Australian Fair Trade and Investment Network (AFTINET) Submission to the DFAT re-negotiation of bilateral investment treaties with Egypt, Hungary, Poland, Czechia, Lithuania and Romania, February 2026

Contents

Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair trading relationships with all countries based on the principles of human rights, labour rights and environmental sustainability. We recognise the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries.

We welcome the opportunity to make a submission to the DFAT renegotiation of Bilateral Investment Treaties (BITs) with Egypt, Hungary, Poland, Czechia, Lithuania and Romania.

The Labor government has a policy against Investor-State Dispute Settlement (ISDS) in new trade agreements and to review it in existing agreements because ISDS provisions reduce government scope to regulate in the public interest[1]**.** The government also has policies to include enforceable human rights (including women's and Indigenous rights), labour rights and environmental standards (including commitments to reduce carbon emissions) in trade and investment agreements. As discussed below, ISDS can undermine regulation in all these areas. The Government should also respond to the recommendations of the Joint Standing Committee on Trade and Investment Growth[2] *inquiry into Australia's approach to negotiating trade and investment agreements* by legislating a negotiating framework for Australia's trade and investment agreements that excludes ISDS provisions and ensures the ability of the Australian Government to regulate in the public interest.

Bilateral investment agreements do not need to include ISDS. They can include general rules that provide fair protections for international investment and governments' right to regulate but do not need to give individual foreign investors special legal rights to sue governments. Such agreements can be enforced by state-to-state dispute processes. Examples of this include the Regional Comprehensive Economic Partnership of 14 Asia-Pacific countries, the Australia-UK Free Trade Agreement, the Australia-UAE Investment Agreement, and the India-Brazil bilateral investment agreement.

This submission has two parts.

Part one updates the evidence against ISDS.

Part two presents conclusions and recommendations. These are the that the BITs with the five EU countries should be terminated and that ISDS should be removed from the BIT with Egypt. There are also specific recommendations using examples of investment agreements without ISDS, which give

[1] Trade Minister Don Farrell (2022) Trading our Way to Greater Prosperity and Security, https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security.

[2] Joint Standing Committee on Trade and Investment Growth (2024) inquiry into Australia's approach to negotiating trade and investment agreements *Final Report* https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000220/toc_pdf/StrengtheningAustralia'sapproachtotradenegotiations.pdf, recommendation 5, p. 88.

reasonable general protections to investors but protect the right of governments to regulate. These can be enforced through state-to-state dispute processes found in all agreements.

Summary

Updated evidence on ISDS

Part one updates the evidence which supports government policy against ISDS. ISDS does not lead to increased investment, is structurally imbalanced in favour of investors, and international institutions like the OECD and the United Nations Framework Convention on Climate Change have acknowledged in reports that ISDS is an obstacle to the urgent transition to a low-carbon global economy. Australia's large number of agreements with ISDS leave it vulnerable to more cases from fossil fuel companies, and to forum shopping from both international and Australian investors, as has occurred with the Clive Palmer cases. Speculative third-party funding has fuelled the rise in multibillion-dollar claims, which are especially damaging to low-income countries. Attempts to reform ISDS processes through UNCITRAL and ICSID initiatives have been too slow and have not addressed its fundamental flaws. The introduction of environmental and health exceptions in "modernised" agreements has not prevented ISDS cases.

BITs with Hungary, Poland, Czechia, Lithuania and Romania should be terminated without sunset clauses

Following the Court of Justice of the European Union (CJEU) Achmea judgment[3] in 2018, which found ISDS provisions to be incompatible with EU law, EU governments signed a plurilateral agreement to terminate over 130 intra-EU BITs, including cancelling sunset clauses which provide for disputes to continue after agreements have been terminated [4].Australia and the EU are in the process of finalising negotiations for the Australia-EU FTA, which has an investment chapter without ISDS.

Given the updated evidence against ISDS, Australia's policy against ISDS and the EU termination of intra-EU BITS and their sunset clauses both governments should terminate these five agreements including their respective sunset clauses.

ISDS should be removed from the BIT with Egypt

The Egypt -Australia BIT is the only investment agreement between the two countries. Consistent with the evidence against ISDS the Australian government should remove ISDS from the agreement with Egypt and terminate its sunset clause. This would preserve general investment provisions without ISDS.

The agreement's structure includes the first 12 Articles dealing with aims, definitions and general protections for investment, and a state-to-state process for dealing with disagreements between state parties about the interpretation and application of the agreement. Article 13 deals specifically with ISDS disputes initiated by investors.

[3] Judgment of the Court of Justice of the European Union (2018), Slowakische Republik v Achmea BV 6 March, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0284

[4] Official Journal of the European Union (2020), Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union 29 May https://eur-lex.europa.eu/eli/agree_internation/2020/529/oj/eng

Article 13 ISDS provisions and the sunset clause (Article 15.3) should be removed from the agreement. The agreement preamble should also include the right of governments to regulate in the public interest, and the safeguards for government regulation should be strengthened in the context of a state-to-state dispute process. Specific recommendations are listed below.

Specific technical recommendations to exclude ISDS from the BIT with Egypt

1. The ISDS provision (article 13), which allows investors to claim compensation from governments and the sunset clause (Article 15.3) should be removed.
2. There should be a state-to-state dispute process similar to the processes in other bilateral investment agreements without ISDS.
3. The aims of the agreement in the preamble should include cooperation to promote mutually beneficial investment, the protection of investment and the right of governments to regulate in the public interest.
4. The state-to-state dispute process should have a code of conduct for dispute panel members to prevent perceived and actual conflicts of interest and to maintain the highest standards of independence and impartiality.
5. In the context of the state-to-state dispute mechanism, there should be the following clear exclusions from the provisions of the agreement and the application of the state-to-state dispute settlement mechanism:

    - government subsidies or grants
    - public services
    - taxation measures
    - safety
    - human plant and animal health, including environmental regulation, regulation to reduce carbon emissions, regulation to protect and improve human rights and labour rights, regulation to protect public morals or maintain public order, deceptive and fraudulent practices, national treasures of artistic historical or archaeological value, the privacy of individuals in relation to processing and dissemination of personal data and confidentially of individual records and accounts
    - measures for international peace or security, and protection of essential security interests
    - Australia's foreign investment framework, including legislation on Foreign Acquisitions and Takeovers from 1975 to 2020, Financial Shareholdings and their Ministerial Guidance Notes
    - prudential measures relating to regulation of financial institutions

    - rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement ("TRIPS Agreement"), or to the revocation, limitation, or creation of intellectual property rights

    - government procurement
    - preferences to indigenous persons, the Native Title Act 1993 and protection of Indigenous heritage
    - contracting out and privatisation of government services
    - funding, licensing and quality of all education services

- income security or insurance, Social Security or insurance, social welfare, public education, public training, health, childcare, aged care, public utilities, public transport and public housing.
- the creative arts, cultural heritage including indigenous cultural heritage, audiovisual services and other cultural industries
- gambling and betting
- tobacco regulation
- federal leased airports, maritime cabotage, registration of vessels and agricultural marketing boards
- favourable treatment to New Zealand and Pacific Islands Forum countries.

6. The Most Favoured Nation treatment of investment should clarify that it does not apply to international dispute procedures or mechanisms and that ISDS or other dispute provisions from previous or future agreements cannot be imported into the agreement.
7. The agreement should clarify that obligations to investors do not go beyond customary international law and that the definition of breaches of these obligations must demonstrate denial of justice in civil or administrative proceedings, fundamental breach of due process, including a fundamental breach of transparency in judicial or administrative proceedings, manifest arbitrariness, targeted discrimination, abusive treatment, or failure to provide full protection and security.
8. Obligations should clarify that the mere fact that a party takes or fails to take an action that may be inconsistent with investor expectations does not constitute a breach of the agreement, even if there is loss or damage to the investment as a result.
9. The obligations on national treatment should clarify that national treatment applies “in like circumstances” and depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare or regulatory objectives.
10. There should be no provisions for indirect expropriation.
11. The definition of expropriation should clarify that non-discriminatory regulatory measures by a party or judicial bodies of a party that are designed to protect legitimate public interest or public purpose objectives such as public health safety and the environment do not constitute expropriation.

Part One: Why ISDS should be removed from trade and investment agreements

Evidence of ISDS impacts on foreign direct investment is inconclusive

Supporters of ISDS claim that it increases the level of foreign investment, especially in developing countries. However, a comprehensive review by Bonnitcha *et al* of the impacts of ISDS in BITs on Foreign Direct Investment (FDI) noted the complexity involved in measuring the impact of this single variable on foreign investment flows, which are many other more significant factors, including commercial viability and market conditions. They concluded in 2017 that

> The studies' results are mixed. A majority find that bilateral investment treaties have a positive and statistically significant impact on inward FDI in at least some circumstances. Amongst these the scale and impact varies remarkably with some reporting strong effects and others finding positive but only small effects. Among the studies reporting a positive effect of BITS on investment flows, some also come to apparently contradictory findings. Finally a sizeable minority of studies find there was no statistically significant effect of BIT adoption on FDI. [5]

A more recent 2022 meta-study on ISDS and investment flows concluded that there was "robust evidence that effect of international investment agreements is so small as to be considered zero." [6]

Brazil's parliament has never endorsed BITs or trade agreements containing ISDS, but it has experienced high levels of FDI.[7]

ISDS origins, cases against public interest regulation and reviews by tribunal institutions

Legal rights for foreign investors to claim compensation originally developed in the post-colonial period after World War II to compensate international investors for the direct expropriation or taking of property by governments. However, over the past 60 years, they have expanded to include "indirect expropriation"[8] and "legitimate expectations",[9] which do not exist in national legal systems. Investors can claim that they deserve compensation if they can argue that a change in law or policy reduces the value of their investment and/or expected future profits and/or that they were not consulted fairly about the change and did not expect the change to occur when they made the

[5] Bonnitcha, J., Lauge, N., Skovgaard, P., Waibel, M. (2017) *The Political Economy of the Investment Treaty Regime*, Oxford University Press, Oxford, p. 159.
[6] Brada, J., Drabek Z., (2022) Does investor protection increase foreign direct investment? A Meta-Analysis 30 September https://onlinelibrary.wiley.com/doi/full/10.1111/joes.12392

[7] Filho, J. (2008) "The Brazilian Experience with Bilateral Investment Agreements: A Note", *Transnational Dispute Management*, No.1, https://www.transnational-dispute-management.com/article.asp?key=1198.
[8] Malakotipour, M (2020) The chilling effect of indirect expropriation clauses on host states public policies: A call for a legislative response. *International Community Law Review*. 29 May.
Availableat https://brill.com/view/journals/iclr/22/2/article-p235_5.xml?language=en
[9] Levashova, Y (2022) The role of investors' due diligence in international investment law: legitimate expectations of investors. 22 April. *Kluwer Investment Blog*. Available at https://arbitrationblog.kluwerarbitration.com/2020/04/22/the-role-of-investors-due-diligence-in-international-investment-law-legitimate-expectations-of-investors/

investment. These provisions enable tribunals to pay more attention to the payment of compensation rather than whether the regulation is in the public interest.

The number of reported ISDS cases has been increasing rapidly, reaching 1440 as of July 2025.[10] These include cases against tobacco regulation,[11] medicine patents,[12] environmental protections,[13] indigenous land rights,[14] regulation of the minimum wage[15] and more recently, government action to reduce carbon emissions, examples of which are discussed in more detail below.

Widespread criticism has influenced the two institutions that provide ad hoc tribunals to ISDS arbitration systems, the UN Commission on International Trade Law (UNCITRAL) and the World Bank International Centre for Settlement of Investment Disputes (ICSID), to conduct reviews that recognise that there are flaws in the ISDS system. The reviews began in 2017, were interrupted by the coronavirus disease 2019 pandemic, and have resumed but not yet been completed[16]. The ICSID review is not a public process. The UNCITRAL review, conducted by a UN body, has a more open structure with public submissions and publication of proceedings.

The criticism of ISDS has been acknowledged in the UNCITRAL review. Criticisms of the ISDS *structure* include the following: the power imbalance, which gives additional legal rights to international corporations that already exercise considerable market power, the lack of obligations on investors, and the use of claims for compensation for public interest regulation.

