Public consultation on modalities for investment protection and ISDS in TTIP

1. RESPONDENT DETAILS	
1.1. Type of respondent -single choice reply-(compulsory)	I am answering this consultation on behalf of a company/organisation
Your details - Companies/Organisations	
1.1.1. My company's/organisation's name may be published alongside my contribution. -single choice reply-(compulsory)	Yes
1.1.2. Company/Organisation name: -open reply-(compulsory)	BUSINESSEUROPE
1.1.3. Contact person - not for publication -open reply-(compulsory)	Sofia Bournou, Adviser, International Relations Department
1.1.4. Contact details (address, telephone number, email) - not for publication: -open reply-(compulsory)	
Avenue de Cortenbergh 168, 1000 Brussels tel.: 0032 (0)2 237 65 29 e-mail: s.bournou@businesseurope.eu	
1.1.5 What is your profile? -single choice reply-(compulsory)	Trade association representing EU businesses
1.1.5.3. If you are a trade association, how many members does your association have? -single choice reply-(compulsory)	25 - 100
1.1.5.4. If you are a trade association representing businesses, please provide information on your members (number, names of organisations). -open reply-(compulsory)	41 Members in 35 countries, main national industry and employers federations in Europe and 60 Associated corporate members (www.businesseurope.eu)
1.1.6. In which country are the headquarters of your company/organisation located? -single choice reply-(compulsory)	In one of the EU28 Member States
1.1.6.1. Please specify which Member State: -single choice reply-(compulsory)	Belgium
1.2. Your contribution I agree for my contribution to be made public on the European Commission's website -single choice reply-(compulsory)	Yes
1.3. What is your main area/sector of activity/interest? -open reply-(compulsory)	
Represent European business interests.	
1.4. Registration: Are you registered in the EU's transparency register? -single choice reply-(compulsory)	Yes

1.5. Have you already invested in the USA? -single choice reply-(compulsory)	No

A. Substantive investment protection provisions

Question 1: Scope of the substantive investment protection provisions

Question:

Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the objectives and approach taken in relation to the scope of the substantive investment protection provisions in TTIP?

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- Overall, we agree with the approach the Commission took in CETA, as provided in the reference text to Q1. - The definitions of 'investment' and 'investor' need to be as broad as possible, in order to provide wide protection to various types of investments, tangible and intangible, direct and indirect. - Furthermore, the definitions in question should be comprehensive, not allowing discrimination against specific sectors and/or products. We should also make sure that definitions are clear enough in order to avoid uncertainties. For instance, the use of the term 'investment' would be preferable to 'covered investment'. - We understand the intention of the Commission to avoid situations where protection is granted in an abusive manner, although checks already exist, for instance in the current ICSID system. But whether the Commission's proposal can be supported entirely depends on the way that the term substantial business activities is defined. What criteria will the Commission propose to be taken into account in order to define whether a company is a 'shell' or 'mailbox' company? The Commission has for example to take into account that in most of the cases, the investment will not be done in one time but over a prolonged period of time. Therefore, duration cannot be the only criterion used, but always in combination with the type of investment, the capital dedicated, the number of employees as well as the assets that the investor owns. The ultimate criterion should be whether the investment is made in accordance with the applicable law. If this is the case, then it should not be considered as 'shell' or 'mailbox' investment. The Commission should not deviate from existing international practice in this case in TTIP. In this regards, we could refer to standards developed in the Base Erosion Profit Shifting (BEPS) exercise of the OECD. - Investment protection principles should extend to both the pre- and post-establishment phase. The CETA reference text lacks clarity on the pre-establishment phase. Even if there is no separate paragraph, the definition of an investor includes parties that seek to make an investment.

Question 2: Non-discriminatory treatment for investors

Question:

Taking into account the above explanations and the text provided in annex as a reference, what is your opinion of the EU approach to non –discrimination in relation to the TTIP? Please explain.

