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NOTE

from:	General Secretariat of the Council
to:	Delegations
Subject:	Partial summary of the meeting of the European Parliament **Committee on International Trade (INTA)** held in Brussels on 18 and 19 March – Items 3 to 4 and 6 to 15 on the agenda Chair: Mr Lange (S&D, DE)

- **INTA held an exchange of views with the Ambassador of Japan to the EU. Both the Japanese Ambassador and the EU Chief Negotiator called for an ambitious FTA agreement between both parties by the end of 2015.**
- **It also held an exchange of views with Commissioner Malmström on ISDS in TTIP during which Ms Malmström presented the Commission's preliminary set of reforms for investor protection in TTIP following the public consultation launched in 2014. MEPs broadly welcomed the Commission's preliminary proposals but several political groups including the S&D, Greens/EFA, GUE/NGL and EFDD groups remained largely critical of ISDS.**
- **It approved by large majorities the reports on macro-financial assistance to Ukraine and on the suspension of trade preferences with Bosnia and Herzegovina (BiH).**
- **It considered the amendments proposed in its draft report on conflict minerals, with differences remaining between the political groups over the approach and the scope to be adopted.**

3. Exchange of views with Keiichi Katakami, Ambassador of Japan to the EU, on EU-Japan trade relations

Ambassador KATAKAMI underlined Japan's commitment to obtaining in principle an ambitious and comprehensive Economic Partnership Agreement or Free Trade Agreement (FTA) with the EU by the end of 2015. Both Commissioner MALMSTRÖM and Japanese Foreign Affairs Minister KISHIDA viewed this objective as ambitious but feasible. The differences in the positions of both sides had become clearer in some sectors following the 9th round of negotiations in Brussels, especially on services and investment, market access, trade in goods and procurement which, according to Mr KATAKAMI, demonstrated the advanced state of negotiations. Japan had delivered substantially on the implementation of the non-tariff measures agreed during the scoping exercise and had been steadily adopting the United Nations Economic Commission for Europe (UNECE) regulations in the car sector. It was also cooperating actively with the EU in establishing the single International Whole Vehicle Type Approval (IWVTA) regulation, while Japanese railway companies were expected to conduct procurement in compliance with the principles of transparency and non-discrimination.

Mr SILVA PEREIRA (S&D, PT), the current standing rapporteur for trade negotiations with Japan, called for a good, balanced agreement, whereas Mr SCHOLZ (GUE/NGL, DE) favoured quality over speed. MEPs also voiced concerns over regulatory cooperation and investor protection; the level of consumer protection (Mr WAŁĘSA - EPP, PL); food standards (Mr BUCHNER - Greens/EFA, DE); geographical indications (Mr FISAS AYXELÀ - EPP, ES); and the link to other ongoing trade negotiations such as the Trade in Services Agreement (TiSA) and the Trans-Pacific Partnership (TPP) (Ms REDING - EPP, LU).

The EU Chief Negotiator, Mr PETRICCIONE, said that despite positive developments during the first year package, more was needed on non-tariff measures, procurement (particularly on market access and railway procurement), tariffs, services, and investment. He called for an ambitious agreement similar to the FTAs with South Korea and Canada, if possible by 2015, and said that TPP negotiations could have a positive impact on EU-Japan trade negotiations.

Ambassador KATAKAMI noted that Japan attributed equal importance to trade negotiations with the EU and the trans-Pacific region and viewed provisions on Investor-State Dispute Settlement as a last resort for investors.

4. Recommendations to the European Commission on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP)

INTA/8/01962 2014/2228(INI)

Rapporteur: Bernd Lange (S&D)