Acknowledged criticisms of the ISDS *process* include the lack of independent judges, arbitrator conflict of interest, lack of transparency, lengthy proceedings, high legal and arbitration costs, forum shopping by investors, inconsistent decisions caused by the lack of precedents and appeals, third-party funding for claims as speculative investments, and excessively high awards based on dubious and inconsistent calculations of expected future profits. [17]

After nine years, the only agreed change to emerge from the UNCITRAL process is a Code of Conduct for arbitrators, which attempts to address arbitrator conflict of interest by defining conflict of interest

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[10] UNCTAD (2022) Investment Dispute Settlement Navigator, https://investmentpolicy.unctad.org/investment-dispute-settlement

[11] Ranald, P. (2019) When even winning is losing. The surprising cost of defeating Philip Morris over plain packaging, The Conversation, March 27, https://theconversation.com/when-even-winning-is-losing-the-surprising-cost-of-defeating-philip-morris-over-plain-packaging-114279

[12] Baker, B. (2017) The Incredible Shrinking Victory: *Eli Lilly v. Canada*, Success, Judicial Reversal, and Continuing Threats from Pharmaceutical ISDS cases, *Loyola University Chicago Law Journal,* Vol. 49, 2017, Northeastern University School of Law Research Paper No. 296-2017 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3012538

[13] Withers, P. (2019) Canada ordered to pay US 7 million in NAFTA case, February 25, Canadian Broadcasting Company, https://www.cbc.ca/news/canada/nova-scotia/nafta-bilcon-digby-neck-quarry-environmental-sovereignty-1.5032727
Nelson, A. (2022) Oil firm Rockhopper wins £210m payout after being banned from drilling, *The Guardian*, August 25, https://www.theguardian.com/business/2022/aug/24/oil-firm-rockhopper-wins-210m-payout-after-being-banned-from-drilling

[14] International Centre for Settlement of Investment Disputes (2017) Decision on Bear Creek Mining Corporation versus the Republic of Peru, November 17, ICSID Case No. ARB/14/21, https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3745/DS10808_En.pdf

[15] UNCTAD (2019) Investment Dispute Settlement Navigator, Veolia v. Egypt 2012, https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/458/veolia-v-egypt;
Breville, B and Bulard, M. (2014) The injustice industry and TTIP, *Le Monde diplomatique*, English edition, June, https://www.bresserpereira.org.br/terceiros/2014/agosto/14.08.injustice-industry.pdf

[16] United Nations Commission on International Trade Law (UNCITRAL) (No Date) Working Group III: Investor-State Dispute Settlement Reform. Available at https://uncitral.un.org/en/working_groups/3/investor-state

[17] Langford, M, Potesta, M and Kaufman, G (2020) UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions. *Journal of World Investment and Trade.* 22 June. Available at https://brill.com/view/journals/jwit/21/2-3/article-p167_1.xml?language=en

and requiring disclosure by arbitrators of 'double hatting'. This occurs when an arbitrator is arbitrating one claim and practising as an advocate in another. After much debate, the final Code adopted by ICSID and UNCITRAL requires that double hatting must be publicly disclosed, but it has not been forbidden except in very narrow circumstances when claims are closely related. [18]

Latest evidence of ISDS claims against government regulation of carbon emissions

A 2022 study published in the journal *Science* showed that the increasing use of ISDS clauses in trade agreements by fossil fuel companies to claim billions in compensation for government decisions to phase out fossil fuels is a growing threat to government action to address climate change.[19]

US company Ruby River Capital filed an ISDS claim against Canada after its liquefied natural gas project was rejected because of concerns about its greenhouse gas emissions. The company sought US$20 billion in compensation despite having spent approximately US$124 million on the project [20].

In Europe, German energy companies RWE and Uniper launched ISDS cases against the Netherlands using ISDS in the Energy Charter Treaty (ECT) over its moves to phase out coal-powered energy by 2030.[21] Although both cases have now been withdrawn, they spurred public debate and a comprehensive review of the EU's membership of the ECT which led to EU withdrawal.

However the ECT's sunset clause continues to protect existing investments for 20 years. In 2025 Dutch oil company Shell registered in the UK and US company Exxon-Mobil initiated separate ISDS cases against the Netherlands over the closure of the Groningen gas field, one of Europe's largest gas projects, after a parliamentary inquiry found the drilling caused earthquakes resulting in widespread structural damage, safety risks, and social harm. These cases appear to be counterclaims to attempt to evade responsibility for the costs of environmental remediation [22], and show why is it essential to terminate ISDS sunset clauses. There are proposals which show termination is technically possible through the use of Article 62 of the Vienna Convention on the Law of Treaties (VCLT), on the basis that there has been a fundamental change in circumstances since the inception of the treaty. This

[18] United Nations Commission on International Trade Law (UNCITRAL) (2023) Code of Conduct for arbitrators in international investment dispute resolution. 21 December. Geneva: United Nations. Available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/2318944_coc_arbitrators_e-book_eng.pdf
International Centre for Settlement of Investment Disputes (ICSID) (2023c) Code of conduct for arbitrators in international investment disputes. Available at https://icsid.worldbank.org/resources/code-of-conduct

[19] Tienhaara *et al.* (2022) Investor-State disputes threaten the global green energy transition, *Science,* 5 May 2022Vol 376, Issue 6594 pp. 701-70 https://www.science.org/doi/10.1126/science.abo4637 See also Boston University (2023) Submission to the Special Rapporteur on human rights and the environment call for inputs. Available at https://www.bu.edu/gdp/files/2023/11/KT-RT-KG-OHCHR-ISDS-Submission-FIN.pdf

[20] International Centre for Settlement of Investment Disputes (ICSID) (2023b) Ruby River Capital LLC v. Canada, ICSID Case No. ARB/23/5. Available at https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/5.

