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Editor's Note:
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1. Clarification RE: Petrobart v Kyrgyzstan Energy Charter Treaty case

A report in the Feb.1, 2007 edition of Investment Treaty News entitled “Kyrgyzstan loses appeal of an Energy Charter award in Swedish courts” contained the following passage:

“Counsel for Kyrgyzstan had also argued that the tribunal had made an administrative error by not seeking the advice of the secretary of the ECT (Energy Charter Treaty) on whether Gibraltar is covered by the treaty. However, Adnan Amkhan, the secretary of the ECT at the time, told the appeals court that he would not have replied to such a request had it been made. The court therefore concluded that the tribunal had not made an error by not seeking Prof. Amkhan’s advice.”

This passage has sowed some confusion amongst readers. The Editor would like to clarify that there is no position of “Secretary” at the Energy Charter Treaty Secretariat. The story reference should have been to the “Head of the Legal Affairs Department” at the ECT Secretariat.

ITN drew upon a translation of the relevant Swedish court ruling, which had referred (incorrectly) to the position of “Secretary” at the ECT Secretariat

Also, it warrants clarification that Mr. Amkhan’s testimony in the Swedish court proceeding was given after he had stepped down as Head of Legal Affairs at the ECT Secretariat – a fact which was not remarked upon in the Swedish court ruling obtained by ITN.

This fact should help to clarify why Mr. Amkhan was offering his opinions in the Swedish Court proceeding, while at the same time suggesting that he might have declined any earlier request to offer a view (in his former capacity as Head of Legal Affairs at the Secretariat) with respect to the question whether Gibraltar is covered by the Energy Charter Treaty.

Arbitration Watch:

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2. European mining investors mount arbitration over South African Black Empowerment, By Luke Eric Peterson

European-based investors in South Africa’s mining industry have mounted an international arbitration against the South African Government alleging that that country’s new Black Economic Empowerment (BEE) mining regime violates the terms of investment protection treaties concluded by South Africa with Italy and Luxembourg.

The individual investors, all Italian nationals, allege breach of the protections contained in the Italy-South Africa investment treaty; in addition, their Luxembourg-based holding company, Finstone (PTY) Ltd SA, alleges violations of a separate investment treaty concluded by South Africa with Belgium and Luxembourg.

Collectively, the European investors hold large investments in the natural stone (e.g. granite) business in South Africa. In an interview in late 2005, Mario Marcenaro said that his family - together with another Italian family also involved in the current arbitration - controls some 80% of South Africa's stone exports.

The claim, which was formally registered by the Washington-based International Centre for Settlement of Investment Dispute (ICSID) on January 8th, is likely to be a politically sensitive one, as foreign investors, for the first time, invoke international law protections in an effort to challenge central tenets of the ruling-African National Congress's (ANC) Black Economic Empowerment policy.

NEW MINING REGIME AT CENTRE OF ARBITRATION CLAIM

The Mineral and Petroleum Resources Development Act (MPRDA), which came into force in May of 2004, served to vest all mineral and petroleum rights with the South African Government.

Under the new framework, businesses must apply to the South African Government – within a given time frame - for a right to convert their former holdings into "new-order" rights, which are held and used under license from the state.

As part of this conversion process, South Africa's Department of Mining and Energy will take into account the South African Constitution's overall goal of redressing historical, social and economic inequalities - and the progress of applicant companies in meeting targeted social, labour and development objectives set out in a broad-based socio-economic empowerment mining charter.

In the 2005 interview Mr. Marcenaro said that the social requirements were "very onerous" for small, family-held companies – pointing to affirmative action requirements for the hiring of Black or Historically Disadvantaged managers, as well as a looming obligation to sell 26% shareholdings to Black or Historically Disadvantaged Individuals. In the recent economic climate, where a strengthening South African currency has buffeted mineral exports, he says the prospect of finding a willing buyer who will pay a market price for such shareholdings is unlikely.