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- Both Most Favourite Nation (MFN) and National Treatment are well established, basic, non-discriminatory principles that are included in most FTAs globally and should be also guaranteed in TTIP. We support that non-discrimination principles should be applied both in pre- as well as in post-establishment and therefore exceptions should be narrowly defined and restricted to genuine sensitivities. Lists of exceptions and carve-outs should be avoided. - Exceptions can be allowed, for instance in the area of public health and the protection of the environment, in line with WTO GATT and GATS provisions. If they are deemed necessary, the Commission should be careful however to keep the right balance between the right to regulate and the right to investors to get adequate protection. This balance should recognise that the existence of policy measures amounting to disguised protectionism has always been a distinct possibility in the trade policy. And this is the type of abuse by States that investors need to be protected against. Moreover, in some cases, measures adopted by States do not necessarily mean an improvement of environment, social or other standards. Consequently, it may also be in the overall public interest to be able to challenge them. Invoking an exception like this should also be subject to a proportionality check. (See also Q5) - The formulation in like situations could be problematic. In practice, all disputes are very specific. - Issues are raised with regards to the importation of MFN standards by third agreements. If TTIP indeed provides high-standards protection - in line with the Parties intention to create a state-of-the-art agreement - then European business can agree with the approach taken by the Commission. With regard to substantive provisions, one needs not fear that MFN leads to a circumvention of explicitly negotiated restrictions because MFN cannot be used to exclude important public policy considerations of the Parties. With regard to procedural rules, the access to other investment treaties has been excluded in treaties and this is acceptable for BUSINESSEUROPE. Only if TTIP limits the rights of

business to investment protection substantially in relation to other existing and future FTAs, then European business cannot take the risk of not having a strong MFN principle in TTIP, which would allow importation of standards from third agreements, both procedural and substantive, including in ISDS. - The term 'in accordance with law' should be framed in a way that it covers only fundamental legislation. - TTIP should not allow for the importation of the Energy Charter Treaty (ECT). The reference text underlines this problem: Under the agreement a Canadian investor could import the substantive rights of the ECT because the EU has ratified the ECT, but EU investors could not, because Canada has not signed the ECT. Such asymmetric solutions should be avoided in TTIP.

Question 3: Fair and equitable treatment

Question:

Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the approach to fair and equitable treatment of investors and their investments in relation to the TTIP?

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- Abusive interpretation of the Fair and Equitable Treatment clause should be avoided and a better definition of what the principle entails is advisable. In our view however, the Commissions approach seems too hypothetical. It mentions 'lessons learned from case law' in reference to the application of the Fair and Equitable Treatment, without providing specific evidence-based information in support of the Commissions argument in favour of a narrower definition of the principle in question. - BUSINESSEUROPE would like to see a broader definition of the Fair and Equitable Treatment in TTIP. For instance, we do not support the adoption of a closed list of investors rights that if breached, could then trigger a legitimate case. It is impossible, for the negotiators of TTIP to already foresee today all the possible cases in which a measure can be considered unfair and inequitable in the future, as the legal environment changes constantly and the business environment even more so. The 'stable legal environment' that investors refer to is not an environment in which no new law or measure is ever adopted, but rather an environment in which new legislation is non-discriminatory, non-arbitrary, non-abusive and in good faith. Furthermore, in practice it would be doubtful whether the parties to the treaty will ever exercise their right to amend the list as provided in TTIP. It may also be unlikely that both treaty parties would agree to an extension of the list if that means increasing the risk of a dispute for any of them. - The language used in CETA reference text limits the application of Fair and Equitable Treatment to very serious violations ('fundamental breach', 'manifest arbitrariness', 'targeted discrimination'). This makes it difficult for investors to prove a violation of Fair and Equitable Treatment and decreases the level of investment protection. - In certain cases, an umbrella clause is an important element to guarantee efficient protection of the investor. We agree with the Commission's view that not every breach of States obligations under a contract signed between a State and a foreign investor originating from the other Party of the agreement constitutes a breach of the bilateral investment agreement. If an umbrella clause is included in TTIP, it should be applied in limited and well defined cases and should not be open to possibilities for abuse.

Question 4: Expropriation

Question:

Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the approach to dealing with expropriation in relation to the TTIP? Please explain.

If you do not want to reply to the question, please type "No comment".

