

INVEST-SD: Investment Law and Policy News Bulletin, April. 8, 2005

Published by the International Institute for Sustainable Development  
(<http://www.iisd.org/investment/invest-sd>)

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Negotiation Watch:  
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1. Korean officials hint that screen quota reduction may unlock BIT negotiation with US,

By Luke Eric Peterson

A flurry of media reports in Korea indicate that high-ranking government officials are musing about a reduction in a screen quota designed to promote Korean films.

The quota has been a sticking point between the US and Korea for more than half a decade, with the US Motion Picture Association of America (which lobbies on behalf of Hollywood studios) steadfastly opposed to a system which dictates that Korean cinemas show domestic films at least 40% of the time.

The screen quota is routinely cited by US officials as the primary obstacle to a bilateral investment treaty between Korea and the United States. In turn, a BIT would pave the way for a broader Free Trade Agreement between the two countries.

Last month, in a speech to the American Chamber of Commerce in Korea, Trade Minister Kim Hyun-chong reportedly said that he was "cautiously optimistic about the resolution of the issue soon". According to the Korea Times, Kim suggested that a decision was likely prior to June, when trade officials from the two countries are slated to decide whether to move forward with economic negotiations.

Meanwhile, Kang Chul-kyu, Chairman of Korea's Free Trade Commission has been reported to have said that the Korean Government is studying a possible reduction in the quota.

Such moves have been hotly contested by the influential Cultural ministry, and by the domestic arts community.

The discussion over the US investment treaty comes at a moment when Korea appears to be ramping up economic negotiations with various parties. In an unrelated announcement this month, Korea announced that it had concluded a bilateral investment treaty with Libya. The country also plans to ink a trade deal with the European Free Trade Association (consisting of non European Union members Norway, Switzerland, Iceland and Lichtenstein) by year's end. According to a report in the Korea Times, the country is pursuing or exploring trade negotiations with Japan, India and Canada.

Korea has also concluded negotiations on a free trade agreement with Singapore, which marks the country's second free trade agreement, following its 2004 pact with Chile.

Sources:

"Lifting "screen quota", The Korea Herald, April 6, 2005

"S Korea to sign investment treaty with Libya", Asia Pulse Limited, April 4, 2005

"S Korean Govt mulling screen quota issues", Asia Pulse Limited, March 28, 2005

"Korea to step up free trade talks", Korea Times, March 26, 2005

"Trade Minister hints at resolution of screen quota issue before June", Korea Times, March 26, 2005

2. European Commission ratchets up pressure on members over BITs compatibility,  
By Luke Eric Peterson

The European Commission (the executive arm of the European Union) has served four member-governments with notice that certain of their bilateral investment treaties (BITs) with non-EU countries are incompatible with the European Communities (EC) Treaty.

As earlier reported in INVEST-SD in May of 2004, the Commission had requested information from Denmark, Sweden, Finland and Austria related to the compatibility of those countries BITs with EC law.

In the latest development, last month the Commission announced that it had served the four countries with "reasoned opinions" citing the incompatibility of certain BITs with EU law. The four governments have two months in which to formulate a response to the Commission's demand that they revise these treaties so as to bring them into compliance with the EC Treaty. Following that two month interval, the Commission could bring legal proceedings against the four member-countries before the European Court of Justice.

A particular concern for the Commission has been the failure of certain BITs to provide for limitations on the free transfer of funds in case of extenuating financial difficulties. According to a Commission press release, the body has found fault with 17 Swedish BITs, eight Finnish BITs, six Austrian BITs and one Danish BIT. In the Commission's view, these treaties "cut across the EU Council of Ministers' exclusive powers to adopt on behalf of the EU as a whole measures on the movement of capital to and from non-EU countries (by virtue of Articles 57.2, 59 and

60 of the EC Treaty)."

The question of safeguards on capital flows had reared its head in negotiations between the US, the European Commission, and a number of EU accession candidates from Eastern and Central Europe. While the Commission successfully persuaded the US to renegotiate its treaties with the various accession candidates so as to bring those BITs into compliance with EU law, the US balked at calls to remedy the lack of safeguards on capital flows. US officials pointed to the fact that some BITs of existing EU member-states also fail to provide for such limitations on the free transfer of capital.

The latest move by the European Commission to force several long-standing EU members to bring their BITs into compliance, may be seen as a prelude to pursuing a new solution to the same problem with the United States.