In legal terms, the claimants say that the MPRDA extinguished their ownership of mineral rights in South Africa, without providing "prompt, adequate and effective compensation" as required under South Africa's investment treaties.

The claimants also allege that they have been denied fair and equitable treatment – as required under South Africa's treaties – by virtue of being forced to divest 26% of their investments to Historically Disadvantaged South Africans (HDSAs)

In addition, the claimants allege that they are victims of "discrimination" – contrary to the fair and equitable treatment guarantee – thanks to their being treated less favourably

than Historically Disadvantaged South Africans. The claimants in the ICSID case maintain that their investments were made after the end of Apartheid in South Africa, and that as a consequence of this, the investors did not benefit from past injustices during the Apartheid era.

EUROPEAN GOVERNMENTS EXERTED DIPLOMATIC PRESSURE ON SA

Prior to the recent launch of an international arbitration, diplomatic pressure had been brought to bear upon South Africa in support of foreign mining companies with objections to the Black Economic Empowerment (BEE) policies introduced in the mining sector.

ITN can report that the Belgian and Italian Governments both made diplomatic representations to the South African government - warning that the BEE policies lead to potential breaches of investment protection treaties in force.

In March of 2005, South Africa's then-Minister for Minerals and Energy, in response to a written question posed by Mr. Henrik Schmidt, an opposition Member of Parliament, confirmed that the South African Government "had received an aide memoire from the Embassy of Italy in South Africa on the 26th August 2004 enquiring about the possible breaches of the South Africa-Italy Bilateral Investment Treaty (BIT) in the implementation of the Mineral and Petroleum Resources Development Act (MPRDA)."

A copy of the Italian Embassy's aide memoire seen by this newsletter explicitly warns the South African Government that "(i)t is the Italian Government's view that the (Minerals and Petroleum Resources Development) Act might produce a breach of the 1997 Agreement Between the Government of the Republic of South Africa and the Government of the Italian Republic on the Promotion and Protection of Investments."

Moreover, the aide memoire goes on to spell out how discrimination in favor of "historically disadvantaged individuals" (for e.g. Black or other disadvantaged persons) might breach the terms of the SA-Italy BIT.

"In the Italian Government's view, the Act might breach Articles 2(3) and 3(1) of the SA-Italy BIT. Under Article 2(3), the (Minerals) Act does not ensure 'just and fair' treatment of the investments of Italian investors in South Africa, as a result of the Act's preference, through its social upliftment objectives and the mining charter, of ownership of mining investments by historically disadvantaged individuals ('HDSAs')."

"Similarly, under Article 3(1), the (Minerals) Act does not offer investments of Italian investors 'no less favourable treatment than investments of its own investors', as HDSAs, and, by extension, South African investors as a group, are afforded better treatment under the Act than Italian investors."

NEXT STEPS IN ARBITRATION PROCESS

Now that the arbitration claim has been formally registered at the ICSID facility, each party has 90 days in which to nominate one of the three arbitrators who will preside over the dispute. The parties should jointly agree on the appointment of the third arbitrator. In case of a failure to appoint arbitrators or a failure of the parties to jointly agree on the third arbitrator, the ICSID facility would make such decisions.

For its part, the South African Government has been formally notified of the claim, and is planning to defend the dispute.

ITN will continue to monitor the arbitration, and will hope to obtain comment from the South African Government once it has been able to respond to the claim and appoint a legal team.

Sources: ITN Interviews

3. ANALYSIS: South African arbitration may raise delicate human rights issues,
By Luke Eric Peterson

With the filing of an international arbitration against the Republic of South Africa by a group of European mining investors, issues which have been discussed and debated in the abstract – including the relationship of international investment treaties and international human rights law – may soon be the subject of vigorous advocacy and deliberation.