-open reply-(compulsory)

- We generally agree with the approach described by the Commission in the reference text at the Annex of the public consultation as regards direct and indirect expropriation, i.e. whether expropriation is done for a public purpose (on 'public purpose', refer to Q1 and Q5), whether it is conducted under due process of law, in a non-discriminatory manner and with compensation offered to the expropriated investor. - Defining indirect expropriation too narrowly poses some risks for investors. The reference text uses concepts like 'economic impact', 'character of the government measure' or 'duration of the measure'. With regard to 'duration', for example, case law indicates this might be anything from two to five years, but it will be difficult to determine the period in the specific case. - The Commission should furthermore apply the principles of proportionality and subsidiarity. An investor is indirectly expropriated if a host country takes measures for whatever legitimate purpose if the costs of those measures substantially outweigh the expected results in light of the measures' objective(s), while other, better cost-benefit balanced measures were available as well. - We also agree with the criteria used to assess the amount of compensation. - In case of proven legitimate expropriation full compensation must be paid, not only for the value of the property but also for lost income during the planned life-time. - We support a more open definition of indirect expropriation, which would clearly cover all tangible and intangible assets of investors, including those protected under intellectual property rights. More factors

should be added in TTIP to help define whether a measure constitutes expropriation or not. - In determining whether indirect expropriation has taken place, the possibility that certain policy measures de facto constitute a form of disguised protectionism should also be taken into account.

Question 5: Ensuring the right to regulate and investment protection

Question:

Taking into account the above explanation and the text provided in annex as a reference, what is your opinion with regard to the way the right to regulate is dealt with in the EU's approach to *TTIP?*

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- For BUSINESSEUROPE investment protection and ISDS are not generally at odds with the right of States to regulate. To the contrary, strong investment protection provisions and the existence of ISDS could help in providing the legal framework that would ensure better designed and more efficient regulations. The balance between investment protection and the right to regulate can be reaffirmed in TTIP. The Commission should however take into account that on some occasions public policy measures may constitute disguised protectionism by States and ensure that this risk will be eliminated in TTIP. The right to regulate should not be synonym for arbitral, elusive, discriminatory policy-making. There are narrow limits to what States can do in the name of public interest. The definition of public interests is not universal and depends in many cases on subjective and discretionary choices, not always of the common good and interest of citizens. - BUSINESSEUROPE welcomes the inclusion of the right to regulate into the preamble of TTIP. It can help tribunals to make a more balanced view and weigh the public good against investor rights. We also welcome the reference to GATT Art. XX and the OECD Guidelines for Multinational Enterprises. These references provide guidance for interpretation and they connect the treaty to internationally recognised standards. The confirmation of the 'right to regulate' should furthermore be accompanied by a (re)confirmation of the need for international policy coherence. This not only improves the adequacy of the measures taken, it also ensures a level playing field and predictability of a particular country's investment climate. The OECD is a clear example of such a platform where governments, amongst which the TTIP parties, work with business and civil society to find the right balance between economic, environmental and social interests. - As already stressed in previous questions, clearer definitions of key concepts, such as non-discrimination, fair and equitable treatment and indirect expropriation may help address existing concerns on investment protection and ISDS. Nevertheless, it is also clear that the approach of closed lists and wide exceptions as developed in the public consultation and the reference text will not help towards this direction. o First, it would actually limit investors' rights, something that is not in line with the intention of the EU and the US to develop a modern, gold standard TTIP that would serve as a model to future agreements. By such an approach EU and US investors will be discriminated against in relation to other existing and future agreements. o Furthermore, it is practically impossible to define concepts precisely. It is certain that situations will arise in the future (such as changes in the regulatory environment) that negotiators cannot already foresee, and which may very well constitute discrimination, unfair and inequitable treatment or indirect expropriation. Enough room for interpretation should be given to arbitrators in order to be able to judge on a case by case basis as it is normal practice in the judicial system. - The right to regulate of the State needs to be guaranteed, but this should not result in erosion of the protection of investments. Therefore, the right to regulate should be bound to the principle of proportionality. - Finally, the text of the Consultation seems to suggest that any unsuccessful case brought by an investor is frivolous. This is not however the case. As a general rule it is absolutely unacceptable that a party that brings an unsuccessful claim bears all the costs of the procedure. Frivolous for instance may be a case that is clearly outside the scope of TTIP, or an unfounded case. In these cases, it could be accepted that the losing party, the investor who brought to ISDS a frivolous or unfounded claim, bears the full cost. We cannot however accept that in a well-founded case, the loser-pays principle should be applied. If a filter is included covering frivolous and unfounded claims it is excessive to have another layer by establishing a loser pays system that will end up limiting companies access to ISDS, in particular SMEs that will be the ones more likely to suffer from such a measure. (see also Q9)

