Relevance of IIAs for German Industry

The BDI, the Federation of German Industry, represents 100,000 German industrial companies. These companies are responsible for 8 million employees in Germany.

Our companies are globalized and have FDI outward stocks of about 1.4 trillion U.S. dollars in other countries. These investments have created prosperity and jobs in many parts of the world. Around seven million employees outside of Germany are employed in companies of German investors. As a result, the German industry has created almost as many jobs abroad as in Germany.

However, investment abroad is always a risk for companies. For German small and medium-sized companies the lack of legal certainty is the biggest obstacle when investing abroad. Nearly half of the companies have problems with this obstacle. Therefore, our companies trust in the 130 German IIAs. Every single one of these 130 treaties is a strong, inviting signal of openness to our companies.

The termination of such a treaty could send the opposing signal. Investors might begin to doubt whether the government is willing to grant fundamental rights to foreign investors.
How to Reform

At the same time, it is clear that reforms of old IIAs are necessary. States need their right to regulate. Legal definitions in IIAs must be precise. ISDS must be transparent.

The termination of old treaties may be a way to modernize the IIA net of a country. But, in order to avoid the negative signals to investors which I have mentioned, some conditions should be respected:

1. The treaties should be terminated by an agreement of both parties.
   - This could send the message that both countries are interested in the success of the companies even if they have to change some terms and conditions of investment protection.

2. A future perspective should be communicated.
   - It should be clear why the treaty was terminated and how the investments will be protected in the future.

3. The validity of survival clauses should be reaffirmed.
   - They should provide protection until a new contract is in force.

Thank you very much!
Speech
Towards a Global Reform Effort –
Designing Principles

UNCTAD High-level IIA Conference “Phase II of IIA Reform”
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Dr. Christoph Sprich
Department External Economic Policy
Federation of German Industries (BDI)

The BDI, the Federation of German Industry, represents 100,000 industrial companies.

Our companies are responsible for 8 million employees in Germany. And with their investments abroad, German industry have created another 7 million jobs in other countries, almost as many as at home.

To protect their investments, our companies trust in 130 German IIAs. But the old net of treaties needs to be reformed. States need their right to regulate. Legal definitions in IIAs must be precise. ISDS must be transparent.

However, the modernization of the IIAs should not lead to the existence of many different standards of investment protection. An IIA regime which is like a bowl of broken spaghetti must be avoided. The international activity of investors could be best facilitated by internationally comparable standards.

In the area of sustainability, various standards are established internationally. For example, the SDGs, the UN GP, the ELO core labor standards etc. These standards are particularly important to strengthen the sustainability and public acceptance of IIAs.
However, not all of these standards are equally appropriate to improve investment protection standards. For example, the OECD Guidelines for Multinational Enterprises are designed as voluntary guidelines for companies and could not easily serve as a basis for an IIA.

Moreover, it is not only important to establish global standards for sustainability in the IIA net. For investors, it will also be more important to deal with global standards in the field of substantive rights and in ISDS procedures.

The UNCTAD Policy Framework, for example, provides orientation in all important aspects of IIA design. Furthermore, in 2016 the G20 provided a valuable guidance with its Guiding Principles for Global Investment Policymaking. This year, under the German B20 Presidency led by the BDI, BDA, and DIHK, the business organizations of the G20 countries have presented further proposals on how FDI could be facilitated on a global scale.

The most powerful way to a modern, effective, and sustainable investment protection would surely be a multilateral approach. However, this path certainly also offers the biggest political challenges. Especially, if such a solution should provide both a high level of protection for investors and, at the same time, meet the requirements for sustainability. For investors, such an approach could reduce complexity. The spaghetti bowl approach in the IIA regime could find an end.

Thank you very much!