While dozens of investor-state arbitrations are thought to be launched under investment treaties each year, it is the rare case which touches upon issues as politically sensitive as the question of the application of Black Economic Empowerment measures to foreign investors – and the compatibility of such measures with international investment treaty commitments owed to such foreign investors.

Although mining investors have long voiced concerns about the evolving regulatory climate in South Africa – including the vesting of mineral rights in the state and the BEE obligations imposed on mining companies - the decision by a group of European-based investors to take South Africa to international arbitration marks a major turning point – one which will be closely watched, and perhaps even duplicated, by other foreign investors.

A recent feature article in the Financial Mail of South Africa has highlighted growing discontent amongst mining companies, including a greater willingness to criticize government policy moves – and to challenge them in the courts of law.

However, by electing to sue South Africa for alleged breach of its international

investment treaty commitments, a group of European mining investors are gambling that international arbitration will provide a more favourable playing field than would the Courts of South Africa.

CHOOSING THE INTERNATIONAL ARENA OVER DOMESTIC COURTS

Peter Leon, a Partner with the law firm Webber Wentzel Bowens, told the Financial Mail that "However much you respect the independence of the SA courts, the fact is [claims for alleged expropriation] will end up in the constitutional court, which will have to consider the impact of a finding that there has been a generalized expropriation of mineral rights with compensation running into billions of Rand. An international arbitration tribunal will not have those implications in mind."

Mario Marcenaro, one of the claimants in the arbitration recently mounted at ICSID, in an earlier interview with ITN, argued that, even if the various requirements of the new South African minerals regime were found not to violate the domestic property rights of mining investors, they still might fall afoul of international investment treaties – which may impose a lower threshold for proving expropriation of property.

In the event that Marcenaro's calculations are correct, international arbitration may hold a further attraction for foreign investors, as Peter Leon told the Financial Mail:

"The potential compensation under international law is much larger, given that full market compensation could be awarded. Going to an international arbitration tribunal takes the process out of the hands of the domestic courts."

Indeed, the South African Constitution expressly provides that compensation for expropriation be "just and equitable", with various factors taken into consideration, including the purpose lying behind a government action. In instances where important public interests (for e.g. South Africa's need for racial redress or a more equitable distribution of natural resources) are involved, less than market-value compensation might be on offer – at least as a matter of domestic law.

By opting for international arbitration, the claimants in the pending ICSID arbitration hope that they can lay claim to full market-value compensation, unencumbered by the limitations imposed under the South African Constitution.

INVESTMENT TREATIES AND HUMAN RIGHTS LAW

Another issue lurking in the wings may be the relationship of South Africa's international law commitments to foreign investors and its parallel obligations under international human rights law.

One question which may be hotly contested is whether the Black Economic Empowerment policies have been conceived – and implemented – in furtherance of South Africa's international human rights obligations, for example to promote the right to

equality, or to take affirmative action measures so as to redress earlier discrimination. And, if so, how this should bear upon the tribunal's analysis as to whether the south African Government has breached its treaty undertakings to foreign investors.

To date, investment arbitrations have scarcely wrestled with such thorny legal questions – and the relevant investment treaties offer no guidance as to whether human rights considerations ought to mitigate potential claims for breach of an investment treaty.

Many of the earliest treaties concluded by South Africa in the immediate aftermath of Apartheid did not include provisions which expressly discussed the Government's prerogative to pursue Black Empowerment or other preferential treatment schemes – much less specific guidance as to which legal tests will be applied in the event that such government measures are alleged to violate investment treaty obligations.

It remains to be seen how these novel legal issues will be dealt with in the pending international arbitration at ICSID.

However, the degree to which the pending arbitration will play itself out in public remains a matter to be determined.

Occasionally, ICSID arbitration proceedings are opened to the public; however the preponderance are arbitrated in-camera.

It remains to be seen what level of transparency will attend this particular legal dispute. Given the likely public and academic interest in the dispute, the two parties might consent to open the arbitral hearings to public view; however, either party retains the right to veto such a move.