- Further consideration of draft report

MEPs once more welcomed the draft report and underlined the need to regain the confidence of citizens. They warned about drawing additional red lines and issuing yet another 'negotiating mandate' and called instead for a constructive position which would clearly spell out what the European Parliament wanted with regard to the Transatlantic Trade and Investment Partnership (TTIP). Investor-State Dispute Settlement (ISDS) and the nature of lists (positive or negative) remained fairly controversial issues among the political groups. While the S&D questioned the need for an ISDS chapter in TTIP, the EPP backed it as it provided legal certainty. Moreover, the EPP through Mr FJELLNER (EPP, SE) asked what the S&D position was on ISDS as the vice-chancellor, Economy minister and leader of the German Social Democratic party, Mr Sigmar GABRIEL, seemed to be more favourable to ISDS than the rapporteur Mr LANGE (S&D, DE). Mr JADOT (Greens/EFA, FR) and Mr SCHOLZ (GUE/NGL, DE) supported the rapporteur's position on ISDS, with Mr JADOT criticising the 'perversity' of the system, and Mr SCHOLZ underlining growing opposition to ISDS in the US. Mr LANGE favoured investor protection but not under the ISDS format.
As regards positive and negative lists, the S&D and ALDE groups through Ms ARENA (S&D, BE) and Ms CHARANZOVÁ (ALDE, CZ) favoured a positive approach, whereas the EPP group through Ms QUISTHOUDT ROWOHL (EPP, DE) supported negative lists, arguing that the agreement should be future proof and should not exclude new services especially in the digital area. The S&D group expressed concerns about negative lists and the implications for public services.

Mr GARCIA BERCERO, Director at DG Trade, acknowledged the significance of the EP's recommendations. He mentioned the changing political context in the US and said that delays were expected in setting up the Trade Promotion Authority, originally scheduled for April/May. He warned against the negative impact of setting new red lines and told INTA that the Commission would almost certainly adopt a hybrid approach on the issue of lists. He reiterated the Commission's assurances on safeguarding public services and ensuring high levels of protection for EU citizens.

6. Exchange of views with Cecilia Mälmstrom, Commissioner for Trade, on the public consultation on modalities for investment protection and investor-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP)

Commissioner MALMSTRÖM made the intervention contained in ANNEX I. She viewed the new reform approach to TTIP as a starting point, with the recently concluded Comprehensive Economic Trade Agreement (CETA) with Canada as a baseline as it contained some of the improvements proposed by the European Parliament (EP). These included in particular: a reference for the first time to the right to regulate; provisions to reduce the scope for abuse through better definitions and to narrow key concepts like 'fair and equitable treatment' and 'indirect expropriation'; provisions granting governments and not arbitrators the ultimate control over the interpretation of the rules; including for the first time a code of conduct for arbitrators; and provisions for a future appeal mechanism, including clear requirements for the transparency of the tribunal process. The four sets of reforms for investor protection in TTIP proposed by the Commission included: the insertion of either a full article that would clearly state governments' rights to freely pursue public policy objectives and choose the level of protection deemed suitable or a clause stating that investment protection rules did not offer any guarantee for investors that the legal regime under which they had invested would remain the same; the nomination, long before any actual cases were launched, of a list of sufficiently qualified trustworthy arbitrators who would decide on all TTIP investment cases by the governments; the inclusion of an appeal body, with permanent members, directly in TTIP; and forcing investors to choose between national courts and ISDS from the outset, or forcing investors to abandon any proceedings started in national courts if they decided to launch an ISDS case.

During the exchange of views, MEPs from the EPP, S&D and ECR groups broadly welcomed the new proposals. Mr McCLARKIN (ECR, UK) suggested moving the debate from having or not having investor protection to the form investor protection should take. However, Ms KELLER (Greens/EFA, DE) claimed that the discussion should focus primarily on having or not having ISDS at EU level.

INTA Chair and standing TTIP rapporteur Mr LANGE (S&D, DE) agreed with calls to develop an adequate investor protection mechanism in general but differed over the need for an extra judicial dispute settlement system between the EU and the US. Mr LAMBSDORFF (ALDE, DE) and Mr CAPSARY (EPP, DE) on the contrary advocated an ISDS, since in their opinion the US legal system did not ensure full impartiality for EU investors.

