

STATEMENT

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Speaking points

- The **EU is deeply committed to reform** the international investment agreements system. The reform process started, with the EU-Canada agreement where we have introduced a number of modern and innovative elements meant to clarify the content of the investment protection provisions, to improve the dispute settlement process and to prevent abuses.
- Examples include:
 - a detailed definition of the **fair and equitable treatment** standard (by listing its main elements);
 - an annex clarifying how the concept of **indirect expropriation** should be interpreted, and in particular excluding claims against legitimate public policy measures;
 - various safeguards and clarifications designed for specific situations such as: addressing serious macroeconomic difficulties, ensuring the stability of the financial system through prudential measures or prohibiting claims against negotiated debt restructuring;
 - prevention of **"treaty shopping"** (through a clarification stating that the most favourite-nation clause cannot be used to "import" provisions from other agreements which are not translated into concrete measures), prevention of **"forum shopping"** (business re-organisation for the purpose of bringing a case is explicitly prohibited), and exclusion of **"mailbox companies"** (through a requirement that companies conduct substantive business operations in their home country);
 - rules **discouraging unfounded or frivolous claims** by ensuring their early dismissal and by imposing the "loser pays" principle;
 - **increased transparency** in line with UNCITRAL rules (all documents such as submissions by the disputing parties or decisions of the tribunal made publicly available; all hearings open to the public; interested parties such as NGOs or trade unions allowed to make submissions);

- a **code of conduct** for arbitrators, ensuring the respect of high ethical and professional standards; or the possibility for the Parties to issue **binding interpretations** on how certain provisions should be interpreted.
- Following the **public consultation on the investment approach in the Trans-Atlantic Trade and Investment Partnership (TTIP)**, we have identified four **areas for further reform**: enhancing the safeguards for the right to regulate of the Parties; improving the establishment and functioning of arbitral tribunals; creating an appellate mechanism; and addressing the relationship with the domestic courts.
- As a result, we proposed an operational article affirming the **right to regulate** of the Parties and clarifying how it applies in a number of cases. For instance, we clarified that investment protection provisions should not be understood as commitments by the Parties not to change their regulatory framework (so-called "non-stabilization" clause) or as commitments to grant, to maintain or to authorize certain subsidies.
- Regarding dispute settlement, we proposed an **investment court system (ICS)** with the objective of increasing legitimacy, effectiveness and independence of the dispute settlement system in EU FTAs. Under the ICS, all EU trade and investment agreements would have an institutionalised system for settling investment disputes within that agreement. The ICS consists of a Tribunal of First Instance and an Appeal Tribunal, with permanent judges appointed by the EU and each FTA partner.
- The EU has made significant progress in implementing this new policy. We proposed and published this approach in relation to **TTIP** and we have integrated it in our recently negotiated agreements with **Canada and Vietnam** (both concluded in the beginning of 2016).
- Our proposals on the ICS are intended as the stepping stones towards the establishment of a **multilateral system**. The EU is supportive of the creation of one permanent court for investment disputes. This court would apply to multiple agreements and between different trading partners, on the basis of an opt-in system. Eventually, this would lead to the full replacement of the "old ISDS" mechanism with a modern, efficient, transparent and impartial system for international investment dispute resolution.
- Initial work has already begun on how to start this process, in particular on aspects such as architecture, organisation, costs and participation of other partners. We would like to thank UNCTAD for the opportunity of organizing a side event dedicated to the idea of a multilateral court, and to thank those who participated in the meeting. We had a useful and interesting debate this morning and we are eager to continue to build on this basis.
- We must add that the EU and its Member States are also very active in **other reform areas**:
 - EU agreements typically contain provisions that promote **responsible investment**: For instance, commitments on the non-lowering of standards in the fields such as environment protection or health; as well as commitments to promote corporate social responsibility practices and to adhere to sustainable development objectives.

- The EU Member States, in their turn, are deeply engaged in investment **promotion and facilitation**.
- Finally, **ensuring systemic consistency** of the IIA regime is an important objective for us: where the EU is negotiating with a given country on investment, the bilateral investment treaties (BITs) concluded by the EU Member States with that country will be replaced by a single, EU-level agreement; where there are no negotiations at EU level, EU Member States may negotiate BITs which will have to be consistent with the EU's investment policy in order to be authorized under EU law.
- We believe that many challenges that characterize today's IIA regime would be best solved at the **multilateral level**. We encourage UNCTAD to continue its work in the field of IIA, which we highly value, and to continue to facilitate exchanges between those countries engaged in the process of improving the IIA regime.