

Investment protection in TTIP

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The discussion at this event focused on investment protection measures in the context of the TTIP agreement which is currently under negotiation.

Frank Hoffmeister from the Cabinet of DG Trade Commissioner was talking about the role of the European Commission (EC) in the negotiations. He argued that the EC needs to achieve a level of protection which is complete and at the same time it has to find a common denominator of the best practices of Member States so that new European treaties can replace old Member States bilateral investment treaties (BIT). He notes that the **Transatlantic Trade and Investment Partnership (TTIP)** negotiations have risen much public interest, especially its investment chapter. Therefore the EU will start its public consultation mid-March in order to explain transparently its approach to the public. It has, however, to respect rules of confidentiality with the USA and will hence only be able to state the European side concerns and goals. Hoffmeister underlined four issues which need to be addressed to improve the system: (1) Substantive Standards: it is necessary to define precisely what is meant by "fair and equitable treatment". (2) We need to define when the policy space is reaching indirect expropriation and on what level there should be compensation guaranteed. (3) Who should have the right to claim against the state? How should shell companies be treated in this regard? (4) Transparency: we need an open and transparent system. "The EU has nothing to hide".

David Gaukrodger, who is working in the Investment Division at the OECD presented OECD's work on investment protection at the Freedom of Investment Roundtable which was launched 2 years ago. He pointed out the issues of **investor-state dispute settlements (ISDS)** on domestic policy and the problem of preferential treatment for domestic vs. foreign companies which interferes with efficiency.

Suparna Karmakar, Visiting Fellow at Bruegel warns from rising too high expectations with the investment protection regulation. It is not yet assessed if a strong investment protection would actually lead to more foreign direct investment (FDI). She underlines two concerns for developing countries: First, the possibility that the ISDS is going to be used opportunistically and second, claims and settlements might be becoming too expensive for developing countries.

In the following discussion the following points were raised:

- Does ISDS give privileged treatment to big investors? Generally, the answer is no. The cost of litigation is, however, very high what does indeed favour big companies.
- Should we go even further and create ad hoc. court for international approval in ISDS? Therefore we would need a multinational investment treaty to make it the last deciding institution, which is rather unlikely to happen.
- What is the German position towards the negotiations? Germany is not opposed to TTIP but it does not believe that it is absolutely necessary.
- There are a lot of south-south treaties and many north-north projects. Would a strong ISDS favour more north-south FDI?
- Why does the negotiation with US raise much more public interest than other negotiations? Since 2010 all negotiations were fully transparent. It is not very clear why the media discussion has grown so big in the case of the TTIP. One can speculate that it is due to the generally higher media interest towards USA.