



IIA ISSUES NOTE

INTERNATIONAL INVESTMENT AGREEMENTS



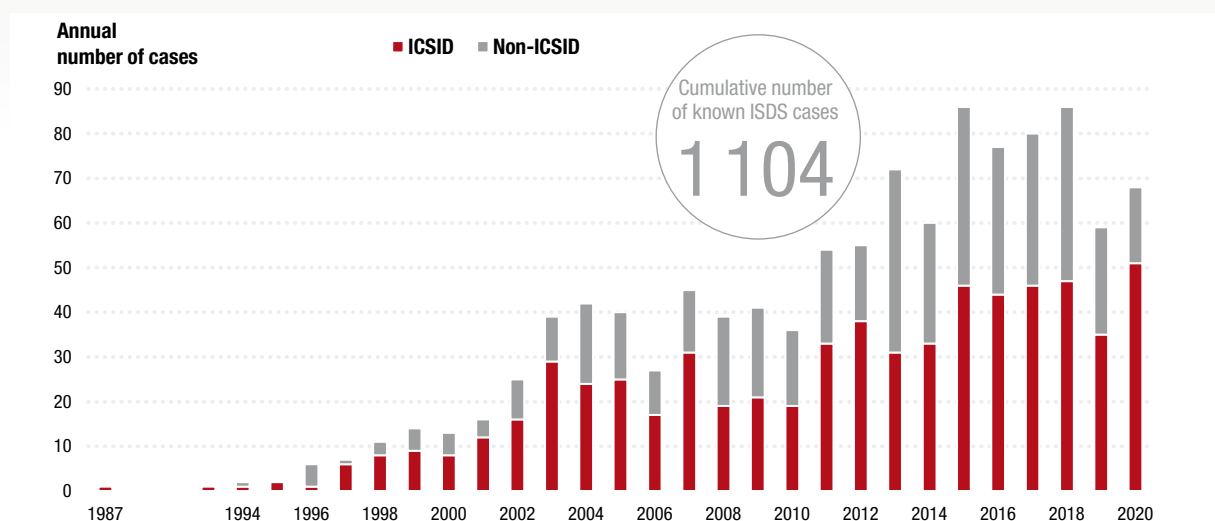
UNITED NATIONS
UNCTAD

INVESTOR–STATE DISPUTE SETTLEMENT CASES: FACTS AND FIGURES 2020

H I G H L I G H T S

- In 2020, at least 68 known treaty-based investor–State dispute settlement (ISDS) cases were initiated (figure 1). Most investment arbitrations were brought under international investment agreements (IIAs) signed in the 1990s or earlier.
- The total ISDS case count had reached over 1,100 by the end of 2020. To date, 124 countries and one economic grouping are known to have been respondents to one or more ISDS claims.
- The new ISDS cases in 2020 were initiated against 43 countries. Peru and Croatia were the most frequent respondents, with six and four known cases respectively. Four economies – Denmark, Norway, Papua New Guinea and Switzerland – faced their first known ISDS cases.
- The Energy Charter Treaty (ECT, 1994) was the IIA invoked most frequently in 2020, with seven cases, followed by the Arab Investment Agreement (1980) and the Organization of the Islamic Conference (OIC) Investment Agreement (1981) with four cases each.

Figure 1. Trends in known treaty-based ISDS cases, 1987–2020



Source: UNCTAD, ISDS Navigator.

Note: Information has been compiled from public sources, including specialized reporting services. UNCTAD's statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signaled its intention to submit a claim to ISDS but has not commenced the arbitration. Annual and cumulative case numbers are continually adjusted as a result of verification processes and may not match exactly case numbers reported in previous years.