Mr JADOT (Greens/EFA, FR) and Ms ARENA (S&D, BE) pointed to the lack of any empirical evidence demonstrating that an investment protection system through private arbitration bodies favoured additional investment. Mr JADOT viewed ISDS as a system that defied both the EU's and the Member States' court systems, while Mr SCHOLZ (GUE/NGL, DE) felt that ISDS did not respond to the needs of the globalised 21st century as it consisted of private arbitration systems for treaties agreed between states. Mr FJELLNER (EPP, SE) called for greater transparency and criticised the EU's failure to sign the UN ISDS Convention on transparency rules. He also proposed the inclusion of the 'loser pays' principle. The S&D and Greens/EFA groups criticised the inconsistencies in Ms MALMSTRÖM's calls to reform the existing ISDS mechanism in several existing international agreements but not in the CETA. Both groups called for further improvements in the CETA in order to secure the right to regulate in the entire text (and not just in the preamble), to ensure impartiality and a review system, and to exclude the parallel use of national and international arbitrations. Ms BEGHIN (EFDD, IT) noted that the issue of potential conflicts of interest and the independence of the arbitration bodies in the CETA had not been resolved yet. However, the EPP through Ms QUISTHOUDT-ROWOHL (EPP, DE) agreed with Ms MALMSTRÖM that the CETA should not be reopened unilaterally by the EU as it could jeopardise the entire agreement. Moreover she felt that ISDS was more suitable for SMEs than a state-to-state dispute settlement as proposed by Mr LANGE. There seemed to be general agreement among the political groups on the creation of a legally binding permanent international dispute settlement mechanism. Nevertheless, all agreed this was not foreseeable in the short run. German EPP MEPs questioned the appeal mechanisms laid down in the proposal as this could be onerous for SMEs and give investors a second chance to challenge detrimental rulings.

Ms MALMSTRÖM said that existing ISDS provisions in bilateral agreements could not simply be scrapped; instead, they could be reformed. International agreements were not 'law' in US courts and in most cases ISDS had been mostly used by EU companies and in particular by SMEs. Many reforms advocated by the EP including the 'loser pays' mechanism were already in the CETA. Ms MALMSTRÖM referred to the current proposal to move the formalised right to regulate from the preamble in the CETA to the legal text and pointed out that the CETA was a closed agreement which should not be reopened. She did not foresee new discussions on ISDS provisions with the US and Canada before the Council and the EP agreed on a common position non the issue. She felt that the set-up of a permanent international court was a good idea and noted that the appeal mechanism could be used by both investors and states.

7. Hearing: TTIP: what's in it for the Europeans?

INTA/8/02423

Rapporteur: Bernd Lange (S&D)

Commissioner MALMSTRÖM opened the hearing by emphasising the transparency requests from European citizens and their representatives in the European Parliament. The hearing was a good way to publicly address the expectations of EU companies and civil society.

Ms MALMSTRÖM viewed the TTIP as a win-win agreement on both sides of the Atlantic. Three main benefits could be expected: TTIP would benefit the EU in the sense that the normative and regulatory outcomes on a wide range of trade areas would give the EU a stronger voice on the world's stage. Furthermore, it would offer more efficient governance in EU-US trade relations by laying down the highest possible standards in key areas such as food, medicine or the chemical industry, and it would reduce the production costs of European companies by getting rid of non-tariff barriers and drastically reducing customs duties.

A lively debate followed between representatives of the *Bureau Européen des Unions de Consommateurs* (the European Consumer Organisation), Michelin, British Telecom, the Swedish Trade Union Confederation, the Port of Rotterdam, representatives from the spheres of architecture, transport and the environment, the moderator of EU Trade Insights and MEPs[1].

[1] See Annex II for the draft programme of the hearing and the name of the panellists.

From the various discussions one clear expectation emerged: full and transparent access to public procurement in the US. Productivity gains were expected as a result of the reduction in customs duties. Other benefits would also include a degree of convergence of labour standards if the US made a commitment to ratify more agreements on the International Labour Organisation conventions.

8. Macro-financial assistance to Ukraine

INTA/8/02513 2015/0005(COD)

Rapporteur: Gabrielius Landsbergis (EPP)

- Consideration of amendments

Mr LANDSBERGIS (EPP, LT) announced that 43 amendments had been tabled, and underlined the broad consensus within INTA over the need for swift adoption of the proposal. Mr BOȘTINARU (S&D, RO) Mr PIECHA (ECR, PL), Ms CHARANZOVÁ (ALDE, CZ) and Mr JADOT (Greens/EFA, FR) expressed their support for the Ukrainian people and, like the Council, backed the Commission proposal without amendments.
However, Mr SCHOLZ (GUE/NGL, DE) felt it was important to address the conditionality of the macro-financial assistance (MFA) to Ukraine (UA) as he feared the country would not be able to reimburse the MFA.
Mr CHAUPRADE (NI, FR) referred to the ongoing civil war in UA which he believed had been caused by the EU pushing Russia to defend its people in eastern Ukraine. Moreover he was convinced that the MFA would be used for the rearmament of the Ukrainian army. Mr CASPARY (EPP, DE) rejected Mr CHAUPRADE's allegation, noting that the civil unrest in UA had been mainly caused by Russia and that Mr CHAUPRADE's political party was financed by Russian banks (Mr LANDSBERGIS pointed out to Mr CHAUPRADE that there were no EU troops in Ukraine and that the EU had not occupied Crimea).

