Investment Law and Sustainable Development Weekly News Bulletin, Nov.1, 2002

Published by the International Institute for Sustainable Development (www.iisd.org)

Contents at a Glance:

NEGOTIATIONS WATCH:
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1. Canada Pursues a Narrowing of Investment Treaty Provisions on Two Fronts

According to a recent newspaper report, a senior Canadian Government official has indicated that Canada continues to pursue an interpretive clarification of the NAFTA with the United States and Mexico. Canada seeks a clarification which would stipulate that the category of government measures considered to be "tantamount to expropriation" under Article 1110 of NAFTA are no broader than the existing categories of direct or indirect expropriation.

A report in the Financial Post Newspaper suggests that Canada smiles upon the interpretation of a NAFTA Tribunal in the Pope & Talbot case (which rejected the view that a quota on timber exports was "tantamount to expropriation"). Canada would like to see this interpretation prevail across all other NAFTA investment disputes.

On another front, this week Canadian officials reached an interpretive clarification with their Chilean counterparts on several provisions contained in the investment chapter of the Canada-Chile Free Trade Agreement. The clarifications (in the areas of transparency and minimum standards of treatment) appear similar to those agreed last summer by the three NAFTA parties.

(Sources: "Canada Seeks Narrowing of NAFTA Lawsuit terms", The Financial Post (Toronto), Oct.22, 2002, pg FP10; "Canada and Chile Clarify Investment Provisions in Bilateral Free Trade Agreement", Press Release, Department of Foreign Affairs and International Trade (DFAIT), Oct.31, 2002, available at: www.dfait-maeci.gc.ca/tna-nac/bilateral-e.asp)

2. Environmental Groups Criticize Changes to US Investment Negotiating Position

A coalition of environmental groups have written to members of the US Congress's Oversight Group on Trade Policy to voice their concerns about changes to the US negotiating policy for future investment agreements (and trade agreements with investment provisions).

While the coalition expressed regret that full details of the changes have not been publicized to date, nevertheless they argue that the changes, as described orally by a USTR spokesperson, "do not accomplish the congressional mandate that trade agreements not grant foreign investors greater substantive rights than U.S. investors are afforded under U.S. law."

In their six-page letter the groups set out concerns about a number of substantive provisions, as well as the procedure by which investment treaty disputes are arbitrated.

For more information about the campaign or for a copy of the letter, contact David Waskow, Trade Policy Coordinator, Friends of the Earth at DWaskow@foe.org

3. Latin American Regional Seminar on "Investment for Development"

The latest in a series of seminars planned by the India-based NGO, Consumer Unity & Trust society (CUTS), as part of its "Investment for Development" project is slated for December 4-5 in Sao Paulo, Brazil. Produced in collaboration with a Brazilian research institute, the event will present the findings of the project's Brazilian research. In particular, the session is expected to zero in on the contentious question of the role of FDI in economic development.

The two year project, launched by CUTS in September 2001, encompasses seven countries: South Africa, Bangladesh, Brazil, Hungary, India, Tanzania and Zambia. The Project will wrap up around the same time as the WTO will consider, at its Ministerial Conference in Cancun, Mexico, whether to launch negotiations on a multilateral agreement on investment.

For further information about the Brazilian seminar, or other regional seminars please contact Rajeev Mathur at CUTS: citee@cuts.org

4. Euro-NGO Network Releases Booklet and Letter Opposing WTO Investment Agreement

The Seattle to Brussels (S2B) Network, an umbrella group of European NGOs has issued a booklet entitled "Investment and Competition Negotiations in the WTO - What is Wrong With it and What are the Alternatives?". The Group's website also allows readers to sign-on to a "Statement by European Civil Society Against an Investment Agreement in the WTO."

