

QCEA's Model Answers for the EU Commission Consultation on an Investor-to-State Dispute Settlement (ISDS) for the Transatlantic Trade and Investment Partnership (TTIP)

[Answers only - for the questions, please see <http://www.qcea.org/wp-content/uploads/2014/06/QuestionnaireISDSen.pdf>]

A. Substantive investment protection provisions

1. Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the objectives and approach taken in relation to the scope of the substantive investment protection provisions in TTIP?

The Quaker Council for European Affairs (QCEA) opposes the inclusion of substantive investment protection provisions in Transatlantic Trade and Investment Partnership (TTIP), particularly the insertion of an Investor-to-State Dispute Settlement (ISDS) clause.

The introduction of the ISDS mechanism is a retrograde step which weakens European democracy. It would allow corporations and other investors to challenge legal decisions that could be in the public interest, and it removes legal challenges from public scrutiny.

QCEA agrees with the principle that judicial judgements should be made based on the merits of the case presented, as long as the appropriate laws are fundamentally correct. No judicial decision should be made on the basis of nationality, race, religion, or gender. Equally, however, no single section of society should have access to any form of special justice because they have made an investment. This violates the principle of "equality before the law", as foreign investors would have access to a form of justice unavailable to domestic citizens.

QCEA believes that the fundamental rights of investors described in the explanation are already protected, and we can see no rationale for altering this system to offer further protections to investors. There is no evidence that the fundamental rights of investors highlighted in the explanation have been neglected or abused in either the European Union (EU) or the United States of America (US). There is also no evidence that the judgements made in legal cases relating to trade have been based on nationality, or race, or other factors. From the €700bn worth of goods and services that are traded between the EU and the US every year, it is clear that the current system offers adequate protection to investors.¹

QCEA has great concern about the potential negative effects of ISDS on government decision making. Not only could there be a significant negative impact on elected representatives and their exercise of legislative powers, but there could also be arbitration tribunals determining that the penalty in the national law is excessive, thus eviscerating democratically determined laws.²

Previous abuse of substantive investment protection of provisions (through ISDS clauses) illustrates how these unnecessary (and undeserved) special measures can be misused and abused to increase profits of corporations. Two examples are Lone Pine vs. Canada, (under NAFTA 1994) and Philip Morris vs. Australia (under Australia - Hong Kong BIT 2006). The current improvements are not sufficient to address this problem.

QCEA opposes using the text from CETA as a model for the proposed substantive investment protection provisions for TTIP. The text referred to in the explanatory text and annex is from an agreement which is not yet signed nor implemented and which is therefore currently theoretical rather than tried and tested. There could be loopholes and problems which will not be apparent until CETA itself is signed and implemented.

¹ Impact Assessment Report on the future of EU-EU trade relations (Commission Staff Working Document, March 2013) p.9

² <http://www.curtis.com/siteFiles/News/Is%20Investor-State%20Arbitration%20Broken.pdf>

2. Taking into account the above explanations and the text provided in annex as a reference, what is your opinion of the EU approach to non-discrimination in relation to the TTIP? Please explain.

QCEA cannot find any evidence that investors from the EU or the US are discriminated against in legal proceedings in either area based solely on nationality. QCEA agrees with the principle that the EU should not discriminate in law against any party in any legal matter (including investors) without good reason (see below). Cases should be considered individually and judged appropriately based on the evidence presented, taking into consideration a wide range of factors. We can find no cases where, either implicitly or explicitly, courts have unfairly favoured a party based on nationality. QCEA therefore does not see the need to include further substantive investment protection provisions as part of TTIP.

QCEA supports positive discrimination in specific circumstances which take into account individual and community well-being and the environment. There are many legitimate reasons why a government would want to give priority to domestic or local organisations over foreign investors. There are many credible reasons for legislators to place the interests of their local and/or domestic environments before those of foreign investors' profit margins. The environmental limitations and the need to consider the 'whole picture' including climate change, or the need to support local economic well-being, are good examples. By denying governments the right to make such decisions, the EU could prevent the completion of some of their own targets and directives on climate change, renewable energy, biodiversity, water quality, and the green economy, to name just a few.