The Commission reassured the EP that it would approach the conditionality in the programme in a realistic manner.

9. Exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process and suspending its application with regard to Bosnia and Herzegovina

INTA/8/00663 2014/0197(COD)

Rapporteur: Goffredo Maria Bettini (S&D)

- Consideration of draft report

Mr BETTINI (S&D, IT) announced that 7 amendments had been tabled. Some amendments were aimed at relaunching EU membership prospects for Bosnia and Herzegovina (BiH), while others referred to the use of delegated acts for several parameters to give the European Parliament more oversight. Mr BETTINI rejected the Greens/EFA amendments deleting the suspension clause proposed by the Commission and suggested moving forward with trilogue negotiations once the draft report had been voted in committee.

Mr STIER (EPP, HR) welcomed the report and simply asked BiH to play by the rules. Mr JADOT (Greens/EFA, FR) did not support the draft report or the Commission proposal, saying that the approach was not balanced and presented economic risks for BiH.

The Commission expressed strong reservations regarding the institutional aspect of the delegated acts which, if they were to be approved, would considerably slow down the implementation of the Regulation compared to implementing acts.

****** Voting time ******

10. Macro-financial assistance to Ukraine

INTA/8/02513 2015/0005(COD)

Rapporteur: Gabrielius Landsbergis (EPP)

- Adoption of draft report

The draft report was adopted with 30 votes in favour, 7 against and 0 abstentions.

11. Exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process and suspending its application with regard to Bosnia and Herzegovina

INTA/8/00663 2014/0197(COD)

Rapporteur: Goffredo Maria Bettini (S&D)

- Consideration of draft report

The draft report was adopted with 31 votes in favour, 6 against and 0 abstentions.
The committee decided by a large majority to engage in trilogue negotiations.
****** End of vote ******

12. Strategy for the protection and enforcement of intellectual property rights in third countries

INTA/8/01642 2014/2206(INI)

Rapporteur: Alessia Maria Mosca (S&D)

- Consideration of draft report

Ms MOSCA (S&D, IT) felt that it was useful to address the changes that had taken place in the last few years, particularly in the digital world. She listed some of the strengths and weaknesses in the Commission's strategy and explained that the report aimed to strike the right balance between the rights of holders and end-users. It also stressed the need to establish a link between the protection of intellectual property rights (IPRs) and other policies, including the fight against counterfeiting and organised crime. The distinction between physical and digital goods was equally important. Moreover she felt that the European observatory on IPRs should be managed independently and allocated sufficient resources.

The shadow rapporteurs broadly supported the draft report. They agreed that there was insufficient enforcement of IPRs, expressed interest in learning lessons from the rejection of the Anti-Counterfeiting Trade Agreement (ACTA) and broadly agreed with calls for proper enforcement of IPRs. However, they expressed some doubts about paragraphs 12, 20 and 22 (Mr FISAS AYXELÀ - EPP, ES), paragraphs 22 and 36 (Ms McCLARKIN - ECR, UK) paragraphs 27, 31, 36, 39 and 43 (Mr SCHOLZ - GUE/NGL, DE, on behalf of Ms MINEUR - GUE/NGL, DE), and paragraph 19 (Mr JADOT - Greens/EFA, FR).

The Commission was increasingly working with Member States and stakeholders to coordinate efforts and to discuss issues relating to access to medicines.

Ms MOSCA said that she had prepared an amendment to paragraph 12 on the implementation of the Trade-Related Aspects of Intellectual Property Rights. She explained that it was important to find ways to involve different partners in introducing an obligation for banks to automatically sanction fraud happening on the internet (paragraph 20), and felt it was unwise to make the situation more difficult for countries with which the EU already had an agreement regarding the criteria to be applied for the Generalised Scheme of Preferences Plus programme (paragraph 22). She called for consistency on a possible extension of protection of the EU's geographical indications to non-agricultural products (paragraph 36), and agreed that the prices of medicines should not be solely regulated by the market (paragraph 27). She did not advocate setting up a new EU Observatory on IPR infringements (paragraph 31), and instead called for proper use to be made of the existing Observatory and for internet providers to be given more responsibilities. Regarding ACTA, she said it was essential to involve citizens as much as possible in order to ensure a valid initiative.