See: http://www.s2bnetwork.org/

Arbitration Watch:
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1. South Africa Attempts to Reassure Rattled Mining Sector

Following leaked reports earlier this summer that the South African government would pursue radical redistribution of mining assets over the next decade, the Government has struggled to reassure panicked investors in that country's mining industry. As reported earlier (see INVEST-SD Bulletin Oct.11, 2002), the government has since revised its plans substantially, however the initial threat of 51% of the company's mining assets being placed under black ownership, had mining firms scurrying to consult their copies of investment promotion & protection agreements signed between South Africa and various home states (including the UK).

This week, the Financial times of London reports that the South African government is still seeking to repair relations with the industry. South African Minerals Minister Phumzile Mlambo-Ngcuka has been dispatched to London to assure nervous investors, who have been slow to re-embrace the South African mining sector.

(Sources: "The Diggers are Restless", The Economist, June, 22, US Edition; "S Africa acts on fears over mining ownership rules", By Nicol Degli Innocenti, The Financial Times, Oct 30, 2002)

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1. UNCTAD Series on Issues in International Investment Agreements now available on-line.

Some readers will be familiar with the so-called "pink series" (so named for their distinctive color) produced by the United Nations Conference on Trade and Development. Each volume in the series is devoted to the analysis of a particular investment treaty provision or issue (for eg., National Treatment, Taking of Property, Social Responsibility, Environment, Foreign Direct Investment and Development, etc.)

The volumes do not always reflect experience with more recent investor-state disputes, however they do offer considerable insight into drafting of treaty provisions and some difficulties which have dogged negotiators.

Twenty-one volumes in this useful series are now available on-line at:

http://r0.unctad.org/en/subsites/dite/iia/IIA_Series/iia_series.htm

2. Council of Canadians Accuses Canadian Trade Minister of Flip-Flopping on Replication of NAFTA Chapter 11 in FTAA.

In a press release last week, the Council of Canadians, a Canadian watchdog group, accused International Trade Minister Pierre Pettigrew of reversing course on earlier suggestions that Canada will avoid replicating the controversial Chapter 11 investment provisions in the proposed Free Trade Area of the Americas. The group points to a recent news report citing a senior

Canadian Official" who suggested that "Canada is backing plans to let companies sue countries in a proposed Americas-wide free trade".

Pettigrew was quoted in the Nov.2 of the Ottawa Citizen as suggesting that Canada would learn from its "experience" under the NAFTA, as it negotiates an investment chapter in the FTAA. However, in a conference call with reporters he did not go into detail. David Robbins, a campaigner for the council of Canadians has criticized Pettigrew for not offering specifics: "[I]t is impossible to get a straight answer from Minister Pettigrew. One morning, he gets up and is opposed, the next day, he's adamantly in favour. The negotiations are under way and Canadians deserve a straight answer: is Canada pushing the right of companies to sue governments?"

A spokesperson for the Department of Foreign Affairs could not confirm Canada's specific negotiating positions on investment, nor would that spokesperson confirm that Canada has a fixed menu or template which it takes to the table. Instead that spokesperson indicated that Canada continues to work for clarification of Chapter 11 with its NAFTA partners, and that Canada will use this "experience" in negotiating an FTAA.

(Sources: "Pettigrew flip-flops again on Chapter 11", Oct 30, 2002, Council of Canadians Press Release, www.canadians.org ; "FTAA Talks Get Down to Details: Pettigrew Counters Reports Trade Talks Aren't Going Well", James Baxter, The Ottawa Citizen, Nov.2, 2002; Interviews with IISD reporting, Nov.7, 2002)

3. Canada Seeks Stakeholder Input on New Trade & Investment Treaties

Canada has signaled its intentions to negotiate two new Trade & Investment Agreements with a grouping of Andean countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) and with the Dominican Republic.

As part of this process, the Canadian government is requesting stakeholder consultations on a variety of issues, including investment provisions., environmental protection, labour & human rights. Submissions must be received by December 20, 2002 to be taken into consideration.