SOUTH AFRICA'S PRIOR EXPERIENCE WITH BITS

Following the dismantlement of the Apartheid system, the newly-elected African National Congress concluded a large number of bilateral investment treaties, including with a number of Western European Governments. As of June 2006, South Africa had signed a total of 42 such treaties – not all of which had entered into force.

The Republic of South Africa has faced at least one earlier investment treaty arbitration – although the proceedings were carried out in strict secrecy and the final award in that case has never been published.

ITN can report that in 2003, an arbitral tribunal operating under the UNCITRAL rules of procedure issued an award which held South Africa in breach of the Swiss-South Africa investment treaty, as a result of the Government's treatment of a Swiss private citizen who owned a game farm and lodge which was alleged to have been denied adequate protection and security from domestic police forces.

Further Reading:

Luke Eric Peterson, "South Africa's Bilateral Investment Treaties: Implications for Development and Human Rights", a Briefing Paper prepared for the South African Institute for International Affairs, November 2006, available on-line at: http://www.fes-globalization.org/publications/FES_OCP26_Peterson_SA_BITs.pdf

"Left Behind", By Brendan Ryan, Financial Mail (SA), January 26, 2007

Moshe Hirsch, "Interactions between Investment and Non-Investment Obligations in International Investment Law", in Oxford Handbook of International Law on Foreign Investment (Christopher Schreuer, ed., Oxford University Press, forthcoming).

4. US chemical firm pressing forward with NAFTA suit against Canada,
By Luke Eric Peterson and Fernando Cabrera

US-based Chemtura Corporation is moving forward with a NAFTA Chapter 11 arbitration against the Canadian Government following an earlier move by Canada to phase out a controversial agro-chemical used as a pesticide and fungicide.

A corporate predecessor of Chemtura, The Crompton Corporation, had first warned Canada in 2001 that it might seek upwards of $100 Million (US) in compensation for the alleged "expropriation" of its Canadian investments, following a Government move to ban the chemical Lindane.

Recently, Chemtura has called for the creation of an arbitral tribunal to hear the dispute. A source familiar with the claim tells ITN that the parties are in the process of choosing a Chair to serve on the three-person arbitration tribunal.

At the root of Chemtura's claim is the move by Canada's Pest Management Regulatory Agency (PMRA) to ban Lindane on the basis of the chemical's health and environmental effects. According to Chemtura, this decision was based on an inadequate scientific study, and was motivated by a politically-charged trade conflict between Canada and the United States.

The US firm alleges that between 1997 and 1998 US canola growers professed to be at a competitive disadvantage to Canadian growers, because of widespread use of Lindane-based seed treatments in Canada. At that time, the product was not approved for use by American canola growers, and Chemtura alleges that this fact led to the product becoming a "trade irritant" between Canada and the US – with US authorities going so far as to threaten to prohibit the import of Canadian Canola Oil.

According to Chemtura, the US and Canada ultimately struck a deal which would involve the cessation of manufacturing and sales of lindane-based seed treatment products in

Canada.

The US-based firm further alleges that it came to an agreement with Canada's Pest Management Regulatory Agency in October of 1999; under the terms of this deal, the company would agree to a voluntary discontinuation of the use of Lindane-based Canola treatments, pending a study to be conducted by Canada - and another study to be undertaken in conjunction with the US - to assess the safety of Lindane-based treatment.

In its Notice of Arbitration, Chemtura says that if studies demonstrated the safety of Lindane-based treatments, the registrations for these products were to be re-instated and Chemtura could sell its product during a phase-out window.

Chemtura contends that the Canadian Government subsequently reneged on this commitment, and failed to undertake a rigorous scientific risk assessment.

Chemtura further alleges that in December of 2001, Canadian authorities announced that they would terminate all uses of lindane in Canada through "phase out by suspension of registrations or voluntary discontinuation."