13. European Energy Security Strategy

INTA/8/01753 2014/2153(INI)

Rapporteur for the opinion: Helmut Scholz (GUE/NGL)

- Consideration of amendments

83 amendments and 7 compromise amendments had been tabled and the vote on the draft opinion had been postponed until April to take into account the new Commission package on the Energy Union. Most amendments consisted in incorporating energy security into trade agreements, diversifying energy production in the EU, reducing energy dependence, and strengthening alternative energy sources. Additionally, Mr SCHOLZ (GUE/NGL, DE) held that access to affordable energy was a fundamental human right.

Mr SZEJNFELD (EPP, PL) felt that compromise amendments 1, 2, 3, 6 and 7 still required some fine tuning. He stressed the precedence of energy security over climate policy and of the European dimension of energy security over global challenges. He felt it was equally important to underline the importance of energy self-sufficiency and direct foreign investment and proposed deleting references to the euro/dollar exchange rate and to energy efficiency worldwide.

Mr LANGE (S&D, DE) was convinced that energy generation in other countries was linked to energy security. In his opinion, EU trade agreements should contain energy chapters and in particular provisions on energy-generation dumping. Moreover, the draft report should include references to information reporting requirements and to ongoing trade negotiations impacting energy supply.

Ms McCLARKIN (ECR, UK), on behalf of Mr ZAHRADIL (ECR, CZ), expressed concern about amendments on the creation of a border adjustment mechanism, emissions and collective purchasing agreements at EU level.

Ms KELLER (Greens/EFA, DE), on behalf of Mr BUCHNER (Greens/EFA, DE), believed environmental and sustainability concerns should be part of any energy security strategy and that the diversification of energy supply should remain consistent with internal EU policies and should not include shale gas and tar sands.

The Commission stressed the important role played by international trade in securing the EU's energy security as well as the significance of the external dimension in the recently adopted Energy Union, in which the first of the five pillars was energy security and security of supply. A number of geographical areas had been highlighted, in particular: strengthening the EU's partnership with key partners such as the US, Canada and Australia; developing strategic energy partnerships with key transit and production countries such as Turkey, Algeria, Azerbaijan, Turkmenistan and some African countries; developing liquid gas hubs and electricity and renewables relationships with Mediterranean countries; and linking the EU with the Caspian area where important resources of gas and oil were available. The Commission also highlighted the need to ensure that energy chapters were included in trade agreements and destination clauses in intergovernmental agreements.

14. Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas

INTA/8/00381 2014/0059(COD)

Rapporteur: Iuliu Winkler (EPP)

- Consideration of amendments

576 amendments had been tabled and the DEVE Committee had approved its opinion with 50 amendments. However, AFET had not been able to agree on its opinion.

Mr WINKLER (EPP, RO) explained that the trade regulation being debated was one of the three pillars of the EU integrated approach. The two remaining pillars consisted of accompanying measures aimed at helping EU companies to update the self-certification system, and accompanying measures to be deployed through political, diplomatic and development cooperation in conflict-affected and high-risk areas. He felt that the regulation should fulfil a number of conditions in order to be efficient, by taking on board existing experiences and functioning mechanisms. It should also be proportionate, so as to avoid unilateral imposition of obligations on EU undertakings and respect the principles of prudent legislation. It should include a review clause to accommodate developments in the Organisation for Economic Cooperation and Development (OECD) due diligence guidance, and avoid the risk of trade diversion and disengagement from conflict regions and affected areas as well as undesirable embargo effects. Mr WINKLER also mentioned the letter received from HR MOGHERINI and Commissioners MALMSTRÖM and MIMICA on the accompanying measures envisaged by the Commission and in particular the use of EUR 20 million of EU funds for the period 2016-2020.

Ms McCLARKIN (ECR, UK) also backed the Commission proposal. She noted that the industry was already carrying out due diligence and therefore warned against unwanted duplication. She also expressed concern about the effects a mandatory approach would have on SMEs.

Ms ARENA (S&D, BE), Mr SCHOLZ (GUE/NGL, DE), Ms KELLER (Greens/EFA, DE) and Ms BEGHIN (EFDD, IT) wanted the legislation to have a global impact all along the chain and therefore reiterated their preference for a method that would be binding throughout the entire production chain and cost-free for SMEs, based on the OECD due diligence guidelines.