1. Trends in ISDS: new cases and outcomes

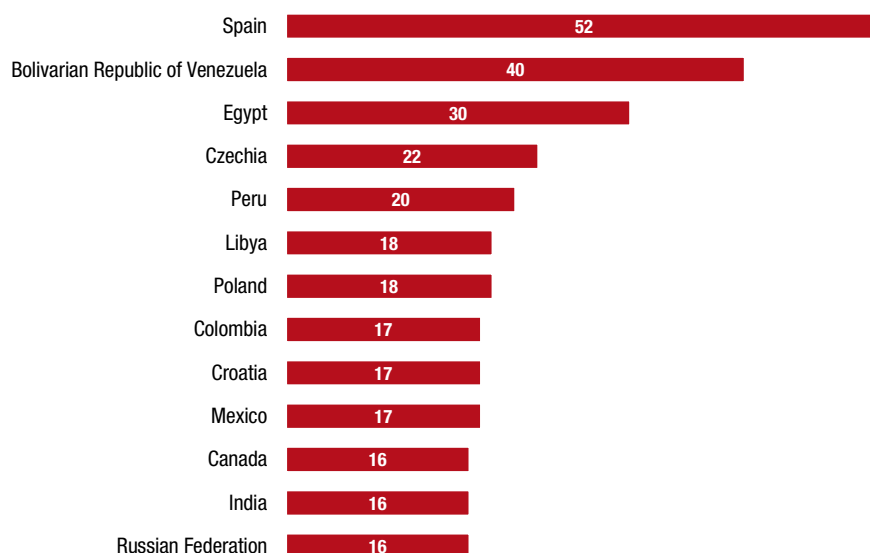
(i) New cases initiated in 2020

In 2020, investors initiated 68 publicly known ISDS cases pursuant to IIAs (figure 1).¹ As of 1 January 2021, the total number of publicly known ISDS cases had reached 1,104. As some arbitrations can be kept confidential, the actual number of disputes filed in 2020 and previous years is likely to be higher. To date, 124 countries and one economic grouping are known to have been respondents to one or more ISDS claims.

Respondent States

The new ISDS cases in 2020 were initiated against 43 countries. Peru and Croatia were the most frequent respondents, with six and four known cases respectively. Four economies – Denmark, Norway, Papua New Guinea and Switzerland – faced their first known ISDS cases. As in previous years, the majority of new cases (about 75 per cent) were brought against developing countries and transition economies. In the past 10 years, Spain, Venezuela and Egypt have received the largest share of claims (figure 2). Looking at the 1,104 known ISDS cases filed since 1987 (the year of the first treaty-based ISDS case), Argentina (with 62 cases), Venezuela (54) and Spain (53) have been the most frequent respondent States (annex 2).

Figure 2. Most frequent respondent States, 2011–2020 (Number of known cases)



Source: UNCTAD, ISDS Navigator.

Claimant home States

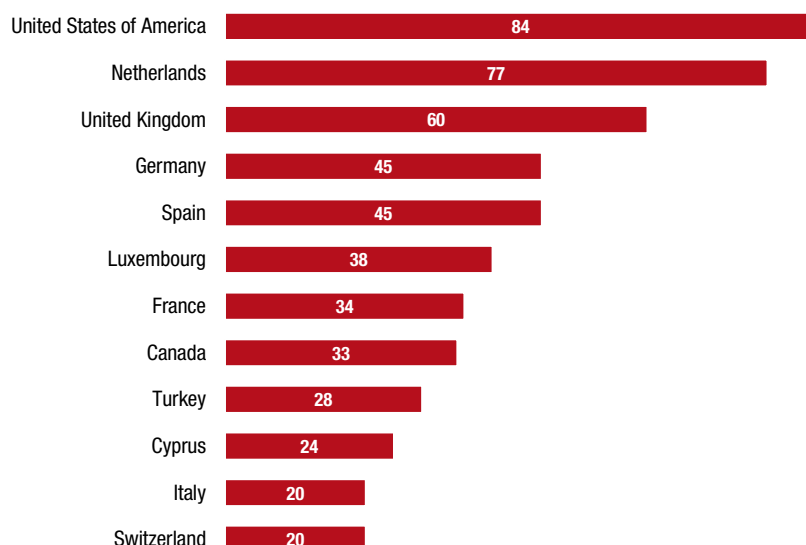
Developed-country investors brought most – about 70 per cent – of the 68 known cases in 2020. The highest numbers of cases were brought by investors from the United States (10 cases), the Netherlands (7 cases) and the United Kingdom (5 cases). In the past 10 years, investors from the United States, the Netherlands and the United Kingdom have filed the largest number of claims (figure 3). Overall, these three countries have been the three most frequent home States of claimants in known ISDS cases filed from 1987 to 2020 (annex 2).

