



Mr Gianni Pittella

President of the Group of the Progressive Alliance
of Socialists & Democrats (S&D)

Mr Bernd Lange

Chair of the Committee on International Trade
Member of the European Parliament

European Parliament
Rue Wiertz 60
BE-1047 Brussels
BELGIUM

13 March 2015

Dear President,

gentile sig. Pittella,

Dear Chair,

Milieu pour Lange,

I am writing to you with regards to the issue of investment protection and the Investor-to-State Dispute Settlement (ISDS) mechanism. We regret the recent position against the inclusion of ISDS in TTIP by the S&D Group.

BUSINESSEUROPE acknowledges legitimate concerns on how the ISDS system works in practice. **As a consequence, we are ready to support substantive and constructive proposals to make ISDS more fit to today's reality.** We believe ISDS needs to be part of the European Investment policy and therefore a modernised system should be included in all our bilateral investment agreements.

One may argue that a system created in the 1960s is not needed any more as nowadays the global trade and investment environment is very different. Indeed we have increasing investment flows worldwide and more companies investing in third countries. This makes today's investment environment much more complex and the protection of investors even more important considering the EU is still a major FDI contributor worldwide.

Moreover, the fundamental needs of investors have not changed over time. Investors still require protection against being expropriated without adequate compensation, unfair and inequitable treatment or against restrictions to transfer of capital. Therefore, a neutral, de-politicised and fact-based system that ensures investor's right to justice is still necessary.



BUSINESSEUROPE believes that other options to uphold investor's rights being through state-to-state dispute settlement or the exclusive use of domestic courts are second best to ISDS for several reasons:

- Contrary to multilateral arbitration or domestic legal systems, under no circumstances does an ISDS ruling require a State to revoke a law, regulation or any other measure, even in cases where the particular law, regulation or measure has been found to violate the bilateral agreement.
As an additional guarantee, in the recent EU agreements that include ISDS provisions it is clearly stated that the EU preserves its right to regulate and to achieve legitimate policy objectives, such as public health, safety, environment etc.
- A State-to-State dispute settlement mechanism will inevitably lead to politicisation of the cases and in practice may deny an investor in particular smaller companies legitimate access to justice. It will be difficult to convince a government or the European Commission to engage in a trade / investment dispute to defend the rights of a small investor. This will also lead to discrimination among investors.
- As to domestic courts in general they do not consider themselves competent to interpret and apply International Law. Companies' claims result from the breach of an International Treaty. So unless the provisions included in the investment agreements or investment chapters of the free trade agreements are transposed to national legislation, investors will have problems in upholding their rights.

These arguments are also valid in the case of TTIP. Since some EU member states have already bilateral investment agreements with the US, this can be a unique opportunity to harmonise the EU-US investment framework creating a level-playing field among investors at the same forging a state of the art ISDS.

Significant steps have been undertaken towards increasing transparency, for example through the adoption of the UNCITRAL rules on transparency and the adoption of the Convention on Transparency in Treaty-based Investor-State Arbitration. BUSINESSEUROPE welcomes these developments.

We would also be in favour of a modern code of conduct for arbitrators, clearer measures to avoid the pursuit of parallel proceedings and exploring the possibility of an Appeal Mechanism.

I thank you for the attention you give to this letter and we remain committed to an open and interactive dialogue.

Yours sincerely,

Markus J. Beyrer