

Investment Chapter in EU-India FTA

Implications for Public Health and Access to Medicines

Date 16 June 2011
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Background

- Bilateral Investment Treaties
- Lisbon Treaty: FDI becomes exclusive EU competence;
- January 2011: EC request modification negotiating mandate EU-India FTA to include investor protection – under consideration in Council.
- EP resolutions, April and May 2011: need to protect public health

Challenge to regulate in public interest

- Protected investment: Intellectual Property Rights included
- Standards of Protection:
 - Prohibition of « indirect expropriation »
 - Fair and Equitable Treatment
- Enforcement mechanism: investor-state dispute settlement:
 - Bypass domestic courts;
 - Secret nature of investor-state arbitration;
 - High costs;
 - Example of Australia

Some examples

- Philip Morris against Uruguay (Switzerland-Uruguay BIT): tobacco warning as expropriation of trademarks;
- Merck called compulsory license for ARV medicine by Brazil an expropriation of its IP
- Aguas Argentinas S.A. against Argentina: prize freezing of water prices in economic crisis as unfair and inequitable – compensation to be paid.

Conclusion and Recommendations

- Investment chapter poses a real challenge to health and access to medicines
- Recommended actions:
 - Exclude investor-state arbitration mechanism;
 - Exclude IP from definition of “investment”;
 - Offer precise and narrow definition of “indirect expropriation” and “fair and equitable treatment”.

More information

- CSO briefing note, May 2011: The IP and investment chapters of the EU-India FTA: Implications for Health;
- Oxfam (2011): Sleeping Lions: International investment treaties, state-investor disputes and access to food, land and water.
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