The Multilateral Investment Court Initiative

Dispute Settlement and Legal Aspects of Trade Policy
DG Trade, European Commission
Outline

- ISDS concerns
- Main features of the Multilateral Investment Court
- Responds to ISDS concerns
- UNCITRAL process
ISDS concerns
ISDS concerns

Consistency and correctness
- Lack of predictability caused by inconsistency
- Incorrect decisions – errors of law or fact cannot be corrected

Decision-makers/arbitrators
- Impartiality and independence brought into doubt
- Lack of expertise in public international law and public law
- Lack of diversity – geographic and gender

Costs and duration
- Expensive proceedings (significant %age of legal fees on choice of arbitrators)
- Long duration (around 6-8 months on appointment of arbitrators)
- Lack of predictability leads to relitigation and has an impact on duration
- Impact on ability for developing countries to use/ SMEs to access the system

Concerns are related and systemic
Main features of the Multilateral Investment Court
Main features

- First instance and appeal mechanism
- Full-time salaried adjudicators appointed by the treaty parties for fixed non-renewable terms
- Effective enforcement procedures
- High qualifications and ethical requirements, geographical and gender diversity
- Open to all interested countries
- Applicable to existing and future international treaties ("opt-in" mechanism)
- Advisory Centre for investment law to assist developing countries
- Transparency and third party access
- Improved access for SMEs
- Robust appointment procedures based on best international practices
- Allocation of costs among treaty parties based on level of development
- Structured dialogue between court and treaty parties
Responds to ISDS concerns
Responds to ISDS concerns

- Permanency
  ↓
  creates consistency and predictability

- Appeal
  ↓
  ensures consistency and correctness

- Full time adjudicators
  ↓
  removes concerns re independence and impartiality of arbitrators

- Selection criteria
  ↓
  ensures geographical and gender representation
Responds to ISDS concerns

- Robust appointment system
  - ensures independence, impartiality and expertise

- Selection criteria
  - ensures public international law and public law expertise

- Predictability, removal of tribunal constitution stage, better management
  - reduces cost

- Predictability, removal of tribunal constitution stage, better management
  - reduces duration
UNCITRAL process
UNCITRAL process

UNCITRAL Working Group III mandate

PHASE 1
Identify and consider concerns regarding ISDS

PHASE 2
Consider whether reform is desirable in the light of any identified concerns

PHASE 3
Develop relevant solutions to be recommended to the Commission

More information and documents:
http://www.uncitral.org/uncitral/en/commission/working_groups/3Investor_State.html
**UNCITRAL process**

First 2 rounds of discussions on concerns of ISDS (Phase 1):
- 27 November–1 December 2017, Vienna
- 23–27 April 2018, New York

3rd round of discussions on desirability of reform (Phase 2):
- 29 October – 2 November 2018, Vienna

Next discussions on reform options (Phase 3):
- April 2019, New York
UNCITRAL process

UNCITRAL commitment to transparency and openness:

- Participation open to all UN members and any interested party (international/regional organisations, civil society)
- Publication of meeting reports and audio recordings

More information and documents:
http://www.uncitral.org/uncitral/audio/meetings.jsp
UNCITRAL process

Working document from the European Union on possible reform of ISDS available in all UN languages (Arabic, Chinese, English, French, Russian and Spanish) ➤ UNCITRAL and EU Multilateral Investment Court webpage

Travel fund maintained by UNCITRAL and funded by the EU and other donors for granting travel assistance to developing countries to Working Group III sessions ➤ contact UNCITRAL Secretariat
For further information:

Websites:

UNCITRAL Working Group III (Investor-State Dispute Settlement Reform):
http://www.uncitral.org/uncitral/en/commission/working_groups/3Investor_State.html

European Commission, DG TRADE, Multilateral Investment Court project:

Contact:

TRADE-F2-MULTILAT-INVEST-DS@ec.europa.eu
@ec.europa.eu

Follow:

@Trade_EU
@Trade_EU
#uncitral