

Short courses for Permanent Missions in Geneva

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International Investment Agreements: Challenges and implications

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The International Legal Framework for International Investment

- Absence of a **multilateral agreement on investment** (unlike trade, services, IPR)
- International investment rulemaking lacks **system-wide coordination**
- Countries conclude **investment treaties at the bilateral and regional levels**

The network of IIAs consists of...

- Bilateral investment treaties (**BITs**)
- Free trade agreements/economic partnership agreements with investment provisions (**FTAs/EPAs**)
- Regional integration agreements (**REIOs**) (EU, CARICOM, MERCOSUR, COMESA CIA, SADC investment protocol, Arab investment agreement, ASEAN etc)

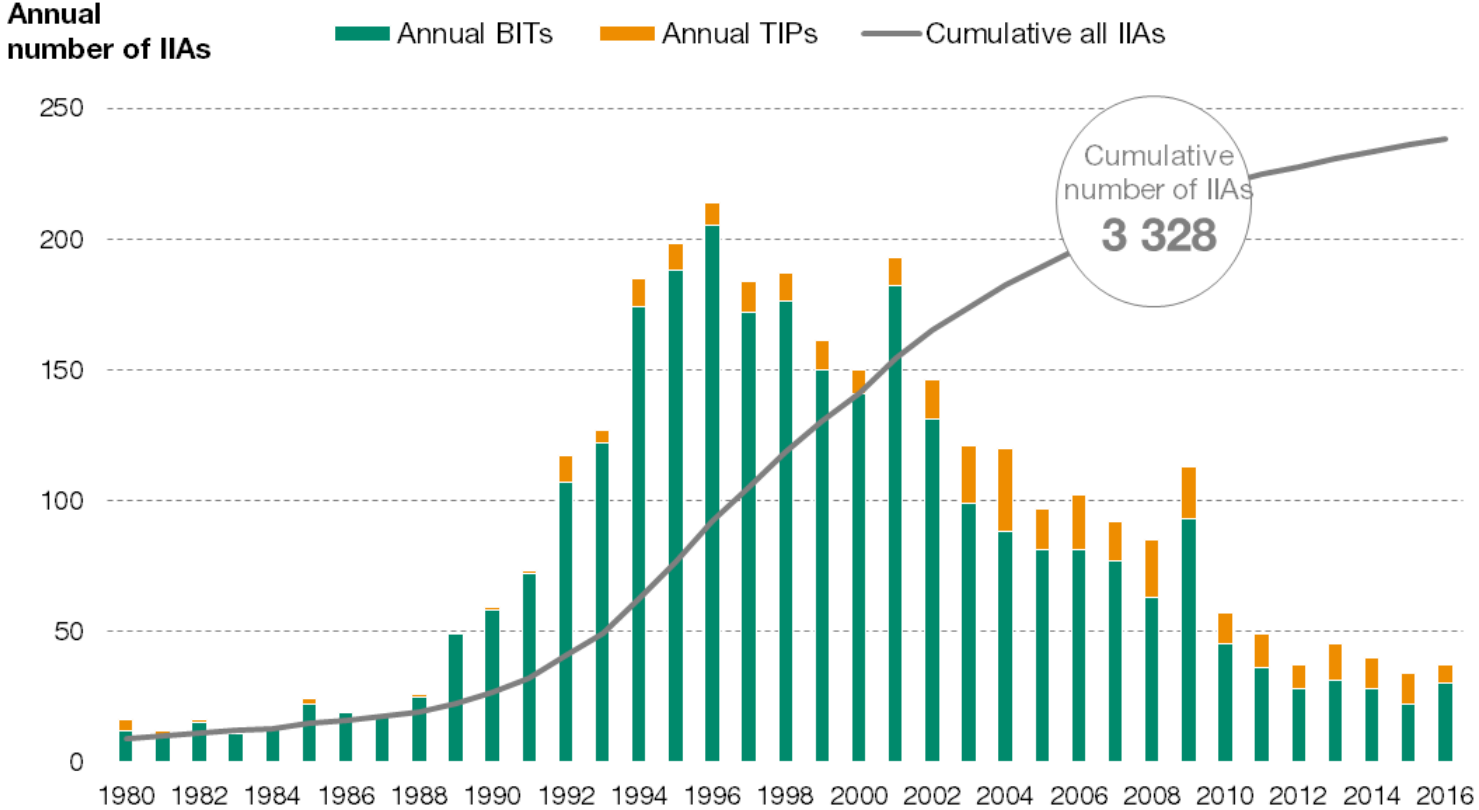
Core elements in International Investment Agreements (IIAs)

