

Stichting Vrijsschrift

3 November 2014

European Parliament INTA committee
ISDS in EU-Singapore FTA is rigged

Dear Members of the INTA committee,

On 15 September we informed you that the investor-to-state arbitration mechanism (ISDS) in the draft EU-Canada trade agreement (CETA) does not observe the separation of powers – the foundation of our democracy. In fact, in the CETA draft ISDS is rigged to the advantage of the United States.

We would now like to inform you that the same is true for the draft EU-Singapore trade agreement (EUSFTA). This is incomprehensible in itself and a dangerous model for a trade agreement with the US.

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 annulment cases under ICSID rules (the only possible appeal).

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 EUSFTA articles 9.21.2, 9.21.7, 9.21.10, 9.30.2 and 9.32.7)

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 ISDS 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 Vrijschrift (2014).

To protect our democracy it is imperative that the EU-Singapore trade agreement 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>

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