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Flash report- Meeting with Amcham, 09/01/2014

On 9 January, B2 attended a meeting organised by AmCham to discuss Investment and ISDS in TTIP. Participants from business included representatives from Business Europe, Transatlantic Business Council, EuroChambres, UEAPME, UPS and Philip Morris.

B2 first gave a general debriefing on the latest legislative developments and ongoing negotiations. B2 then explained that the EU-US negotiations have led to unprecedented public attention on investment issues. B2 indicated that COM is sticking to its goal of improving the current ISDS mechanism and that the outcome of the CAN negotiations give the needed reassurances that that EU agreements on investment can adequately address both the need to preserve Member States right to regulate and the need for strong protection of EU investors.

Industry reasserted its strong support to the inclusion of investment protection and ISDS in TTIP.

On investment protection, participants raised the following issues:

- FET and intent of COM to clarify the concept- B2 replied that COM is aiming at bringing more clarity to FET in EU agreements.
- Fate of existing BITs with the US- B2 indicated that there are 9 agreements between Member States and the US. In accordance with Regulation 1219/2012, MS BITS would be replaced by the EU agreement. The investment provisions in TTIP should be based on MS best practices with in addition a number of elements to bring more clarity on a number of issues.
- Convergences and divergences with US-

- COM actions to address Civil Society concerns- B2 indicated that COM has significantly strengthened its communication on investment issues. COM website displays many useful documents.

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On ISDS, participants raised the following issues:

- Possibility of exclusion of ISDS from TTIP- B2 made the point that investors need an efficient mechanism of enforcement of investment protections provisions, in particular when denied access to a local Court. ISDS is necessary to complement the State-to-State Dispute mechanism.
- Inclusion of an Appellate mechanism- B2 explained that the issue was part of COM Communication of 2010. It remains a policy goal for COM.
- Volume of litigation stemming from MS BITs- B2 recalled that EU companies are those that use ISDS the most. EU MS have been defendants in a fair number of cases but have well managed their defence. To our knowledge, US investors have only won once against EU MS. The most vocal concerns of civil society are based on cases (Vatenfall, Philippe Morris) that have not yet been adjudicated.
- Transparency – B2 indicated that COM has played a proactive role in the negotiations of the transparency rules for ISDS under the auspices of UNCITRAL.

- Loser pays principle-B2 informed that COM is looking at ways to address the issue of costs related to arbitral procedures. The question of the loser pays principle is only one of the elements COM is looking at.
- Enforcement of the investment chapter- ISDS is needed for cases where Investors cannot access local courts. The State to State Dispute mechanism is politicised.

TRADE B2