After its announcement, PMRA offered a phase-out plan to those companies willing to submit to a 'voluntary withdrawal' of their lindane products. After Chemtura refused to agree to this, the US-based firm says that the PMRA suspended its registrations for its remaining lindane products (non-canola-related) in February of 2002, without providing the company with a phase-out period.

Chemtura's allegations will be put to a test in formal arbitration which should get under way in a matter of weeks. The proceeding will take place under the UNCITRAL rules of arbitration.

While the Government of Canada has publicly stated that it will seek to open all such NAFTA Chapter 11 arbitration proceedings to the general public, it remains to be seen what posture Chemtura will take with respect to open hearings.

The US firm alleges that Canada has breached multiple NAFTA Chapter 11 obligations, including those related to National Treatment, Minimum Standards of Treatment, Expropriation, and Performance Requirements.

With respect to the last of these claims, Chemtura's Notice of Arbitration contends that Canada's ban on the sale and use of Lindane amounts to a requirement that substitute Canadian products be used in lieu of Lindane (produced and sold by a US-based investor).

The move by Chemtura to pursue its international lawsuit against Canada, comes several months after the US Government itself moved to eliminate the use of Lindane in all agricultural contexts.

One US-based environmental campaigner contacted by ITN expressed surprise that Chemtura was planning to sue Canada for compensation under NAFTA:

"Lindane is a persistent, neurotoxic pesticide that has been banned in 52 countries around the world, and is moving toward a global ban under the Stockholm Convention," says Kristin Schafer, Campaigns Director for San Francisco-based Pesticide Action Network North America. "We're astonished that Crompton would revive this lawsuit when the writing is clearly on the wall for this old and dangerous chemical."

Sources:

Legal documents related to Chemtura arbitration available on the Government of Canada's NAFTA Chapter 11 repository: http://www.dfait-maeci.gc.ca/tna-nac/disp/crompton_archive -en.asp

US EPA website on Lindane: http://www.epa.gov/oppsrrd1/reregistration/lindane/

5. Governments punt discussion of special UNCITRAL rules for investor-state disputes, By Damon Vis-Dunbar

Governments have delayed deciding whether United Nations rules on arbitration should treat investor-state disputes differently than ordinary commercial disputes. Delegates met last week in New York to continue discussion of possible revisions to the United Nations Commission on International Trade Law's (UNCITRAL) rules of arbitration. However, members of the UNCITRAL Working Group have postponed consideration of a call by some non-governmental organizations for specially-tailored provisions which would govern investor-state arbitrations.

The New York meeting was the latest in a process which kicked off last September, and which should finalize revisions to the UNCITRAL arbitration rules by some time in 2008.

The bulk of the international arbitration proceedings conducted under the UNCITRAL rules involve private commercial disputes – typically between two private parties - where a high degree of confidentiality is expected. However, the UNCITRAL rules are also commonly used in investor-state arbitrations – indeed many bilateral investment treaties offer investors the option of using the UNCITRAL rules to sue their host governments.

There has been growing debate as to whether greater transparency should be mandated for those international arbitrations where a state is involved.

After two non-governmental organizations (see below) submitted a proposal that called for specially-tailored provisions governing investor-state disputes, the Working Group decided that the issue was best dealt with at a later stage in the revision process. The

Working Group agreed that it would work on the "common denominators" (i.e. issues where consensus can be found) before discussing thornier issues, such as whether special provisions for investor-state disputes should be drafted.

However, governments did take a stand on the question of whether the UNCITRAL rules should incorporate a general provision on the confidentiality of arbitration proceedings. While the current rules address the confidentiality of hearings and awards, they do not address the existence of the proceedings themselves.

Such an overarching rule on confidentiality can be found in other international arbitral rules. For example, the World Intellectual Property Organization's rules of arbitration state that: "Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body ..."