- Preamble
- Definitions (investment/investor)
- Core standards of protection:
 - Principle of fair and equitable treatment
 - Principle of non-discrimination (NT/MFN)
 - Expropriation
- Transfer of funds
- Investor-State dispute settlement



Recent Developments: The Numbers

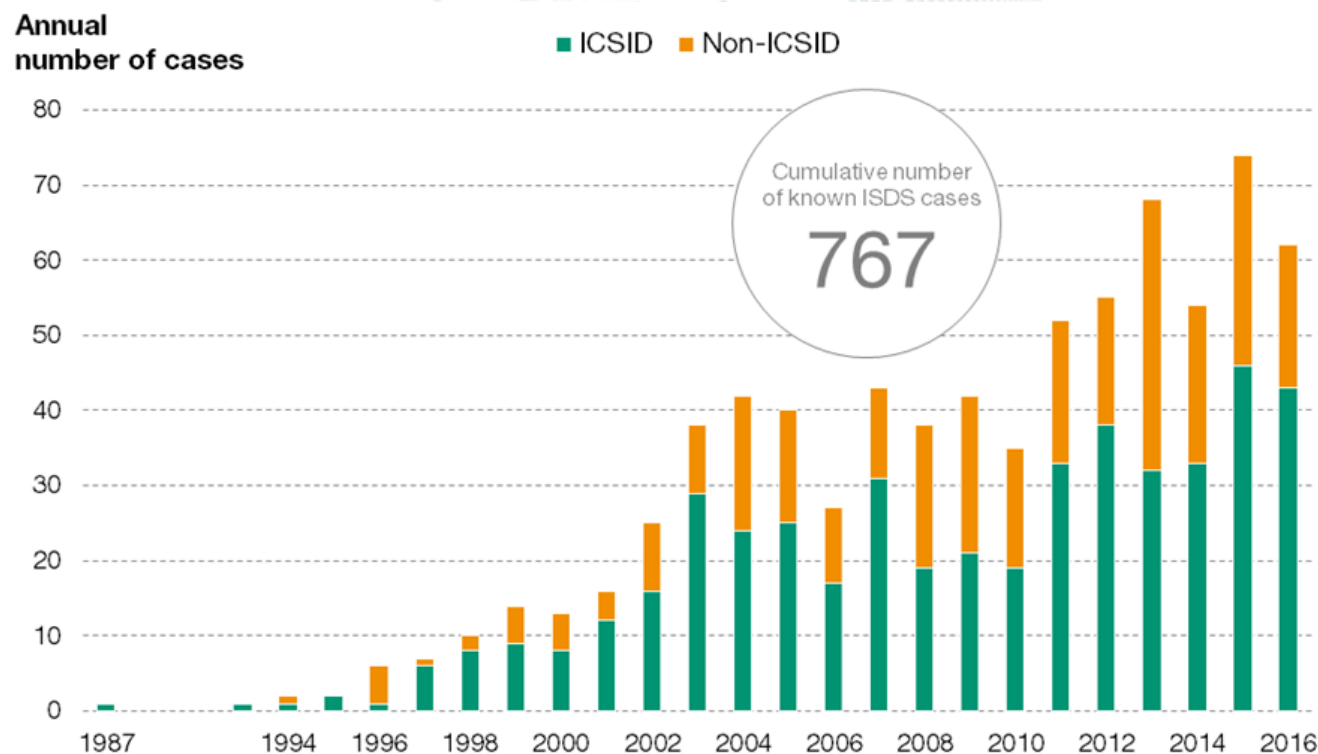
