

Stichting Vrijsschrift

15 september 2014

European Parliament INTA committee  
ISDS does not observe the separation of powers

Dear Members of the INTA committee,

On 16 September the Parliament will discuss the EU-Canada trade agreement (CETA). We would like to inform you that the investor-to-state arbitration mechanism (ISDS) in the draft agreement does not observe the separation of powers – the foundation of our democracy. In fact, in this draft ISDS is rigged to the advantage of the United States.

In practice the US appoints the president of the World Bank. This president

- is ex officio chairman of the International Centre for Settlement of Investment Disputes (ICSID) Administrative Council,
- proposes the ICSID secretary-general,
- appoints all three the arbitrators in appeal cases under ICSID rules.

The secretary-general of ICSID

- appoints the third arbitrator if the parties can not agree on the third one,
- will decide on conflicts of interest. (ICSID, articles 5, 10, 38, 52 and Commission, 2014, chapter 10 articles 25.2, 25.3, 25.10 and 41.5, and chapter 15 article 20.2)

The investors will be able to choose the ICSID forum. The president of the World Bank and the secretary-general of ICSID play a role in appointing arbitrators – the ISDS system does not observe the separation of powers. Moreover, these officials have a link with the US, this gives the US an unfair advantage (the US never lost an IDSD case).

This is just one example of the fundamental flaws in the ISDS system. For more see the Statement of Concern published by over 110 scholars (Scholars, 2014) and Vrijsschrift (2014).

To protect our democracy it is imperative that CETA does not contain

ISDS.

Yours sincerely,  
on behalf of Stichting Vrijschrift,

Ante Wessels

In the pdf version, the *italic part* is a clickable link. You can find a digital version at <http://www.vrijschrift.org>

*Commission, 2014*, CETA Consolidated text, Version of 1 August 2014

*ICSID*, Convention on the settlement of investment disputes between states and nationals of other states

*Scholars, 2014*, Statement of Concern about Planned Provisions on Investment Protection and Investor-State Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership (TTIP)

*Vrijschrift, 2014*, Shortcomings in Dutch government study on investor-state arbitration