



Asia-Europe Meeting

Workshop on possible approaches to a multilateral reform of the investor-state dispute settlement (ISDS) system

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PERSPECTIVES FROM THE EU:

The Idea of Creating a Multilateral Investment Court

DG

Trade, European Commission

@ec.europa.eu

PERSPECTIVES FROM THE EU:

- **Background**
- **Multilateral investment court**
 - objective and main features
- **Next steps**



BACKGROUND

Background

- 2010 Communication: "Towards a comprehensive European international investment policy"
 - > transparency, consistency, predictability, possibility to appeal
- 2015 Concept Paper: "Investment in TTIP and beyond – the path for reform"
 - > replacement of ISDS with the ICS
- Trade for all Communication (2015)
 - > ICS: CETA, EU-Vietnam FTA

Background

- 2016: Public consultation on multilateral reform of the dispute settlement resolution
 - > broad range of stakeholders involved
- Impact Assessment on the MIC
 - > different options and possible features of the MIC
- 10 July 2017: UNCITRAL
 - > Mandate to Working Group III: Possible reform of the ISDS system

Why ?

- Public law issues – vertical relationship between government and investor
- Repeat issues. Specific fact patterns being tested against fixed, broad standards
- Paradigm very different from commercial disputes using commercial arbitration.
 - > NB – ICSID drafted with contractual disputes in mind, not treaty disputes

Why ?

- Public law, repeat issues – normally heard by a permanent institution, typically with appeal.
- Examples – administrative courts, constitutional courts, regional human rights courts
- Why – because effective and fair administration of justice is seen as a public good. “Justice must not only be done, but seen to be done.”
- Why should investment disputes be treated differently ?



MULTILATERAL INVESTMENT COURT

OBJECTIVE AND POSSIBLE MAIN FEATURES

Objective

- set up a framework for investment dispute resolution that is:
 1. Permanent, independent and enjoys the recognition of authority and legitimacy of citizens.
 2. Predictable, delivering consistent case-law in its functioning, ensuring that the interpretation of substantive standards is consistent, where possible.

Objective

- set up a framework for investment dispute resolution that is:
- 3. Allowing for an appeal of decisions in order to correct legal and factual errors.
- 4. Transparent, in line with the fundamental expectations from citizens that justice is a public good.
- 5. Efficient, in that it satisfies the needs of involved stakeholders through an effective use of financial and human resources.

Possible Main Features

- First instance tribunal and appeal tribunal
- Full time salaried adjudicators
- Qualifications and ethics
- Open to all interested countries
- Developing countries and SMEs

First instance tribunal and appeal tribunal

- Permanent nature
 - Predictability
 - Transparency
 - Consistency of case-law
 - Secretariat
- Number of adjudicators
 - Workload of the tribunal
 - Efficiency
- Appeal
 - Legal and factual errors
 - Legitimacy, independence, consistency and predictability

Full time salaried adjudicators

- Adjudicators
 - Full time
 - Nature of their mandate (renewability)
 - Appointment
 - Impartiality and independence
- Salary
 - Independence
 - Impartiality
- Case allocation

Qualifications and ethics

- High qualification criteria
 - Similar to other international fora
 - Consistency
 - Predictability
 - Legitimacy
 - Independence
- Ethics
 - Impartiality
 - Compatibility with other professional activities

Open to all interested countries

- Opt-in system
 - More efficient than re-negotiating each treaty (Mauritius Convention approach)
 - Cost-efficient
- Financing
 - Contributions of contracting parties
 - User fees ?

Developing countries & SMEs

- Developing Countries
 - Advisory Centre
 - Financial aspect: contributions based on the level of development of the country
- SMEs
 - Small claims/simplified procedures



NEXT STEPS

Next Steps

- UNCITRAL
- Role of other international organizations
 - > ICSID, OECD, UNCTAD, WTO etc.



Thank you for your attention!