Mr SCHOLZ advocated a two-year transitional period, while Ms KELLER favoured including other natural resources apart from tin, tantalum, tungsten, their ores, and gold and claimed that the Dodd-Frank Act had a limited geographical scope which had made companies move elsewhere.

The Commission was not proposing a mandatory system for the upstream because it wanted to avoid trade diversion and disengagement from conflict regions. It also worried about the competitive disadvantage this could cause to the downstream industry and about potential security supply disruptions to European industry. Consequently, it favoured a voluntary system with a possible review after three years. It also stressed that there was public demand for responsible sourcing, and it therefore preferred to boost the process by providing a legislative and institutional framework coupled with an incentive package, rather than over-regulating.

15. Monitoring Groups' Activities

INTA/8/01441

- Exchange of views

Mr CAMPBELL BANNERMAN (ECR, UK), chair of the monitoring group on **India**, referred to the first meeting of the monitoring group which took place on 4 March in the presence of the EU's Chief Negotiator, Mr GARCIA BERCERO, and the Head of the India Division at the European External Action Service, Ms CASTILLO FERNANDEZ. He emphasised the potential of an EU-India trade agreement, given the predictions that India's population would grow by 200 million in the next 15 years, and regretted the fact that the EU-India summit had not yet materialised.

Furthermore he identified five areas likely to pose problems in trade negotiations with India: tariffs and services (wines and spirits, cars and car parts, services, insurance, mode 4), data protection issues, government procurement, intellectual property and Geographical Indicators/sustainable development.

Ms BEGHIN (EFDD, IT), on behalf of Mr BORELLI (EFDD, IT), chair of the monitoring group on **Turkey**, referred to the meetings with DG TRADE and DG NEAR and with the Director-General in charge of EU affairs in the Turkish economy ministry (who was also the Turkish Chief Negotiator for all trade agreements). The aim of those meetings was to listen to their points of view on the EU-Turkey customs union talks. Additionally, the Commission and the Turkish government were expected to come up shortly with a joint report outlining proposals and processes for updating the customs union.

Mr SCHOLZ (GUE/NGL, DE), chair of the monitoring group with the **Andean Community** countries, referred to the exchange of views on the state of play of Ecuador's accession to the Trade Agreement with Colombia and Peru. He recommended the preparation of a resolution in the second half of the year on this matter and announced that the Ecuadorian Minister for Trade would be visiting Brussels on 26 March.

17. Date of next meeting

The next meeting would be held in Brussels on 13 and 14 April 2015.

Speech by Ms Malmström Commissioner for Trade

Honourable Members,

We're here today to talk about investment in the Transatlantic Trade and Investment Partnership. Of all the issues in TTIP it has received the most attention and raised the most concern.

In some ways that's surprising. Over 60 years, national governments in the EU negotiated 1400 bilateral investment treaties without any outcry. That network helped European companies become the largest foreign investors in the world. And the investments they made helped create the wave of prosperity that swept Europe in the post-war decades. Moreover, for the countries we partnered with, the deals encouraged much needed capital inflows and created employment.

But the reality is that people's concerns are not surprising at all.

The context for international investment agreements has changed. Part of the reason for our current debate is because the European Union, not national governments, is now in charge of our international investment policy. That has raised broader awareness and brought more openness.

Moreover, with deepening cross-border economic ties, the overall number of agreements has risen and the nature of some disputes has changed. Whereas disputes in the past were mostly on straightforward investment issues, in some cases companies have now sought to push the boundaries of interpretation. That has led to situations that do surprise reasonable people, including me.

On closer examination, of course, we find that the reality is often less dramatic than the headline:

- The most controversial cases are still not decided.
- In general investors lose more cases than they win.
- And in many cases, excessive requests are flatly rejected.

But what many of these disputes make clear is that there is a problem with the investment agreements of the past: they were drafted more with the investor in mind than the state's right to regulate.

That fact has made this one of the most hotly debated European issues of recent years.

Because of the intensity of that debate, the Commission last year chose to launch a public consultation on our approach to investment protection in TTIP. We announced our detailed analysis of the results in January so I won't go into them again here.

Suffice it to say, the vast majority of the individual responses rejected either TTIP in its entirety or ISDS more specifically. But the responses from interest groups representing groups of people were more mixed.

Let me be clear on how we interpret those results. The consultation was not a referendum even if the responses showed huge scepticism and concerns about the system.

What the consultation did do is allow us to understand the main concerns about the system and give us ideas for how to address them.