[21] Kluwer Arbitration (2021) http://arbitrationblog.kluwerarbitration.com/2021/08/24/the-netherlands-coal-phase-out-and-the-resulting-rwe-and-uniper-icsid-arbitrations/

[22] Bedeschi, B. (2026) Groningen closure debate reignites as Shell brings fresh arbitration. *Gas Outlook.* January 21, https://gasoutlook.com/analysis/groningen-closure-debate-reignites-as-shell-brings-fresh-arbitration/
Hodgson, R. ExxonMobil sues Dutch government over gas field closure(2024*) EuroNews.* October 10. https://www.euronews.com/my-europe/2024/10/10/exxonmobil-sues-dutch-government-over-gas-field-closure

can be justified on the basis that a swift and substantial transition away from fossil fuels is now required to ensure states can meet their obligations under the Paris Agreement[23].

In 2025 the UK faced its first ISDS claim under the bilateral Singapore UK investment agreement from Singapore-based Woodhouse Investment Pte Ltd against a High Court decision to deny a permit for a coal mine in Cumbria[24]. The claim has provoked widespread public criticism as it is seen as a challenge to government policy to phase out fossil fuels[25].

Governments are refusing ISDS arrangements

Following the Court of Justice of the European Union (CJEU) Achmea judgment[26] in 2018, which found ISDS provisions to be incompatible with EU law, EU governments signed a plurilateral agreement to terminate over 130 intra-EU BITs, including terminating sunset clauses which provide for disputes to continue after agreements have been terminated [27].

As discussed above, the EU Commission in July 2023 proposed a coordinated withdrawal of all EU states from the ECT because its ISDS provisions were being used against government policies to reduce carbon emissions.[28] The UK has also announced its withdrawal from the ECT.[29]

There has been bipartisan opposition to ISDS in the USA. The USA and Canada both agreed not to apply ISDS to each other in the first Trump administration's 2020 revision of NAFTA (now called the US-Mexico-Canada Agreement).[30]

Other governments are withdrawing from ISDS arrangements. South Africa, India and Indonesia have terminated Bilateral Investment Treaties. ISDS has been excluded from the Regional Comprehensive Economic Partnership (RCEP) and the Australia-UK Free Trade Agreement (A-UKFTA). ISDS has also been excluded from the India-Australia Comprehensive Economic Cooperation Agreement and the Australia-EU Free Trade Agreement (A-EUFTA), both currently under negotiation.

[23] Jackson, E. (2024) The Energy Charter Treaty: Letting the sun set on sunset clauses. Review of European, Comparative & International Environmental Law. Volume 33, Issue 3 pp. 619-63 https://onlinelibrary.wiley.com/doi/10.1111/reel.12583

[24] Investment Treaty News (2026)The United Kingdom faces its First ISDS Arbitration. January 19. https://www.iisd.org/itn/2026/01/19/the-united-kingdom-faces-its-first-isds-arbitration/

[25]ABColombia (2026) ISDS a threat to global security. February 4. Report of a conference sponsored by Christian Aid, CAFOD, SCIAF, Oxfam and Trocaire. https://www.abcolombia.org.uk/isds-a-threat-to-global-security/

[26] Judgment of the Court of Justice of the European Union (2018), Slowakische Republik v Achmea BV 6 March, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0284

[27] Official Journal of the European Union (2020), Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union 29 May https://eur-lex.europa.eu/eli/agree_internation/2020/529/oj/eng

[28] European Commission (2023), 7 July, https://energy.ec.europa.eu/news/european-commission-proposes-coordinated-eu-withdrawal-energy-charter-treaty-2023-07-07_en

[29] UK government (2024) UK departs Energy Charter Treaty, 22 February, https://www.gov.uk/government/news/uk-departs-energy-charter-treaty

[30]Miller-Chevalier (2023) As the end of NAFTA's sunset period approaches, Mexican, U.S. and Canadian investors have until April 1 to submit a notice of intent. *International Alert* March 15. Available at https://www.millerchevalier.com/publication/end-naftas-sunset-period-approaches-mexican-us-and-canadian-investors-have-until-april (accessed 23 February, 2024)

The United Nations Framework Convention on Climate Change UNFCCC) reports says ISDS is a systemic barrier to climate action

A 2023 report by the UN Special Rapporteur on human rights and the environment found "overwhelming evidence that ISDS is a major barrier to addressing climate change."[31]

This recognition continued in the 2025 UNFCCC COP 30 report, *Baku to Belém Roadmap to 1.3T* on climate financing which explicitly called out Investor-State Dispute Settlement (ISDS) in trade agreements as a systemic barrier to financing climate action in developing countries (p.52):

> *A further systemic barrier reflects outdated clauses used in over 2,000 investment treaties that can impact the sovereign policy-making space of developing countries. Investment treaties with investor-state dispute settlements provisions allow foreign investors to claim compensation against government measures that may challenge their business interests. Potential damages liability can affect policy decisions to set enabling environments for climate action. Up to USD 83 billion has been awarded through 349 investor-state disputes for policy actions such as denial of permits for GHG emissions-intensive exploration, extraction, or infrastructure. Developing countries are vulnerable to over 60 per cent of potential Investor-state dispute settlement (ISDS) claims due to climate action.*[32]

Irene Vélez Torres, the environment minister of Colombia, spoke at COP 30 following a much-lauded announcement in which Colombia said it would protect its part of the Amazon from fossil fuel exploitation. She said ISDS made such decisions far more difficult because Colombia is one of the most affected countries in the world by ISDS, with 23 known cases already, and as many as 280 potential cases if the country continues to take ambitious climate action. "No government should have to choose between protecting nature and its people, and protecting itself from arbitrators," she said.[33]

Australia and 23 other countries endorsed the Belem Declaration on the Transition away from Fossil Fuels initiated by Brazil, Netherlands and Colombia[34].

Colombia and the Netherlands are hosting a high-level government conference in Santa Marta Colombia from April 28-9, 2026, to develop practical action plans for the transition away from fossil fuels. The themes are overcoming economic dependence, transforming supply and demand for renewable energy and advancing international cooperation and multilateralism. The last theme includes addressing international legal barriers, particularly those arising from ISDS[35].