For more information see the Canada Gazette notices at:

Andean Countries: www.dfait-maeci.gc.ca/tna-nac/FTA-Gaz1102-2-e.asp

Dominican Republic: www.dfait-maeci.gc.ca/tna-nac/FTA-Gaz1102-e.asp

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Arbitration Watch:
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1) Methanex Corporation Proceeds with NAFTA Arbitration Against the United States

On November 5, 2002, Methanex filed its Second Amended Statement of Claim with the NAFTA Tribunal. In an Interim Decision on Jurisdiction earlier this summer, the Tribunal had dismissed much of Methanex's first claim which sought to establish that a California ban on MTBE (a gasoline additive) violated the NAFTA's provisions on expropriations, minimum international standards and national treatment.

The Tribunal did, however, permit Methanex to resubmit an Amended Claim which centered upon the single allegation that the governor of California had discriminated against Methanex due to

the receipt of campaign contributions from a US company which produces an alternative to Methanex's product.

A summary of the case to date, and an analysis of the Tribunal's Interim Decision on Jurisdiction (Aug 7, 2002) can be found on the website of the IISD (who have petitioned for intervener status in the dispute). Additionally, a PDF copy of Methanex's newly amended (Nov.5, 2002) claim can be found on the website of the US State Department International claims division: http://www.state.gov/s/l/c5818.htm

2) UK Seminar on Bilateral Investment Treaties Arbitrations

Herbert Smith, a London-based law firm is holding a seminar on "Structuring Foreign Investments/Obtaining Expropriation Compensation" on Nov. 14. This seminar is not open to the general public on a walk-in basis, however interested individuals can signal their interest to the firm at the contact address below.

The seminar speakers will be Herbert Smith's International Law Partners, Campbell McLachlan and Robert Volterra and recently appointed assistant, Dr Alejandro Escobar, former Senior Counsel at the World Bank Group's International Centre for Settlement of Investment Disputes (ICSID). Sir Elihu Lauterpacht, CBE QC will be chairing the event.

Thursday, 14th November, 4.45pm - 6.15pm

Contact: Sally Henderson, Client Development Specialist Sally.Henderson@herbertsmith.com

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NEGOTIATIONS WATCH:
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1. Latest Draft of Free Trade Area of Americas Investment Chapter Released

Coinciding with the recent FTAA Ministerial meeting in Quito, Ecuador, the second draft of the FTAA negotiating text was released to the public. Much of the text is confined to square brackets, indicating a lack of agreement about many of the provisions. In many case, multiple permutations of given articles and sub-articles are included, which testifies to the substantial amount of work left to be done in the negotiations. The current deadline for a wrap up of negotiations is January 2005.

The text for the investment chapter can be found on the FTAA website at:

http://www.alca-ftaa.org/ftaadraft02/eng/ngine_1.asp

2. US Seeks Changes to Australian Investment Review Board as Part of New Trade Agreement

This week the United States and Australia announced that they will begin negotiations on a Free Trade Agreement sometime in the new year. US Trade Representative Robert Zoellick has signaled that he will seek to change Australia's current investment rules which require that all incoming investment be screened by a government agency. This government review can block any new investment on the grounds of "national interest". According to press reports, the US also seeks changes to Australia's real estate and media ownership rules, which currently restrict foreign ownership.

As part of its bilateral investment treaty program, the US typically seeks a right of admission/establishment for its investors in the territory of its trading partner. The US treaties generally require that US investors enjoy treatment which is no less favorable than that enjoyed by nationals of the other trading partner or by nationals of a third country (i.e. national or most favored-nation treatment).

In the 1980s, Canada scaled back its foreign investment review agency in response to similar demands from the US during negotiations on the Canada-US Free Trade Agreement (an agreement which was the precursor to the NAFTA).

(Sources: "US to Press Australia for Foreign Investment Changes", The Financial Times, Nov.15, 2002; "Admission and Establishment", UNCTAD Series on Issues in International Investment Agreements", United Nations, 1999)

3. OECD Conference "Attracting Foreign Direct Investment for Development" Slated for December

This second annual conference of the OECD Global Forum on International Investment (GFII) will be hosted by the Chinese Ministry of Foreign Trade and Economic Co-operation (MOFTEC) in Shanghai, China on 5-6 December 2002.