Sources:

INVEST-SD interviews

"Internal Market: Infringement Cases Against the UK, Portugal, Denmark, Austria, Sweden and Finland", European Commission Press Release, March 22, 2005, Reference #IP/05/352, available on-line at:

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/352&format=HTML&aged=0&language=EN&guiLanguage=en>

"EU Executive Branch Looking at Possible Incompatibilities of Some European BITs", By Luke Eric Peterson, INVEST-SD News Bulletin, May 24, 2004, available on-line at:

[http://www.iisd.org/pdf/2004/investment\\_investsd\\_may24\\_2004.pdf](http://www.iisd.org/pdf/2004/investment_investsd_may24_2004.pdf)

3. Canada-India bilateral investment treaty to be concluded by year's end,

By Luke Eric Peterson

In comments reported in the Indian press, Canada's Minister for International Trade, Jim Peterson, has signaled that a Foreign Investment Protection Agreement (FIPA) should be concluded between Canada and India by year's end.

According to The Economic Times of India, Peterson hailed the proposed agreement as a means for "encourag(ing) investors in both countries and

provid(ing) greater security to them." Peterson singled out several areas where economic relations might be enhanced, including farming, finance, energy, infrastructure and information technology.

As reported in an earlier edition of INVEST-SD, negotiations between Canada and India were launched in 2004, as part of Canada's Emerging Markets Strategy, which has also seen investment treaty talks opened with China.

Sources:

"India, Canada to Seal Foreign Investment Pact by '05-end", The Economic Times of India, April 5, 2005

"Civil society groups look for input into Canada-China investment treaty negotiations", By Luke Eric Peterson, INVEST-SD News Bulletin, Feb.7, 2005, available on-line at:

[http://www.iisd.org/pdf/2005/investment\\_investsd\\_feb7\\_2005.pdf](http://www.iisd.org/pdf/2005/investment_investsd_feb7_2005.pdf)

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Arbitration Watch:  
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4. Canadian Bank to sue Argentina under Canada-Argentina BIT,  
By Luke Eric Peterson

One of Canada's leading financial institutions, Scotiabank has served the Argentine Republic with a notice of arbitration under the Canada-Argentina bilateral investment treaty.

The bank is seeking more than US \$600 million related to losses incurred during Argentina's recent financial crisis.

According to a company news release, the firm alleges that Argentina has violated treaty obligations related to expropriation, non-discrimination and fair & equitable treatment. The bank alleges that various actions and omissions by the Argentine authorities caused Scotiabank to suffer a "total loss of its investment in its subsidiary Scotiabank Quilmes, whose license was revoked in August 2002".

In particular, the company objects to the forced conversion of US Dollar denominated deposits and loans into (devalued) Pesos in 2002.

The claim is the latest in a series of claims brought by Canadian investors operating in the Americas. Although disputes launched under Canada's BITs are not always disclosed by the parties, INVEST-SD is aware of at least four other claims by Canadian companies having been launched in recent years. These include a threatened arbitration by Scothalls against Barbados (this claim was settled on confidential terms), a threatened arbitration between Select Office Equipment and Croatia (this claim is reportedly pending), a pending arbitration between Vannessa Ventures and Venezuela, and a pending arbitration between Encana and Ecuador.

Sources:

"Scotiabank files claim against the Government of the Republic of Argentina", Canada NewsWire, April 7, 2005

INVEST-SD files

5. Spanish firm, Gas Natural, drops Argentine claim,  
By Luke Eric Peterson

The Spanish firm, Gas Natural, has reportedly abandoned its investment treaty claim against Argentina.

The natural gas distributor had filed a claim with the Washington-based International Centre for Settlement of Investment Disputes (ICSID) in 2003, alleging losses arising out of the Argentine financial crisis. The claim was one of several dozen which has landed on the doorstep of the ICSID facility following Argentina's financial meltdown.

A tribunal consisting of Andreas Lowenfeld, Henri C. Alvarez and Pedro Nikken was weighing jurisdictional arguments in the case at the time of Gas Natural's announcement that it would withdraw its claim.

Argentine President Nestor Kirchner has taken a hard line with foreign utility firms, urging them to withdraw their arbitration claims if they wish to see rate-hikes approved by the government. Foreign-owned utilities have been clamouring for sharp price-increases for several years now - to offset mounting losses - with many having turned to international arbitration in the hope of recouping compensation from the Government.

Company officials at Gas Natural have reportedly said that its decision to withdraw the firm's ICSID claim is a "gesture of goodwill". The law

firm of Freshfields Bruckhaus Deringer had represented the firm during its ICSID arbitration.

