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Negotiation Watch:

1. Brazilian government's decision on ratification of BITs looming,
By Luke Eric Peterson

The Brazilian government will soon announce whether it will push for congressional ratification of a series of bilateral investment treaties signed during the 1990s.

An official involved in the bureaucratic evaluation of the 16 international investment agreements - which include 14 BITs and two Mercosur Protocols on investment - says

that an inter-departmental working group has drafted a recommendation for its political masters.

The relevant ministers are expected to meet to take a decision on the question in a matter of weeks. It remains unclear whether that decision will be announced prior to a scheduled May 12 meeting between US and Brazilian negotiators on a Free Trade Area of the Americas (FTAA).

FTAA talks have been at a standstill for more than year, as the US and Brazil differ over the approach to be taken with respect to a number of key issues, including investment.

Brazil has never ratified any of its international investment treaties due to political and constitutional concerns about the agreements, and the standing offer found in these agreements for international arbitration of disputes between foreign investors and the state.

2. IISD to launch model investment agreement in London

The policy-arm of the International Institute for Sustainable Development (publishers of this news bulletin) will launch their draft model investment agreement for sustainable development at an event in London later this week.

The model agreement has been drafted as a template for future investment negotiations, and seeks to strike a balance between foreign investment protection and the pursuit of sustainable development.

Following a public call for comments, and an expert's review session held in The Hague, Netherlands in January of this year, the Institute has incorporated various comments and suggestions into the latest draft of its model text.

A copy of the new text will be available on the IISD's website (<http://www.iisd.org/investment>). The official launch of the text is to take place at a ceremony on April 28 at Marlborough House, London.

3. Key US Senators want US-Russia BIT ratified before Russia Joins WTO, By Luke Eric Peterson

The Chairman and Ranking Member of the US Senate Finance Committee have urged the Acting US Trade Representative to withhold US support for Russia's accession to the World Trade Organization (WTO) until a series of bilateral and multilateral concerns can be resolved, including Russian ratification of the 1992 US-Russia Bilateral Investment Treaty.

In an April 11 letter to Acting USTR Peter Allgeier, Senators Chuck Grassley and Max

Baucus express the view that bilateral accession negotiations between the US and Russia should not be brought to a premature close, as a number of areas remain to be addressed.

The Senators raise concerns about the enforcement of intellectual property rights in Russia, as well as the Russian government's need to agree further liberalization of key sectors such as insurance, banking and telecommunications.

Noting that the US Senate ratified the US-Russia BIT in the year of its signing, the two Senators observe that Russia's longstanding failure to follow suit "sends the wrong signal about Russia's commitment to fostering transparency and the rule of law."

Sources:

"Grassley, Baucus Outline Concerns to Be Resolved Prior to Russia's WTO Membership", Press Release, April 14, 2005

Arbitration Watch:

4. ICSID rejects challenge to lead arbitrator in Siemens case; Argentina rips decision,
By Luke Eric Peterson

A challenge by the Argentine Republic to the President of an ICSID tribunal has been rejected by the Chairman of ICSID's Administrative Council, and the proceedings have resumed.

As reported in an earlier edition of INVEST-SD News Bulletin, the two party-appointed arbitrators in an ICSID arbitration between Siemens and the Argentine Republic handed down conflicting opinions on an Argentine request to remove Dr. Andres Rigo Sureda as President of that tribunal. (For full details of Argentina's challenge, see: "ICSID tribunals diverge over independence of arbitrator to hear Argentine claims", INVEST-SD News Bulletin, March 24, 2005, available on-line at:
http://www.iisd.org/pdf/2005/investment_investsd_mar24_2005.pdf)

A copy of arbitrator Domingo Bello Janeiro's opinion seen by INVEST-SD News Bulletin adopts the view that Dr. Rigo's decision to resign his position at Fulbright & Jaworski can be taken as an "implicit" indication of his earlier lack of independence.

However, Mr. Bello's counterpart, Judge Charles N. Brower took a contrary view, holding that Dr. Rigo's resignation from Fulbright & Jaworski acted "to silence any conceivable lingering doubts as regards his suitability to continue as President of this Tribunal".

Given this divergence of viewpoints between the two remaining arbitrators, the Argentine request was handed to the Chairman of ICSID's Administrative Council (the President of the World Bank) for resolution.