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[31] Boyd, D. (2023) Paying polluters: the catastrophic consequences of Investor-State Dispute Settlement for climate and environment action and human rights. UN Commission on Human Rights, July 13 https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute?s=03

[32] UNFCCC COP 30 (2025) F*rom Baku to Belem roadmap to 13 T,* November 5. https://unfccc.int/documents/650953

[33] Montague, B. COP30 'must declare an end to ISDS' *The Ecologist*, November18. https://theecologist.org/2025/nov/18/cop30-must-declare-end-isds

[34] Belem Declaration on the Transition away from Fossil Fuels (2025) November 23. https://static1.squarespace.com/static/68dc91a7e566d74a91e8e22d/t/6982c9263e67ae51aa01c17d/1770178854739/BELEM+DECLARATION+ON+THE+TRANSITION+AWAY+FROM+FOSSIL+FUELS.pdf

[35] Colombia The Netherlands (2026) First conference on Transitioning away from Fossil Fuels: Principles and Thematic Pillars https://transitionawayconference.com/

ISDS in Australia's many BITs and trade agreements make it vulnerable to claims by Clive Palmer and others

Law firms specialising in ISDS cases advise international companies to set up subsidiary companies in jurisdictions where governments have ISDS agreements so they can use forum shopping to maximise ISDS opportunities. One firm advised that "companies in industries most affected by States' climate change obligations (e.g., fossil fuels, mining, etc.) should audit their corporate structure and change it, if needed, to ensure they are protected by an investment treaty".[36]

Australia has 16 bilateral investment agreements and 10 out of a total of 19 broader trade agreements that include ISDS[37]. This leaves Australia particularly vulnerable to claims by fossil fuel companies against regulation to reduce carbon emissions. More generally, the number of agreements with ISDS enables international companies based elsewhere to register subsidiaries in Australia through which they can make claims against other countries.

There are 14 known claims from Australian companies using ISDS in Australia's trade and investment agreements (all from mining and energy companies) in the UNCTAD database[38]. Two of the companies are subsidiaries of a Canadian mining company.

The negative impact of Australian mining companies' ISDS claims on international reputation and broader foreign policy is discussed in detail in another section below. This is particularly relevant to the Australian investment agreement with Pakistan because an Australian subsidiary of a Canadian and Chilean mining company achieved damages of $US 5.8 billion against Pakistan, which is also discussed further below.

The risks posed by ISDS are starkly illustrated by the claims brought by Australian billionaire Clive Palmer. Palmer registered his company Zeph Investments in Singapore and used ISDS in the ASEAN-Australia-New Zealand free trade agreement to claim a total of $A420 billion from the Australian government. The first claim was for $300 billion after he lost a High Court appeal against a Western Australian government decision to refuse an iron ore mining license[39]. The other three claims, which total $120 billion, are for the refusal of permits for a coal mine and coal-fired power station in Queensland[40]. The refusals were for environmental reasons, including contributions to increased carbon emissions[41].

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[36] Bradfield, M (2022) Climate change and investor-state dispute resolution. *Lexology*. 1 March. Available at https://www.lexology.com/library/detail.aspx?g=086370ea-bd96-4c3d-9446-24ca72136151

[37] See https://www.dfat.gov.au/trade/investment/australias-bilateral-investment-treaties and https://www.dfat.gov.au/trade/agreements/trade-agreements

[38] United Nations Trade and Development (2025) Investment Policy Hub https://investmentpolicy.unctad.org/investment-dispute-settlement/country/11/australia/investor

[39] Ranald, P., (2023) How Clive Palmer is suing Australia for 300 billion with the help of an obscure legal clause and Christian Porter 4 April, https://theconversation.com/how-clive-palmer-is-suing-australia-for-300-billion-with-the-help-of-an-obscure-legal-clause-and-christian-porter-203111

[40] Attorney Generals Department (2023) Notice of Intension to Commence Arbitration 20 October https://www.ag.gov.au/sites/default/files/2023-10/notice-of-intention-to-commence-arbitration-zeph-20-october-2023.pdf For the coal fired power station, see Attorney-General https://www.ag.gov.au/international-relations/international-law/international-trade-and-investment-law

[41] Queensland Department of Environment and Science (2023) Waratah Galilee Coal Mine EA refused, www.des.qld.gov.au/our-department/news-media/mediareleases/waratah-galilee-coal-mine-ea-refused

The international tribunal in the first case has dismissed Palmer's claim, finding that he was not a Singaporean investor and therefore not entitled to invoke ISDS protections[42]. The tribunal ordered Palmer to pay A$13.6 million in Australian government legal costs.

However, the dismissal of the first claim does not guarantee an end to the litigation. Palmer has sought annulment of the tribunal's decision in the Swiss Supreme Court, one of the procedural seats of the arbitration. While the Swiss court cannot review the merits of the decision, only technical legal issues, and may ultimately reject the application, this step is likely to cause further delay and expense. In the meantime, Palmer's three remaining coal-related ISDS claims are proceeding, potentially exposing Australia to years of additional litigation and tens of millions of dollars in further legal costs, even if all claims are ultimately unsuccessful.

The Palmer cases show the absurdity of a system which can be manipulated through forum shopping to enable an Australian national to claim to be a foreign investor then and enable similar cases to continue because precedents do not apply in an ad hoc tribunal system.

Use of third-party speculative funding and growth in ISDS billion dollar awards

Leading international investment law expert and practitioner George Kahale has argued that "there really are no hard and fast rules" in ISDS claims for compensation. He cites examples of claims of billions of dollars based on false documents, methodologies for calculations of future lost profits, which are unacceptable in World Bank accounting practice, and similar claims before different tribunals resulting in inconsistent decisions[43].

Kahale also notes the growth of third-party funding of ISDS cases, in which speculative investors fund cases in return for a share of the claimed compensation and argues that they fuel the growth of "surrealistic" claims and are "more about making money than obtaining justice" [44].

Legal scholars Bonnitcha and Brewin have also noted:

> The possibility of large compensation awards has systemic implications. Investors with long-shot claims are more likely to proceed to arbitration if they expect to receive a large payout should their case succeed. The possibility of a large award also encourages third-party funding.[45]

These findings have been reinforced by the increasing numbers of awards of billions of dollars against low-income governments, which are a substantial proportion of their national budgets and can damage their ability to provide essential services. There is no general right of appeal for substantive ISDS decisions. For ICSID tribunal decisions only, governments can apply to have the award annulled or reduced. This is rarely successful.