B. Investor-to-State dispute settlement (ISDS)

Question 6: Transparency in ISDS

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on whether this approach contributes to the objective of the EU to increase transparency and openness in the ISDS system for

TTIP. Please indicate any additional suggestions you may have.

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- BUSINESSEUROPE recognises the need to increase transparency in the ISDS process. We welcome that the reference text makes the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration binding, but TTIP should not go further than the recently updated UNCITRAL Rules. For instance, they provide a good framework for the publication of information and documents relevant to the case, the openness of hearings as well amicus curiae possibilities, which are far greater than in normal court proceedings. In our view, a minimum standard should comprise only the need to publish basic technical information, the claim and the decision / award. Further mandatory requirements increase the risk of 'politicisation' of complex technical cases, leading to a less fact-driven and hence more arbitrary system. Hence provisions beyond the minimum standard should be left to the discretion of the involved parties. From an investor's point of view it is essential to preserve the confidentiality of the proceedings not only because there is sensitive business or economic information that must be kept confidential, but also because a public process maximizes the investor risk of reputational impact in the host country. - It is our view that ISDS provisions under TTIP should allow exceptions to transparency in order to protect sensitive and confidential business information, important for the commercial interests of companies involved in arbitration. Such exceptions have been explicitly agreed upon by governments, business and civil society in the 2011 update of the OECD Guidelines for Multinational Enterprises. - The U.S. model BIT includes a section covering general transparency, out-lining the way that parties to the treaty are to announce the proposal of new regulations and be involved in standard-setting. A similar approach may suit especially TTIP as it also aims at a strong regulatory cooperation chapter.

Question 7: Multiple claims and relationship to domestic courts

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on the effectiveness of this approach for balancing access to ISDS with possible recourse to domestic courts and for avoiding conflicts between domestic remedies and ISDS in relation to the TTIP. Please indicate any further steps that can be taken. Please provide comments on the usefulness of mediation as a means to settle disputes.

If you do not want to repy to this question, please type "No comment".

-open reply-(compulsory)

- BUSINESSEUROPE welcomes the Commission's approach not to allow investors pursuing the same claims simultaneously under local courts and ISDS. For example, claims for compensation should be only raised in either domestic courts or in ISDS, not both and at the same time. - For BUSINESSEUROPE, there should be no issue of preference of domestic courts over international arbitration. The decision for an investor to go one direction or another depends on the type of claims they raise. There are simply some claims that cannot be dealt in local courts. The example used in the public consultation: that discrimination in favour of local companies is not prohibited under US law is telling. In similar manner, there are also claims that cannot be dealt with international arbitration, such as investigating the constitutionality of a measure. - Furthermore, an investor under TTIP should be able to withdraw the case launched in domestic courts and pursue the case through ISDS, when he has reasons to believe that he is not receiving a fair treatment and is being discriminated against. - For the above described reasons, investors under TTIP should be free to choose either legal path - domestic or international - and ISDS should not necessarily be the last resort. Although such fork in the road may be common, we disagree with the principle that one has to choose between means when the objective is not to receive double compensation, but to ensure that ones concerns are taken seriously and compensation is paid at the end. The fork in the road should hence apply to the outcome. Once an outcome of either domestic proceedings or ISDS has been produced in accordance with the rule of law and due process, all other, parallel proceedings will have to be ceased as well.