Even if we were to believe that there should be absolutely no discrimination, positive or otherwise, it would be unjust for foreign investors to have an exclusive form of justice which would provide unique privileges to people and corporations with money to invest. The inclusion of substantive investment protection provisions in TTIP would not create a level playing field; it would instead provide special protection for foreign investors, giving large multinational corporations an advantage over Small and Medium Enterprises (SMEs). This would contradict the European Commission aim of promoting "successful entrepreneurship and improve the business environment for SMEs".³

3. Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the approach to fair and equitable treatment of investors and their investments in relation to the TTIP?

QCEA does not consider that the inclusion of substantive investment protection provisions in TTIP are necessary in order to provide fair and equitable treatment for investors in either the EU or the US.

QCEA agrees to the proposed principle that all individuals should have a right to fair and equitable judicial treatment. However, both the EU and the US already offer fair and equitable treatment to investors as a matter of principle, independent of the nationality of the parties involved. This fact is proven by the huge amount of investments made annually between the two economic areas, which illustrates the high level of existing trust.

A 2013 analysis from the London School of Economics (LSE), suggests that such investment provisions do not provide any incentives or inducements for investors, particularly in the US. The report states "there is little reason to think that an EU-US investment chapter [substantive investment protection provision] will provide...significant economic benefits...US investors have generally not taken much notice of investment treaties when deciding where, and how much, to invest abroad."⁴

³ http://ec.europa.eu/enterprise/policies/sme/index_en.htm

If there is currently a disparity in fairness and equality, it is in favour of the investor. The existing arbitration courts are biased towards investors, as they are the only party able to bring claims to court. There is no similar international court for states to bring investors to justice when investors abuse human rights or the well-being of citizens.

It has also been noted recently by legal practitioners and a plethora of experts that ISDS courts are themselves naturally unequal in structure. The ISDS process allows the claimant time to strategise prior to a claim, giving them a distinct advantage. There have also been repeated allegations that only arbitrators with a pro-investor bias are appointed and that, as they are paid by the case, they have a vested financial interest in encouraging more cases. As only the investor can bring claims, the more arbitrators find in favour of claimants the more cases are likely to be brought to the courts, providing more work for arbitrators.⁵

QCEA agrees that there have been claims without merit which have been brought before international courts and which challenge the right of the state to regulate. However, it has been the inclusion of investment protection provisions which has led to these frivolous cases - such as Lone Pine vs Quebec (Canada) as part of the North American Free Trade Agreement (NAFTA) (1994). Adding further substantive investment protection provision will not alleviate this issue.

If investment protection provisions are to be included in TTIP, QCEA supports the principle of accurately and clearly defining the terms of this treatment to ensure the continuation of the right of the states to regulate.

4. Taking into account the above explanation and the text provided in annex as a reference, what is your opinion of the approach to dealing with expropriation in relation to the TTIP?

QCEA does not consider substantive investment protection provisions as part of TTIP as necessary to achieve the goal of preventing unfair loss of property. The right to property is a right for natural persons; human rights do not apply to judicial persons. QCEA supports the EU's recognition of the right of the state to create policy which expropriates property for public purposes, as long as it is non-discriminatory and is accompanied by prompt and fair compensation. We can find no evidence that unfair or unjust direct or indirect expropriations have taken place in either the EU or the US.

Conversely, QCEA is firmly convinced that the inclusion of such a clause could in fact lead to further unfair, unjust, and egregious claims against governments by investors. Substantive investment protection could further add to the ambiguity, as even within the text provided there is clearly room for "interpretation". The words 'indirect expropriation' could be construed in many ways. Legislation which inhibits profits could be considered to be a form of indirect expropriation, allowing investors to make claims against governments. Alternatively, the phrase "manifestly excessive in light of their purpose" could be understood in a wide variety of ways leading to misinterpretation and the sort of abusive and flagrantly erroneous claims discussed in other sections of this questionnaire.