Intra-EU disputes

About 15 per cent of the 68 known cases filed in 2020 were intra-EU disputes (nine cases). Five of these nine disputes were brought on the basis of intra-EU bilateral investment treaties (BITs); the remaining four cases invoked the ECT. The EU-level developments to foreclose intra-EU disputes based on BITs between EU Member States and the ECT have so far not stopped new ISDS cases from arising.

¹ UNCTAD's ISDS statistics cover international arbitrations between an investor and a State that are fully or partially based on an IIA, such as a bilateral investment treaty or a treaty with investment provisions (not included are investor-State disputes that are solely based on contracts or on domestic investment legislation).

Figure 3. Most frequent home States of claimants, 2011–2020 (Number of known cases)



Source: UNCTAD, ISDS Navigator.

Applicable investment treaties

About 65 per cent of investment arbitrations in 2020 were brought under BITs and TIPs signed in the 1990s or earlier. All but two remaining cases were based on treaties signed between 2000 and 2011. The ECT (1994) was the IIA invoked most frequently in 2020, with seven cases, followed by the Arab Investment Agreement (1980) and the Organization of the Islamic Conference (OIC) Investment Agreement (1981) with four cases each. Looking at the trend in the past 10 years (2011–2020), about 20 per cent of the 697 known ISDS cases initiated in this period have invoked the ECT (106 cases), NAFTA (28 cases) or the OIC Investment Agreement (16 cases).

(ii) ISDS outcomes

Decisions and outcomes in 2020

In 2020, ISDS tribunals rendered at least 52 substantive decisions in investor–State disputes, 31 of which were in the public domain at the time of writing. Eleven of the public decisions principally addressed jurisdictional issues (including preliminary objections), with eight upholding the tribunal’s jurisdiction and three declining jurisdiction. The remaining 20 public decisions were rendered on the merits, with 6 holding the State liable for IIA breaches and 14 dismissing all investor claims.

In addition, four publicly known decisions were rendered in annulment proceedings at the ICSID. Ad hoc committees of the ICSID rejected the applications for annulment in three cases; in one case, the award at issue was annulled in its entirety.

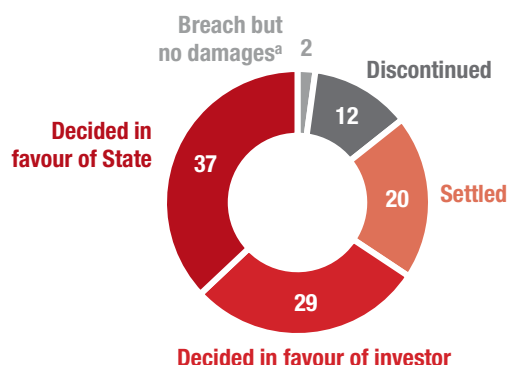
Overall outcomes

By the end of 2020, at least 740 ISDS proceedings had been concluded. The relative share of case outcomes changed only slightly from that in previous years (figure 4).

About 37 per cent of all concluded cases were decided in favour of the State (claims were dismissed either on jurisdictional grounds or on the merits), and about 29 per cent were decided in favour of the investor, with monetary compensation awarded. About 20 per cent of the cases were settled; in most cases, the terms of settlement remained confidential. In the remaining proceedings, either the cases were discontinued or the tribunal found a treaty breach but did not award monetary compensation.