And I am happy to say that we in the Commission share most of the concerns that have been raised.

Since we got the competence for investment our view has been clear: the current network of agreements in place is not fit-for-purpose in the 21st century. We want the rule of law, not the rule of lawyers. If we are to continue with investment protection and international arbitration, it will need to be a very different animal. And that is why we started to reform ISDS already in the Canadian agreement, CETA.

That is what I would like to talk to you about today. I am not here to present a final proposal. Instead, I want to open a dialogue around some preliminary ideas for a way forward. I look forward to the discussion we will have.

Let me start by stating what is perhaps obvious. The Commission's assessment is that we need to negotiate rules on investment protection and ISDS in TTIP. I know that some members of this house believe otherwise, for various reasons.

But my view is that we should, and for the following reasons:

First, there are issues to be addressed in the US specifically.

Some believe that there is no problem in the US that ISDS can solve. "The US has a fully functioning legal system," they say. "So what are we worried about?"

It is true that the risks of expropriation and discrimination are much lower in the US than in other parts of the world. But the fact remains that no US law prohibits discrimination against foreign investors. Putting investment in the deal would close that gap, but only if the commitments are enforceable.

ISDS is the only way to enforce them effectively:

- International law cannot be invoked in US courts.
- And state-to-state dispute settlement would effectively cut off small companies from the system, since the EU will only be able to pursue a limited number of very big cases, as happens in the WTO today.

It's also important to be aware our main competitors on the US market, Canada and Japan have or will have access to investment protection, while without including it in TTIP, Europe will not.

Second, nine Member States already have functioning investment protection deals with the US. Those deals haven't stopped those countries from implementing the entire EU acquis before 2004. But they're problematic because they don't incorporate the reforms I believe are necessary to rebalance the system in favour of the democratic process. Absent new rules in TTIP, these old-style, unsatisfactory BIT's will remain in place. This is a situation we need to change.

Third, the US is the indispensable starting point for a reform of the existing 3000 international investment agreements around the world. Between us, we account for the lion's share of existing agreements and the lion's share of global foreign direct investment. The US also shares many of our goals of protecting the right to regulate. A new reformed approach in TTIP will be a strong starting point for reform of our 1400 European deals with other partners, including our other ongoing negotiations.

Among those, however, Canada is different. It is already concluded. And it already incorporates many of the good ideas from Members of this House:

- First and foremost, there is, for the first time ever, a reference to the right to regulate.
- By better defining and narrowing key concepts like “fair and equitable treatment” and “indirect expropriation”, we are narrowing the scope for abuse.
- We gave governments, not arbitrators, ultimate control over interpretation of the rules. If the EU and Canada don't agree with an arbitrator's determination we can issue a legally binding statement of how we want it to be interpreted.
- We included, for the first time, a code of conduct for arbitrators.
- We opened the door to a future appeal mechanism.
- We included clear requirements for the transparency of the tribunal process.
- And we obliged investors to drop cases in national courts if they want to pursue ISDS.

We will propose any further changes we collectively agree on in TTIP to the Canadian government. But I do not want to raise anyone's hopes. From Canada's perspective this is a done deal. Moreover, the overall economic results are very good for Europe. Unravelling the results we have would be a serious mistake. In any case, there are review clauses in the deal that will allow us to revisit the issue in future, and Canada shares our view of the importance of guaranteeing the right to regulate.

For all these reasons, I believe the question about putting investment in TTIP is not whether we should do it but how we can do it right. Can we design a new form of investment arbitration that keeps the benefits but avoids the negatives? I believe the answer is yes. And that with CETA as a baseline, the four sets of further reforms I'm suggesting today will be an excellent way of doing so. But let me stress again: these are preliminary ideas, the start of a discussion, not our final answer.

First, the most substantive concern expressed by respondents to the survey is that investment arbitration in TTIP will be a barrier to Europe's noble tradition of high quality regulation. Some worry that existing ISDS arrangements give companies too much leeway to attack regulation they deem is not in their interests. Others worry that the mere existence of a possibility of cases chills regulators' activities. These are real concerns that any new investment arbitration system will need to address.

Our idea is that this could be done in two ways. We would like to include a full article in the text that makes clear that governments are free to pursue public policy objectives and they can choose the level of protection that they deem appropriate.