The Australian mining company GreenX Metals (then Prairie Mining) used third-party funding from another Australian company, Litigation Capital Management, in an ISDS claim against Poland over the

[42] Ranald, P., (2025) Clive Palmer's multibillion-dollar claims make a mockery of a tribunal that allows foreign investors to challenge court decisions 30 September, https://www.theguardian.com/commentisfree/2025/sep/30/clive-palmer-singapore-investments-multi-billion-dollar-claims-make-mockery-tribunal

[43] Kahale p.14

[44] Kahale p. 17

[45] Bonnitcha J., and Brewin S. (2019) *Compensation under Investment Treaties*, International Institute for Sustainable Development, October, https://www.iisd.org/sites/default/files/publications/compensation-treaties-best-practicies-en.pdf

obstruction of two coal projects. An LCM subsidiary in London provided AU$18 million to finance the action[46]. GreenX has won AU$490 million in compensation for decisions of Polish national courts[47].

Australian-based mining companies' use of forum shopping to sue low-income countries harms Australia's reputation

The Australian-registered mining company Tethyan Copper Company Ltd had an exploration licence with the intention of opening a mine in Pakistan. The Pakistan federal government refused to grant a mining licence because of claimed anomalies in the way the provincial government had granted the initial exploration licence.

Using ISDS provisions in the Australia-Pakistan investment treaty, Tethyan Copper took an ISDS case against Pakistan in 2012. In 2019, an international investment tribunal ruled that Pakistan should pay Tethyan Copper US$5.8 billion in compensation.[48] Tethyan is owned by the Canadian Barrick Gold Corporation and Chilean Antofagasta PLC. Neither Canada nor Chile has an investment treaty with Pakistan. Tethyan was able to use its Australian subsidiary to lodge the claim because of the Australia-Pakistan investment treaty.

The Pakistan award made headlines around the world because the compensation payout was more than 25 times the US$220 million the company had invested in the project and included an unknown payout for 'lost future profits'.[49] The amount was almost equivalent to the US$6 billion emergency loan the International Monetary Fund (IMF) had just granted Pakistan to deal with its economic crisis, and therefore potentially neutralised any benefit from the IMF loan.

Commentators have noted[50] that there are fundamental flaws when the government of a developing country qualifies for an emergency loan from the IMF to prevent economic collapse, but an ICSID tribunal under the auspices of the World Bank determines that equivalent funds must then be paid to a global corporation for a dubious calculation of future lost profits, thereby nullifying any benefit to the population from the IMF loan.

The same Canadian company, Barrick Gold, announced on July 10, 2020, that its Australian subsidiary, Barrick (PD) Australia Pty Ltd, was using the ISDS provisions of a bilateral investment treaty between Papua New Guinea (PNG) and Australia to claim compensation for the PNG government's refusal to grant an extension of the company's expired 30-year lease at the controversial Porgera Joint Venture gold mine in the PNG highlands.[51]

Canada does not have a BIT with PNG, so again, Barrick's use of an Australian subsidiary appears to be an exercise in forum shopping. There is a documented record of decades of environmental and human rights abuses at the Porgera mine.[52] There have also been recommendations from human

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[46] Prairie Mining Media Release 2020, Prairie secures A$18m litigation funding to pursue damages claim against the Polish government, 1 July, https://italaw.com/sites/default/files/case-documents/italaw1826497.pdf

[47] GreenX Media Release 2024, GreenX wins compensation and interest totalling A$490 million in successful arbitration outcome, 8 October, https://wcsecure.weblink.com.au/pdf/GRX/02863980.pdf

[48] Antofagasta PLC (2019) Reko DIQ project arbitration award Media Release, 12 July, https://www.antofagasta.co.uk/investors/news/2019/reko-diq-project-arbitration-award/

[49] Teinhaara, K. (2019) World Bank ruling against Pakistan shows global economic governance is broken, 23 July, https://theconversation.com/world-bank-ruling-against-pakistan-shows-global-economic-governance-is-broken-120414

[50] Tienhaara (2019)

[51] Barrick Gold (2020) Barrick serves notice of dispute over Porgera, 10 July, https://www.barrick.com/English/news/news-details/2020/barrick-serves-notice-of-dispute-over-porgera/default.aspx

[52] Amnesty International (2010) *Undermining Rights: forced evictions and police brutality around the Porgera gold mine, Papua New Guinea,* Amnesty International, London, https://www.amnesty.org/en/documents/asa34/001/2010/en/

rights experts that the company should address these claims.[53] Despite this record, Barrick sought compensation because its lease was not extended after its expiration.

After negotiations with the company in 2021, the PNG Prime Minister announced an agreement with the company to renew the lease on terms that he claimed were more favourable to the local community and the PNG government.[54] Critics disputed this and claimed that the ISDS threat had intimidated the government. Catherine Coumans of MiningWatch Canada, which worked with local landowners, said:

> "It seems that the legal pressure Barrick has maintained on the COVID-19-ravished state has finally worn down the resolve of the PNG government to chart a course for the mine without Barrick. It will be important to see what kind of deal Barrick has offered local landowners, as most have been adamant that they want to see the back of this controversial company. Our partners in particular want to know that human rights claims for victims of violence by mine security will finally be dealt with equitably."[55]

The use of ISDS in Australian agreements in forum shopping by companies based elsewhere provides no benefits to the Australian economy and can contradict Australia's commitments to human rights, undermine its aid and development programs in low-income countries, and harm Australia's reputation and relationships with them.