⁴ L.N Skovgaard-Poulsen, J.Bonnitcha, J.Webb-Yaknee. Costs and Benefits of an EU-USA Investment Protection Treaty (London School of Economics, April 2013) - p.44
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260380/bis-13-1284-costs-and-benefits-of-an-eu-usa-investment-protection-treaty.pdf

⁵ <http://www.curtis.com/siteFiles/News/Is%20Investor-State%20Arbitration%20Broken.pdf>
<http://corporateurope.org/international-trade/2014/04/still-not-loving-isds-10-reasons-oppose-investors-super-rights-eu-trade>

5. Taking into account the above explanation and the text provided in annex as a reference, what is your opinion with regard to the way the right to regulate is dealt with in the EU's approach to TTIP?

QCEA completely rejects the inclusion of substantive investment protection provisions, and specifically ISDS, as part of TTIP. We consider that the existing national judicial structures in both the US and the EU provide adequate, unbiased, and democratically sound legal systems that afford investors from both regions fair and equitable legal treatment. There is no evidence to suggest that substantive investment protection provisions will offer any benefits to either economy. Conversely, as witnessed by the numerous egregious claims currently ongoing, these settlements have the potential to damage the right of states to regulate. The potential cost to governments is enormous. It is morally wrong that the taxes paid by individual European citizens might go either to the retainers of arbitrators or in compensation awards to corporations.

QCEA does not consider the inclusion of substantive investment protection provisions in TTIP to be necessary to protect either the rights of the investor under international law or the right of the state to regulate. QCEA supports the EU principle on the right of states to devise and implement regulation. We also agree that this regulation should respect fundamental human rights - when pertaining to natural persons. People should share the same rights as other natural persons (e.g. not be given more rights due to access to monetary wealth). However, the absence of a protection provision does not deny either party access to such rights. Neither the explanation nor the annex provided present any evidence to support these claims.

If substantive investment protection provisions are included as part of TTIP, then QCEA supports the EU policy of developing the clearest possible definitions. We also support the inclusion of a mechanism for continual revision and renewal to improve the practical implementation of this provision and to ensure the prevention of abuse through use of loopholes. A sunset clause would also ensure that unwelcome outcomes of this FTA could be prevented. QCEA wants to see frivolous claims actively discouraged and clearly punished.

QCEA would oppose the use of a universal, loser-pays-all-costs rule, as this may discourage individuals with a legitimate claim from proceeding against a government who are not abiding by the rules because they fear potential ruinous financial losses.

B. Investor-to-state dispute settlement (ISDS)

6. Taking into account the above explanation and the text provided in annex as a reference, please provide your views on whether this approach contributes to the objective of the EU to increase transparency and openness in the ISDS system for TTIP. Please indicate any additional suggestions you may have.

QCEA supports the principle of increasing ISDS transparency to provide more openness. The 2014 UNCITRAL Rules state that their objective is to increase accountability and promote good governance, aims which QCEA promotes. However, as there is no ISDS in practice which has yet been shown to help achieve these aims. The inclusion of an ISDS in a trade deal as large as TTIP is in fact creating unnecessary risk to good governance. We consider that the measures proposed in the text provided are fundamentally weak and leave considerable scope for abuse.

The most glaring fault is the exclusion from public scrutiny of “confidential information and business secrets”. A 2013 EU Commission report stated that such information and secrets are “difficult to frame within a rigid definition” and that this could include “any information that has an economic value”⁶ This is a vague definition, open to a wide range of interpretation and abusive practices. Such an exception would provide claimants in ISDS courts with a simple but effective method of avoiding transparency and continuing their current practices.