The IIA universe continues to grow



Source: © UNCTAD, ISDS Navigator

Investor-State dispute settlement (ISDS) cases

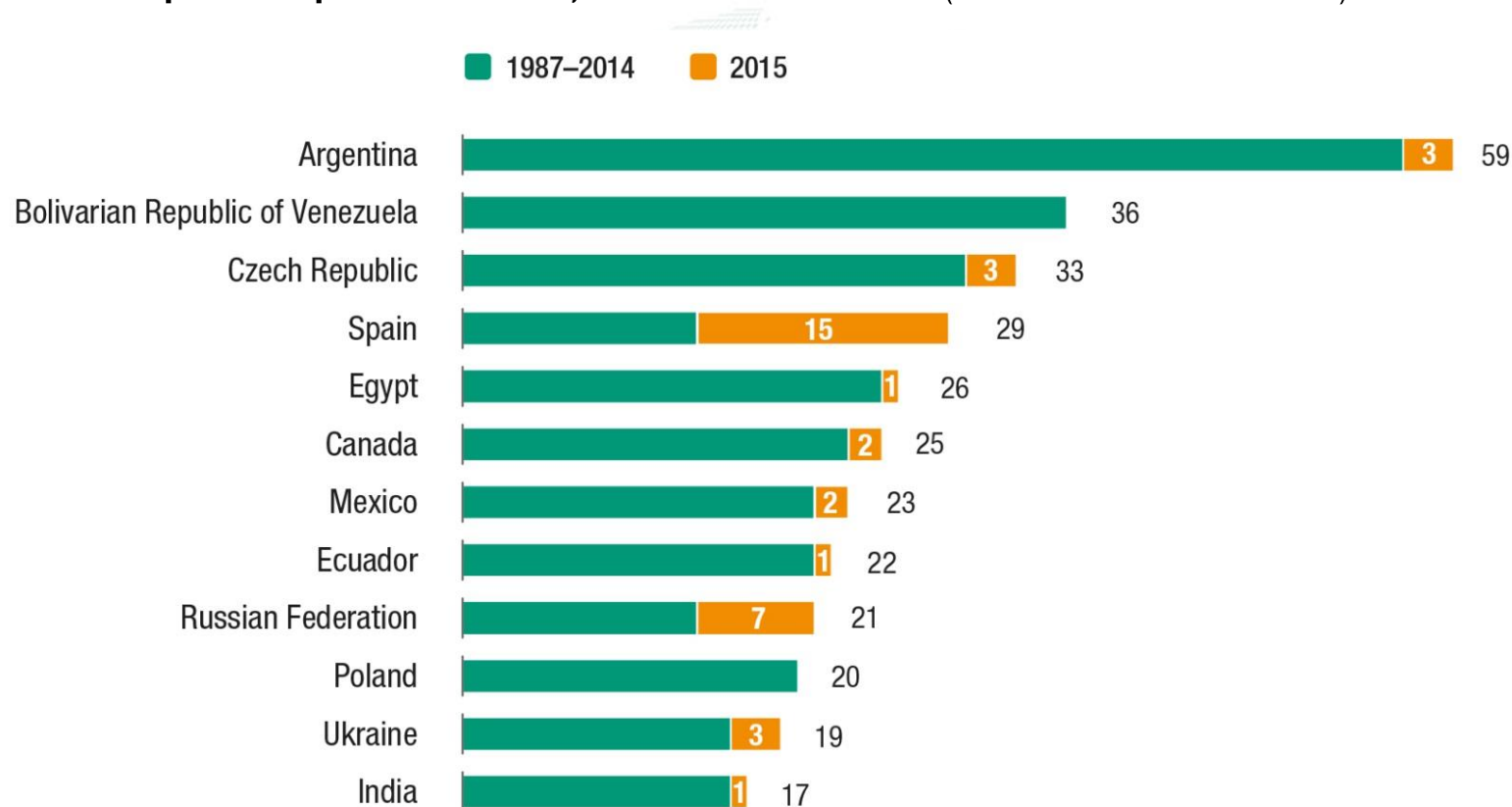
Known ISDS cases, annual and cumulative, 1987-2015



Source: © UNCTAD, ISDS Navigator

Argentina, Venezuela, and the Czech Republic, have been the most frequent respondent States