Experience of ISDS has led to ISDS legitimacy crisis

Scholars have identified that ISDS has suffered a legitimacy crisis that has grown in the last decade, with a lack of confidence in the system shared by both civil society organisations and a growing number of governments.[56] ISDS cases can have chilling or delaying effects on regulation by other governments[57]. The New Zealand government delayed its tobacco plain packaging legislation when the Philip Morris Tobacco company sued the Australian Government over its plain packaging law. The Minister of Health said:

> "In making this decision, the Government acknowledges that it will need to manage some legal risks. As we have seen in Australia, there is a possibility of legal proceedings… To manage this, Cabinet has decided that the Government will wait and see what happens with Australia's legal cases, making it a possibility that if necessary, enactment of New Zealand legislation and/or regulations could be delayed pending those outcomes."[58]

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[53] Jungk, M., Chichester, O., and Fletcher, C. (2018) *In Search of Justice: Pathways to Remedy at the Porgera Gold Mine* Report, BSR, San Francisco https://www.bsr.org/reports/BSR_In_Search_of_Justice_Porgera_Gold_Mine.pdf.

[54] Marape, J. (2021) Government set to sign agreement with Barrick to reopen Porgera mine, Media Release, PNG government, 5 April, https://miningwatch.ca/news/2021/4/6/barrick-forces-hand-papua-new-guinea-government-reopening-porgera-mine

[55] Coumans, C. (2021) quoted in Bilaterals (2021) Barrick forces hand of Papua New Guinea government in reopening Porgera mine, 6 April, https://www.bilaterals.org/?barrick-forces-hand-of&lang=fr

[56] Langford M., Potesta M., Kaufman G. (2020) UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions in *Journal of World Investment & Trade,* 22 June,p.1 https://lk-k.com/wp-content/uploads/2020/07/22119000-The-Journal-of-World-Investment-Trade-Special-Issue_-UNCITRAL-and-Investment-Arbitration-Reform_-Matching-Concerns-and-Solutions.pdf

[57] Malakotipour, M (2020) The chilling effect of indirect expropriation clauses on host states public policies: A call for a legislative response. *International Community Law Review*. 29 May. Available at https://brill.com/view/journals/iclr/22/2/article-p235_5.xml?language=en

[58] Turia, T. (2013) Government moves forward with plain packaging, 20 February, NZ Department of Health https://www.beehive.govt.nz/release/government-moves-forward-plain-packaging-tobacco-products

Companies also acknowledge that they use the threat of ISDS to prevent regulation. Documents revealed under freedom of information laws showed that the Chevron oil company lobbied EU officials to include ISDS in the Trans-Atlantic Trade and Investment Agreement then being negotiated because "the mere existence of ISDS is important as it acts as a deterrent" to regulation[59].

The ISDS system's loss of legitimacy is also being recognised by some of its strongest proponents. For example, Alexis Mourre, the former president of the commercial arbitration system for disputes between companies run by the International Chamber of Commerce (ICC), stated in a lecture that defenders of ISDS had been 'defeated' by social movements and 'lost the battle of public opinion' and 'to a large extent, the battle of legitimacy'. [60]

'Modern' ISDS provisions and proposals for a Multilateral Investment Court do not create effective protections against ISDS cases

There have been attempts in more recent trade agreements, such as the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), to include more protections for governments. This includes exemptions that are meant to safeguard public interest regulation. However, the effect of the "modernised" provisions has been limited as ISDS tribunals have continued to draw on the text of old treaties when interpreting "modernised" treaties.[61]

For example, in the Eco Oro v. Colombia decision, the tribunal disregarded an exception in the Colombia-Canada FTA included to protect governments' right to enact environmental regulation, instead relying on decisions relating to older agreements. The exception reads that nothing in the FTA's investment chapter "shall be construed to prevent a Party from adopting or enforcing measures necessary" to protect the environment if the measures do not amount to "arbitrary discrimination or disguised restraint on trade or investment" However, the tribunal decided that even if the exception applies to a measure, "this does not prevent an investor claiming … that such a measure entitles it to the payment of compensation".[62]

In the CPTPP, a similar exception includes the additional proviso that nothing should prevent measures to protect the environment "otherwise consistent with this chapter".[63] Trade law experts have said that the circular language of this exception gives no additional protections for environmental regulation.[64]

These reforms do not prevent claims from being brought against governments with uncertain outcomes because of inconsistent decisions by tribunals. They only provide some possible arguments governments can use while spending millions on legal and arbitration costs in defending them.

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[59] Nelson, A. (2016), Chevron lobbied for controversial right as 'environmental deterrent' 26 April TTIP: Chevron lobbied for controversial legal right as 'environmental deterrent' | Oil | The Guardian

[60] Ross, A (2024) We're losing the ISDS fight. *Global Arbitration Review*. 19 January. Available at https://globalarbitrationreview.com/article/were-losing-the-isds-fight-warns-mourre (accessed 27 February 2024)

[61] Wolfgang, A (2022) *Investment Arbitration and State-Driven Reform: New Treaties, Old Outcomes*, *OUP*. https://global.oup.com/academic/product/investment-arbitration-and-state-driven-reform-9780197644386?cc=ch&lang=en&.

[62] Benton Heath, J (2021) Eco Oro and the Twilight of Policy Exceptionalism, *Investment Treaty News*, https://www.iisd.org/itn/en/2021/12/20/eco-oro-and-the-twilight-of-policy-exceptionalism/.

[63] DFAT (2015) Text of the Trans-Pacific Partnership (incorporated into the CPTPP) Chapter 9, Article 9.16, p. 9-18. https://www.dfat.gov.au/trade/agreements/not-yet-in-force/tpp/Pages/tpp-text-and-associated-documents.

[64] Kawharu, A (2015) TPPA Chapter 9 on Investment, Expert Paper no. 2 on the TPPA, p.9, *The Law Foundation,* https://tpplegal.files.wordpress.com/2015/12/ep2-amokura-kawharu.pdf, and Gleeson, D, and Labonte, R (2020) Trade Agreements and Public Health, pp.28-9. Palgrave studies in public health policy research, Palgrave Macmillan, Singapore.

Likewise, the EU proposal for a standing Multilateral Investment Court with permanent judges attempts to address some of the procedural problems in the ISDS system. However it does not address the fundamental power imbalances in the ISDS system. Damjanovic [65]notes that, despite the fact that the EU has proposed this in the UNCITRAL reform discussions, none of the EU trade and investment agreements introducing a court system have yet been ratified by the EU Member States. Many other states have expressed scepticism about the MIC, including the US, China and many developing countries.

