



EUROPEAN COMMISSION

STATEMENT

Brussels, 27 March 2014

"Improving ISDS to prevent abuse" - Statement by EU Trade Commissioner Karel De Gucht on the launch of a public consultation on investment protection in TTIP

Good afternoon ladies and gentlemen.

As you are aware, on the 21st of January I decided 'to pause' the part of the Transatlantic Trade and Investment Partnership or TTIP negotiations specific to Investor to State Dispute Settlement and Investor Protection.

I paused this part of the current talks toward the EU-US trade deal so my trade department could prepare a 'public consultation' on this specific issue.

I am pleased to announce that after intensive preparation, the European Commission is ready to launch this 'on-line' public consultation - which will last 90 days, counting from when the texts are available in all official EU languages.

During this public consultation period, I invite all those who are interested - whether organizations or individuals - to share their views with us.

As usual, the European Commission's public consultation will be held on-line. That said, I also intend to organize an event here in Brussels towards the end of the public consultation period to allow stakeholders to raise issues concerning the public consultation more directly with my trade team. We will provide further details - including the date - closer to the time.

To come back to the specifics of the public consultation; we have done our utmost to ensure that the explanations of highly technical international investment law in this public consultation are understandable and digestible.

There is a general explanation of investment protection and ISDS as well as how the Commission wants to improve the current system. Each section covers the situation under most existing investment agreements, and also explains the improvements which the EU is proposing.

The questions are also accompanied by relevant legal texts that reflect the approach pursued with Canada, the most recently negotiated investment and ISDS text. The EU proposes that this would serve as a negotiating basis for TTIP. Furthermore, each question comes with an explanation of the issue at hand and the problem it addresses.

With this in mind, the questionnaire covers some 12 key issues of interest, including the right to regulate; fair and equitable treatment for investors; and transparency and accountability of the ISDS system. There is also an open question allowing for more general comments on investment protection and ISDS.

So, I look forward to receiving the contributions from all interested parties in response to this public consultation. Once the consultation closes we will take the time necessary to digest all the responses and draw conclusions.

These conclusions would then be published on-line; and presented for further discussion by the European Parliament and all our Member State governments at Ministerial level on the way forward in respect of investor protection and ISDS.

Now, let me give you a very short summary of why the Commission has been arguing to include ISDS within TTIP.

First of all, because all EU member state governments have instructed us to do so – when they provided us with a legal mandate in June 2013 which included investment and ISDS.

Second, because what we will be putting forward in these talks is a new and improved system of ISDS which we believe will address existing loopholes, prevent abuse and improve transparency in the system. We aim to establish a more accountable and predictable system that respects the right to regulate and pursue public policy objectives.

To be perfectly clear, I fully agree with the many critics who claim that ISDS up until now has resulted in some very worrying examples of litigation against the state – to give you the most cited example: the case of a tobacco company against Australia challenging Australian law which obliges tobacco companies to sell their products with plain packaging.

But this case is still pending and we should not prejudge the outcome or jump to conclusions on what the final outcome will be.

What really does matter is that irrespective of the outcome in this case, we can already today improve the ISDS system. What we are working on already for some years will help to prevent frivolous legal actions in the future.

We need to ensure the right of the state to legislate in the public interest is fully preserved.

We want to create a state of the art ISDS system – one that is transparent and consistent and which can ensure the sound enforcement of investment provisions.

As I have made very clear in numerous press conferences and events in the last months, the problem lies in some features of the existing 3000 investment agreements currently in operation around the world. Of these, there are 1400 agreements between our individual member states and third countries – with some of these existing agreements dating back several decades.

Many of these existing arrangements have vague legal wording that has left the agreements vulnerable to expansive interpretation by some arbitration tribunals.

The only way to put a stop to this and close down such legal loopholes is to re-do investment protection standards and ISDS.

The only way to stop abuse in the future is to build a legally water-tight system; to ensure there is clear and detailed legal language which is not open to controversial or unintended interpretation and which creates a system which is transparent and accountable.

That is my only aim.

On the other hand, if we do nothing – then guess what...the current arrangements will stay in place and the potential for future abuse will continue. That's not my choice, but that's what would happen!

Is that what we all want...?

Surely...- even the critics of ISDS must agree that we should work together to create an improved system?

Surely...- even the critics must see that we have a real opportunity here to bring about important and positive change?

This is why I strongly believe in this public consultation so that we can all have clarity as to the facts, reflect on these issues together and get it right.

So once again, I invite everyone who is interested to participate in this public consultation.

As of today, the on-line public consultation is available in English. All other EU languages will be published as soon as they become available.

Only on the day of the publication of the final EU language version of the consultation text...will the '90 day clock' start ticking.

So, I look forward to receiving the many contributions and I would like to thank the public for their interest in this issue and TTIP to date.