Unless otherwise specified, all redactions in this document are justified under Article 4.1(b) of Regulation 1049/2001.

Ref. Ares(2018)6087221 - 28/11/2018

To: ASENIUS Maria (CAB-MALMSTROM); EICHHORN Nele (CAB-MALMSTROM); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); REDONNET Denis (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE); [redacted] (TRADE)

Subject: Roundtable discussions on the Multilateral Investment Court at Hume Brophy, Brussels, 13 June 2018

Meeting report

Subject: Roundtable discussions on the Multilateral Investment Court at Hume Brophy, Brussels, 13 June 2018

On 13 June 2018, Nele Eichhorn (CAB Malmström) and [redacted] (TRADE F2) had roundtable discussions on the Multilateral Investment Court project at the international communications firm Hume Brophy in Brussels. Participants were members of Hume Brophy, as well as business representatives from several industries, including telecommunications and energy.

Nele Eichhorn gave a presentation on the Multilateral Investment Court project, in particular on: (i) the background of the EU' reformed approach to investor-state dispute settlement; (ii) the Investment Court System included in bilateral agreements with third countries; (iii) the main proposed design features of the Multilateral Investment Court; (iv) the state-of-play of the ongoing discussions at UNCITRAL; and (v) the next steps of the UNCITRAL process.

All participants praised the Commission's efforts to multilateralise the investment arbitration system and to increase its effectiveness and legal certainty.

In reply to questions, we explained that:

- The Multilateral Investment Court would apply to existing treaties through a mechanism similar to the one used in the Mauritius Convention. Under such mechanism, the Court would apply to disputes under an existing agreement between two countries when both countries have ratified the instrument establishing the Court and both countries have agreed that the investment agreement between them should be subject to the Multilateral Court. This mechanism has the advantage of not requiring an amendment of each existing agreement and to follow an approach which is already established under the Mauritius Convention.
- The *Achmea* ruling of the Court of Justice of the EU exclusively concerns intra-EU BITs and the Court has made no findings with regard to the investment dispute settlement provisions contained in agreements concluded by the Union. Moreover, the issue at the heart of the Court's ruling is the law to be applied by the arbitral tribunal. The current thinking is not to regulate this matter in the instrument establishing the Multilateral Investment Court.
- Opinion 1/17 on the compatibility of the Investment Court System under CETA with the EU Treaties can be expected at the beginning of next year or earlier, but the timing is in the hands of the Court. The Commission is confident that the Court would confirm that ICS is compatible with the EU Treaties and will take any findings of the Court into account as appropriate.

- It could be desirable for the Multilateral Investment Court also to handle state-to state disputes, since these can already be brought under most bilateral investment treaties.
- [Art. 4.1(a)]. In addition, almost all countries participating in the UNCITRAL discussions see problems in the current ISDS system and recognise the need for reform, also at multilateral level. A number of countries are clearly interested, but we are some way from the point that all agree on the form that reform should take.
- It is possible that the court would need a secretariat, but it has to be seen whether to establish a new standing body or dock the court into an existing international organisation with its own secretariat.
- The long-standing practice at UNCITRAL is to reach decisions by consensus as far as possible; in the absence of consensus, decisions are taken by majority vote in accordance with the relevant rules of procedure of UNCITRAL.

European Commission
Directorate-General for Trade
Unit F.2 – Dispute Settlement and Legal Aspects of Trade Policy
B-1049 Brussels/Belgium
@ec.europa.eu