Question 8: Arbitrator ethics, conduct and qualifications

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on these procedures and in particular on the Code of Conduct and the requirements for the qualifications for arbitrators in relation to the TTIP agreement. Do they improve the existing system and can further improvements be envisaged?

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- The objectivity and competence of arbitrators should not be questionable. BUSINESSEUROPE therefore in principle agrees with the adoption of a 'Code of Conduct' for arbitrators. In fact, many arbitrators today follow voluntarily recognised 'Codes of Conduct' such as those of the International Bar Association (IBA). - The Commission should provide more information as regards the contents of the 'Code of Conduct', given that the reference text to the public consultation does not describe these rules but only mentions that they will be established in the future by an appointed Committee on Services and Investment. - BUSINESSEUROPE is against the adoption of a list of arbitrators that will be chosen in the future to deal with ISDS cases under TTIP. The globally established practice (for instance under ICSID and UNCITRAL) where parties are allowed to choose one arbitrator each and then a third, presiding arbitrator jointly should be maintained. In case of disagreement, the selection of the chairman should be done by an independent body, such as ICSID. - The pool of possible arbitrators should not be limited and pre-established, which would be very problematic in practice. We understand this roster of arbitrators will be a 'living document', but for example, the reference text does not cite exactly which criteria will be used by the parties of the agreement in determining which arbitrators will make it to the list or be removed from the list. - Moreover, some special expertise and experience may be required to deal with certain cases and we should not jeopardise a good decision by having a limited pool of arbitrators to choose from.

Question 9: Reducing the risk of frivolous and unfounded cases

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on these mechanisms for the avoidance of frivolous or unfounded claims and the removal of incentives in relation to the TTIP agreement. Please also indicate any other means to limit frivolous or unfounded claims.

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- In principle, BUSINESSEUROPE is in favour of the adoption of measures in TTIP that would quickly dismiss frivolous and unfounded claims, not allowing them to proceed to full arbitration. However, a preliminary review (process) already exists under ICSID rules (Rule 41(2) of the ICSID Convention, Regulations and Rules), which in general provides a proven approach that should serve as a guideline. - We fully disagree with a blanket application of the 'loser pays' principle, including in well-founded cases, as it could limit arbitrators' judgment and discretion in the award of fees. We would only accept the application of the principle in question in frivolous and unfounded cases, where the investor who brought forward such claims, should bear the full cost of the procedure from launch to its dismissal. Otherwise it may harm access to justice, especially for SMEs and raise further questions to determine real 'losers' and 'winners' as ISDS are often highly technical cases where 'winning' and 'loosing' are not appropriate categories. It should also be acknowledged, that in complex large cases with significant investment sums at stake, ISDS may provide a comparatively cost efficient way to legally settle disputes. The risk of high costs could deter SMEs to use ISDS. Furthermore, in practice, it could be difficult to identify the losing party when the claimant has won with respect to one, but not all claims. Thus, the tribunal should have a certain amount of flexibility with the appointment of the costs. - Finally, with adopting the 'loser pays' principle as a rule, States could be reluctant to defend strong but yet uncertain cases in fear of having to cover also claimants expenses. Or the rule could raise the pecuniary value of strong cases (initially of low value), which could lead to encouraging pursuing the case instead of settling, (just) to increase the sum of legal fees that could be collected from the defendant. (see also Q5)

Question 10: Allowing claims to proceed (filter)

Question:

Some investment agreements include filter mechanisms whereby the Parties to the agreement (here the EU and the US) may intervene in ISDS cases where an investor seeks to challenge measures adopted pursuant to prudential rules for financial stability. In such cases the Parties may decide jointly that a claim should not proceed any further. ***Taking into account the above explanation and the text provided in annex as a reference, what are your views on the use and scope of such filter mechanisms in the TTIP agreement?***

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- We need to ensure that the potential cases are well defined and the filter is applied in an effective way to well-founded emergency situations. - It is important that in the case of financial services the financial services regulation is part of TTIP and a common approach is already defined between the EU and the US regulators. This would already prevent the emergence of exceptional situations in the future. - We would not support special treatment or carve-outs from ISDS and thus we call on the Commission to be very careful with possible

exceptions to the filtering mechanism. Such a mechanism should not be used to circumvent the obligations under the treaty and should only be used in well-founded emergency situations. The definition of these cases should not be left only to the discretion of the Parties.

