



**EUROPEAN COMMISSION**  
Directorate-General for Trade

The Director General

Brussels, **15 DEC. 2015**  
TRADE/AS/am 4137071

Dear Petitioner,

Thank you for your emails to President Juncker expressing your concern about the inclusion of Investor to State Dispute Settlement (ISDS) in the TTIP.

ISDS is the classical means of enforcement of investment agreements. It has been included in nearly all of the 3000 existing investment agreements worldwide. EU Member States have included ISDS in almost all of their 1400 investment agreements with third countries. But over the last months the Commission has worked hard to improve the current system by addressing its perceived flaws.

Under the EU's approach, which is also being pursued in the TTIP negotiations, there are only very limited cases where an investor would be able to bring a claim. Investors would be able to bring a claim if they consider that they have been discriminated against by the host State, if they have been expropriated without compensation, have been denied access to justice or prohibited from transferring capital abroad. A foreign investor would not be able to challenge a government simply on the grounds that he has lost profits nor would a dispute settlement tribunal be able to overturn a democratically adopted law. The investment texts concluded with Canada and Singapore which are available on the DG Trade website should bring you the necessary reassurances on these points.<sup>1</sup> In particular you will see that instances where an investor would be able to bring a dispute settlement claim do not in fact go beyond rights which are already part of the European Convention of Human Rights.

Being able to challenge a State if you consider that your rights have been breached is a fundamental right. It does not mean that your claim will be successful. In fact available data on concluded ISDS cases shows that in the majority of cases, investors are not successful in their claims against the host State.<sup>2</sup>

In September, the Commission presented its new approach, a whole-sale reform of the provisions, accompanied by a new investment court system. The EU's approach reaffirms the right of Governments to regulate and clearly defines the standards of

---

<sup>1</sup> <http://ec.europa.eu/trade/policy/accessing-markets/investment/>

<sup>2</sup> [http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3_en.pdf)

investment protection in order to avoid that a non-discriminatory measure of general application taken for legitimate public welfare objectives such as health or environment protection be considered equivalent to expropriation.

Following the public consultation held in 2014 on the EU's proposed approach to investment protection in TTIP, we identified the scope for further improvements of the dispute resolution system to make it function as an investment Court and thereby more like traditional courts and including an appeal mechanism. You can find more details in the Commission concept paper "Investment in TTIP and beyond – the path for reform" available on Commissioner Malmström's website.<sup>3</sup> This concept paper has subsequently been fleshed out and EU text proposals were presented on 12 November 2015.<sup>4</sup> These proposals translate the policy objectives into legal language. In particular, the standards of protection are drawn up in a precise legal manner; the right to regulate is explicitly guaranteed and protected; dispute resolution takes place in a new system, subject to democratic principles and scrutiny, where potential cases are treated in a transparent manner by publicly appointed, independent professional judges, in hearings accessible to the public and with a possibility to appeal.<sup>5</sup>

The end-goal is to ensure that the whole of the EU can reap the economic benefits which will be generated by the inclusion of investment in TTIP while at the same time excluding the possibility of abuse of the investment dispute resolution system, and preserving the right of governments to adopt or change legislation in the public interest.

A petition against TTIP was signed by thousands of citizens. However looking at the wider picture, the polls actually show that the majority of EU citizens continue to believe that this deal is a good idea for Europe and for them, as shown by the last Eurobarometer. There are nevertheless many people who are worried and the Commission takes these concerns seriously and has made considerable efforts to address them. However the debate has to be based on facts, not fear. Every European who wants to know what this agreement is about should be able to find out about it easily. This is the reason why the Commission has further increased transparency about the negotiations, so that every citizen can read not only legal text, but also explanations and summaries in plain language.

The Commission hopes that these elements will bring you some reassurance.

Yours sincerely,

Jean-Luc DEMARTY

T.O.

European Commission

Mauro PETRICCIONE

Deputy Director General  
DG TRADE



---

<sup>3</sup> [http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc\\_153408.PDF](http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF)

<sup>4</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1396>

<sup>5</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1364>