For more information see:

www.oecd.org/EN/document/0,,EN-document-673-12-no-20-32518-0,00.html

4. Russia Changes its Negotiating Position on Investment Treaties

Last year the Russian Federation announced a new negotiating template for its bilateral investment treaty program. Since the dissolution of the Soviet Union in 1989, Russia has signed 52 bilateral investment treaties, as well as the Energy Charter Treaty (ECT). However, 23 of these agreements, including the ECT and a BIT with the United States, have not entered into force. Further doubt was cast on the ratification of these remaining instruments last year, when the Russian Federation announced that it was scaling back the commitments made in any new bilateral investment treaties. Among the changes is a removal of certain core non-discrimination standards (national treatment and Most-Favored Nation treatment) as well as a guarantee of "fair & equitable treatment".

An analysis of Russia's policy change can be found in a commentary prepared for the Russia/central Europe Executive Guide, authored by Mark Luz, an Associate with the Moscow Office of the law firm White & Case.

See: www.whitecase.ru/articles/bilateral_investment.pdf

Arbitration Watch:
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1. Law Firm Releases Guide to Dispute Resolution in Caspian Region

A recent document published by Freshfields Bruckhaus Deringer offers an overview of the dispute resolution options, including investment treaty arbitration, open to investors in this

strategically important region. The report notes that the region has seen "huge international investment as international energy companies, and the industries that service them, begin to exploit some of the largest undeveloped oil and gas reserves in the world."

In addition to offering a useful catalogue of all existing investment treaties signed by countries from the region, the report also offers data on the number of investor-state disputes submitted to several different arbitral institutions in 2001. Notably, the report concedes that no data are available on disputes brought under ad-hoc rules (such as the UNCITRAL rules commonly included in BITs) presumably because of the lack of transparency under these rules.

For a copy of "Dispute Resolution in the Caspian Region: What Foreign Investors and Governments Need To Know", see:

www.freshfields.com/practice/disputeresolution/publications/pdfs/3401.pdf

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Arbitration Watch:
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1. Well-Known Arbitrator Warns of "Crisis of Legitimacy" in International Arbitration

A former judge on the Iran-US Claims Tribunal has warned of the "crisis of legitimacy" facing international arbitration. Charles N. Brower, writing in the National Law Journal, cautions that the increase in cases headed to international arbitration is serving to highlight the shortcomings of a system which lacks "generally accepted appellate or other control mechanisms." Contrary to the belief that arbitration will lead to a definite and binding resolution of international disputes, Brower points to several cases where the two parties have fought to an effective stand-off by resorting to their respective domestic courts in an effort to annul or enforce the arbitral award respectively.

Brower also laments that multiple arbitrations, related to essentially the same facts, have wended their way through parallel processes, sometimes leading to divergent or even contradictory resolutions of the same dispute. Two recent arbitrations against the Czech Republic, arising out of investments in that nation's broadcasting sector, have highlighted this Achilles Heel. While some multilateral investment treaties, such as the NAFTA mandate the consolidation of similar cases under a single tribunal proceeding, most treaties and investment agreements are silent on this point.

For the full article see:

http://www.whitecase.com/article_international_adr_10_7_2002.pdf

2. San Francisco Chronicle News Article Predicts Quick Resolution of Methanex Case

An article in the San Francisco Chronicle claims that the NAFTA Chapter 11 dispute between the Methanex Corporation and the United States is "widely expected" to be dismissed early next year. According to the article, a lawyer for the Methanex Corporation concedes that the recent re-filing in that case has "basically nothing" new to offer.

The article also suggests that many business groups are not in favor of seeing investor-state dispute settlement provisions - like the one contained in the NAFTA - replicated in other international agreements. This claim on the part of the author appears to be at odds with the positions of some major business lobbies in the United States. Two of the largest, the National Foreign Trade Council and the US Council for International Business, have long defended such investor-state provisions, calling upon the US government to include them in future investment agreements.