Question 11: Guidance by the Parties (the EU and the US) on the interpretation of the agreement

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on this approach to ensure uniformity and predictability in the interpretation of the agreement to correct the balance? Are these elements desirable, and if so, do you consider them to be sufficient?

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- Although BUSINESSEUROPE agrees that some guidance by the parties should be produced in order to assist arbitrators in future ISDS cases under TTIP to act within the 'spirit' of the Agreement, binding interpretations should not be adopted. - Binding interpretations may be particularly problematic as, instead of facilitating the arbitration process, limit the discretion of arbitrators. As the legal environment is constantly evolving and the arbitrators work on a case-by-case basis, a binding interpretation which may perfectly apply to one case, may not fully apply to another case.

Question 12: Appellate Mechanism and consistency of rulings

Question:

Taking into account the above explanation and the text provided in annex as a reference, please provide your views on the creation of an appellate mechanism in TTIP as a means to ensure uniformity and predictability in the interpretation of the agreement.

If you do not want to reply to this question, please type "No comment".

-open reply-(compulsory)

- BUSINESSEUROPE is in favour of the creation of an appellate mechanism preferably at multilateral level, in close cooperation with ICSID and UNCITRAL. - We are aware that there are provisions in the US model that allow for an appellate mechanism at bilateral level. These provisions have not been put in practice yet, which means that we do not have a clear idea of how an appellate mechanism at a bilateral level would work in practice. - The Commission should provide more information about the structure and functioning of a possible appellate mechanism in TTIP. - An appellate mechanism could enhance the administration of justice, provided the arbitrators are selected from a standing body free from conflict of interests. A broader appeal mechanism could be structured in a similar way to the appellate body of the WTO's Dispute Settlement Body. An ad hoc case-by-case appellate mechanism would be not desirable.

C. General assessment

What is your overall assessment of the proposed approach on substantive standards of protection and ISDS as a basis for investment negotiations between the EU and US?

Do you see other ways for the EU to improve the investment system?

Are there any other issues related to the topics covered by the questionnaire that you would like to address?

If you do not want to reply to these questions, please type "No comment".

-open reply-(compulsory)

- BUSINESSEUROPE is the voice of business in Europe, representing 41 national industry and employers federations in 35 countries. - For BUSINESSEUROPE ISDS is a vital part of investment protection. It provides for a neutral, fact-based mechanism of dispute resolution in cases of breaches of investment agreements. It is important for reasons of substance and consistency that ISDS is included in TTIP. - Contrary to what is often claimed, ISDS does not limit the policy space of States, including in the area of public goods and services. Instead, it helps establish a balance between the right of States to regulate and the rights of investors to protection under international law, thus strengthening the global rule of law. - The current ISDS mechanism may be improved, as suggested in the text of

the public consultation. We would favour a more inclusive and coherent ISDS system, e.g. at the multilateral level as well as the consideration of measures to better prevent frivolous and unfounded claims. - Investment protection is a system that works. Different protection principles and standards interact. Therefore, reforms should be introduced carefully as to fine-tune the system. Creating a lot of new terminology without a precise and established common understanding on what they mean will likely lead to more uncertainty and maybe to more disputes due to different understanding and interpretation of legal terms. - Many of the issues tabled in relation to ISDS have been discussed in a parallel forum, on what could be called Investor-Community Dispute Settlement with National Contact Points for the OECD Guidelines (NCPs), where civil society groups can file complaints against companies. The procedural rules for this NCP 'specific instance procedure' or complaint mechanism were amended under the 2011 update of the MNE Guidelines. Issues such as: impartiality, resolution through mediation or adjudication, the right balance between transparency and confidentiality, parallel proceedings, and frivolous claims were all addressed in these negotiations between the OECD (governments, business, unions and NGOs), and could hence prove a useful source for finding workable compromises for ISDS.