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Negotiation Watch:

1. World Bank management responds to external review of WB role in extractives sector,
By Luke Eric Peterson

Following on the heels of a recommendation that the World Bank discontinue funding for certain extractive industries investments the World Bank's management has weighed in with its own view on the matter.

In a report tabled to the Bank's Executive Directors, management has rejected calls for an outright cessation of financing for certain extractive industry projects (for eg in coal and oil), while acknowledging the need to be far more selective in its engagement in such initiatives.

Responding to demands of external stakeholders, and the recent World Bank-commissioned Extractive Industries Review by former Indonesian Environment Minister Emil Salim, the Bank's management has set forth a number of proposals which it believes will help ensure that Bank financing promotes poverty alleviation, as well as social and environmental sustainable development.

In particular, the need for revenue transparency in new extractive projects has been affirmed by the management, along with other measures to ensure better governance of revenues in donor developing countries.

Minister Salim had been particularly critical in his external review - and in recent published comments in the Financial Times newspaper - of failures in good governance which have meant that the poorest citizens of many resource-rich countries have been rendered worse-off by corruption and mismanagement.

While acknowledging these concerns, the Bank's management stress that extractive resources remain a potential asset in meeting the ambitious United Nations Millennium Development Goals (MDGs), particularly given that foreign aid flows have proven insufficient to meet many basic needs such as access to potable water, hunger alleviation and funding of basic education.

Management's comments are open for public comment, before they - and Minister Salim's recommendations - will be weighed by the Bank's Board of Executive Directors.

Sources:

For more information about the External Review of Extractive Industries see:

<http://www.eireview.org/>

For the Bank Management's response to the External Review see:

<http://www.worldbank.org/ogmc/files/eirmanagementresponse.pdf>

Public comments on the Management's response may be made here:

<http://lnweb18.worldbank.org/energy/eirresponse.nsf/comments>

"World Bank rejects call to end mining and oil projects", By Andrew Balls, Financial Times, June 21, 2004

"The World Bank must reform on extractive industries", By Emil Salim, Financial Times, June 17, 2004

2. OECD working paper looks at relationships between Investment Agreements

The Paris-based Organization for Economic Cooperation and Development (OECD) has published a working paper which examines the relationship between various types of international investment agreements. The paper, which comprises one in a series of working papers on international investment, explores the linkages and potential overlap between OECD instruments on investment, various bilateral investment treaties, and several World Trade Organization agreements.

In particular, the authors argue that more recent investment agreements may not supercede automatically the provisions of earlier (perhaps more generous) agreements, and that attention will need to be paid to the intent of negotiators who conclude future- international investment rules. Indeed, in the absence of any clear intent to narrow earlier commitments through the conclusion of new international rules, the authors contend that earlier (more investor-friendly) agreements might not be incompatible with later agreements. The issue is a live one as member-states of the World Trade Organization still grapple with a decision whether to negotiate any form of a multilateral (or plurilateral) agreement on investment, and as Western hemisphere nations also contemplate a Free Trade Area of the Americas which could include investment commitments of some sort.

The OECD working paper is available on-line at:

<http://www.oecd.org/dataoecd/8/43/31784519.pdf>

3. UN Sets Up Investment Treaty Search Engine

The United Nations Conference on Trade and Development (UNCTAD) has established a searchable database of investment treaties and other investment instruments (for eg national investment laws). The database contains full texts of more than 1800 bilateral investment treaties, as

well as the full contents of 10 UNCTAD compendiums on international investment instruments.

The BIT search engine can be accessed at:

http://www.unctadxi.org/templates/DocSearch_779.aspx

The Investment Instruments Compendium On-line can be accessed at:

http://www.unctadxi.org/templates/DocSearch_780.aspx

4. UNCTAD touts signing of further investment treaties in Brazil

In conjunction with a UN summit on trade and development in Sao Paulo, Brazil, the United Nations Conference on Trade and Development has announced the signing of 8 new investment treaties involving a total of 10 countries, including developed countries such as Switzerland and Korea, and least-developed countries such as the Democratic Republic of Congo, Chad and Benin.

For further information see:

http://www.unctadxi.org/templates/Event_149.aspx

5. FT: India signals that it will review foreign investment limits

According to a recent report in the Financial Times newspaper, India's new government has signaled a willingness to review its ceilings on foreign equity participation in various sectors. If requested by foreign investors, Commerce and Industry Minister Kamal Nath has expressed openness to lifting the ceilings in case-by-case, or even sectoral basis. However, Minister Nath cautioned that liberalization would be limited to those sectors where serious job creation was likely to occur - so-called Greenfield investments - rather than mergers and acquisitions of existing investments. The new government is also slated to release next month a review of India's trade policies, including those on foreign investment.

For the full story see:

"New Delhi ready to review limits on foreign investment in Indian business", By Guy de Jonquieres, Financial Times, June 18, 2004

Arbitration Watch:

6. ICSID sees new investment treaty case against Egypt

The Washington-based International Centre for Settlement of Investment Disputes has registered a new claim under an investment treaty concluded between Egypt and Belgium-Luxembourg. According to a source familiar with the claim, the dispute arises out of a contractual dispute over payments related to a large dredging project in Egypt

See Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt at: www.worldbank.org/icsid/cases/pending.htm

7. Arbitration lawyers offer guide to 'navigating through investor-state arbitrations'

A recent article by several practicing arbitration lawyers sets forth an overview of bilateral investment treaty claims. The authors, all attorneys with Prague-based Squires Sanders and Dempsey, highlight a number of issues arising in treaty disputes between host states and foreign investors. Included in the analysis are a review of jurisdictional hurdles, applicable law and a survey of the types of claims that may be brought by investors.

The article, which originally appeared in the Dispute Resolution Journal, is available on-line at:

www.ssd.com/files/tbl_s29Publications/FileUpload5689/8951/BIT.pdf

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