



EUROPEAN COMMISSION

Directorate-General for Trade
Directorate F - WTO, Legal Affairs and Trade in Goods

The Director

Brussels,
TRADE/F.2/[REDACTED] (2017)6849847

Subject: Assessment of the public consultation on the proposed Multilateral Investment Court

Dear [REDACTED],

Thank you for your e-mail and the enclosed assessment from the Centre for International Environmental Law, Friends of the Earth Europe and Seattle to Brussels Network of the Commission's public consultation on a multilateral reform of investment dispute resolution. Said assessment argues that the scope and questions of the public consultation prevented a large number of stakeholders from expressing their views, that the Commission misrepresented the results of the consultation and that it failed to take certain views into account.

Allow me to address these issues clarifying from the outset that the public consultation in question, which was connected to the Impact Assessment on a multilateral reform of investment dispute resolution, focused on several options to multilaterally reform the current system of investment dispute settlement and, accordingly, it sought stakeholder feedback on a number of options in that regard. The consultation built on the results of the 2014 public consultation on investment protection and Investor-State Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement (TTIP), where a number of stakeholders suggested that a multilateral approach would be the optimal solution to address the insufficiencies of ISDS. The consultation at hand was therefore not aimed at seeking views on the adequacy of traditional ISDS.

Following the 2014 consultation, the Commission undertook an important reform of traditional ISDS in bilateral agreements. The resulting Investment Court System (ICS) institutionalises investment dispute settlement bringing added legitimacy, impartiality, independence and transparency to the system and is the current policy in EU trade and/or investment agreements. However, this, in itself, does not address the concerns with traditional ISDS in the more than 3000 existing bilateral investment treaties. It is in this context that the Commission designed the public consultation seeking views on key technical aspects of a multilateral reform. Although some degree of technicality may have been warranted to respond to some questions, the consultation allowed for the submission of position papers. In fact, these proved highly useful when assessing the replies and, as you know, more than one in four responses to the consultation attached one.

On the basis of the results, the Commission concluded that, among the respondents, there is overall broad support for a multilateral reform of investment dispute settlement as per the principles of permanency, appeal and transparency, as well as involving state-appointed highly qualified full-time adjudicators with a fixed remuneration subject to high ethical standards. Indeed, the Commission believes that these results support the policy decision to pursue international negotiations to establish a permanent multilateral court for investment disputes.

For the reasons set out above, the Commission respectfully disagrees with the findings of the assessment you have shared with us. The Commission attaches great value to the contributions of all stakeholders to its public consultations and looks forward to a continued open, frank and honest dialogue on this file, through further meetings, stakeholder events and the like.

Yours sincerely,

Denis REDONNET