In addition, the Commission in its proposal has not specified which information from the TTIP would be excluded from public scrutiny in the exception made possible under Article 7 of the UNCITRAL Rules⁷, ‘information that is protected against being made available to the public under the treaty’. Finally, the US has broad rules regarding another class of non-public information under the UNCITRAL Rules, ‘Information the disclosure of which would impede law enforcement.’ Although transparency is certainly a good aim, the actual exclusions would, or could, in cases where the EU has not provided an actual scope of exclusion, interfere with transparency.

From the explanations provided throughout this consultation, it seems apparent that the EU Commission is strongly in favour of an ISDS provision as part of TTIP, in spite of widespread public opposition. Therefore, while QCEA is firmly against an ISDS provision for TTIP, if such a mechanism were to be included, we support increased transparency. We encourage maximum stakeholder and civil society participation to ensure terms are not defined in a way which provides an advantage to any single section of society.

QCEA believes that transparency helps facilitate democratic accountability: the TTIP negotiations themselves should also be fully transparent. QCEA strongly supports the calls from several hundred NGOs for increased transparency in the TTIP negotiations. We would like to see a broad public consultation on the desirability of such a vast free trade agreement, taking into account the potentially huge impacts on human well-being such as protection of workers and the environment, including climate. We support increases in transparency for all agreements and negotiations. We encourage maximum stakeholder and civil society participation to ensure these terms are not defined to provide an advantage to any single section of society.

7. Taking into account the above explanation and the text provided in annex as a reference, please provide your views on the effectiveness of this approach for balancing access to ISDS with possible recourse to domestic courts and for avoiding conflicts between domestic remedies and ISDS in relation to the TTIP. Please indicate any further steps that

⁶EU Commission 'Study on Trade Secrets and Confidential Business Information (April 2013) - http://ec.europa.eu/internal_market/iprenforcement/docs/trade-secrets/130711_final-study_en.pdf p.2

⁷<http://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/Rules-on-Transparency-E.pdf>

can be taken. Please provide comments on the usefulness of mediation as a means to settle disputes.

QCEA can find no evidence to support the European Commission claim that, in either the EU or the US, “it is possible that investors will not be given effective access to justice” based on discrimination against nationality.

QCEA supports the use of domestic courts as a means to settle any disputes that may arise as part of international trade, including between EU and US investors in each market. We also believe that mediation is favorable over legal conflicts and so support the principle behind such measures. However, QCEA does not feel it necessary to legitimise a new judicial level which would be beyond the control of either the EU or US governments and which could potentially have a serious negative impact on democratic structures and regulatory standards.

QCEA firmly believes that the inclusion of an ISDS will simply increase the cost and complexity of the judicial system, without offering any substantial benefits. There is no logical or legal reason why “TTIP provisions cannot be directly invoked in front of a national court”, considering the “general solidarity of developed court systems such as the US and the EU”. Many other NGOs who oppose ISDS as part of TTIP support this viewpoint. According to the Bureau Européen des Unions de Consommateurs, ISDS is unnecessary as the EU and the US “both have well-functioning court systems and robust private property rights which are sufficient to resolve any claim of unfair treatment by States”.⁸

In any legal procedure, multiple claims should be prevented and ongoing claims in other courts should be taken into account. However, it is premature to examine the detail before agreeing the entire structure - in open dialogue with those citizens (natural persons) who would be affected by this agreement.

8. Taking into account the above explanation and the text provided in annex as a reference, please provide your views on these procedures and in particular on the Code of Conduct and the requirements for the qualifications for arbitrators in relation to the TTIP agreement. Do they improve the existing system and can further improvements be envisaged?

There is no evidence to support the EU claim that, in either the EU or the US, “it is possible that investors will not be given effective access to justice” based on discrimination against nationality. Therefore QCEA rejects the inclusion of an ISDS as a part of TTIP. Instead, QCEA support the use of domestic courts as a means to settle any investor disputes that may arise.