Sources & Links:

"Canadian trade challenge falls flat - but more fights may be coming", The San Francisco Chronicle, Nov.17, 2002: www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2002/11/17/MN128143.DTL ;

US Council for International Business: www.uscib.org

National Foreign Trade Council: www.nftc.org

3. Argentine Reluctance to Allow Utility Rate Hikes Angers Foreign Investors

The Argentine Government has rallied politicians from across the party spectrum in an effort to demonstrate support for a series of economic demands imposed by the International Monetary Fund. Although Argentina's "political, economic and social accord" claims to represent progress on many of the IMF's demands, the government still balks at a request by the IMF to permit privatized utilities to increase their charges to customers.

This issue has been a particularly contentious one, triggering tensions between foreign investors and the Argentine government. Of the ten investor-state disputes launched against Argentina through the International Center for the Settlement of Investment Disputes (ICSID), almost all are reputedly linked to problems arising out of privatization of public utilities in the 1990s. Moreover, recent emergency regulations imposed by the embattled government have further angered investors, leading to suggestions in the local press that several more investor-state disputes are in the offing.

Current cases registered with ICSID include those brought by the US-based Azurix corporation (a spin-off of the Enron corporation) entrusted with water delivery and supply in Buenos Aires province, and by a water services arm of the Vivendi Corporation which provided service in the Tucuman province. The former case was brought pursuant to the Bilateral Investment Treaty between Argentina and the United States, while the latter involved an alleged violation of the terms of the Argentina-France BIT.

Sources & Links:

"Argentina fails to Impress", The Financial Times, Nov.20, 2002;

"Investor-State Arbitration: A Hot Issue in Latin America", in Arbitration and ADR Newsletter of the International Bar Association, Oct. 2002, available online at: www.bomchil.com/cas/articulos/Investor%20State%20Arbitration.pdf ;

List of disputes registered with ICSID: www.worldbank.org/icsid/cases/cases.htm

4. Specter of NAFTA Chapter 11 Rears Its Head in Nova Scotia Dispute Over Proposed Quarry

Local citizens and environmentalists are calling upon the Nova Scotia government to undertake an environmental assessment of a US-based company's plan to quarry for Basalt Rock in Nova Scotia. The Interim Director of the Sierra Club of Atlantic Canada told local news organizations that this is "one of the worst projects I have ever seen as an environmentalist." Meanwhile residents of the tiny coastal community have lobbied local politicians and the province's environment minister to undertake an assessment of the project's impact upon local well-water, as well as fishing and whale-watching industries. Thus far, the government has declined to do so. One local political scientist has warned that the government's decision to issue a permit to the New Jersey-based company could mean trouble under the terms of NAFTA's chapter 11, if the government were to put a halt to the project now.

Sources & Links:

"Critics worry NAFTA could help push quarry through", By David Swick, The Daily News (Halifax), Nov.17, 2002, see: www.canada.com/search/story.aspx?id=aea8c868-1940-4ffa-a382-b64ed085b4ac
;

"Digby Neck will be destroyed by 'rotten quarry' critics say", By Peter McLaughlin, the Daily News (Halifax), Nov. 21, 2002, see: www.canada.com/halifax/dailynews/story.asp?id={50AA214F-6F3F-4235-8D7A-2
FA7650F1A50 ;

"Assessment Process for New Mines Flawed", Press Release of the Parks & Wilderness Society, Nova Scotia Chapter, August 23, 2002, see: www.chebucto.ns.ca/environment/cpaws/new/minerelease.html)

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5. Short Paper on the Right to Regulate and International Investment Law

Recently, the United Nations conference on Trade and Development held an experts meeting in Geneva, Switzerland on the Development Dimension of Foreign Direct Investment. Dr. Howard Mann, Associate and Senior International Law Advisor to IISD, presented a paper to this session on the theme of "The Right of States to Regulate and International Investment Law". A copy of this paper is available on the IISD website: www.iisd.org/trade.htm

