ISDS and Competition Distortions

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1. Introduction

ISDS (investor state-dispute settlement) is a tool of public international law and an international investment agreement between foreign investors and the host states to which they invest. Through ISDS investor and state rights are defined so that legal protection is ensured during their investment activity. So, when two countries agree to ISDS, if the host state violates the rights provided to the investor based on public international law then the foreign investor owns the right to submit request in front of the arbitration court.

The basic legal protection which is provided to investors through ISDS mechanism is about:

- The right of fair and equitable treatment
- The right of full protection and security
- The right of free transfer of means
- The right of not being directly or indirectly expropriated without full compensation

More specifically the host states must provide investors with fair and equitable treatment, full legal protection and insurance as stipulated in the agreement. The insurance provided to foreign investors must be identical to the one given to local investors. So specific legal procedures must be followed since it is not possible to apply different measures to foreign investors. In connection with the definition of the term "legal and equitable treatment" the reference is to "in accordance with the customary international law since this gives the government vital room to support its state actions. (Investor – State Dispute Settlement Provisions in the EU'S International Investment Agreements, European Parliament, September 2014)

Through such a protection, the investors can move their investment funds freely, under the condition of ensuring and facing financial crises and ensuring the integrity and stability of the financial system. Besides, the host states cannot directly or indirectly remove the value of an investment, without covering the investor with the full refund stipulated.

The first ISDS agreement was signed between Pakistan and Germany in 1959 with the ultimate goal of the enhancement of foreign investment activity at an international level as well as the investors' protection from unfair and unequal treatment. Up to now there are more than 3000 international investment agreements containing

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investor to state dispute settlement provisions. EU member States participate in 1400 of them.

2. Reasons for ISDS and globalization

Since the First World War there has been intense development of foreign investment activity for which the globalization and the internationalization of businesses was the motivating power. More generally the term globalization or internationalization is used for the autonomy of all those parameters (economy, communication etc.) which until recently, a few decades, desired to have borders within a state-protector. Parameters which tend to free themselves and permeate ,following the globalization ,is trade, social structure, technology, culture ,the political system, knowledge etc. More specifically according to economic science, the term ‘’globalization’’ is determined by an investment system in foreign markets, which comes as a result of the rational economic analysis of the advantages of international extension towards certain directions.

The term ‘’firm globalization’’ focuses on the geographic dimension and refers to the stages in which the business widens the spectrum of its activities beyond the borders of geographic continent to which it belongs. In contrast the term ‘’firm internationalization’’ is used to describe briefly the extension process of business activities and operations in general abroad. Therefore, it is a safe conclusion to say that these two terms are not perfectly interchangeable. Their difference lies in the fact that the internationalization constitutes the first step the business must take in order to be given the opportunity to actively participate into a globalization model to achieve a point of possession and control of productive units in more than one countries around the world.

The illegal states’ behavior towards foreign investors tended either to remain unimpeded or to escalate into a conflict between states until the creation and the development of a necessary modern system based on rules. Just in 1974, a report by United Nations found that in the previous decade there were 875 rejections of private property of foreigners by the governments in 62 countries for which there were not international litigations. Although the diplomatic solutions were feasible, they were often ineffective and political and lacked the reliability of a judicial solution.

So due to continuous development of the foreign investment activity it became a necessity to have a legal framework as until then effective judicial measures were not taken, given that control is a necessary condition to the realization of every form of investment. This legal framework will ensure and cover the rights of investors who decide to follow an investment procedure abroad. To cover this need the mechanism - agreement ISDS was created with the purpose of ensuring the basic legal protections for foreign investors.

3. ISDS contribution to the host state

3.1 Positive impact on the host state

Beyond the main purpose of the ISDS creation which is to benefit foreign investors, there should also be benefits for the host state as an incentive for the consigning of

such an agreement. When a state agrees on ISDS only foreign investors are given the opportunity to sue the host state at an arbitration court. On the contrary the host state and the domestic investors do not have this opportunity, as according to the ISDS rules they have no right to begin a dispute in front of arbitration court. If a foreign investor does not comply with the legislation that is applied in the host state, he can sue only in front of a national court which is entitled to solve the dispute.

