



## EUROPEAN COMMISSION

Directorate-General for Trade

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

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Dear Sir/Madam,

Thank you for your contribution to the public consultation on options for a multilateral reform of investment dispute settlement in the form of a petition and accompanying Seattle to Brussels Network position paper. The Commission services are analysing its content and that of recent e-mails carefully and will duly factor this input into the Impact Assessment Report that is under preparation.

Let me try to briefly address the most notable points raised in the petition and enclosed documents.

You argue that investor-state dispute settlement (ISDS) is flawed in multiple ways and therefore there is a need for fundamental change. The Commission considers that there is a need for fundamental change. Allow me to explain why we believe that engaging in work for the establishment of a single and permanent investment court that has the most notable features of judicial systems and is multilaterally backed will effectively address the limitations of traditional ISDS.

As you know, there are more than 3200 international investment treaties that contain ISDS provisions. Despite their important shortcomings especially in terms of lack of legitimacy, accountability, predictability and transparency, the ISDS provisions contained in those agreements will remain in force unchanged for an indefinite time unless they are replaced by a reformed system. In order to offer a better and more accountable dispute settlement regime that can replace existing ISDS provisions, it is necessary that we embark together with other trading partners on a multilateral reform path. This has been stressed in various exchanges with key trade and investment partners and stakeholders.

This initiative would focus on dispute settlement rules, which is the area where multilateral reform appears at this moment in time reasonably possible and where multilateral action seems most appropriate. Clearly, this does not exclude any possible further multilateral action, including related to substantive investment standards, at the appropriate time and in the appropriate forum.

You argue that the Commission's proposal for a multilateral investment court is flawed and dangerous. Allow me to clarify how we envisage the process going forward. It is

paramount that discussions be framed in a fully open and inclusive, geographically balanced and transparent negotiating process from the outset. Discussions must be open to all interested parties and gradually build up the concepts before moving to concrete proposals. As for the actual design and functioning of the court, that will be the main issue for the negotiations. What the Commission has in mind is a first instance tribunal with an appeal where judges would be employed full time and have permanent appointments. A secretariat would be required. Effective enforcement of decisions would be vital. But of course, all of this is yet to be discussed and negotiated, clearly bearing in mind that only a system that envisages the key features of modern judicial systems and is multilaterally endorsed will be reasonably able to effectively replace the traditional ISDS regime.

One of the most notable points you make in the position paper relates to the need for binding obligations for business in relation to public health, the environment and human and labour rights. I can assure you that the Commission considers it particularly important to strengthen the sustainable development dimension of international investments. Clearly, investors not only have rights but also obligations. In this spirit, the EU participates in discussions in different international fora, such as the UN and the OECD. EU agreements also foster adherence and implementation by companies of Responsible Business Conduct (RBC) practices. They refer explicitly to internationally recognised guidelines and principles in this area, such as the OECD Guidelines for Multinational Enterprises or the UN Guiding Principles on Business and Human Rights.

More broadly, the Commission attaches great importance to policies combatting the negative effects of globalisation that you point out such as climate change or growing inequalities. The main actions of the Commission for 2017 include a number of initiatives in this area, including in relation to the Youth Initiative, the ratification of the Paris Agreement and the European Pillar of Social Rights.

In this regard, the EU trade policy constitutes a key instrument to protect and promote the EU's values beyond the protection of EU economic interests, as evidenced by EU trade agreements such as CETA that notably include commitments by the Parties on the respect of fundamental labour rights as well as key Multilateral Environmental Agreements. EU trade policy has also developed other mechanisms such as the Generalised Scheme of Preferences Plus (GSP+) whereby the EU offers additional market access opportunities to developing countries that ratify and implement core international conventions relating to human and labour rights, environmental protection and good governance. The EU also strives to promote responsible supply chains, e.g. with the Regulation on conflict minerals or developing outreach and capacity building programmes on responsible business conduct in its relevant trading partners. Please note also that Commission President Juncker announced in the White Paper a communication on Harnessing Globalisation to allow for further reflection in this area.

Throughout the current process of exploratory talks and the forthcoming negotiating process for a multilateral reform of investment dispute resolution, the Commission welcomes input from all interested parties. In this sense, the online public consultation and recent dedicated events with stakeholders have relayed very valuable feedback that is now being carefully analysed and processed by the relevant Commission services.<sup>1</sup>

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<sup>1</sup> The results of the online public consultation are available online at [http://trade.ec.europa.eu/consultations/index.cfm?consul\\_id=233](http://trade.ec.europa.eu/consultations/index.cfm?consul_id=233).

We appreciate the active involvement of key stakeholders in the developments and implementation of Commission initiatives and public consultations. We look forward to further exchanges on this issue.

Yours sincerely,

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