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Arbitration Watch:
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1. Tribunal issues Award on Jurisdiction in the UPS vs. Canada case

A Tribunal in a NAFTA chapter 11 dispute between United Postal Service of America (UPS) and the Government of Canada has dismissed part of the claim brought by UPS. In an award issued on Nov.22, 2002, and available on-line (see link below), the Tribunal rejected the admissibility of a claim for damages under Article 1105 (minimum international standards of treatment) of NAFTA, but agreed to hear the claim of a violation of NAFTA's provisions on National Treatment (Article 1102).

UPS alleges that Canada Post, a government monopoly postal service, illegally cross-subsidizes other businesses, such as courier and express delivery services, to the detriment of UPS's Canadian operations. Pursuant to its Award on Jurisdiction, the Tribunal has requested UPS to submit a further amended statement of claim. The parties have until Dec.9, to advise the Tribunal on the scheduling of the next steps in the case. Further developments in the case will be reported in INVEST-SD bulletin

(Sources: "Tribunal Cuts Suit Against Canada", By Steven Chase, The Toronto Globe and Mail, Nov.23, 2002; "NAFTA News - UPS Tribunal Issues Jurisdictional Award", commentary by trade lawyer Todd Weiler, see www.naftaclaims.com ; Award on Jurisdiction, along with other documents in the UPS case, are available on the Government of Canada website: www.dfait-maeci.gc.ca/tna-nac/parcel-e.asp)

2. New Developments in Broadcasting Dispute with Czech Republic.

American Businessman RonaldLauder, heir to the Estee Lauder fortune, appears to be inching closer to a payday in his long-running battle with the Czech Republic, but new legal fronts continue to open up in the dispute.

Lauder is the major shareholder in Central European Media Enterprises Ltd., which ran, for a time, the first national private television station in the Czech Republic. However, because of political considerations, when CME invested in the Czech Republic in 1993 it did not hold a license to broadcast, instead the company partnered with a domestic license-holder, CET 21. Following a series of brushes with regulatory authorities, CME's legal relationship with its Czech partner became ever more tenuous. And in 1999, CME found itself shouldered to the sidelines by its erstwhile partner.

CME and Mr. Lauder, responded with a series of actions in Czech courts, as well as three international arbitrations. One of these was a contract arbitration brought under International Chamber of Commerce rules against CME's local partner, Vladimir Zelezny, head of CET 21.

Two further arbitrations were brought pursuant to bilateral investment treaties. One of these was brought by Mr. Lauder, as the major CME share-holder, under the US-Czech Bilateral Investment Treaty. A London-based tribunal in that case issued a final award which found only a single minor infraction under the treaty and awarded no damages to Mr. Lauder in the case.

In the second BITs arbitration, CME brought a case under the bilateral investment treaty between the Czech Republic and Holland, where CME was legally headquartered. The Czech Republic rebuffed an offer by CME and Mr. Lauder to consolidate the two arbitrations, so the proceedings ran in parallel.

And in this second BITs arbitration, the tribunal issued a partial award which found the Czech Republic to have violated five key provisions of the BIT, and ordered the Czech government to pay CME the fair market value of its investment before it was destroyed. Earlier this month, the Tribunal heard final arguments in the damages phase of the case, where CME is claiming damage of more than $525 million US. The tribunal is expected to render a final award on the exact level of damages in the Spring of 2003.

Meanwhile, attorneys for the Czech Republic are challenging the partial award in the Swedish Courts (where the arbitration tribunal was legally sited). That case is also expected to be heard in Spring of 2003.

