Eastern Sugar v Czech Republic (Netherlands v Czech Republic BIT)

AREAS OF POLICY AFFECTED: agriculture (sugar quotas), international trade (sugar imports), employment (beet sugar industry).

CASE SUMMARY: The case was brought by British and French/ German sugar interests (Tate & Lyle Plc. and St. Louis Sucre). The dispute arose from the Czech Republic's allocation of sugar quotas based on the European Union's agricultural quota system. Historically, to support employment, the Czech Republic guaranteed minimum prices for sugar beet growers in competition with overseas cane sugar. In 2000, the government moved toward an EU model of duties on sugar imports. A series of laws were introduced, some of which were revised after decisions of the Czech Constitutional Court. The claimants objected to the laws on the basis that reforms to the quota system disadvantaged cane sugar producers relative to new entrants and to sugar beet growers. In 2006, the EU liberalized its sugar regime following World Trade Organization decisions and the claimant abandoned sugar production in the Czech Republic and other new EU countries. The tribunal found that the Czech Republic violated the Netherlands-Czech Republic bilateral investment treaty (BIT) and ordered roughly 25 million Euros in compensation to the claimant.

COMMENT: The case shows how a general agricultural and employment policy may lead to an investment treaty claim and order to compensate foreign investors. According to the tribunal, even if the aim of the Czech Parliament in allocating sugar quotas was to favour new entrants and preserve employment for sugar beet growers, the legislation still violated the treaty. The case also illustrates how an EU member state's BIT obligations can interact with its regulatory duties under EU law. Recently, the Czech Republic has taken steps to withdraw from its BITs with other EU states on the basis that they are not needed, now that the Czech Republic is a member of the EU. It has also sought to renegotiate BITs with non-EU states, including the U.S.

The case is an example of the practice of forum-shopping by claimants in investment arbitration. Here, the claimant was a Dutch company, owned by corporations based in third countries that used their corporate status in the Netherlands to bring a claim under the relevant BIT. Lastly, the case illustrates the political role played by private arbitration bodies in investment arbitration. The presiding arbitrator was appointed by the Stockholm Chamber of Commerce (SCC). This is a private body that was assigned the political role of appointing authority because the treaty allowed claims by investors under the SCC arbitration rules.

Source: www.iiapp.org (February 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see www.italaw.com). This report was produced by a research team coordinated by professor Gus Van Harten (gvanharten@osgoode.yorku.ca) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at www.iiapp.org.