Of the cases that were resolved in favour of the State, about half were dismissed for lack of jurisdiction. Looking at the totality of decisions on the merits (i.e. where a tribunal determined whether the challenged measure breached any of the IIA's substantive obligations), about 57 per cent were decided in favour of the investor (breach found and damages awarded). The remainder were dismissed on the merits or breaches were found but no damages awarded (figure 5).

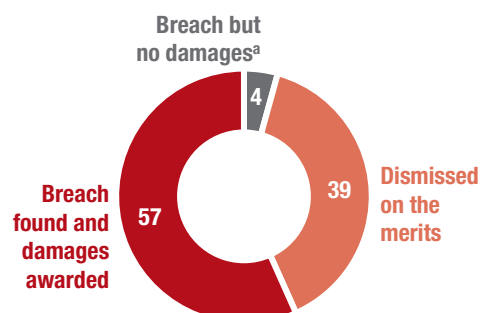
Figure 4. Results of concluded cases, 1987–2020 (Per cent)



Source: UNCTAD, ISDS Navigator.

^a Decided in favour of neither party (liability found but no damages awarded).

Figure 5. Results of decisions on the merits, 1987–2020 (Per cent)



Source: UNCTAD, ISDS Navigator.

^a Decided in favour of neither party (liability found but no damages awarded).

Note: Excludes cases (i) dismissed by tribunals for lack of jurisdiction, (ii) settled, (iii) discontinued for reasons other than settlement (or for unknown reasons).

UNCTAD Investment Policy Online Databases

International Investment Agreements Navigator

<https://investmentpolicy.unctad.org/international-investment-agreements>

IIA Mapping Project

<https://investmentpolicy.unctad.org/international-investment-agreements/iaa-mapping>

Investment Dispute Settlement Navigator

<https://investmentpolicy.unctad.org/investment-dispute-settlement>

Investment Laws Navigator

<https://investmentpolicy.unctad.org/investment-laws>

Annex 1. Known treaty-based ISDS cases initiated in 2020

Key information about each case is available at:

<https://investmentpolicy.unctad.org/investment-dispute-settlement>

No.	Full case name	Respondent State	Home State of claimant	Applicable IIA
1	Adria Group B.V. and Adria Group Holding B.V. v. Republic of Croatia (ICSID Case No. ARB/20/6)	Croatia	Netherlands	Croatia–Netherlands BIT (1998)
2	AFC Investment Solutions S.L. v. Republic of Colombia (ICSID Case No. ARB/20/16)	Colombia	Spain	Colombia–Spain BIT (2005)
3	AHG Industry GmbH & Co. KG v. Republic of Iraq (ICSID Case No. ARB/20/21)	Iraq	Germany	EU–Iraq Cooperation Agreement (2012)
4	Ahron G. Frenkel v. Republic of Croatia (ICSID Case No. ARB/20/49)	Croatia	Israel	Croatia–Israel BIT (2000)
5	Akfel Commodities Pte. Ltd. and I-Systems Global B.V. v. Republic of Turkey (ICSID Case No. ARB/20/36)	Turkey	Netherlands; Singapore	Netherlands–Turkey BIT (1986); Singapore–Turkey BIT (2008)
6	Arka Energy B.V. v. Republic of Albania (ICSID Case No. ARB/20/54)	Albania	Netherlands	Albania–Netherlands BIT (1994)
7	AsiaPhos Limited v. People’s Republic of China	China	Singapore	China–Singapore BIT (1985)
8	Atlas Group and Duško Knežević v. Montenegro	Montenegro	Cyprus	Cyprus–Montenegro BIT (2005)
9	Bachar Kiwan v. State of Kuwait (ICSID Case No. ARB/20/53)	Kuwait	France	France–Kuwait BIT (1989)
10	Bacilio Amorrortu v. The Republic of Peru (PCA Case No. 2020-11)	Peru	United States of America	Peru–United States FTA (2006)
11	Barrick (PD) Australia Pty Limited v. Independent State of Papua New Guinea (ICSID Case No. ARB/20/27)	Papua New Guinea	Australia	Australia–Papua New Guinea BIT (1990)
12	Bob Meijer v. Georgia (ICSID Case No. ARB/20/28)	Georgia	Netherlands	Georgia–Netherlands BIT (1998)
13	BRIF TRES d.o.o. Beograd and BRIF-TC d.o.o. Beograd v. Republic of Serbia (ICSID Case No. ARB/20/12)	Serbia	Luxembourg	BLEU (Belgium–Luxembourg Economic Union)–Serbia BIT (2004)
14	Campos de Pesé, S.A. v. Republic of Panama (ICSID Case No. ARB/20/19)	Panama	Italy	Italy–Panama BIT (2009)
15	Coöperatieve Rabobank U.A. v. United Mexican States (ICSID Case No. ARB/20/23)	Mexico	Netherlands	Mexico–Netherlands BIT (1998)
16	Donatas Aleksandravicius v. Kingdom of Denmark (ICSID Case No. ARB/20/30)	Denmark	Lithuania	Denmark–Lithuania BIT (1992)
17	Durres Kurum Shipping SH. P.K., Durres Container Terminal SH.A, Metal Commodities Foreign Trade Corp. and Altberg Developments LP v. Republic of Albania (ICSID Case No. ARB/20/37)	Albania	United Kingdom; United States of America	Albania–United Kingdom BIT (1994); Albania–United States of America BIT (1995)
18	Edward and Jak Sukyas v. Romania	Romania	Canada; United States of America	Canada–Romania BIT (2009); Romania–United States of America BIT (1992)

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19	Encavis AG, Fano Solar 1 S.r.l., DE Stern 10 S.r.l. and others v. Italian Republic (ICSID Case No. ARB/20/39)	Italy	Germany	Energy Charter Treaty (1994)
20	Eni International B.V., Eni Oil Holdings B.V. and Nigerian Agip Exploration Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/20/41)	Nigeria	Netherlands	Netherlands–Nigeria BIT (1992)
21	EP Wind Project (Rom) Six Ltd. v. Romania (ICSID Case No. ARB/20/15)	Romania	Cyprus	Energy Charter Treaty (1994)
22	Espiritu Santo Holdings, LP v. United Mexican States (ICSID Case No. ARB/20/13)	Mexico	Canada	NAFTA (1992)
23	Fengzhen Min v. Republic of Korea (ICSID Case No. ARB/20/26)	Korea, Republic of	China	China–Korea, Republic of BIT (2007)
24	Fin.Doc S.r.l., Domenica Gazineo, En.Doc S.r.l. and others v. Romania (ICSID Case No. ARB/20/35)	Romania	Cyprus; Czechia; Germany; Greece; Italy; Luxembourg; Turkey	Energy Charter Treaty (1994)
25	Freeport-McMoRan Inc. v. Republic of Peru (ICSID Case No. ARB/20/8)	Peru	United States of America	Peru–United States FTA (2006)
26	Garsq Pasaulis UAB v. Kyrgyz Republic	Kyrgyzstan	Lithuania	Kyrgyzstan–Lithuania BIT (2008)
27	Gesenu S.p.A. v. Arab Republic of Egypt (ICSID Case No. ARB/20/45)	Egypt	Italy	Egypt–Italy BIT (1989)
28	Goh Chin Soon v. People's Republic of China (ICSID Case No. ARB/20/34)	China	Singapore	China–Singapore BIT (1985)
29	GPIX LLC v. The Republic of India (PCA Case No. 2020-36)	India	Mauritius	India–Mauritius BIT (1998)
30	Grupo Energía Bogotá S.A. E.S.P. and Transportadora de Energía de Centroamérica S.A. v. Republic of Guatemala (ICSID Case No. ARB/20/48)	Guatemala	Colombia	Colombia, El Salvador, Guatemala and Honduras FTA (2007)
31	Hamburg Commercial Bank AG v. Italian Republic (ICSID Case No. ARB/20/3)	Italy	Germany	Energy Charter Treaty (1994)
32	Hope Services LLC v. Republic of Cameroon (ICSID Case No. ARB/20/2)	Cameroon	United States of America	Cameroon–United States of America BIT (1986)
33	Human Rights Defenders Inc., as assignee of Natale Palazzo, Rodolfo Scodeller and Antonio Basile v. Swiss Confederation (ICSID Case No. ARB/20/29)	Switzerland	Seychelles	Hungary–Switzerland BIT (1988)
34	IBT Group, LLC and IBT, LLC v. Republic of Panama (ICSID Case No. ARB/20/31)	Panama	United States of America	Panama–United States FTA (2007)
35	JCDecaux SA v. Czech Republic (ICSID Case No. ARB/20/33)	Czechia	France	Czechia–France BIT (1990)
36	José Alejandro Hernández Contreras v. Republic of Costa Rica (ICSID Case No. ARB(AF)/20/2)	Costa Rica	Venezuela, Bolivarian Republic of	Costa Rica–Venezuela, Bolivarian Republic of BIT (1997)
37	Koch Industries, Inc. and Koch Supply & Trading, LP v. Canada (ICSID Case No. ARB/20/52)	Canada	United States of America	NAFTA (1992); USMCA (2018)
38	Komaksavia Airport Invest Ltd v. Republic of Moldova	Moldova, Republic of	Cyprus	Cyprus–Moldova, Republic of BIT (2007)