The aforementioned conflicts bring to the surface the issue of fair access to justice as it is discussed:

- If foreign investors are benefited against local investors and
- To what degree a government is benefited through the signing of an ISDS agreement.

The issues raised is whether the host state is ultimately benefited through such an agreement and to what degree and if ISDS encourages the local investments and boosts the production development in the host state.

If the aforementioned issues are a motive for a state to leave an ISDS agreement then the result will be the reduction of the local investment activity.

The discussion concerning the benefits of ISDS often underlines its benefits for the investors who face inefficiently operational or biased internal dispute solution procedures and outlining of investment policy. Apart from the benefits for individual investors the ISDS can indirectly also bring collective benefits for the host states as it allows them to attract investments, despite the weakness that may exist in their models of home governance. Besides, the enactment of ISDS may change the policy dynamics of reforming the terms of internal dispute solution through the making of special rules. So we come to the conclusion that foreign investments mainly contribute positively to the economic growth of a country. This is the reason that states try to attract foreign investments as their production GDP increases in the cases of limited funds. More specifically, according to international bibliography, the positive consequences of ISDS to the host state are the production boost, the permeation of technical knowledge and new methods of production and management, the staff training, the creation of international networks and easier access to markets. Finally it is an undisputable fact that foreign investment activity influences salaries and employment ratings in the host state and as a result of all the above there is development of local enterprises. In addition, if a state refuses to participate in ISDS there is a risk to its remaining presence in the negotiations FTAs (free trade agreement) at a time when trade and foreign funds are a necessary growth condition for many of the states. (European Commission, Investor-to-State Dispute Settlement (ISDS) Some facts and figures)

In conclusion the states benefit through the signing of an ISDS agreement in:

- The investment conflict resolution without the creation of disagreement between the states involved.

More specifically for most of the agreements signed before 1965 it was stipulated that the two signing countries would resolve the probable conflicts that would come up. But in the beginning of the 60s the governments came to realise that the dispute

settlement procedure between states could get them involved in conflicts on behalf of individual investors and in diplomatic incidents between governments. If the foreign investor government took on to resolve the case, this could cause tensions, undermining the purpose of the agreement. Besides in the case of imposing sanctions the agreement would not be undermined but there would be conflict between the governments and investors. In the past there are many examples of state conflicts flared by ISDS in trying to solve these problems. The often military interventions in the early years of American history are a typical example for the case of shotguns, to defend the private commercial interests of America. To avoid these conflicts, it was decided to give to the investors who are directly affected from such a violation, an "individual right to action" in order to impose it through a neutral team using agreed upon rules-in other words ISDS. In this way the ISDS approach acquired broad multilateral recognition with the 1966 convention for the investment dispute settlement between the states and the citizens of the other states.

- The citizens' protection of the participating state abroad.

As the ISDS mechanism provides basic legal protection to foreign investors, the citizens of the participating states are protected and reassured that their rights will be respected. In this way, when the states agree on ISDS, they are aware that they provide their citizens with a special protection in case they pursue investment policy in another consigning state.

- Motivate prospective investors as there is the certainty of abiding by the law rules, so in this way foreign direct investments are created.

As a result of the aforementioned benefit prospective investors are motivated as they feel protected by law on the grounds of the consigning on ISDS nations ,which is very important and provides the business people of one state with complete possibilities and furthermore a boost of foreign investments.

3.2 Negative Impact on the host state

Despite all the positive effects of using ISDS, there are some disadvantages of this mechanism in relation to the host state. According a UNCTAD (United Nations Conference on Trade and Development) out of a sample of 356 ISDS cases and with a time span until the end of 2014 the following results were reached

- 37% of cases (132 cases) were rejected against investors and in favor of the State either for juristiction reasons or for material reasons.
- 28% of cases (101 cases) were settled
- 25% of cases (87 cases) were resolved in favor of the investor, with monetary equivalent refund
- 8% of cases (29 cases) were interrupted for reasons beyond procedure or reasons uknown
- 2% of cases (7 cases) were resolved in favor of the investor, despite there not being any refund.