Another possible change would address the argument sometimes made that investors can sue just because the regulatory environment changes. Some respondents to the consultation were concerned about text in investment agreements that says that investors can expect a “stable business environment”. The feeling was that it would open the door to cases based simply on a change in regulation. Our idea is a clause that says that investment protection rules offer no guarantee for investors that the legal regime under which they have invested will stay the same.

The second way that the Commission suggests to improve the system concerns the way the tribunals work. Many are concerned that the system creates conflicts of interest because arbitrators are also lawyers and might expect to get business from the investors in future.

Our idea here is for governments, long before any actual cases are launched, to nominate a limited list of trustworthy arbitrators who would decide on all TTIP investment cases. To get onto the list, the arbitrators would have to be sufficiently qualified. For example, they would have to be eligible to be judges in their home systems.

Of course, this does not go the whole way to creating a permanent investment court, with permanent judges who would have no temptation to think about future business opportunities.

I know some have suggested this and I support the idea. In fact I have already instructed my staff to start working towards it. However, I believe that we should aim for a court that goes beyond TTIP. A multilateral court would be a more efficient use of resources and have more legitimacy. That makes it a medium-term objective to be achieved in parallel to our negotiations with the United States. I hope for Parliament's support and advice as we try to achieve it.

Third, appeals. The fact that ISDS tribunals don't have appeal mechanisms is one of the things that united business and NGO respondents to the consultation. It's a concern we want to address. Our suggestion here is to include an appeal body, with permanent members, directly within TTIP. It would ensure consistency of interpretation and review of decisions. We will also be proposing an appeal mechanism to our other negotiating partners, including in Canada. As with the permanent court, however, there are strong efficiency and legitimacy reasons to aim for a multilateral appeal mechanism. So we will begin to work on this in parallel.

Finally, we believe we should address the question of the relationship between domestic legal systems and ISDS. If anything contributes to the perception of ISDS as unfair, it's the notion that investors have a second chance to overrule the decisions of national courts. There are two possible ways to address this. One would be to force investors to choose between national courts and ISDS from the outset. They would not be allowed to use ISDS once a case had begun in national courts. However, that might have the negative side-effect of encouraging companies to avoid national courts altogether.

A second option might therefore be to provide that investors have to abandon any proceedings they have started in national courts if they launch an ISDS case. Recourse to investment arbitration would not, however, be possible if the investor has decided to exhaust local remedies.

Honourable Members,

These are some of the ideas we have so far. I want to stress again that they are preliminary ideas. We want to discuss them with you. That is why I am here today. We want to discuss them with the Council. I will do that at the informal meeting in Riga next week. And we want to come to a common EU position on how to move forward.

I hope you will see them for what they are: a serious attempt to grapple with a complex issue.

I hope we can have a constructive discussion on this basis.

And I look forward to your views.

EUROPEAN PARLIAMENT 2014 - 2019

Committee on International Trade

DRAFT PROGRAMME
PUBLIC HEARING ON TTIP

"TTIP: What's in it for Europeans?"

Wednesday, 18 March 2015, 16h15-18h30
Room JAN 6Q2, Brussels

16:15 - 16:20 Opening remarks by **Mr Bernd LANGE**,
Chair of the Committee on International Trade (INTA) and INTA Rapporteur on TTIP

16:20 - 16:30 Key notes speech by **Ms Cecilia MALSTRÖM**,
Commissioner for Trade

16:30 - 17:50 **PANEL DISCUSSION**
moderated by Ms Lénaïc VAUDIN D'IMÉCOURT, EU Trade Insights

16:30-16:40	**Mr Johannes KLEIS, BEUC**, Bureau Européen des Unions de Consommateurs, Head of communications
16:40-16:50	**Ms Fabienne GOYENECHE, MICHELIN**, EU Affairs Manager
16:50-17:00	**Mr Tilmann KUPFER, BT Group plc**, Vice President, Trade & International Affairs
17:00-17:10	**Ms Susanne LINDBERG-ELMGREN**, Research Officer, LO, Swedish Trade Union Confederation
17:10-17:20	**Mr Mark DIJK, PORT OF ROTTERDAM**, Programme Manager
17:20-17:30	**Mr Jos DINGS**, Transport and Environment, Director
17:40-17:50	**Ms Sandra KRINNER**, Architect
17:50 - 18:25	**Q&A SESSION** **including remarks by the Rapporteurs of opinion-giving Committees**
18:25 - 18:30	Conclusion by the INTA Chair and INTA Rapporteur on TTIP

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