Due to Dr. Rigo's prior service as a lawyer with the World Bank Group, and ICSID in particular, an informed source tells INVEST-SD that ICSID turned to the Secretariat of the Dutch-based Permanent Court of Arbitration for an evaluation of Argentina's challenge to Dr. Rigo.

In a ruling handed down earlier this month, ICSID, on the recommendation of the Secretary General of the Permanent Court of Arbitration, formally dismissed Argentina's challenge to Dr. Rigo.

However, no reasons were given for the decision to reject Argentina's challenge - in keeping with the practice of the Permanent Court of Arbitration's which does not disclose the reasons for challenge rulings.

The absence of any explanation for the rejection of its challenge to Dr. Rigo has angered the Argentine Government. In publicly reported comments, the Attorney General Osvaldo Guglielmino has condemned the lack of reasoning as "perverse", and lamented the "lack of transparency" surrounding the handling of an international arbitration which may have serious economic and social financial consequences for a government recovering from a financial crisis.

Sources:

INVEST-SD Interviews

Siemens A.G. v. Argentine Republic, Decision of Judge Brower on Proposal of the Argentine Republic to disqualify Dr. Andres Rigo Sureda pursuant to Articles 14 and 57 of the ICSID Convention and ICSID Arbitration Rule 9, February 11, 2005

Siemens A.G. v. Argentine Republic, Decision of Professor Bello Janeiro on Proposal of the Argentine Republic to disqualify Dr. Andres Rigo Sureda pursuant to Articles 14 and 57 of the ICSID Convention and ICSID Arbitration Rule 9, February 11, 2005

5. Arbitrators appointed by parties in Menatep v. Russia case,
By Luke Eric Peterson

The parties to a multi-Billion Dollar investment treaty arbitration between the major shareholders of the Yukos Corporation and the Russian Federation, have each nominated their respective arbitrators. It now remains for those two individuals to nominate the

Chairman of the three-person UNCITRAL arbitration tribunal.

According to press reports, Russia has nominated former International Court of Justice member Stephen Schwebel, while the shareholders grouping, led by Group Menatep, have nominated Daniel Price, head of the international trade and dispute resolution practice at US law firm Sidley Austin Brown & Wood.

Messers Schwebel and Price are familiar to one another, and have collaborated as co-counsel on several ongoing investment treaty cases, including Vivendi v. Argentina and Fireman's Fund v. Mexico.

In 2002, the firm of Sidley Austin announced that Judge Schwebel had moved his legal practice to an office located in Sidley's Washington office, and would advise the firm on "matters of international law and dispute settlement."

As reported in an earlier edition of this News Bulletin, Group Menatep, joined by other former Yukos shareholders, is seeking compensation pursuant to the Energy Charter Treaty for the precipitous drop in Yukos' share price following what it characterizes as an effective expropriation of the oil firm by Russian authorities.

Sources:

"L'arbitrage de l'affaire Ioukos confié à des juristes américains", Reuters (France), April 11, 2005

"La Russie a nommé son juge dans l'arbitrage l'opposant à Menatep", Les Echos, April 12, 2005

"Menatep's Yukos claim is largest in investment treaty history, others in offing?", INVEST-SD News Bulletin, February 22, 2005, available at:
http://www.iisd.org/pdf/2005/investment_investsd_feb22_2005.pdf

"Former President of the International Court of Justice Establishes Offices at Firm" Sidley Austin Press Release, May 21, 2002, available on-line at:
<http://www.sidley.com/news/pub.asp?PubID=948105212002>

6. Arbitrators announced in Eastern Sugar v. Czech Republic arbitration

Arbitrators have been selected in an investment treaty arbitration pitting French-English firm, Eastern Sugar BV against the Czech Republic.

Emmanuel Gaillard, Robert Volterra and Pierre Karrer have been selected to arbitrate Eastern Sugar's \$130 million US claim. Arbitrators Gaillard, Volterra and Karrer are practicing arbitration lawyers with French, British and Swiss firms respectively.

Eastern Sugar BV, which is a joint-venture of Britain's Tate & Lyle and France's Saint Louis Sucre, professes to be the victim of discrimination at the hands of Czech agriculture authorities in charge of allocating sugar production quotas. The firm mounted a claim last year under the Dutch-Czech Republic bilateral investment treaty.