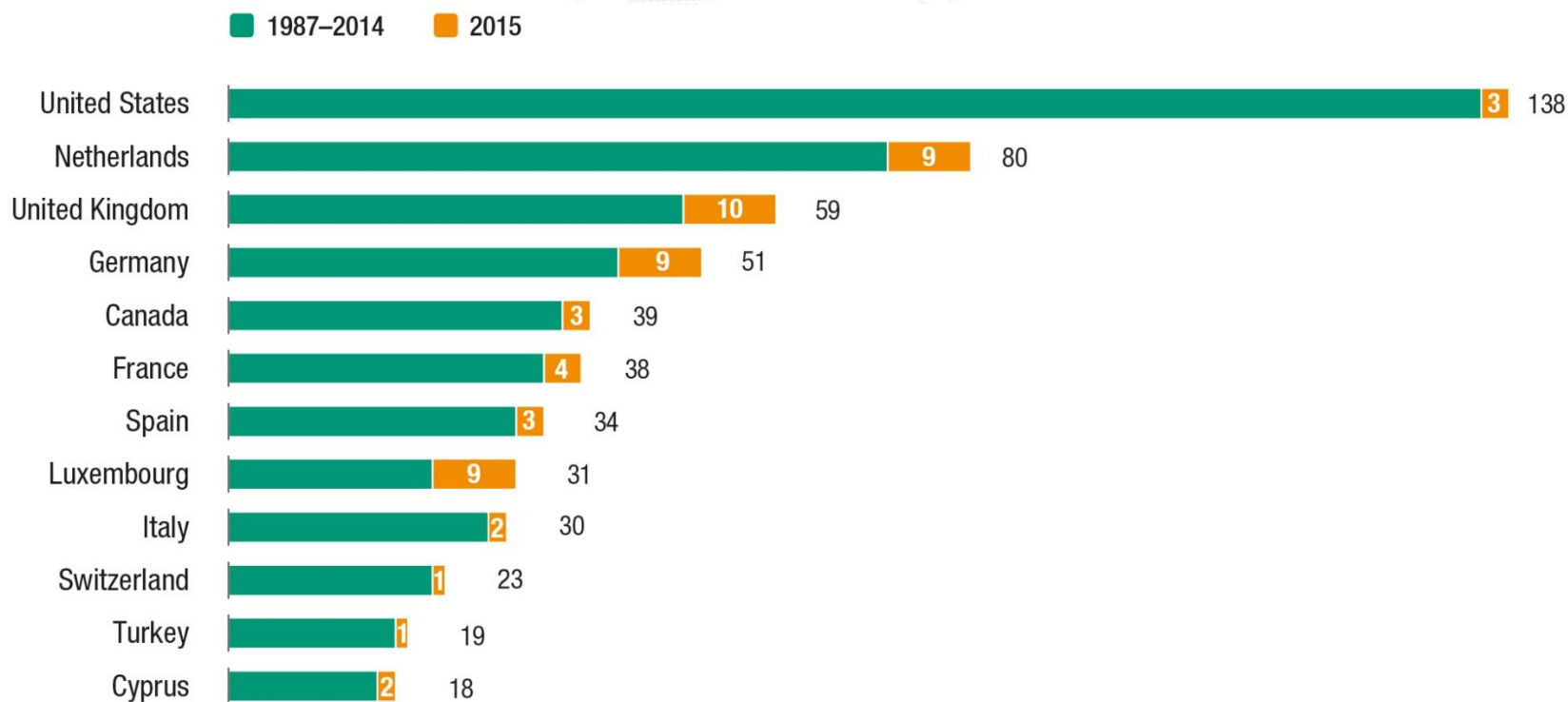
Most frequent respondent States, total as of end 2015 (Number of known cases)



Source: © UNCTAD, ISDS Navigator

The **United States**, the **Netherlands**, and the **United Kingdom**, have been the most frequent home States of investors bringing ISDS claims

Most frequent home States of claimants, total as of end 2015 (Number of known cases)