Both the EU and the US have well-structured legal systems, with professional bodies and codes of conducts. These ensure that legal professionals follow stringent guidelines in terms of professional conduct and ethics, thereby avoiding conflicts of interest. QCEA firmly believes that these domestic courts provide fully qualified and impartial legal professionals who are able to impartially pass judgment on investor dispute claims.

However, if despite the risks and the broad public opposition to ISDS, the EU intends to continue to include an ISDS as part of a TTIP treaty, then QCEA advocates the creation of strong, well-defined regulations for those lawyers, judges, and arbitrators working on ISDS claims. These regulations should not only cover the working practices of such arbitrators, but should also cover their selection, to ensure that they are chosen fairly and that a pro-claimant cultures does not continue or develop. We strongly support the general principle of improving judicial standards at all levels.

⁸ <http://www.beuc.eu/blog/?p=193>

9. Taking into account the above explanation and the text provided in annex as a reference, please provide your views on these mechanisms for the avoidance of frivolous or unfounded claims and the removal of incentives in relation to the TTIP agreement. Please also indicate any other means to limit frivolous or unfounded claims.

QCEA rejects the need for an ISDS as part of TTIP. We feel strongly that ISDS offers corporations and big business a dangerous tool to undermine democracy, justice, and the right of the state to regulate. We consider that an ISDS offers no tangible benefits in terms of judicial equality or efficiency. Furthermore, this mechanism goes against the ideal of 'equality before the law' by providing one section of society, corporations, with privileged access to justice.

QCEA considers the proposed mechanism to prevent frivolous claims to be unworkable and not fit for purpose. The definition of a "frivolous claim" could easily be open to interpretation and cannot prevent truly egregious claims being filed. What is flagrantly frivolous to the public or civil society could be considered a just and correct case by large corporations. We support the Corporate Europe Observatory statement that many of the most outrageously unfounded claims which have brought the ISDS to public attention, would not be prevented under the proposed "improvements" laid out by the EU Commission. For example the Philip Morris vs Australia (under Australia - Hong Kong BIT 2006) case over the anti-tobacco legislation would not be excluded by these new rules.

We also believe that this mechanism would not prevent some of the indirect negative consequences of ISDS. As outlined in the provided explanation, without actually taking proceedings forward, the mere threat of action can result in undemocratic changes of public policy. This is known as the chill effect. This makes these proposed improvement provisions somewhat obsolete, as governments could potentially change policy to suit the preferences of big business rather than risk losing large sums of tax-payers' money, even if the claim is potentially frivolous. One example of this is the decision of the New Zealand Ministry of Health to delay the implementation of its anti-tobacco legislation until a decision is made in the aforementioned Philip Morris vs Australia case, which could be years away.

QCEA welcomes reforms which attempt to limit frivolous, and unfounded cases but not as part of TTIP; an ISDS brings too many risks to democracy. QCEA would also oppose the use of a universal loser-pays-all-costs rule. This rule could discourage individuals with a legitimate claim from proceeding, who may fear they could not meet the cost of losing a case, and make these judicial provisions the exclusive preserve of large corporations.

10. Some investment agreements include filter mechanisms whereby the Parties to the agreement (here the EU and the US) may intervene in ISDS cases where an investor seeks to challenge measures adopted consistent to prudential rules for financial stability. In such cases the Parties may decide jointly that a claim should not proceed any further. Taking into account the above explanation and the text provided in annex as a reference, what are your views on the use and scope of such filter mechanisms in the TTIP agreement?

QCEA is firmly opposed to the inclusion of an ISDS as part of TTIP, and we do not believe this filter mechanism will enhance either public-policy-making provisions or provide a more fair and equitable legal system. QCEA strongly supports the exclusive right of fairly and freely elected governments to enact appropriate public policy, and we consider the measures described, both in the ISDS itself and the filter mechanism, as potentially contravening this right.

