

From: PETTINATO Carlo (TRADE)
Sent: 28 September 2012 15:28
To: AGUIAR MACHADO Joao (TRADE); PETRICCIONE Mauro Raffaele (TRADE); LOBILLO BORRERO Cristina (TRADE); IDIL Celine (TRADE); NYMAN Jon (TRADE); FRONTINI Gaspar (DEVCO); RUBINACCI Leopoldo (TRADE); IRUARRIZAGA DIEZ Ignacio (TRADE); GEHL Fablen (TRADE); TUIS Lucrezia (TRADE); DUEERKOP Marco (TRADE); BAULE Sylvia (TRADE); CZARNECKA Ewa (TRADE); SPATOLISANO Maria Francesca (EEAS-PARIS); LIIRA Minna (EEAS-PARIS)
Cc: LEVIE Damien (TRADE); PERESSO Elena (CAB-DE GUCHT); JORGENSEN Matthias (TRADE); CLANCY John (COMM); LEFORT Benoit (TRADE); VON WALTER Andre (TRADE)
Subject: RE: Meeting KDG with Repsol - flash report - follow up
Follow Up Flag: Follow up
Flag Status: Flagged

Following the meeting between Commissioner De Gucht and Repsol, on Tuesday 25 September DG Trade (Chair: G. Frontini; M. Jorgensen; C. Pettinato; B. Lefort; A. Von Walter) and Cabinet (E. Peresso) continued discussions with Arturo Gonzalo Aizpiri, Repsol's Director of Institutional relations.

Mr Gonzalo reiterated that in Repsol's view the current international framework does not allow any effective protection of foreign investment (no WTO rules; only BITs but international arbitration is too slow: justice delayed is justice denied). Thus, the "illegal confiscation" by Argentina of US\$ 10bn from Repsol, constitutes in their view a test case that will show if the international community is willing to enforce the rule of law or not. This will be an important precedent that will send a strong signal to other countries such as Venezuela, Ecuador and Bolivia where EU investments are vulnerable.

Mr Gonzalo explained that Argentina will need USD 37bn to develop the new Vaca Muerta oil field (discovered by Repsol) and they do not have the resources by their own. Deleted

He appreciated the political support received by the EU (De Gucht, Ashton, Tajani), but at the same time asked if the following instruments could be pursued:

- 1) WTO DS;
- 2) OECD – through the Investment committee, since Argentina has adhered to the National Treatment instrument
- 3)

Deleted

Mr Gonzalo explained that Repsol would start proceedings with ICSID by the end of November, after the expiry of the 6-month cooling off period provided for in the ARG-ES BIT (through the MFN clause). He realised that once the ICSID arbitration proceedings would start no other international claim could be brought against Argentina. Repsol had also sued Argentina in the US District court in New York, (since YPF is listed in the NYSE) due to Argentina's failure to launch a tender offer despite having retaken control over YPF. This would constitute a breach of their obligations to other shareholders.

In Argentina, Repsol has also filed a suit against the Government's failure to pay compensation in advance, as established in the Constitution, for the nationalisation of the Repsol shares. Mr Gonzalo explained, however, that They have tried to settle the dispute amicably, to no avail. Deleted

G. Frontini recalled all the strong political signals that had been given to express the EU disapproval of the expropriation of YPF. On the possibility to resort to WTO DS Deleted

As regards the OECD, COM is actively working to reach an EU coordinated position at the next

Investment Committee of October, during which the Argentina case will be discussed.

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Conclusion

EU will look at the possibilities to coordinate a position with MS in the various multilateral fora. Repsol will be ready to provide COM with all relevant information, including on the legal aspects of the claims.

Follow-up: Trade C.3 will prepare a note, in consultation with the investment, services and legal units and other relevant DGs, outlining the options available to pursue the Repsol issue in the different international fora. The note shall also recommend a course of action.