(Sources: "Czechmate", By Michael Goldhaber, The American Lawyer, March, 2002 Available by subscription or by Lexis-Nexis subscription

"CME Ltd. Provides Update on Quantum Phase of Stockholm Arbitration Tribunal", PRNewswire, Sep. 13. 2002 http://news.findlaw.com/prnewswire/20020913/13sep2002124618.html

CME Ltd., 10-Q Report to the US Securities and Exchange Commission (SEC), Sept.30, 2002, http://www.sec.gov/Archives/edgar/data/925645/000092564502000042/finalq.
htm

Partial Award of Stockholm Tribunal: http://www.mfcr.cz/arbitraz/en/partialaward.pdf

Final Award of London Tribunal: http://www.mfcr.cz/arbitraz/en/finalaward.pdf)

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3. US Council for International Business Rejects Claims Made in San Francisco Chronicle Article

In response to a recent article in the San Francisco Chronicle, and discussed in last week's INVEST-SD News bulletin (see "San Francisco Chronicle News Article Predicts Quick Resolution of Methanex Case", Nov. 22, 2002), a Director with the US council for International Business rejects any suggestion that US business does not support the inclusion of investor-state arbitration in current and future US trade & investment agreements.

The full response from Adam B. Greene, Director for Environmental Affairs & Corporate Responsibility with the USCIB, follows. (Other readers wishing to comment on this or other issues can contact the editor of this bulletin at lpeterson@iisd.ca):

"Regarding the San Francisco Chronicle article on Methanex, the Investment Law and Sustainable Development Digest rightly disputes the author's claim that investor-to-state arbitration is not supported by business. That assertion, like many other aspects of the article, is simply not supported by the facts.

Investor-to state arbitration is an essential component in all of the nearly 2,000 investment agreements that have been negotiated globally, of which the US is a party to over 40. There are two main reasons why investor-to-state arbitration is so broadly supported:

1) Unlike trade disputes, which can be effectively remedied through agreements on future actions by the governments involved, investment disputes require remedies that can address past violations, including acts of expropriation against a single person or organization.

2) Investor-to-state arbitration is necessary to remove political considerations from the arbitration process. Without the right to submit a dispute to international arbitration on their own, individuals or organizations would have to convince their home government to submit the dispute on their behalf. This additional step would subject the dispute to the political pressures of inter-governmental relations.

What the Investment Law and Sustainable Development Digest and numerous other writings on this issue have failed to note is that U.S. takings law is based on the same principles and processes of investor-to-state arbitration. No home-owner would want to be required to first convince a state government to act if his property was taken illegally or without compensation.

The chronicle article also asserts that disputes are, in and of themselves, are a sign of a flawed process. If that is the case, the US legal system is seriously flawed: As of 1998, 370 takings cases were pending in the US Court of Federal Claims, representing 16% of all cases pending. 186 new takings cases were filed that year, or 19% of the total, and 61 were disposed, 7% of the total. (Source: Congressional Research Service - American Law Division)"

(Sources: reader submission by Adam B. Greene)

4. US and Singapore Negotiate an FTA, but Fail to Agree on Emergency Capital Controls

The United States and Singapore have announced "substantial agreement" on a Free Trade Agreement. To date, however, the two sides have been unable to reach an agreement on the subject of capital transfers. Under the terms of the bilateral investment treaties which it has negotiated with other trading partners, the US has typically refused to allow its trading partners to take emergency measures to limit capital transfers in times of crisis. While such leeway is accorded to WTO members, as well as under the terms of some bilateral investment treaties negotiated by other nations, it is not permitted under most, if not all, US BITs. Singaporean officials are reportedly concerned about retaining sufficient regulatory maneuvering room, in case of another event such as the Asian Financial Crisis of 1997.

(Sources: "US Singapore Reach Substantial Agreement", World Trade Online, Nov.19, 2002; "Capital controls: Will Singapore give in to US?", The Singapore Straits Times, November 22, 2002)

5. Research Guide to International Investment Law Available On-Line

The Library of the Washington University School of Law had made available on-line a helpful guide to researching international investment law. The guide can be accessed by visiting the library web site at the link provided below.

(Sources: http://www.wulaw.wustl.edu/Infores/Library/Guides/int-inves-law-sem.html)