If an ISDS is to be included in the TTIP agreement, QCEA believes that both the EU and the US should still wholly and completely retain the right to regulate independently, including regulation around financial stability. QCEA does not believe that the EU should not have to consult and gain permission from another government when implementing policies. We do not

consider it appropriate for this agreement to provide the US or the EU with powers, however indirect, to influence each others' regulations.

11. Taking into account the above explanation and the text provided in annex as a reference, please provide your views on this approach to ensure uniformity and predictability in the interpretation of the agreement to correct the balance? Are these elements desirable, and if so, do you consider them to be sufficient?

QCEA opposes the inclusion of an ISDS in TTIP. We believe that this mechanism is undemocratic, unnecessary, and potentially dangerous, as the numerous recent egregious claims have highlighted. National and supra-national courts in both the US and the EU currently provide uniformity and predictability in legal cases, and QCEA can find no reason to supersede or replicate this judicial system.

The framing of the explanation related to this question by the EU encapsulates some of the major risks of including ISDS in any trade deal. The Commission acknowledges that the arbitration tribunals may find loopholes in agreed text and force an unpredicted interpretation. This highlights the risk of this proposed inclusion. The solution is to not incorporate ISDS into TTIP.

12. Taking into account the above explanation and the text provided in annex as a reference, please provide your views on the creation of an appellate mechanism in TTIP as a means to ensure uniformity and predictability in the interpretation of the agreement.

QCEA is strongly opposed to the inclusion of an ISDS provision for TTIP. This unnecessary and potentially dangerous mechanism will not improve the well-being of citizens in either the US or the EU and could have the opposite impact by providing a method for corporations to gain further power over regulation.

Having an appeals mechanism can help to balance the interpretation made by the small panel of arbitrators. The option of an appellate mechanism would improve access to justice for individuals through the revision of errors and would support the development of more uniform, predictable verdicts. However, this is one of the reasons that the existing and well-developed legal systems in the EU and the US are sufficient to address investor needs for recourse in the event of unfair treatment. An ISDS is not needed for the EU and US.

To set up special court systems for which investors can make claims against governments, and then to add an additional structure to mimic the appeals mechanism of regular courts, is unnecessary. In addition, both the new structures and the appeals system would be an additional burden on the state's funds, which are provided by the people through their taxes. At a time when the EU should be focusing on relieving increasing inequality and when governments are streamlining their expenditure, the EU should not contemplate spending funds on an unnecessary mechanism which will only benefit wealthy individuals and corporations.

C: General Assessment

1) What is your overall assessment of the proposed approach on substantive standards of protection and ISDS as a basis for investment negotiations between the EU and US?

QCEA opposes in the strongest possible terms the inclusion of an ISDS as part of TTIP. We regard ISDS as a potential hazard to democracy and an unnecessary measure that unbalances the current judicial system. We consider that the established domestic courts in the EU and US offer ample opportunity for access to justice for corporate bodies and individual investors who feel they have a genuine claim to recompense from governments. QCEA also believes that ISDS

courts completely undermine the idea of 'equality before the law', by providing an exclusive form of justice to a single section of society, big business.

QCEA can locate no examples of foreign investors being denied access to fair and equitable treatment based on nationality in either the EU or the US. However, we can see numerous cases where investors have used an ISDS emanating from a free trade agreement, to frivolously claim compensation from a government over democratically enacted legislation. To give only a few examples: Lone Pine vs. Canada, (under NAFTA 1994) over fracking rights in Quebec for \$250 million; Philip Morris vs. Australia (under Australia - Hong Kong BIT 2006) because of Australia's anti-tobacco legislation, the claim unknown but thought to be billions of Australian dollars; or Vattenfall vs. German (under the Energy Charter Treaty (ECT) 1994) over the German decision to phase out nuclear energy, for hundreds of millions of Euro.

