's significant advantages in terms of transparency, openness and accessibility, the Commission is hopeful that discussions will deliver a satisfactory outcome in reasonably good time.
- I firmly believe that this initiative could provide a real and effective solution to the problems afflicting the current fragmented system of ISDS and would address the many concerns expressed on its legitimacy, accountability and impartiality. Such a global system is also likely to be a more efficient solution than the coexistence of a multitude of bilateral investment dispute resolution mechanisms.

DEFENSIVES MULTILATERAL INVESTMENT COURT

What would an actual Multilateral Investment Court look like? What would be its main features?

- What we have in mind is a first instance tribunal with an appeal. Judges would be full time and have permanent appointments. A secretariat would be required, but it may be possible to build this onto existing secretariats. Effective enforcement would be vital. But of course, all of this is to be discussed and negotiated.

How would membership work for a Multilateral Investment Court?

- To become a member, interested countries would at any time be able to adhere to the legal instrument which has formally established the court. That is the way membership of other international courts happens. Expansion of membership would require adjustments to the number of judges as well as the supporting secretariat to reflect the increased coverage of the court.

What about the costs of establishing and running of such a multilateral permanent investment court system?

- This will depend on a number of factors that are to be negotiated, such as the court's concrete design, methods of functioning, size and any future arrangements relating to possible user fees or salaries. The cost would be divided between the Contracting Parties and several formulas should be studied so that countries contribute according to their level of development or depending on how often they use the court.

What about the costs for developing countries of joining such a new multilateral system?

- We are conscious of this particular aspect. And in our view, we should also aim at agreeing on a repartition of costs that takes into account, as much as possible, the particular situation of each member country, such as its level of development, the number of its investment agreements covered or its investment flows and/or stocks.

A criticism commonly made to the current investment dispute settlement system is that developing or transition economies do not always have the resources and legal expertise to defend themselves effectively. Have any thoughts been given to this aspect in your deliberations on the multilateral investment court?

- This is clearly also an aspect that we will be exploring with other interested countries. In that context, there are examples of centres that provide legal assistance to developing countries (such as the Advisory Centre on WTO Law – ACWL) and that could serve as potential models for thought.