No.	Full case name	Respondent State	Home State of claimant	Applicable IIA
39	Liberty Seguros, Compañía de Seguros Y Reaseguros and Liberty UK and Europe Holdings Limited v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/20/3)	Venezuela, Bolivarian Republic of	Spain; United Kingdom	Spain–Venezuela, Bolivarian Republic of BIT (1995); United Kingdom–Venezuela, Bolivarian Republic of BIT (1995)
40	Lupaka Gold Corp. v. Republic of Peru (ICSID Case No. ARB/20/46)	Peru	Canada	Canada–Peru FTA (2008)
41	Macro Trading Co., Ltd. v. People's Republic of China (ICSID Case No. ARB/20/22)	China	Japan	China–Japan BIT (1988)
42	Mitsui & Co., Ltd. v. Kingdom of Spain (ICSID Case No. ARB/20/47)	Spain	Japan	Energy Charter Treaty (1994)
43	Mustafa Orhan Özer and Nurettin Mendost Dirlik v. Libya	Libya	Turkey	Libya–Turkey BIT (2009)
44	Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania (ICSID Case No. ARB/20/38)	Tanzania, United Republic of	United Kingdom	United Republic of Tanzania–United Kingdom BIT (1994)
45	Nasib Hasanov v. Georgia (ICSID Case No. ARB/20/44)	Georgia	Azerbaijan	Azerbaijan–Georgia BIT (1996)
46	Neustar, Inc. v. Republic of Colombia (ICSID Case No. ARB/20/7)	Colombia	United States of America	Colombia–United States TPA (2006)
47	Odebrecht Latinvest S.à.r.l. v. Republic of Peru (ICSID Case No. ARB/20/4)	Peru	Luxembourg	BLEU (Belgium–Luxembourg Economic Union)–Peru BIT (2005)
48	Orange S.A. v. Republic of Iraq (ICSID Case No. ARB/20/42)	Iraq	France	France–Iraq BIT (2010)
49	OTP Bank Plc v. Republic of Croatia (ICSID Case No. ARB/20/43)	Croatia	Hungary	Croatia–Hungary BIT (1996)
50	Patel Engineering Limited v. The Republic of Mozambique (PCA Case No. 2020-21)	Mozambique	India	India–Mozambique BIT (2009)
51	Peteris Pildegovics and SIA North Star v. Kingdom of Norway (ICSID Case No. ARB/20/11)	Norway	Latvia	Latvia–Norway BIT (1992)
52	Prairie Mining Limited v. Republic of Poland	Poland	Australia	Australia–Poland BIT (1991); Energy Charter Treaty (1994)
53	Qatar Airways Group Q.C.S.C. v. Arab Republic of Egypt	Egypt	Qatar	Egypt–Qatar BIT (1999); Arab Investment Agreement (1980); OIC Investment Agreement (1981)
54	Qatar Airways Group Q.C.S.C. v. Kingdom of Bahrain	Bahrain	Qatar	Arab Investment Agreement (1980); OIC Investment Agreement (1981)
55	Qatar Airways Group Q.C.S.C. v. Kingdom of Saudi Arabia	Saudi Arabia	Qatar	OIC Investment Agreement (1981); Arab Investment Agreement (1980)
56	Qatar Airways Group Q.C.S.C. v. United Arab Emirates	United Arab Emirates	Qatar	Arab Investment Agreement (1980); OIC Investment Agreement (1981)

