Exploring Alternatives to Investment Treaty Arbitration and Other Dispute Prevention Policies

- First Draft for Discussion -Not for quotation

UNCTAD Series on International Investment Policies for Development



UNITED NATIONS New York and Geneva, 2009

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 its Division on Investment and Enterprise (DIAE), promotes understanding of key issues, particularly matters related to foreign direct investment and transfer of technology. DIAE 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 dash (-) 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;

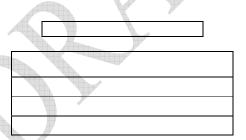
Use of a hyphen (-) between dates representing years, e.g. 1994-1995, signifies the full period involved, including the beginning and end years.

Reference to "dollars" (\$) means United States dollars, unless otherwise indicated.

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

Details and percentages in tables do not necessarily add to totals because of rounding.

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



Copyright © United Nations, 2009 All rights reserved Printed in Switzerland



UNCTAD Series on International Investment Policies for Development

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.

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 international investment agreements.

The Series is produced by a team led by James Zhan. The members of the team include Bekele Amare, Anna Joubin-Bret, Hamed El-Kady, Jan Knörich, Marie-Estelle Rey, Ileana Tejada, Elisabeth Tuerk and Jörg Weber. Members of the Review Committee are Jack Coe, Susan Franck, Barton Legum, Peter Muchlinski, and Jeswald W. Salacuse and Margrete Stevens.

This paper is based on a manuscript prepared by Anna Joubin-Bret and Jan Knörich. It benefited from comments during a peer forum on "Investor State Dispute Settlement" in July 2009, which took place in Miami and was jointly organized with the University of Miami. Further comments and inputs are expected from a joint conference...

The paper provides a timely stocktaking of the current state of affairs in international investment policy making, as UNCTAD embarks on implementing its renewed mandate in the area of international investment agreements emanating from the Accra Accord (paragraph 151).

Supachai Panitchpakdi Secretary-General of UNCTAD

Geneva, July 2009

CONTENTS

PREFACE			
EXECUTIVE SUMMARY			
INTRODUCTION3			
I.	DISPUTE RESOLUTION THROUGH INTERNATIONAL ARBITRATION	11	
A.	Specificity of investor-State dispute settlement	11	
B.	Advantages and disadvantages of international arbitration	13	
II.	ALTERNATIVE METHODS OF DISPUTE RESOULTION	19	
A.	Procedures followed in alternative approaches for dispute resolution	20	
В.	Challenges and obstacles to alternative approaches	25	
C.	ADR as an Alternative to International Arbitration and Investor-State Disputes	31	
III.	ALTERNATIVES TO ARBITRATION IN THE INTERNATIONAL INVESTMENT FRAMEWORK	33	
A.	Available means in IIAs	33	
B.	Available international rules and facilities	48	

UNCTAD Series on International Investment Policies for Development

IV.	DISPUTE PREVENTION POLICIES: EXPERIENCES AND BEST-PRACTICE APPROACHES60
A.	Information sharing61
B.	Reinforcing institutions and clean procedures / administrative review
C.	Implementation of ISDS commitments: access to information, inter-institutional arrangements and authority to settle 68
D.	Institutional response: Ombuds and mediation services76
E.	State-State Cooperation in Dispute Prevention
F.	The ability to settle during an arbitration procedure
CO	NCLUSION87
REI	FERENCES
TRA FOI	LECTED UNCTAD PUBLICATIONS ON ANSNATIONAL CORPORATIONS AND REIGN DIRECT INVESTMENT
	Boxes
Rov	1 Recent examples of legal fees in ISDS cases 7

预览已结束,完整报告链接和二维码如下:

https://www.yunbaogao.cn/report/index/report?reportId=5_7709

