



A Multilateral Investment Court: a contribution to the conversation about reform of investment dispute settlement

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Deputy Prime Minister Reynders,
Ladies and gentlemen,

Thank you for inviting me here today. I am glad for this opportunity to set out the EU's views on the Multilateral Investment Court project.

The multilateral system is currently under threat. In particular, the body that has underpinned global trade for decades. A body that has overseen an historic opening of markets and integration of economies – the World Trade Organization. Created as part of a vision. A vision of a global architecture to uphold the liberal world order – standing against anarchy and authoritarianism after WW II.

The European Union is committed to multilateralism. This commitment does not come from idealism – it comes from experience. In the EU, collective action and institutions do not only create peace – they create prosperity too. This is particularly true for trade and investment. This is not just true for our continent. It is true for the world.

Multilateralism creates an environment where trade and investment can prosper, and trade and investment have been a powerful tool for growth and development. When used in the right way, trade and investment can change the world for the better.

For trade and investment to support sustainable development, we need rules. Those rules need to be backed up with effective enforcement. This is why we need neutral and effective dispute settlement mechanisms.

NOT FIT FOR PURPOSE

The EU has put forward a broad set of ideas to modernise the WTO in all its functions. They would involve changes to:

- the dispute settlement system
- updating the rulebook
- and strengthening the processes of the WTO itself

Just as we seek to reform the WTO, we seek to reform investment dispute settlement too. Unlike the WTO, the dispute settlement mechanisms for investment were not designed for their current purpose. They were designed in the 1960s and based on commercial arbitration – on a system for resolving private commercial disputes, not the public type of disputes which in fact arise. It has proven to be inadequate.

The European Union has sought to change these systems. It has been including a new investment court system in its latest agreements. Canada, Singapore, Vietnam, Mexico – All of these agreements now contain the investment court system. These are crucial stepping-stones towards multilateral reform.

UNCITRAL PROCESS

I am grateful that the United Nations has stepped up to the challenge. The United Nations Commission on International Trade Law – or UNCITRAL – decided to start work on this reform in July 2017. I am particularly happy that Anna Joubin Bret is here today. As Secretary of UNCITRAL, she is particularly well placed to explain the detail of the work.

I particularly welcome the focus UNCITRAL puts on inclusiveness and transparency. The EU has supported these efforts whenever possible. We can see these efforts are paying off. The attendance at the last discussion was impressive. More than 90 countries. There is clearly an appetite for change.

Three weeks ago in Vienna there was consensus that reform should happen. This is an important achievement which seemed impossible even two years ago. These discussions are the first real multilateral discussions on ISDS. I am proud that the EU has contributed to getting the international community thus far.

In UNCITRAL, states all over the world have identified problems with the current system, and identified where reform is desirable. These problems are:

- a lack of consistency and correctness
- the role of arbitrators
- the costs and duration

The next step is to find solutions. UNCITRAL will now start gathering and examining different options.

The European Union believes that systemic reform is how we can address these concerns – and that only one of the options on the table can effectively address these concerns. That is the creation of a permanent body to resolve investment disputes – a multilateral investment court.

Only a permanent body can create predictability and consistency. The current system cannot achieve this. Only a permanent body with an appeal can ensure correctness. Only a permanent body with full-time adjudicators can address the potentially perverse incentives of the current system. Only a permanent body with full-time adjudicators eliminates ethical concerns.

Only a permanent body can bring about the expertise that the system needs. To apply public international law you should be steeped in it. To practice the art of judging you need experience in judging.

Only a permanent body can effectively address costs and duration. It will remove the costs of choosing the arbitrators. It would reduce the duration and costs of proceedings too. This is important for SME access. Aside from this it would need to be able to be applied to the 3000 existing treaties.

It would therefore need to be flexible in jurisdiction, and able to handle evolution in the content of treaties, for example if countries decide to extend them to cover investor obligations.

Finally, only a permanent body can assure equal representation. Right now we are not achieving that – geographical representation and appointments of women are both low. The situation with is unacceptable, we need more variety.

MULTILATERAL DISCUSSIONS

To be fully inclusive and to address all concerns, our discussion must be multilateral. The EU will put forward its ideas in the next phase of the UNCTRIAL discussion. These ideas, as I have laid them out today, are a contribution to a conversation.

We are convinced that only a permanent body can truly respond to the identified concerns, but this is not for one state – or group of states – to decide.

A multilateral reform needs multilateral discussion. It needs to take into account other initiatives to reform – like those at the International Centre for Settlement of Investment Disputes, which we will hear about from Meg Kinnear. We need to support those reforms, while at the same time pushing reform further.

We will need ideas and proposals from across the board. We have to ensure effective coordination too, so that all inputs will be heard. This is how we will successfully redesign international investment dispute for the 21st century. With a permanent body – one fit for purpose and respected by all.

CONCLUSION

This is a critical part of a broader plan. The EU is committed to multilateralism in all its forms. Increasingly, countries are standing up for the multilateral system. There is one lesson we can take away from the challenges and crises of late: If we want our systems to survive, they need to be able to adapt.

The WTO guarantees stable open trade in the world. We propose a Multilateral Investment Court to create a stable international investment environment – one we can all trust.

Thank you.