The Eastern Sugar arbitration is not the first claim filed by foreign investors in relation to sugar or sugar-substitute quotas set by EU member-states.

As reported in an earlier edition of this News Bulletin, US-based Cargill has launched a claim against Poland. Cargill is Poland's only producer of isoglucose, a wheat-based alternative to sugar. The firm objects to the lowering of national quotas which have cut into Cargill's production.

Sources:

INVEST-SD Interviews

"Eastern sugar not entitled to compensation for quotas - Agrimin" Czech News Agency, March 14, 2005

"Eastern Sugar picks representative in dispute with Czech Rep". Czech News Agency, March 16, 2005

Cargill Challenges Polish Agricultural Quotas at ICSID, INVEST-SD News Bulletin, By Luke Eric Peterson, available on-line at:

http://www.iisd.org/pdf/2004/investment_investsd_july16_2004.pdf

7. Another firm takes Venezuela to ICSID over unpaid debt instruments,
By Luke Eric Peterson

A Dutch entity holding promissory notes issued by a Venezuelan agricultural development bank has seen its claim for compensation registered by the International Centre for Settlement of Investment Disputes (ICSID).

Alleging that the notes have not been paid, the Dutch entity, I & I Beheer B.V., is seeking compensation pursuant to the Dutch-Venezuela bilateral investment treaty. Although the issuing bank has since been dissolved, I&I Beheer reportedly maintains that the Venezuelan government has earlier guaranteed the Bonds.

The arbitration has echoes of an earlier dispute resolved at the Washington-based ICSID facility, between Fedax A.V., a Dutch Antilles entity, and Venezuela. The Fedax case pertained to non-payment of certain promissory notes, and was arbitrated pursuant to the same Dutch-Venezuelan BIT.

Sources:

INVEST-SD Interviews

8. Danish shipping company taking Lithuania to ICSID over cancelled privatization bid,
By Luke Eric Peterson

A Danish shipping firm, Trident Marine, has announced that it will take the Lithuanian government to the International Centre for Settlement of Investment Disputes (ICSID).

A subsidiary of the Unisea Shipping Company, Trident, is suing the government for losses incurred when the firm was excluded from a privatization competition to acquire a controlling stake in Lietuvos Juru Laivininkyste (LJL), a Lithuanian shipping company.

According to press reports, Trident's high bid was quashed after Lithuania's security service informed privatization authorities that the Danish firm - which has reported profits, but has no employees - was "financially unreliable".

Trident has sought to overturn the decision of privatization authorities in the Lithuanian courts. Following an unfavorable ruling of the Supreme Court, the firm announced that it will turn to international arbitration. Trident alleges that it is the victim of discrimination, contrary to the guarantees of non-discrimination found in the Denmark-Lithuania bilateral investment treaty.

Sources:

"Danish company to take Lithuania before international arbitrators", Agence France Presse, April 13, 2005

"Trident Marine claiming millions in damages from Lithuania's Govt", Baltic News Service, March 25, 2005

9. Web site launched to house investment treaty arbitration decisions

A new website has been launched to house decisions and awards related to investment treaty arbitrations. The site is managed by Todd Weiler and Ian Laird (both practicing arbitration lawyers) and serves as a counterpart to the popular naftaclaims.com set up by Mr. Weiler to track NAFTA Chapter 11 arbitrations.

The new website can be found on-line at <http://www.investmentclaims.com>

Another website managed by a University of Victoria Law Professor, Andrew

Newcombe, also offers free public access to investment treaty arbitration awards and decisions. Prof. Newcombe's site is available on-line at:
http://ita.law.uvic.ca/alphabetical_list.htm

Because of the multitude of different arbitration rules used for investment treaty arbitration, there is no single clearing-house for awards and decisions in such cases. Some portion will remain confidential, while many others may be released at the discretion of one or both parties.

Indeed, there is no certainty as to the overall incidence of this form of arbitration and there is no global docket of such cases.

A 2004 study by the UNCTAD (undertaken by the Editor of this News Bulletin) found evidence of more than 160 known investment treaty arbitrations since 1987, with strong indications that the actual number may be considerably higher. (A summary of the UNCTAD study is available on-line at:
http://www.unctad.org/sections/dite/ia/docs/webiteit20042_en.pdf)

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