Although the results of the research show that the most of the cases are resolved in favor of the host state under the ISDS mechanism, however, the states are not benefited. This is happening because of the huge refunds that states are obliged to

pay in cases where the arbitrators fully accept the investor's claim as in some cases, the amount of the refund asked is quite high and may reach hundreds of millions of dollars or even billions, putting at risk the fiscal position of the defendant country. Moreover, because the number of cases which are settled is big, the states are obliged to pay large sums even in the case of partial justification of the investor. So if we consider the total of cases in which the host state loses, we end up with a percentage larger than 50%.Summing up the cases settled and the cases resolved in favour of the investor, in 53% of the cases the host state was called to pay.

From the above it becomes clear that enterprises are justified in many of the cases. A very good example is the case when the court ordered the payment of over 1,4 billion dollars by a multinational oil company, for breaking the stipulations of its agreement with the government of Equador to investigate oil in the Amazon.

4. Settlement Right

Regarding the ISDS procedure there are many doubts concerning the objectivity of arbitrators, while there is considered to be important decline in the freedom of the states to impose rules. As a result there may exist an imbalance between the protection right of investor and the ruling state's right to control its domestic market. As it has been noted states cannot apply arbitrary measures but they need to follow specific legal procedures to avoid bias toward foreign investment. When we refer to the legal protection which foreign investors enjoy and to the measures that host states need to follow, there rises the issue of firstly defining the term" arbitrary measure' and secondly of the host state rights to regulate and apply new rules for its interior needs.

So the main issue is whether ISDS limits regulation rights of governments and by this we refer to the right of the government to define the local legal system and to apply their rules. But there is no clear answer as these rules can be characterised as "arbitrary measures" and influence the foreign investor rights. The investment conditions and the term of national treatment presuppose that the government by adopting laws and regulations influence all the enterprises present in their country, both foreign and local. Nevertheless ISDS forces them to legislate in such a way to be unbiased on the basis of indigenuity, of providing the minimum Universal law standards of dealing, and to allow the transfer of funds to and from the investment. In this context though all these commitments to the agreement, limit the right of the host state concerning the introduction of regulations, given that one foreign investor will have claims against the host state through ISDS every time a condition of the agreement is breached. (Peter H. Chase, U.S. Chamber of Commerce, TTIP, Investor–State Dispute Settlement and the Rule of Law, Wednesday, December 2, 2015)

In conclusion, it should be noticed that one state has the right to introduce regulations for reasons of protection the public health or of the environment even if it violates the foreign investors' rights by introducing nationality bias. This will have direct consequences to the investments however, the reasons which force a government to intervene with regulatory laws, for issues which concern the "public

interest" and the "social protection or consumers' protection" are not considered "arbitrary measures" and the investors can not claim bias against them. In these cases the need for state intervention by legislation is obvious, but the risk of violation of foreign investors rights is also expected.

5. ISDS in developed countries

Another critical issue of concern is if and to what degree the form and the legal system of states matters in dispute cases through ISDS. This is happening because the need of existence of ISDS legal framework is not this strongly felt in more developed countries, since the states themselves have basic laws with utterly democratic character.

Besides for countries like America and member – states of EE, the rights and the legal protection which is offered by the ISDS is fully compliant with their interior national legislations, but also the indigenous legal traditions and rituals. This is the main reason why the American and European governments believe that the investment agreements which they sign do not provide bigger rights to the foreign investors than those which the local investors enjoy. This is the reason why these governments are not expected to violate these obligations. The governments of member – states US and EE believe that the protection which is offered to their investment agreements agree with their notion for rule of law, so the four basic obligations of the agreement are not bigger than those provided by their interior legislation and as a result they will not be broken.