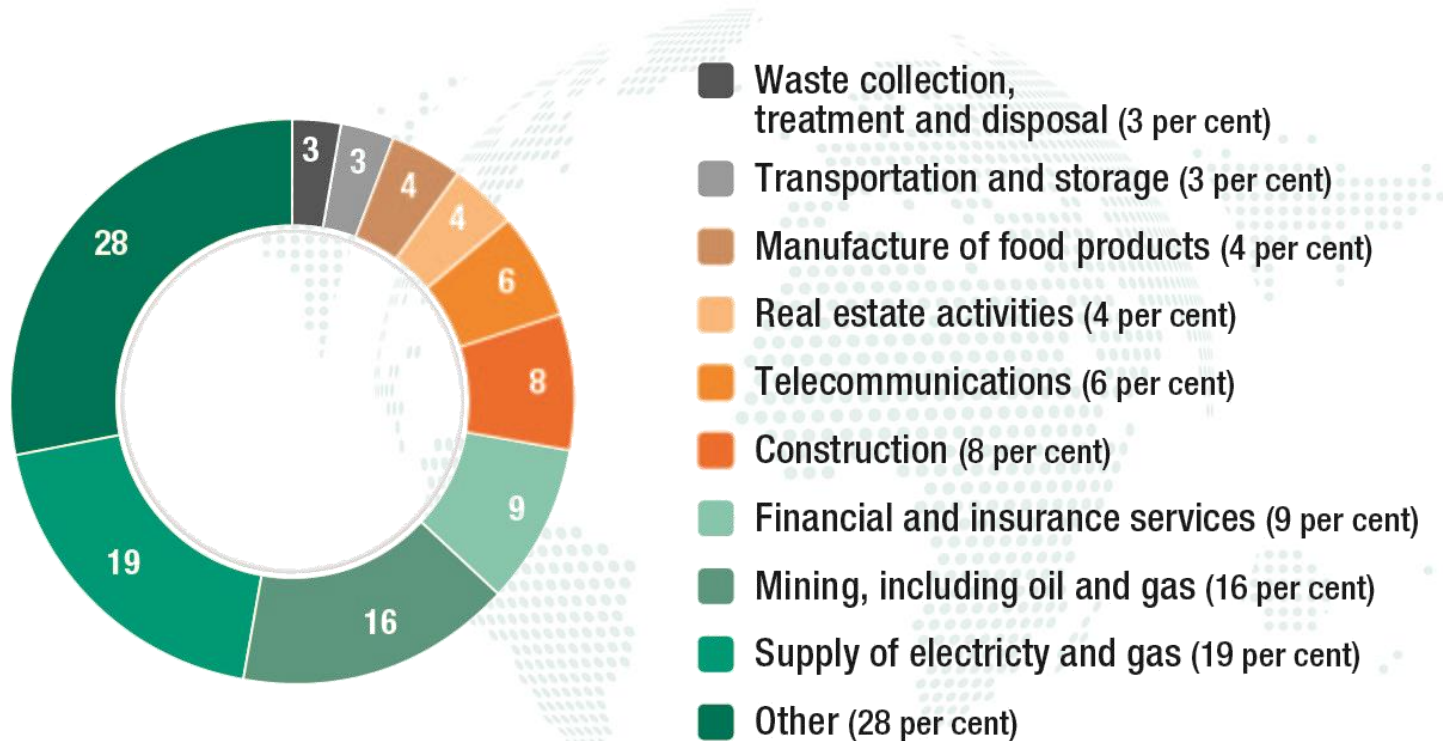
Source: © UNCTAD, ISDS Navigator

Considerations in ISDS cases

- The amount claimed ranges **from \$8 million to about \$2.5 billion**
- Most of the cases are brought by **investors from developed countries**
- **Developed-country investors** – in particular, those from the United States, Canada and a few EU countries – **have been the main ISDS users**, responsible for over 80 per cent of all claims

ISDS Cases by Economic Sector

Total as end 2014 (Per Cent)



Source: © UNCTAD, ISDS Navigator



IIA Reform: **Taking Stock and Charting the Way Forward**

UNCTAD Roadmap for IIA Reform (WIR 2015)

- There is a pressing need for systematic reform of the global IIA regime
- Need for reform is evident from the heated public debate and parliamentary hearing processes in many countries and regions
- The question is not whether or not to reform, but about the *what*, *how* and *extent* of such reform
- World Investment Report 2015 (WIR15) offers an action menu for such reform





INVESTMENT POLICY FRAMEWORK FOR SUSTAINABLE DEVELOPMENT

- NEW GENERATION INVESTMENT POLICIES
- PRINCIPLES FOR INVESTMENT POLICYMAKING
- NATIONAL INVESTMENT POLICY GUIDANCE
- GUIDANCE FOR INVESTMENT TREATIES
- ACTION MENU FOR INVESTMENT IN SDGs
- THE WAY FORWARD

http://investmentpolicyhub.unctad.org/Upload/Documents/POLICY_FRAMEWORK%2025_JAN_2016.pdf

UNCTAD Investment Policy Framework 2015: A New Generation of Investment Policies

Core Principles

“Design criteria” for investment strategies, policies and treaties

National investment policy guidelines	IIA guidance: policy options	Action Menu: promoting investment in sustainable development	Global Action Menu for Investment Facilitation
Concrete guidance on how to formulate investment policies and ensure their effectiveness	Framework and toolkit for designing and negotiating international investment treaties	Strategic initiatives to mobilize funds and channel investment towards sectors key for sustainable development	10 Action Lines for policymakers to adapt and adopt for facilitating investment and benefitting from it

THANK YOU!

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