

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**INVESTOR-STATE DISPUTES
ARISING FROM INVESTMENT
TREATIES: A REVIEW**

**UNCTAD Series
on International Investment Policies for
Development**



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NOTE

As the focal point in the United Nations system for investment and technology, and building on 30 years of experience in these areas, UNCTAD, through DITE, promotes understanding of key issues, particularly matters related to foreign direct investment and transfer of technology. DITE also assists developing countries in attracting and benefiting from FDI and in building their productive capacities and international competitiveness. The emphasis is on an integrated policy approach to investment, technological capacity building and enterprise development.

The term “country” as used in this study also refers, as appropriate, to territories or areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries. In addition, the designations of country groups are intended solely for statistical or analytical convenience and do not necessarily express a judgement about the stage of development reached by a particular country or area in the development process.

The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported.

Rows in tables have been omitted in those cases where no data are available for any of the elements in the row.

A hyphen (-) indicates that the item is equal to zero or its value is negligible.

A blank in a table indicates that the item is not applicable.

A slash (/) between dates representing years (e.g. 1994/1995) indicates a financial year.

Use of a dash (–) between dates representing years (e.g. 1994–1995) signifies the full period involved, including the beginning and end years.

References to “dollars” (\$) are to United States dollars, unless otherwise indicated.

Annual rates of growth or change, unless otherwise stated, refer to annual compound rates.

Because of rounding, details and percentages in tables do not necessarily add up to totals.

The material contained in this study may be freely quoted with appropriate acknowledgement.

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PREFACE

The secretariat of the United Nations Conference on Trade and Development (UNCTAD) is implementing a programme on international investment arrangements. It seeks to help developing countries to participate as effectively as possible in international investment rule-making. The programme embraces policy research and development, including the preparation of a series of issues papers; human resources capacity-building and institution-building, including national seminars, regional symposia and training courses; and support to intergovernmental consensus-building, as well as dialogues between negotiators and groups of civil society.

This paper is part of a new *Series on International Investment Policies for Development*. It builds on, and expands, UNCTAD's *Series on Issues in International Investment Agreements*. Like the previous one, this new series is addressed to government officials, corporate executives, representatives of non-governmental organizations, officials of international agencies and researchers.

The series seeks to provide a balanced analysis of issues that may arise in the context of international approaches to investment rule-making and their impact on development. Its purpose is to contribute to a better understanding of difficult technical issues and their interaction, and of innovative ideas that could contribute to an increase in the development dimension of IIAs.

The series is produced by a team led by James Zhan. The team members are Victoria Aranda, Amare Bekele, Hamed El-Kady, Anna Joubin-Bret, Joachim Karl, Martin Molinuevo, Anca Radu, Marie-Estelle Rey, Elizabeth Tuerk and Jörg Weber. Khalil Hamdani provides overall guidance. The members of the Review Committee are Mark Kantor, Mark Koulen, Peter Muchlinski, Antonio Parra, Patrick Robinson, Pierre Sauvé, M. Sornarajah and Kenneth Vandavelde.

This paper was prepared by Jörg Weber and Peter Muchlinski on the basis of a manuscript prepared by Howard Mann. Inputs were provided by Joachim Karl. Comments were provided by Victoria

Aranda, Anna Joubin-Bret, Christoph Schreuer and Michael K. Tracton. The paper also benefited from comments made at an ad hoc expert meeting convened by UNCTAD in November 2004 on the issue of “Investor-State dispute settlement in international investment agreements: Development perspective”, which was attended by several experts and practitioners in this field.

Geneva, February 2006

Supachai Panitchpakdi
Secretary-General of UNCTAD

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UNCTAD has carried out a number of activities related to the work programme in cooperation with other intergovernmental organizations, including Agence pour la Francophonie, Banco Centroamericano de Integración Económica, the CARICOM Secretariat, the German Foundation for Development, the Inter-Arab Investment Guarantee Corporation, the Inter-American Development Bank (BTD/INTAL), the League of Arab States, the Organization of American States, Secretaria de Integración Económica Centroamericana and the Secretaria General de la Comunidad Andina. UNCTAD has also cooperated with non-governmental organizations, including the Centre for Research on Multinational Corporations, the Consumer Unity and Trust Society (India), the Dutch Foundation for Research on Multinationals (SOMO), the Economic Research Forum (Egypt), the European Roundtable of Industrialists, the Friedrich Ebert Foundation (Germany), the German Foundation for International Development, the International Confederation of Free Trade Unions, the Labour Resource and Research Institute (LaRRI) (Namibia), Oxfam, the Third World Network and World Wildlife Fund International. Since 2002, a part of the work programme has been carried out jointly with the World Trade Organization (WTO).

Funds for the work programme have so far been received from Australia, Brazil, Canada, France, Japan, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and the European Commission. Argentina, Botswana, China, Colombia, Costa Rica, Croatia, Cuba, the Czech Republic, Djibouti, Egypt, Gabon, Germany, Guatemala, India, Indonesia, Jamaica, Malaysia, Mauritania, Mexico,

Morocco, Namibia, Pakistan, Peru, Qatar, Singapore, South Africa, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia, Venezuela and Yemen have also contributed to the work programme by hosting regional symposia, national seminars or training events.

In pursuing this programme of work, UNCTAD has also closely collaborated with a number of international, regional and national organizations, particularly Centro de Estudios Interdisciplinarios de Derecho Industrial y Económico (University de Buenos Aires), the Indian Institute of Foreign Trade, the Legon Centre of Accra (Ghana), ProInversión (Peru), Pontificia Universidad Católica del Perú, the National University of Singapore, Senghor University (Egypt), the University of Dar Es Salaam (United Republic of Tanzania), the University de Los Andes (Colombia), the University of Campinas (Brazil), the University of Lima (Peru), the Universidad del Pacífico (Peru), the University of Pretoria (South Africa), the University of Tunis (Tunisia), the University of Yaoundé (Cameroon), the Shanghai WTO Affairs Consultation Center (China) and the University of the West Indies (Jamaica, and Trinidad and Tobago). All of these contributions are gratefully acknowledged.

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