The above conclusions are disproved by the fact that developed countries discriminate against foreign investors, by arbitrarily breaking the contracts and the licences, but also by expropriating their assets. One of the main reasons why foreign investments must continue to be protected even in developed democratic countries is the different policy and the lack of effective distinction between the executive and judicial power. (Ingrid Persson, Response Essays, May 15, 2015)

Clear results and a documented answer to the questions raised above are given by analyzing in depth the table below, regarding the correlation of developed and developing countries with all the cases involved. The table shows 131 countries which have participated in investment dispute settlement and the number of cases they had been involved in.

No.	Name	Cases as Respondent State	Cases as Home State of claimant
1	Albania	7	0
2	Algeria	6	0
3	Argentina	59	3
4	Armenia	2	0
5	Australia	1	3
6	Austria	1	17
7	Azerbaijan	2	0
8	Bahamas	0	2
9	Bangladesh	1	0

10	Barbados	1	6
11	Belgium	1	16
12	Belize	3	0
13	Bermuda	0	1
14	Bolivia, Plurinational State of	14	1
15	Bosnia and Herzegovina	3	0
16	British Virgin Islands	0	1
17	Bulgaria	8	0
18	Burundi	4	0
19	Cabo Verde	1	0
20	Cameroon	1	0
21	Canada	26	44
22	Chile	3	7
23	China	2	4
24	Colombia	4	0
25	Congo, Democratic Republic of the	4	0
26	Costa Rica	9	1
27	Croatia	8	3
28	Cyprus	3	19
29	Czech Republic	34	4
30	Denmark	0	5
31	Dominican Republic	5	0
32	Ecuador	23	0
33	Egypt	28	3
34	El Salvador	3	0
35	Equatorial Guinea	1	0
36	Estonia	4	1
37	Ethiopia	1	0
38	Finland	0	2
39	France	1	41
40	Gabon	2	0
41	Gambia	1	0
42	Georgia	8	0
43	Germany	3	55
44	Ghana	2	0
45	Gibraltar	0	2
46	Greece	3	14
47	Grenada	1	0
48	Guatemala	3	0
49	Guyana	1	0
50	Hong Kong, China SAR	0	1
51	Hungary	14	1
52	India	21	4
53	Indonesia	7	0
54	Iran, Islamic Republic of	1	1
55	Ireland	0	1
56	Israel	0	3
57	Italy	8	30
58	Japan	0	2
59	Jordan	8	5

60	Kazakhstan	17	4
61	Kenya	1	0
62	Korea, Republic of	3	3
63	Kuwait	0	5
64	Kyrgyzstan	13	0
65	Lao People's Democratic Republic	3	0
66	Latvia	7	2
67	Lebanon	5	3
68	Lesotho	2	0
69	Libya	2	0
70	Lithuania	5	3
71	Luxembourg	0	34
72	Macao, China SAR	0	1
73	Macedonia, The former Yugoslav Republic of	3	0
74	Madagascar	2	0
75	Malaysia	3	3
76	Malta	0	2
77	Mauritius	2	6
78	Mexico	25	2
79	Moldova, Republic of	10	1
80	Mongolia	4	0
81	Montenegro	3	0
82	Morocco	2	0
83	Mozambique	1	0
84	Myanmar	1	0
85	Netherlands	0	92
86	Nicaragua	1	0
87	Nigeria	1	0
88	Norway	0	5
89	Oman	3	2
90	Pakistan	9	0
91	Panama	7	4
92	Paraguay	3	0
93	Peru	12	2
94	Philippines	5	0
95	Poland	23	6
96	Portugal	0	5
97	Qatar	0	2
98	Romania	13	1
99	Russian Federation	24	14
100	Saudi Arabia	1	1
101	Senegal	3	0
102	Serbia	7	0
103	Seychelles	0	1
104	Singapore	0	3
105	Slovakia	13	1
106	Slovenia	3	2
107	South Africa	1	3
108	Spain	34	38

