

Investitionsschutzabkommen und Außenwirtschaft – eine ökonomische Betrachtung

EU-US-Abkommen - eine neue Ära für Investitionsschutz und
Streitbeilegung?

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Outline

- 1 Handel und Investitionen
- 2 Kritik am derzeitigen System
- 3 Zentrale Elemente des neuen Abkommens
- 4 Kontakt

Welche Änderungen stehen bevor?

- Gemeinsamkeit von Handel und Investitionen: global governance failure
- Nicht-tarifäre Handelshemmnisse: zum Schutz der Verbraucher, der Umwelt oder der nationalen Sicherheit
- Wirkung nicht-tarifärer Handelshemmnisse
 - Beschränkung des Marktzuganges
 - Zusätzliche Kosten "of doing-business"

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(Bilaterale) Investitionsschutzabkommen (BITs)

- Welche ökonomische Bedeutung haben BITs?
 - “the host state deliberately renounces an element of its sovereignty in return for a certain new opportunity: the chance to better attract new foreign investments, which it **would not have acquired in the absence of a treaty**. (Dolzer and Schreuer 2012, Oxford UP)
 - „... economic function of BITs is to act as a **commitment device** for the host government.“ (Aisbett, Australian National University, 2009)
- “... more countries signed them in order to gain legitimacy and acceptance **without a full understanding of their costs and competencies**.” (Jandhyala et al. Wharton School, 2011)
- Wodurch erhalten BITs ihre ökonomische Bedeutung?
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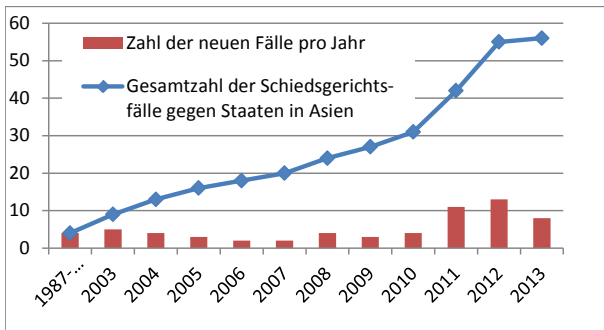
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Entwicklung der Schiedsgerichtsverfahren in Asien



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Quelle: Newcombe and Paradell, Law and Practice of Investment Treaties, Kluwer

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- **Asymmetrie** von Rechten und Pflichten zwischen Investoren und Regierungen / Staaten.

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Marktöffnung

Prinzipien des Verhandlungsmandats der EU

- The importance of regulatory action to achieve **public policy objectives**, including the ... consumers and **investors**, at a level that each party considers appropriate.
- TTIP provisions shall not affect the ultimate sovereign right of either party to regulate in pursuit of its public policy objectives and shall not be used as a means of lowering the levels of protection provided by either party.
- The HLWG recommends that a comprehensive U.S.-EU trade agreement should include investment liberalization and protection provisions based on the highest levels of liberalization and highest standards of protection that both sides have negotiated to date.
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Streitbeilegungsmechanismus

- „a relatively **thinly defined procedural framework** compared to advanced domestic procedural frameworks.“ (OECD 2012)
- Optionen
 - Promoting alternative dispute resolution
 - Tailoring the existing system through individual IIAs (die wahrscheinlichste Alternative)
 - Limiting investor access to ISDS
 - Introducing an appeals facility
 - Creating a standing international investment court
 - Rolle der diplomatischen Streitbeilegung in Zukunft?

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Corporate Europe



Kontakt

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