Sources:

INVEST-SD Interviews

"Gas Natural to withdraw lawsuit against Argentine govt for 2002 devaluation", AFX International Focus, March 15, 2005

"Spanish Gas Natural To Withdraw Legal Claim Against Argentina". Invertia Latin American News Digest, March 15, 2005

6. Mexico draws line under Feldman case by not appealing to Canadian Supreme Court,  
By Luke Eric Peterson

According to two sources familiar with the dispute, the Mexican Government will not appeal a recent ruling of the Ontario Court of Appeal, to Canada's Supreme Court.

Mexico has appealed to two separate Canadian courts in an effort to overturn the arbitral award in the NAFTA case of Marvin Roy Feldman Karpa v. United Mexican States. It failed in both attempts.

Following a decision of the Ontario Court of Appeal on January 11, 2005, the Mexican Government's sole option would have been to take its case before Canada's Supreme Court. However, the Mexican Government has decided against such a move, which means that the NAFTA tribunal's award of December 16, 2002 will stand.

Mr. Feldman, a US-citizen, operated a grey-market cigarette re-export business in Mexico. In 1999, he mounted a claim under the NAFTA alleging discriminatory treatment related to tax matters. Lawyers for Mr. Feldman alleged that similarly-situated domestic firms were allegedly receiving tax rebates while Mr. Feldman was denied such rebates. In its award of December, 2002, a divided tribunal upheld Mr. Feldman's claims of discrimination. The Mexican Government then sought to challenge the award, first in the ICSID system, and later in the Canadian courts (the legal seat of arbitration had been in Canada).

Sources:

## INVEST-SD Interviews

For earlier coverage of the Feldman arbitration see the following editions of INVEST-SD News Bulletin:

"NAFTA Tribunal in Feldman Case Won't Revisit Ruling; Headed for Court Review?", By Luke Eric Peterson, INVEST-SD News Bulletin, June 20, 2003, at:

[http://www.iisd.org/pdf/2003/investment\\_investsd\\_june20\\_2003.pdf](http://www.iisd.org/pdf/2003/investment_investsd_june20_2003.pdf)

"Canadian court declines to set aside award in NAFTA Feldman Arbitration", By Luke Eric Peterson, INVEST-SD News Bulletin, Dec.8, 2003, at [http://www.iisd.org/pdf/2003/investment\\_investsd\\_dec8\\_2003.pdf](http://www.iisd.org/pdf/2003/investment_investsd_dec8_2003.pdf)

"Second Canadian court declines to overturn NAFTA Feldman v. Mexico decision", By Luke Eric Peterson, INVEST-SD News Bulletin, Jan.21, 2005, at: [http://www.iisd.org/pdf/2005/investment\\_investsd\\_jan21\\_2005.pdf](http://www.iisd.org/pdf/2005/investment_investsd_jan21_2005.pdf)

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Briefly noted:  
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### 7. INVEST-SD seeking part-time writer to intern with IISD in Geneva

The International Institute for Sustainable Development (IISD), publishers of the INVEST-SD News Bulletin, are seeking applications from Canadian citizens under the age of 30 interested in a 6 month paid internship with IISD's Geneva-based office.

The successful candidate will need to be available for training during August and would take up the position in Switzerland in September of 2005. In addition to serving as a part-time writer on the INVEST-SD News Bulletin, the candidate will also serve as a research assistant for an ongoing research project related to international subsidies (for more information see: <http://www.iisd.org/trade/wto/vanlennep.asp>)

Please note that all applicants should have excellent spoken and reading facility in Spanish and English. All writing assignments will be in English.

The application deadline is April 25, 2005.

General details about the internship application process can be found here:

<http://www.iisd.org/interns/about.asp>



Specific terms of reference for the INVEST-SD internship can be found here:

[http://www.iisd.org/interns/current\\_positions.asp?id=165](http://www.iisd.org/interns/current_positions.asp?id=165)

#### 8. ICSID Deputy Secretary-General Parra to retire, take up visiting academic post

In an announcement this week, Antonio R. Parra, Deputy Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID), signaled his intention to retire at the end of September 2005. Mr. Parra will take up a post as Visiting Professor at University College London (UCL). Mr. Parra served with the World Bank since 1984, and has occupied various positions including Senior Counsel and Legal Advisor to the arbitration facility, and Editor-in-Chief of the ICSID Review - Foreign Investment Law Journal.

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