109	Sri Lanka	4	0
110	Sudan	1	0
111	Sweden	0	8
112	Switzerland	0	24
113	Syrian Arab Republic	1	0
114	Tajikistan	1	0
115	Tanzania, United Republic of	2	0
116	Thailand	1	0
117	Trinidad and Tobago	1	0
118	Tunisia	1	1
119	Turkey	11	21
120	Turkmenistan	9	0
121	Uganda	1	0
122	Ukraine	21	10
123	United Arab Emirates	2	5
124	United Kingdom	1	67
125	United States of America	16	148
126	Uruguay	2	0
127	Uzbekistan	7	1
128	Venezuela, Bolivarian Republic of	41	1
129	Viet Nam	4	0
130	Yemen	3	0
131	Zimbabwe	3	0

Source: UNCTAD, ISDS Navigator,
http://investmentpolicyhub.unctad.org/ISDS/FilterByCountry

Concerning developing countries, it is concluded that their overall engagement as respondent states is bigger than in the developed countries. The hypotheses that developed states have been involved in conflicts as respondent states are zero or negligible. One considerable exception is that there are some cases of developed countries that significantly differ from that of Canada, which has been involved in 26 cases and the Czech Republic and Spain which have participated in 34 cases each.

Also, with regard to the cases that states are involved as home state of claimant, it is quite the opposite. In these cases, developing countries participated in few cases as home state of claimant as opposed to those of developed countries that are many. Impression is caused by several cases, such as that of France, which, while participating as a respondent state in only one case, was the home state of claimant in 41 cases. Similar is the case of Germany, which, out of the three cases as a respondent state, has 55 as the home state of claimant. The largest variations in the sample of 131 countries are in the Netherlands, with 0 cases as a respondent state found to be involved in 92 dispute settlement cases as home state of claimant as well as the United States of America with a large number of participants on both sides with 16 cases as respondent state and 148 as home state of claimant.

According to the above elements of the table, it is clear that in developed countries the need of an ISDS mechanism is not so great, because as host countries they respect the rights of foreign investors. So investors who decide to invest in a developed country are not faced with a large number of ISDS cases. On the contrary, many of

the ISDS cases in which developed nations take part with regard to their investors are the surprise.

Developing countries have to deal with a big number of ISDS cases as host countries, proving the weaker internal organization and lack of protection for foreign investors. In conclusion, the above assumption, that is, that developed countries, as they are more democratic, more effectively respect the rights of foreign investors, is verified. Nevertheless, there are also assumptions as to how useful the existence of ISDS is.

For this reason, even when the governments making these agreements are not expected to violate their obligations, it is important to ensure these agreements between states, because in this way:

- There is coding of the way that governments expect from other countries to face their investors.
- Security is offered to investors placing funds in a country of which jurisdiction they are not fully aware of.

It is recognised that sometimes governments make mistakes and adopt laws which may introduce bias or otherwise harm a foreign investor without similarly influencing the interior investments.

6. Does ISDS attract investments?

One big question is whether the increase of foreign investment activity causes the need for creation of ISDS or if the creation of ISDS mechanism led to the increase of the investments abroad. In particular, in the case of denial of an agreement would ISDS lead to a decline in investment activity or it would have no impact on investments?

According to a scientific study on how the ISDS provisions are effective to increase the foreign direct investments (FDI), empirical evidence has shown that treaties including these provisions have a positive effect on foreign direct investment (FDI) flows between signatory countries. In addition, bilateral investment treaties (BIT) include mainly the ISDS provisions as a basic element.

The ISDS provisions are included in almost all of the United States' existing BITs, and they have become increasingly common in BITs signed by countries other than the United States (Berger et al. 2010). Thus looking at the relationship between BITs and FDI can give insights into the likely effects of ISDS on FDI. Studies of the impact of BITs on FDI show that these treaties do have a positive effect on increasing investment (Egger and Merlo 2007, Egger and Pfaffermyar 2004, Rose-Ackerman and Tobin 2009 and 2011, Busse et al. 2010, Neumayer and Spess 2005, and Haftel 2010).