No.	Full case name	Respondent State	Home State of claimant	Applicable IIA
57	Raiffeisen Bank International AG and Raiffeisen Bank Austria d.d. v. Republic of Croatia (II)	Croatia	Austria	Austria–Croatia BIT (1997)
58	Raimundo Santamarta Devis v. Bolivarian Republic of Venezuela	Venezuela, Bolivarian Republic of	Spain	Spain–Venezuela, Bolivarian Republic of BIT (1995)
59	Setta Insaat Taahhüt Turz. Tekstil Gıda San. Ve Tic. AS v. Turkmenistan (ICSID Case No. ARB/20/32)	Turkmenistan	Turkey	Turkey–Turkmenistan BIT (1992)
60	SMM Cerro Verde Netherlands B.V. v. Republic of Peru (ICSID Case No. ARB/20/14)	Peru	Netherlands	Netherlands–Peru BIT (1994)
61	South32 SA Investments Limited v. Republic of Colombia (ICSID Case No. ARB/20/9)	Colombia	United Kingdom	Colombia–United Kingdom BIT (2010)
62	Telcell Wireless, LLC and International Telcell Cellular, LLC v. Georgia (ICSID Case No. ARB/20/5)	Georgia	United States of America	Georgia–United States of America BIT (1994)
63	United Agencies Limited SA v. People's Democratic Republic of Algeria (ICSID Case No. ARB/20/1)	Algeria	Switzerland	Algeria–Switzerland BIT (2004)
64	Wang Jing, Li Fengju, Ren Jinglin and others v. Republic of Ukraine	Ukraine	China	China–Ukraine BIT (1992)
65	Webuild S.p.A. (formerly Salini Impregilo S.p.A.) v. Republic of Panama (ICSID Case No. ARB/20/10)	Panama	Italy	Italy–Panama BIT (2009)
66	Winshear Gold Corp. v. United Republic of Tanzania (ICSID Case No. ARB/20/25)	Tanzania, United Republic of	Canada	Canada–United Republic of Tanzania BIT (2013)
67	Worth Capital Holdings 27 LLC v. Republic of Peru (ICSID Case No. ARB/20/51)	Peru	United States of America	Peru–United States FTA (2006)
68	Zaur Leshkasheli and Rosserlane Consultants Limited v. Republic of Azerbaijan (ICSID Case No. ARB/20/20)	Azerbaijan	Georgia; United Kingdom	Energy Charter Treaty (1994); Azerbaijan–Georgia BIT (1996)

Source: UNCTAD, ISDS Navigator.

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