Carlo Pettinato

From: PETTINATO Carlo (TRADE)

Sent: Monday, September 24, 2012 7:05 PM

To: AGUIAR MACHADO Joao (TRADE); PETRICCIONE Mauro Raffaele (TRADE); LOBILLO BORRERO Cristina (TRADE); IDIL Celine (TRADE); NYMAN Jon (TRADE); FRONTINI Gaspar (TRADE); RUBINACCI Leopoldo (TRADE); IRUARRIZAGA DIEZ Ignacio (TRADE); GEHL Fabien (TRADE); TUIS Lucrezia (TRADE); DUEERKOP Marco (TRADE); CZARNECKA Ewa (TRADE); BAULE Sylvia (TRADE); CZARNECKA Ewa (TRADE); SPATOLISANO Maria Francesca (EEAS-PARIS); LIIRA Minna (EEAS-PARIS)

Cc: LEVIE Damien (CAB-DE GUCHT); PERESSO Elena (CAB-DE GUCHT); JORGENSEN Matthias (TRADE); CLANCY John (COMM); LEFORT Benoit (TRADE)

Subject: Meeting KDG with Repsol - flash report

Participants EU: Commissioner De Gucht, Damien Levie, Elena Peresso, John Clancy, Matthias Jorgensen, Benoit Lefort, Carlo Pettinato.

Repsol: Mr Luis Suarez de Lezo, General Counsel and Secretary of the Board of Directors; Arturo Gonzalo Aizpiri, Director of institutional relations

This afternoon Commissioner De Gucht received Mr Suarez de Lezo (SdL), of Repsol, who first of all wished to thank the Commission for all the support received in the context of the Repsol/YPF expropriation by Argentina. Mr Suarez explained that thanks to the strong EU support to Repsol (which President Fernandez did not expect), the YPF case has not been forgotten and Argentina has found itself isolated by the international community.

KDG observed, however, that Brazil had been very cautious vis-à-vis Argentina (due to their investments in the country?), and that Argentina had initiated WTO DS consultations against the Spanish measure restricting biodiesel imports. Two years ago, when he last visited Argentina, KDG noted that the Government was eager to regain access to the international financial markets. But these last moves, such as the YPF expropriation, do not help them in this process. Since they don't have access to external finance, Argentina needs to balance its current account, thus they impose trade balancing conditions on importers. But this policy by President Fernandez does not seem rational.

SdL replied that the Argentina leadership does not want to be rational, but rather needs to be populist (Falklands, etc.) to maintain internal support. They do want regain access to international financing (IMF, WB), also because they need to finance their imports and subsidies in the energy sector.

As regards the international arbitration, SdL explained that, although the Spanish BIT requires an 18 month cooling off period before presenting a claim, they will resort to the MFN clause that allows them to shorten

this to 6-months. Thus, Repsol will present their claim in early November. Having said this, according to SdL, the example of an arbitration between Daimler and Argentina which was finalised after 9 years, shows that it will not be easy to obtain justice along that route. Argentina would use all possible delaying tactics to avoid paying a fair compensation.

For the reasons above, SdL suggested the following other ways through which the EU could help to exert pressure on Argentina:

- 1) In the short term the EU could exercise effective pressure on Argentina through its votes in the World Bank board of Directors. Argentina has requested a loan to the WB for US\$ 3.3bn, for the development of the country. SdL explained that the WB should respond within the next few months, and that EU MS representatives (coordinated by the EU) should also take a position.
- 2) OECD: EU and MS could certainly exercise political pressure by highlighting the Argentina case in the Investment Committee. He thanked for the support received so far by the COM, in the preparation of the agenda of the next Investment Committee.
- 3) EU could coordinate with the US that the major oil companies do not invest in Argentina until the Repsol case is solved.

KDG replied as follows:

- 1) We shall explore how the COM can facilitate some sort of coordination among EU MS Directors in the WB Board;
- 2) OECD is a good political platform (or high level think tank), but with limited "teeth".
- 3) Perhaps better not to rely on competitors to plead for Repsol's case.

Comments: Tomorrow's meeting between Repsol representatives and DG Trade at 10am will allow us to deepen some of the technical aspects of the discussion.

Carlo Pettinato

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