There is large scientific interest in the existence or not of factors which determine the impact of ISDS more effectively in some countries. Is the impact of this mechanism the same in all participating countries or is it more efficient in some countries? They also identify factors that may determine when BITs are more or less effective at promoting FDI. In particular, BITs are most useful when they can substitute for weak domestic legal and regulatory institutions in the host country

(Busse et al. 2010). This has been found to be the case in a number of studies, including Berger et al. (2010), which isolates transition countries in Central and Eastern Europe and argues that BITs were an effective means to attract FDI to transition countries that lacked any reputation concerning the credibility of unilateral FDI-related measures .In addition to their effects on actual FDI flows, BITs have been shown to have a positive effect on foreign investors' perceptions of the property rights environment in the country in which they are investing (Rose-Ackerman and Tobin 2011, and UNCTAD 2009).

On the other end of the regulatory spectrum, a study of the potential benefits to the United Kingdom of including ISDS provisions in a trade agreement with the United States determines that the benefits would not be that great because "the US government assesses the UK as a very safe place to invest" even without additional ISDS provisions (Skovgaard Poulsen et al. 2013). Thus, these studies show that BITs encourage investment by foreign firms relatively more in countries that need to signal credibility with investors. Although, BITs can not fully compensate for an otherwise extremely weak investment environment (Rose-Ackerman and Tobin 2009 and 2011).

In conclusion, BITs are the best test case we have for the effectiveness of ISDS provisions as it is widely accepted by investment experts that ISDS provisions are crucial for increasing the credibility and effectiveness of BITs (Wälde 2005, and Allee and Peinhardt 2010).

7. Small and medium-size investors and ISDS potential

One of the most critical questions that can be posed is if the ISDS offers the same abilities to all categories of foreign investments as the ISDS is accessible to investments of all sizes. That is to say if this mechanism promotes healthy and productive competition without creating distortions and imbalances between the participating investors. More specifically, the question is if the small and medium-size foreign enterprises have the same potential to start a dispute by seeking ISDS. The answer in this question is ambivalent. (OECD, Government perspectives on investor-state dispute settlement: a progress report, Freedom of Investment Roundtable 14 December 2012)

There are many who support that foreign small and medium-size enterprises, despite having the ability to start a dispute through ISDS, because of the huge legal fees they can not afford the huge expense. It is claimed that ISDS is a system that favours the most powerful ones, resulting in creating distortions of competition. According to an OECD (Organisation for Economic Co-operation and Development) scientific study referring to the cost of starting an ISDS process and how this cost is allocated to the individual duties,it is proved that:

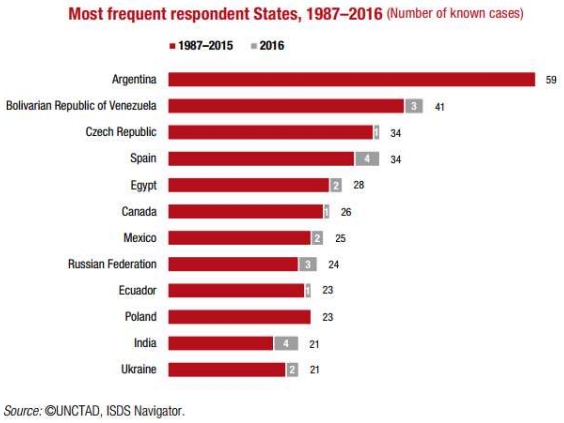
- The average court cost and the arbitration cost for a litigant is approximately 8 million $.
- The highest cost is the cost undertaken by each part (investor and state) for their lawyers and their experts (approximately 82 % of the cost for an ISDS case).

- The arbitrator fees constitute approximately 16% of the cost.
- Constitution costs paid to arbitration organisations and provide desk duties are low and amount to approximately 2% of the cost.

