



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate F - WTO, Legal Affairs and Trade in Goods
Dispute Settlement and Legal Aspects of Trade Policy

Brussels, 24 July 2017
F.2/ [REDACTED] (2017) 2872234

Subject: Meeting with the Belgian mutual health funds on the multilateral investment court (16 May 2017)

Participants

[REDACTED] (DG TRADE F2 – COM).

[REDACTED] Belgian health insurance funds – BEHIF), [REDACTED] (*Centre national de coopération au développement* – CNCDD), [REDACTED] (Friends of the Earth Europe – FOEE); [REDACTED] (Client Earth – CE), as well as several members of the Belgian Christian mutual.

Summary

The aim of this meeting was to exchange with the BEHIF's taskforce on trade agreements on the multilateral investment court project. They had requested a special focus on health services. [REDACTED]

[REDACTED] [Art. 4.2 1st indent] In addition to the members of the BEHIF, several representatives of NGOs (FOEE, CNCDD, CE) had been invited as experts (and were among the most active participants during the discussions).

COM gave a presentation on the multilateral investment court initiative including background (milestones since Treaty of Lisbon, rationale of the initiative and possible design) and state of play (EU internal and external work).

BEHIF raised a number of general questions on the COM's exploratory talks and the interest shown by third countries. BEHIF also requested clarifications on the relationship between the multilateral investment court and the ICS systems in bilateral agreements. BEHIF also raised the issue of the right to regulate and potential concerns relating to public health.

CE questioned the multilateral investment court project from various angles. CE referred to the importance of preserving the role of domestic courts (exhaustion of domestic remedies), the question of standing before the multilateral investment court (claims against investors) and questions of admissibility (clean-hands doctrine, abuse of process, etc.). CE also insisted on the issue of investors' obligations (including on human rights). More broadly, CE questioned the need for any investment dispute resolution system (especially to decide on disputes between developed countries). On the specific points raised in the presentation, CE referred to the procedures for the appointment of judges,

their qualifications, and enforcement (arguing that awards should only be enforceable within the territory of the respondent to give the respondent's domestic courts a say on enforcement questions), and raised concerns that the multilateral investment court would only bring cosmetic changes to the current ISDS system. Not many questions were raised specifically on health services (COM invited BEHIF to meet relevant DG TRADE B1 colleagues for that), but there appeared to be some uncertainties about the distinction between the pre- and post-establishment provisions in investment agreements (as well as between positive and negative list approaches) and the application of the ICS.

COM replied to the questions and concerns raised, stressing in particular (i) that the multilateral investment court would not create additional rights for investors but only replace existing ISDS mechanism, (ii) that it was the most promising and probably only realistic chance to reform the current ISDS system globally, and (iii) that the project would not undermine the possibility of future talks on a multilateral reform of substantive investment rules, nor parallel on-going multilateral initiatives in the field of business and human rights (UN process).

Overall impression was that there is interest on the multilateral investment court project, but more clarity may be needed before the BEHIF will have a clear position on the matter. The overall tone of the discussion was constructive and, in general, BEHIF appeared receptive to COM's explanations.

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