Part Two: Conclusions and specific recommendations

Updated evidence on ISDS

Part one has updated the evidence which supports government policy against ISDS. ISDS does not lead to increased investment, is structurally imbalanced in favour of investors, and international institutions like the OECD and the United Nations Framework Convention on Climate Change have acknowledged in reports that ISDS is an obstacle to the urgent transition to a low-carbon global economy. Australia's large number of agreements with ISDS leave it vulnerable to more cases from fossil fuel companies, and to forum shopping from both international and Australian investors, as has occurred with the Clive Palmer cases. Speculative third-party funding has fuelled the rise in multibillion-dollar claims, which are especially damaging to low-income countries. Attempts to reform ISDS processes through UNCITRAL and ICSID initiatives have been too slow and have not addressed its fundamental flaws, and the introduction of environmental and health exceptions in "modernised" agreements has not prevented ISDS claims.

BITs with Hungary, Poland, Czechia, Lithuania and Romania should be terminated without sunset clauses

Following the Court of Justice of the European Union (CJEU) Achmea judgment[66] in 2018, which found ISDS provisions to be incompatible with EU law, EU governments signed a plurilateral agreement to terminate over 130 intra-EU BITs, including cancelling sunset clauses which provide for disputes to continue after agreements have been terminated [67]. Australia and the EU are in the process of finalising negotiations for the Australia-EU FTA, which has an investment chapter without ISDS.

Given the updated evidence against ISDS , Australia's policy against ISDS and the EU termination of intra-EU BITS and their sunset clauses both governments should terminate these five agreements including their respective sunset clauses.

[65] Damjanovic, I., (2025) The European Union's Reform of International Investment Law: per aspera ad astra or an unfeasible aspiration? https://www.internationalaffairs.org.au/australianoutlook/the-european-unions-reform-of-international-investment-law-per-aspera-ad-astra-or-an-unfeasible-aspiration/

[66] Judgment of the Court of Justice of the European Union (2018), Slowakische Republik v Achmea BV 6 March, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62016CJ0284

[67] Official Journal of the European Union (2020), Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union 29 May https://eur-lex.europa.eu/eli/agree_internation/2020/529/oj/eng

ISDS should be removed from the BIT with Egypt

The Egypt -Australia BIT is the only investment agreement between the two countries. Consistent with the evidence against ISDS the Australian government should remove ISDS from the agreement with Egypt and terminate its sunset clause. This would preserve general investment provisions without ISDS.

The agreement's structure includes the first 12 Articles dealing with aims, definitions and general protections for investment, and a state-to-state process for dealing with disagreements between state parties about the interpretation and application of the agreement. Article 13 deals specifically with ISDS disputes initiated by investors.

Article 13 ISDS provisions and the sunset clause (Article 15.3) should be removed from the agreement. The agreement preamble should also include the right of governments to regulate in the public interest, and the safeguards for government regulation should be strengthened in the context of a state-to-state dispute process. Specific recommendations are listed below.

Specific technical recommendations to exclude ISDS from the BIT with Egypt

1. The ISDS provision (article 13), which allows investors to claim compensation from governments and the sunset clause (Article 15.3) should be removed.
2. There should be a state-to-state dispute process similar to the processes in other bilateral investment agreements without ISDS
3. The aims of the agreement in the preamble should include cooperation to promote mutually beneficial investment, the protection of investment and the right of governments to regulate in the public interest.
4. The state-to-state dispute process should have a code of conduct for dispute panel members to prevent perceived and actual conflicts of interest and to maintain the highest standards of independence and impartiality.
5. In the context of the state-to-state dispute mechanism, there should be the following clear exclusions from the provisions of the agreement and the application of the state-to-state dispute settlement mechanism:
    - government subsidies or grants
    - public services
    - taxation measures
    - safety
    - human plant and animal health, including environmental regulation, regulation to reduce carbon emissions, regulation to protect and improve human rights and labour rights, regulation to protect public morals or maintain public order, deceptive and fraudulent practices, national treasures of artistic historical or archaeological value, the privacy of individuals in relation to processing and dissemination of personal data and confidentially of individual records and accounts
    - measures for international peace or security, and protection of essential security interests
    - Australia's foreign investment framework, including legislation on Foreign Acquisitions and Takeovers from 1975 to 2020, Financial Shareholdings and their Ministerial Guidance Notes

- prudential measures relating to regulation of financial institutions

- rights in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement ("TRIPS Agreement"), or to the revocation, limitation, or creation of intellectual property rights

- government procurement
- preferences to indigenous persons, the Native Title Act 1993 and protection of Indigenous heritage
- contracting out and privatisation of government services
- funding, licensing and quality of all education services
- income security or insurance, Social Security or insurance, social welfare, public education, public training, health, childcare, aged care, public utilities, public transport and public housing.
- the creative arts, cultural heritage including indigenous cultural heritage, audiovisual services and other cultural industries
- gambling and betting
- tobacco regulation
- federal leased airports, maritime cabotage, registration of vessels and agricultural marketing boards
- favourable treatment to New Zealand and Pacific Islands Forum countries.

6.
7. The Most Favoured Nation treatment of investment should clarify that it does not apply to international dispute procedures or mechanisms and that ISDS or other dispute provisions from previous or future agreements cannot be imported into the agreement.
8. The agreement should clarify that obligations to investors do not go beyond customary international law and that the definition of breaches of these obligations must demonstrate denial of justice in civil or administrative proceedings, fundamental breach of due process, including a fundamental breach of transparency in judicial or administrative proceedings, manifest arbitrariness, targeted discrimination, abusive treatment, or failure to provide full protection and security.
9. Obligations should clarify that the mere fact that a party takes or fails to take an action that may be inconsistent with investor expectations does not constitute a breach of the agreement, even if there is loss or damage to the investment as a result.
10. The obligations on national treatment should clarify that national treatment applies "in like circumstances" and depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare or regulatory objectives.
11. There should be no provisions for indirect expropriation.
12. The definition of expropriation should clarify that non-discriminatory regulatory measures by a party or judicial bodies of a party that are designed to protect legitimate public interest or public purpose objectives such as public health safety and the environment do not constitute expropriation.