Considering the previous misuse of these measures, often with flagrant disregard for the spirit of law with which these mechanisms were devised, QCEA considers the ISDS system to be fundamentally flawed. Despite the EU's clear attempt to address some of the flaws identified by legal experts - and for this effort, we commend the Commission - loopholes are likely to exist. These could expose the governments of EU Member States and the European Commission to costs and to threats which could interfere with democratically elected governments fulfilling their duties to protect the public interest.

The stated purpose of the proposed Free Trade Agreement is to increase incomes for citizens in both the EU and the US. The European Commission has estimated that, on average, each EU family will receive €535 per year (although QCEA has deep concerns about the robustness of these numbers). However, the rationale seems contradictory, claiming to improve the economic situation for EU citizens, while incorporating a dispute settlement mechanism which may prevent governments from serving the democratic interests of their citizens, and will almost certainly cost taxpayer money to provide arbitration and legal assistance. In this situation, the profits will most likely go to those already who are already wealthy, the investors.

If the European Commission insists on implementing an ISDS as part of TTIP despite the risks and the public opposition, we strongly agree with the need to reform the system of arbitration, arbitrators, lawyers, and judges as well as the overall administration of the ISDS legal system. We believe that regular reviews should be made to the entire ISDS system based on experience, and this means that the entire FTA should include a sunset clause, a set time at which the entire agreement would be reviewed. As the current volume of trade and investment between the two areas illustrates, investors will not walk away from the EU or the US. It makes sense to ensure there is an exit option included in any commitments made by the EU institutions. Such reform and reviews should ensure maximum stakeholder participation to provide the broadest possible input from EU civil society.

2) Do you see other ways for the EU to improve the investment system?

QCEA considers it vital that the EU remembers and returns to its own fundamental values of citizen well-being. Human well-being as a whole is far more than only short-term financial gain. The EU must focus on the ability of our social and natural systems to continue into the future, including the maintenance of the peace for which the EU was set up. It must reduce the diversion of wealth to the already rich and prevent corporations being awarded vast sums because they can afford to hire arbitrators to bring claims against governments.

The EU must also place democratic participation of Europe's citizens at the heart of its future investment systems. The EU must ensure that far-reaching changes, such as removing standards which have protected European workers and the ecosystems of Europe, are fully understood and agreed by citizens, and that the voices already protesting this are heeded. Most ordinary

citizens of the European Union are not asking for special protection for investors: they may be asking for jobs but they are asking for jobs in a system which protects their health and rights and the natural resources on which economic activities are based.

3) Are there any other topics covered by the questionnaire that you would like to address?

Overall QCEA is disappointed by the content of the questionnaire. While we welcome the European Commission's decision to open a discussion on the subject of ISDS and substantive protection provisions, we consider that this discussion has been severely restricted. The wording and scope has clearly been carefully structured to control and limit the discussion only to areas that the Commission wishes to discuss, specifically the improvements it hopes to make to the current ISDS system. There is no area or space within the questionnaire specifically for broader discussion on the merits of the inclusion of an ISDS within TTIP.

There is currently a huge amount of trade between the EU and the US, which illustrates that investors already have confidence in the legal systems in both regions, and that neither ISDS nor TTIP is necessary for economic growth. The Australia-America Bilateral Investment Treaty (2005) does not contain an ISDS; this sets a precedent for this potentially disastrous mechanism to be excluded from TTIP. The considerable number of frivolous and egregious claims under ISDSs already in existence illustrate how open to abuse these mechanism are, and how they can be incorrectly utilised against governments, citizens, and democracy.

QCEA firmly believes that an ISDS would bring enormous risks to democracy and is unnecessary for TTIP.

QCEA would also like to see the need for consultation on the wider subject of Free Trade Agreements addressed by the European Commission. At the moment there is no space for citizens to voice their concerns about this type of agreement, which would have a vast and long-term impact on the well-being of individuals and communities. QCEA calls on the EU to open a consultation, as well as other channels of communication, to discuss TTIP in general and let European citizens have their say on free trade and on TTIP before any agreement is finalised or signed.