8. Decisions and outcomes in 2016

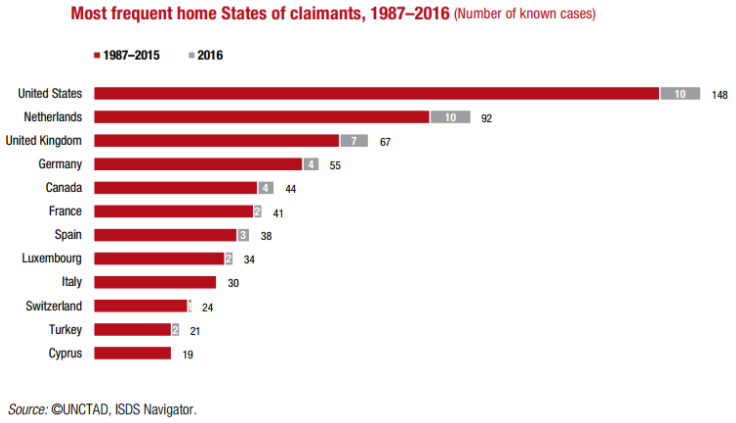
In 2016, investors initiated 62 known ISDS cases pursuant to IIAs. This number is lower than the 74 initiated in the preceding year, but higher than the 10-year average of 49 cases per year (2006–2015). As of 1 January 2017, the total number of publicly known ISDS claims had reached 767. So far, 109 countries have been respondents to one or more known ISDS claims. As arbitrations can be kept confidential under certain circumstances, the actual number of disputes filed for this and previous years is likely to be higher. (Investor – State Dispute Settlement: Review of Developments in 2016, UNCTAD, MAY 2017)

8.1 Respondent States



The new ISDS cases in 2016 were commenced against 41 countries. With four cases each, Colombia, India and Spain were the most frequent respondents. The cases against Colombia are the first known in the country's history. At 29 per cent, the relative share of cases against developed countries was lower than in 2015 (45 per cent).

8.2 Home States of claimants



Developed-country investors brought most of the 62 known cases in 2016. Investors from the Netherlands and the United States initiated the most cases with 10 each, followed by investors from the United Kingdom with 7. Investors from the Russian Federation, Turkey, Ukraine and the United Arab Emirates were the most active claimants from developing countries and transition economies, with two cases each filed in 2016.

8.3 Intra-EU disputes

Intra-EU disputes accounted for about one quarter of investment arbitrations initiated in 2016, down from one third in the three preceding years. The overall number of known intra-EU investment arbitrations initiated by an investor from one EU member State against another member State, totalled 147 by the end of 2016, i.e. approximately 19 per cent of all known cases globally.

8.4 Economic sectors involved

About 60 per cent of the cases filed in 2016 related to activities in the services sector, including the following:

- Supply of electricity and gas (11 cases)
- Construction (6 cases)
- Information and communication (6 cases)
- Financial and insurance services (4 cases)
- Real estate (3 cases)
- Transportation and storage; and arts, entertainment and recreation (2 cases each)
- Accommodation and food service, and administrative and support service (1 case each)

Primary industries accounted for 24 per cent of new cases, and manufacturing for the remaining 16 per cent. This is broadly in line with the overall distribution of the 767 known ISDS cases filed to date.

8.5 Average amounts claimed and awarded

On average, successful claimants were awarded about 40 per cent of the amounts they claimed. In cases decided in favour of the investor, the average amount claimed was $1.4 billion and the median $100 million. The average amount awarded was $545 million and the median $20 million

8.6 Developments in investor-State arbitrations in 2016:

- In 2016, investors initiated 62 ISDS cases pursuant to international investment agreements (IIAs), bringing the total to 767 known arbitrations. The new cases were brought against 41 countries, mostly by investors from developed countries.
- About two thirds of ISDS cases in 2016 were based on bilateral investment treaties, most of them dating back to the 1980s and 1990s. The remaining arbitrations were based on treaties with investment provisions.

- In 2016, ISDS tribunals rendered 57 substantive decisions, 41 of which are in the public domain. (Investor – State Dispute Settlement: Review of Developments in 2016, UNCTAD, MAY 2017)

9. Conclusions

Coming to a conclusion, as investments and trade improve, the differences that arise are becoming all the more varied. Going back in history, International Centre for Settlement of Investment Disputes (ICSID) has recorded 28 cases ISDS just in the first two decades of its arrival. In contrast, there have been recorded 38 ISDS cases just in 2014 which shows the radical need for ISDS. The cases of investor – state dispute settlement will continue to increase as the critical issues of the differences are transformed and become more complicated. As a result, a wider range of expertise is needed to resolve disputes.

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