Ultimately, however, member-governments rejected the idea of including a general provision on confidentiality in the UNCITRAL rules, arguing that it would be complicated to draft and unsuitable for some types of arbitrations. It was noted that in drafting any such express rule on confidentiality, governments would need to consider when the duty of confidentiality would begin and end, and what exactly it would cover (i.e. would it extend to expert-witnesses?). The United Kingdom delegation, in particular, cautioned against strengthening confidentiality requirements, given the trend toward greater transparency in international proceedings.

Meanwhile, two NGOs who have been vocal proponents of greater transparency in investor-state disputes were granted official observer status to the UNCITRAL meetings, reversing an earlier decision that had barred them from taking part.

The International Institute for Sustainable Development (IISD)* and the Center for International Environmental Law (CIEL) had been told late last month that their bid for accredited observer status would be turned down after several governments voiced objections. However, when the Chair of the UNCITRAL Working Group raised the issue during the New York meeting, no formal objections were expressed. Indeed, several delegations expressed explicit support for the move.

CIEL and IISD are promoting a series of revisions aimed at arbitrations involving governments, which are designed to increase transparency and public accountability. Those proposals are outlined in a report published earlier this month.

Last week's New York meeting saw delegations work their way through 20 of the 41 articles of a draft set of revised UNCITRAL rules prepared by the UNCITRAL Secretariat on the basis of earlier discussion by member-governments. The second half of these draft revised rules will be discussed at a meeting in September of this year.

Following that exercise, the UNCITRAL secretariat will produce a second draft of the

revised rules, at the same time as the UNCITRAL member-governments are expected to turn to thornier questions, such as whether to develop specially-tailored provisions to govern investor-state disputes.

The revision process is expected to wrap-up by 2008 after a further two or three meetings, according to the Vienna-based UNCITRAL Secretariat.

Sources:

"Revising the UNCITRAL Arbitration Rules to Address State Disputes", an IISD-CIEL Briefing Paper, available on-line:
http://www.iisd.org/pdf/2007/investment_revising_uncitral_arbitration.pdf

Documents relating to the revision of the UNCITRAL rules or arbitration are available on-line at:
http://www.uncitral.org/uncitral/en/commission/working_groups/2Arbitration.html

(* Investment Treaty News (ITN) is a reporting service of the IISD with an editorially independent mandate to provide neutral reporting on developments in the area of foreign investment law and policy.)

6. Path cleared for Italian holders of Argentine bonds to sue Argentina at ICSID,
By Luke Eric Peterson

The International Centre for Settlement of Investment Disputes (ICSID) has registered an international arbitration claim brought by some 195,000 Italian holders of Argentine bonds.

As was earlier reported in ITN, the claimants seek compensation for losses stemming out of Argentina's 2001 default on its sovereign debt.

The claimants declined a 2005 offer from the Argentine Government which would have paid them 34 Cents on the Dollar; instead, they will try their luck in arbitration at the ICSID facility.

The Italian nationals allege that Argentina's actions breach provisions of the Argentina-Italy bilateral investment treaty, and their "base claim", according to a lawyer working on the arbitration, is for some $4.4 Billon (US).

The bloc of bondholders turned to ICSID in September of 2006, and ITN understands that the Centre took pains to determine whether the claim qualified for ICSID arbitration. Under the ICSID Convention, the ICSID Secretariat will register a claim unless it is "manifestly outside the jurisdiction of the Centre".

Following registration, the parties will nominate an arbitral tribunal to hear the dispute.

The case is sure to be closely watched both within Argentina and elsewhere, as the ICSID tribunal may ultimately determine whether bondholders may use investment treaty protections to recoup losses sustained as a result of sovereign debt default.

Indeed, the ICSID claim arises at an interesting moment, as the newly-elected Government of the Republic of Ecuador is publicly musing about a possible default on its 10 Billion (US) sovereign debt.

