



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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 <p>Council of the European Union General Secretariat</p>	
<b>Trade Policy Committee</b> <b>(Services and Investment)</b>	
<b>m.d. :</b>	<b>17/16</b>
<b>source :</b>	<b>Commission</b>
<b>for :</b>	<b>Information</b>
<b>date :</b>	<b>02 - 03 - 2016</b>

**NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE  
(SERVICES AND INVESTMENT)**

**SUBJECT:** *EU Trade and investment agreements - paper on likely costs of the Investment Court System.*

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**OBJECTIVE:** *For information*

**REMARKS:** In annex is an overview of the likely costs of the Investment Court System under various scenarios.

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**Cost estimate of expenses for the Investment Court System (ICS) under EU trade and investment agreements  
(\*First Tribunal and Appeal Tribunal)  
based on various scenarios of workload**

Scenarios	Estimated annual costs of ICS	Total annual costs for the EU
<p><b>Scenario 1:</b></p> <p><b>ICS inactive :</b></p> <ul style="list-style-type: none"> <li>• <b>No cases</b></li> </ul>	<p><b>1. Fixed annual operating costs ICS (borne 50/50 by the Parties to the agreement) include the following<sup>1</sup>:</b></p> <ul style="list-style-type: none"> <li>➤ Base remuneration for the 15 Judges at First Instance Tribunal (i.e. € 2000 x 15 x 12 months): €360,000</li> <li>➤ Base remuneration for the 6 Appeal Tribunal members (i.e. €7000 x 6 x 12 months): € 504,000</li> </ul> <p><b>Scenario 1: total costs € 864,000</b></p>	<p><b>Total costs for EU: € 432,000</b></p>
<p><b>Scenario 2:</b></p> <p><b>ICS active :</b></p> <ul style="list-style-type: none"> <li>• <b>2 cases at First Instance Tribunal</b></li> </ul>	<p><b>1. Fixed annual operating costs ICS (borne 50/50 by the Parties to the agreement)</b></p> <p>Total: € 864,000 (as under Scenario 1)</p> <p><b>AND</b></p>	

<sup>1</sup> Based on remuneration proposals presently contained in the EU TTIP proposal of 12 November 2015. First Tribunal Judges (Article 9): monthly retainer fee (to be determined by decision of the Committee) - suggested retainer fee of € 2000 per judge (15 judges in total). Members of Appeal Tribunal (Article 10.12): suggested monthly retainer fee of € 7000 (6 members in total).

	<p><b>2. Case-related costs at First instance (borne by the <u>disputing parties</u>)<sup>2</sup></b></p> <ul style="list-style-type: none"> <li>➤ <u>Daily fees for First Instance judges</u> in Case 1 (€ 2700 x 3 judges x days worked)</li> <li>➤ <u>Daily fees for First Instance judges</u> in Case 2 (€ 2700 x 3 judges x days worked)</li> <li>➤ <u>Daily fees for the President of the First Instance Tribunal</u> for days worked (€ 950 € x days worked)<sup>3</sup></li> <li>➤ <u>Fee for case handling</u> (registry, etc) (e.g. ICSID Secretariat current rate is €29,000 per case thus <u>€ 58,000 for 2 cases</u>)</li> </ul> <p><b>Scenario 2:</b> <b><u>Total costs (1+2) = € 864.000 + case related costs</u></b></p>	<p><b>Total costs for EU :</b> <b>€ 432,000 + case related variable costs</b></p>
<p><b>Scenario 3</b> <b>ICS active:</b></p>	<p><b>1. Fixed annual operating costs for ICS (shared 50/50 by the Parties to the agreement)</b> Total: € 864,000 (as under Scenario 1)</p>	

<sup>2</sup> Based on remuneration proposals presently contained in the EU TTIP proposal. For judges of the First Tribunal (Article 9.12): fees per days worked to be determined by Committee (suggested daily fee: current ICSID fee of \$ 3000/€2700 per judge/day). For members of the Appeal Tribunal (Article 10.12): fees for days worked to be determined by the Committee (suggested: current rate for members of the WTO Appellate Body of € 950 (SF 1035) per member/day).

<sup>3</sup> Article 9.12 of EU TTIP text “The President of the Tribunal and, where applicable, the Vice President, shall receive a fee equivalent to the fee determined pursuant to Article 10 (12) for each day worked in fulfilling the functions of the President of the Tribunal”

<ul style="list-style-type: none"> <li>• 2 cases at First Instance Tribunal</li> <li>• 2 appeals at Appeal Tribunal</li> </ul>	<p><b>AND</b></p> <p><b>2. Case-related costs at First Instance (costs borne by the <u>disputing parties</u>)</b></p> <p><b>AND</b></p> <p><b>3. Appeal Tribunal : costs paid by the <u>Parties to the Agreement</u>)<sup>4</sup></b></p> <ul style="list-style-type: none"> <li>➤ <u>Fees for days worked by members of the Appeal Tribunal</u> (based on estimate of 40 days worked x € 950 x 6) : <u>€ 228,000</u></li> <li>➤ <u>Fees for the President of Appeal Tribunal</u> (€ 950 x days worked)<sup>5</sup></li> <li>➤ <u>Single fees for administering Appeal</u> (registry, etc) (e.g. ICSID secretariat rate is € 29,000 per case) thus € 58,000 for 2 appeals</li> </ul> <p>Total: <b>approx. € 286,000</b> (borne 50/50 by the Parties to the agreement)</p> <p><b><u>Scenario 3: total costs (1+2+3): € 1,150,000 + case related variable costs</u></b></p>	<p><b>Total costs for EU:</b></p> <p><b>€ 575,000 + case related variable costs</b></p>
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<sup>4</sup> Based on remuneration proposals presently contained in the EU TTIP proposal. Appeal Tribunal Members (Article 10.12): fees for days worked (to be determined by the Committee but estimated at the current rate for members of the WTO Appellate Body of € 950 (SF 1035) i.e. daily fee plus allowance.

<sup>5</sup> Article 10.12 of EU TTIP proposal: “The President of the Appeal Tribunal and, where applicable, the Vice President, shall receive a fee for each day worked in fulfilling the functions of the President of the Appeal Tribunal pursuant to this Section”