



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate B - Services and Investment, Intellectual Property and Public Procurement
Investment

Brussels, 03.06.2015

Trade B2/ Art. 4.1b

NOTE TO THE FILE

Subject: **Promotion and Protection of Foreign Direct Investments:
 Which global framework is needed?
 Mission report on Panel Discussion Berlin, 7th May 2015**

The Meeting – which took place under Chatham House rules - was organized by the German association of industry (BDI) together with the International Chamber of Commerce Germany and DIHK. COM participated in Panel Discussion II (see below). Participants came from Industry, Politics, Ministries, EU Embassies. COM participant (and rapporteur): Art. 4.1b (DG TRADE B.2)

Agenda: see attachment 1

List of participants see attachment 2

COM Speaking note (English version) see attachment 3.

The meeting was structured in three parts:

1. Introductory statements by the President of ICC Germany and Senior Managing Directors of BDI and DIHK.
2. Panel Discussion I: Foreign Direct Investment of German enterprises – which global framework do companies need?
- 3 Panel Discussion II : Foreign Direct Investment and the future of International Investment Protection

Flash summary:

Broad industry support for investment protection and EU investment agreements. Overall positive views on investment reform envisaged in the EU concept paper presented on 6 May. Sceptic views on ISDS reform by a German law firm. UNCTAD announced presentation of the World Investment Report focussing on options for investment protection reform on 24th June in Geneva.

Detailed report:

Introductory statements:

Mr. Brandt (President ICC Germany) underlined that every new investment/business activity helps creating work places in the home country. He regretted that the ISDS system has been discredited by public voices and advocated to use the current debate in order to improve the system and not to abolish it all together. Improving the system would include making it more user friendly for SMEs.

Outside the scope of the request

Mr. Brandt noted that both, the Concept paper presented by COM Malmström (on 6th May) and the ideas on an investment chapter presented by the German Minister of Economy Gabriel, mention the possibility of a permanent court for investment disputes. In the view of ICC the question remains how ISDS procedures are going to be conducted in the meanwhile (until such a court comes into existence).

Outside the scope of the request

Outside the scope of the request

Mr. Maier (Board of Directors BDI) underlined the importance of a global playing field and therefore the necessity for a global framework for investment.

Outside the scope of the request

As regards TTIP Mr. Maier reminded that US already considers their US model as the optimal investment protection. An EU text – following the Commissioner's concept paper – could nevertheless set the new benchmark – may be even for a future multilateral framework.

Panel I Foreign Direct Investment of German enterprises – which global framework do companies need?

The Panel consisted of a Member of the German Parliament (MP Beyer/CDU), a senior manager from Siemens AG, the German Ministry of Economy (Ms Krumpholz), a representative from Germany Trade and Invest and the head of the Financial section of the German development Agency (DEG).

MP Beyer welcomed a fact oriented public discussion on investment as a "good thing" as in past, many things had developed into a wrong direction. If the outcome of this discussion were not balanced no Parliament would give its consent to investment texts, stressed MP Beyer who also took the view that without investment protection there will be no TTIP with the US.

Art. 4.1a

According to MP Beyer it will be possible to come to an agreement with the US but a certain danger for the negotiations could lay in the desire to set a new gold standard. The effort to develop a common investment chapter with the US is nevertheless laudable and could become a model for the world, Mr. Beyer concluded.

Outside the scope of the request

Outside the scope of the request

Outside the scope of the request

Outside the scope of the request

Panel II: Foreign Direct Investment and the future of International Investment Protection

The Panel consisted of a Member from UNCTAD (Joachim Karl), Prof. Tietje (University Halle-Wittenberg), Prof Wolkewitz (Wintershall Holding), Ms Konrad (Lawfirm Mc Dermott Will & Emery) and the rapporteur (LTT/Speaking Notes – see attachment 3).

Joachim Karl (UNCTAD) described - from an UNCTAD perspective - Developing countries recent attitude to investment agreements. UNCTAD sees a first group of countries in waiting position, observing ongoing negotiations (CETA, TTIP, TPP).

Outside the scope of the request

Outside the scope of the request

Prof Tietje analysed the strengths and weaknesses of investment protection as an area of legal crosscutting issues ("Querschnittsmaterie") between formalised national law and negotiated international agreements. Mr. Tietje saw as a problem that some investment principles in the past were kept vague and potentially broad in range. He welcomed new efforts (esp. by UNCITRAL and by the COM) to increase Transparency in international arbitration.

Prof Wolkewitz considered investment arbitration as necessary and saw IIAs as element of investment decision making.

Ms Konrad described from her experience that SMEs are using ISDS more often than multinational enterprises – Siemens (participating in Panel 1, see above) would also do well without IIAs, while SMEs need this instrument of last resort.

Outside the scope of the request

COM as LTT (see attachment 3). Questions were raised on ISDS reform (parallelism between bilateral investment arbitration and creation of an international court), the concept paper and on legal scrubbing of CETA.

Art. 4.1b

Annexes:

- Agenda
- Speaking notes

Cc: R. Schlegelmilch, Art. 4.1b, Unit B.2, Art. 4.1b, Art. 4.1b (F.2), Art. 4.1b (A.3), Art. 4.1b (E.1)