



Mr Jean-Claude Juncker
President-elect of the European Commission

Brussels, September 25 2014

European Commission public consultation on an investor-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP)

Dear Mr Juncker,

We would like to congratulate you on your appointment as President of the European Commission. As you are aware, the Commission is currently engaged in negotiations on a Transatlantic Trade and Investment Partnership (TTIP) with the United States. If agreed, the TTIP will be the largest bilateral free-trade agreement in history, with significant impacts on every aspect of the lives of European and American citizens alike.

Importantly, one particular provision has been raising major controversy in the negotiations: the investor-state dispute settlement (ISDS) mechanism. This is the reason why EU Trade Commissioner de Gucht decided to hold a public consultation on this provision as part of the TTIP process. The consultation has now come to an end, with some 150,000 contributions sent to the Commission – the vast majority of which came from individual citizens¹.

With this in mind, the statements you made on the topic in front of the European Parliament in your recent approval hearing, and the political guidelines you presented for the next European Commission², take on a special relevance. In particular, we welcome your caution in relation to the mechanism of investor-state dispute settlement (ISDS):

1 http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152693.pdf

2 http://ec.europa.eu/about/juncker-commission/docs/pg_en.pdf

“Under my presidency, the Commission will negotiate a reasonable and balanced trade agreement with the United States of America, in a spirit of mutual and reciprocal benefits and transparency.

[...]

Nor will I accept that the jurisdiction of courts in the EU Member States is limited by special regimes for investor disputes. The rule of law and the principle of equality before the law must also apply in this context.”

In relation to the TTIP, you have rightly stressed that the normal, publicly accountable, court system should be used instead of private courts or arbitration panels, the benefits of which you have expressed doubts about. Our organisations, among a large variety of civil society groups, share your concerns³. So do a very large number of individual citizens, who contributed to the consultation on ISDS via online platforms that our respective organisations have made available in order to facilitate public participation⁴. Together **we have collected more than 140,000 individual contributions from concerned citizens**, who all stressed one point: their total rejection of the ISDS system proposed in the TTIP negotiations. Many also used the consultations to express their rejection of the CETA and TTIP negotiations on the whole.

Never before have so many citizens taken part in a public consultation organised by the European Commission. This shows that European citizens can be activated to engage in a constructive way with EU-related topics. We hope you will agree with us that it is crucial for the Commission to make sure that the voices of these thousands of people are clearly heard by the relevant decision makers and will not be ignored or marginalised. Therefore, we found the statement of Trade Commissioner de Gucht referring to the submissions that came through our platforms as a “real attack”⁵ inappropriate and highly concerning.

We were also alarmed by recent news that the EU and Canada finished their negotiations regarding the Comprehensive Economic and Trade Agreement⁶ which includes an ISDS model that is almost identical to what was presented in the EU consultation. That would imply that, regardless of the outcome of this consultation, the Commission already opted to include ISDS in the CETA agreement making therefore a

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https://www.foeeurope.org/sites/default/files/civilsociety_ttipp_investment_letter_dec162013.pdf

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www.no2isds.eu ; http://action.sumofus.org/a/ttip-comments/3/2/?akid=6026.758537.9AAs_M&rd=1&sub=fwd&t=2 ; <http://blog.38degrees.org.uk/2014/07/10/ttip-eu-consultation/> ; <http://www.umweltinstitut.org/mitmach-aktionen/deine-antwort-auf-ttip.html> ; <http://edri.org/ISDS/>

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<http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/karel-de-gucht-attacke-gegen-ttip-13055875.html>

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<http://ec.europa.eu/avservices/video/player.cfm?ref=I091775&videolang=INT&devurl=http://ec.europa.eu/avservices/video/player/config.cfm>

clear positive judgment on the mechanism before responding to the results of the consultations. We believe it would give an extremely worrying signal to the European citizens if the opinion of those that took part in the consultation is ignored.

We would like to ask you for an opportunity to meet with you to discuss our concerns regarding fundamental problems of ISDS and the reasons why we believe that the reforms proposed by the Commission are insufficient to address them. We would also like to ask you to take on the powers of your new position to:

- Request that ISDS is excluded from the TTIP negotiations
- Ensure that, while the review of the public consultation on ISDS is still ongoing, the CETA agreement that might be initialled does not include ISDS
- Ensure that the voice of every single citizen who contributed to the public consultation on ISDS is taken into account
- Ensure full transparency of the Commission's analysis of the results of the consultation, including the statistics of responses pro and against ISDS and of responses opposing TTIP on the whole.

We look forward to your response on this pressing issue and for an opportunity to discuss it with you directly.

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Yours sincerely



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