

CQ Today

Bilateral Investment Treaties at Heart of U.S. Trade Policy Debate

December 10, 2009 Thursday

By Joseph J. Schatz, CQ Staff

Critics of U.S. trade policy, who have already helped to stall three pending trade deals, are now taking aim at a lower-profile piece of the trade regime -- bilateral investment treaties.

The treaties, which are distinct from trade deals, are designed to protect American companies' investor rights in countries where the United States does not already have a commercial relationship. The agreements also guard the rights of companies in those countries when they invest in the United States.

Negotiated by the Office of the U.S. Trade Representative (USTR) and the State Department, the treaties are a key element of U.S. trade relationships abroad and are important to American corporations doing business overseas.

But they generally receive less attention -- and less legislative scrutiny -- than free-trade agreements. Trade pacts require approval by both the House and the Senate, but the bilateral investment treaties, known as BITs, require only Senate ratification.

Labor and environmental advocates -- who argue that U.S. efforts to open markets have sent jobs overseas, reduced worker rights and circumvented environmental standards -- are trying to draw greater attention to the treaties on the Senate side.

Their efforts come as the Obama administration negotiates a bilateral investment treaty with China -- a flash point for trade policy because of China's status as the United States' biggest creditor, as well as the country with which the United States has a huge trade deficit.

The State Department and USTR also are reviewing the "model" treaty that the U.S. government uses as a framework for negotiating new treaties.

"Obviously, this is part of a larger debate," Sarah Anderson, director of the global economy project at the Institute for Policy Studies, said at a Thursday briefing on BITs.

The briefing was sponsored by Sherrod Brown, D-Ohio, a labor ally who is one of the Senate's staunchest opponents of recent trade agreements. Groups including the AFL-CIO, Sierra Club and United Steelworkers of America organized the briefing.

With little progress being made in global trade talks due to disputes between developed and developing countries -- and trade agreements with Colombia, South Korea and Panama stalled in Congress -- Anderson argued that the U.S. investment treaty framework should be a pressing matter of debate. "If you're looking for where the action is . . . the BITs is really where it's at," she said.

Costing Jobs or Protecting Business?

The U.S. government has BITs with 40 countries. In general, the treaties guarantee that U.S. corporations' legal rights will be protected at least to the same extent as those of companies in the host countries. Moreover, the treaties give foreign investors the right to submit investment disputes with the U.S. government to an international court, and vice versa.

Environmental and labor groups argue that such guarantees can unfairly open U.S. laws to challenge by foreign businesses and expose U.S. workers.

Owen Herrstadt, director of international affairs for the International Association of Machinists and Aerospace Workers, noted that the treaties encourage U.S. companies to invest overseas by making it more predictable and secure for them to do so. As a result, he argued, the treaties contribute to job losses in the United States and exploitation of workers in developing countries.

The treaty system "has to be part of an overall jobs policy that restores our industrial base," he said, arguing for changes to the regime.

The U.S. business community rejects this argument. The split between the corporations and trade critics is particularly evident in addenda to a September report submitted to the government by a private-sector advisory committee made up of representatives of business, labor, environmental and consumer advocacy groups.

"Those of us who believe in the importance of protecting U.S. investment abroad and understand its significance to our nation's economic competitiveness in the global economy were met with the misguided belief that safeguarding U.S. investment abroad leads to the offshoring of jobs, contributes to the degradation of the environment and unfairly restricts government action," Sean Heather, executive director of the U.S. Chamber of Commerce's international division, wrote in a statement that accompanied the report. "The Chamber believes that pursuing strong, high-quality BITs that achieve a high standard of protection for investors is central to our international competitiveness."

The Chamber argues that investment treaties have actually eroded corporations' protections, due in part to a greater focus by lawmakers on labor and environmental issues. The administration needs to make the treaties stronger to compete with investment arrangements happening elsewhere in the world, according to business groups.

The U.S.-China investment negotiations, begun in 2008 under the George W. Bush administration, are of particular concern to both U.S. businesses and the United Steelworkers of America. The union argues that the government must be wary about protecting the rights of Chinese state-owned corporations that compete in the United States.

Linda Andros, the union's legislative counsel, argued at Thursday's briefing that while bilateral treaties used to be more relevant to U.S. companies operating abroad, increasing foreign investment in the United States has raised concerns about whether U.S. companies and laws are at risk.

Some Chinese investment in the United States has been controversial in recent years. State-controlled China National Offshore Oil Corp., for instance, withdrew an offer to buy the Unocal oil company in 2005 after a congressional backlash.

Source: CQ Today
Round-the-clock coverage of news from Capitol Hill.
©2009 Congressional Quarterly Inc. All Rights Reserved.