Negotiation Watch:

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7. China-Finland investment treaty points to new trend in Chinese BITs,
By Fernando Cabrera Diaz

A new bilateral investment treaty (BIT) between China and Finland went into effect in November of last year, replacing a 1980s-era BIT between the two countries. In common with other recent Chinese BITs, the updated Finland-China BIT features an expanded investor-state dispute resolution mechanism.

The previous China-Finland BIT, in common with many other earlier Chinese BITs offered a very limited investor-state dispute resolution mechanism. Under the previous BIT, an investor could invoke the investor-state dispute resolution mechanism only in case of an alleged violation of the BIT's expropriation provisions. None of the other substantive protections in the BIT, such as the right to repatriation of profits, could form the basis of an investor-state arbitration claim.

Moreover, arbitrations relating to the expropriation clause were also narrowly circumscribed. Investors were obliged to take their claims first to national courts. Only if a national court determined that there had been an expropriation, could the affected investor then seek international arbitration under the treaty - and only in order to challenge the amount of compensation that the national courts had awarded.

In sharp contrast, the new China-Finland BIT has a much-expanded investor-state dispute resolution mechanism. Under the new treaty an investor can take any dispute concerning an alleged breach of the treaty's protections directly to international arbitration, following a mandatory three month consultation period with the host country.

Notably, the new BIT has a relatively weak "fork in the road" clause. An investor who brings a complaint to national courts can still seek international arbitration as long as he/she withdraws his/her claim from the national court before a decision has been rendered.

The new China-Finland BIT comes as China is showing greater willingness to conclude broader investor-state dispute resolution provisions in its investment protection treaties. The first BIT signed on this newer model was concluded with the Netherlands, and went into effect in August of 2004. That BIT was followed by a revised China-Germany BIT which went into effect in November of 2005, replacing a 1980s-era treaty between the two countries.

An arbitration lawyer working in China for a foreign law firm tells Investment Treaty News that the change of heart by China appears driven by several reasons. In particular, however, China has become a substantial overseas investor in its own right; this position has provided China with greater incentive to pursue a dispute resolution mechanism which the country had previously viewed as a device for foreigners to wield against China.

To date, no foreign firms is known to have sought arbitration against China to this point – although any such case might well take place below the radar According to the above-mentioned arbitration lawyer working in China, the current investment frenzy in China may mean that foreign investors are wary of challenging (and potentially angering) a Government with whom they are seeking deeper economic ties. Added to this, of course, is the fact that many of the existing first-generation BITs concluded by China provide for very narrow grounds upon which to base an international arbitration claim.

China is currently negotiating investment treaties with other nations. Active negotiations have been ongoing on a Bilateral Investment Treaty with Canada. More recently, in January china began three-way negotiations with South Korea and Japan on Trilateral Investment Treaty.

China is also in process of negotiating several Free Trade Agreements (FTA) with countries such as Australia, Singapore and Thailand. Some of these FTAs, such as the one with Chile, will include provisions on investment.

In related news, a seminar slated for April 2nd in London will explore certain issues related to China's international investment treaty commitments. (See next item for more information).

Sources:

ITN Interviews

China-Finland Bilateral Investment Treaty

Briefly Noted:
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8. British Institute to convene China investment law discussion in April

The London-based British Institute for International Comparative Law in conjunction with the law firm DLA Piper will convene a seminar discussion of China's international investment law commitments.
The seminar is slated to take place in London on Monday April 2nd from 4pm to 6PM. Guest speakers include Professor Wenhua Shan, Oxford Brookes University and Xi'an Jiaotong University; and Martin Endicott, World Bank, Legal Vice Presidency;
Sir Michael Wood will chair the meeting. Proposed issues to be addressed will include: China's recent BITs; Scope of investor/State dispute settlement mechanisms; Investors'/Chinese Government's expectations of new BITs.
For more information contact Dr. Federico Ortino, Director of the BIICL's Investment Treaty Forum at: f.ortino@BIICL.ORG

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