APEC-UNCTAD REGIONAL TRAINING COURSE ON THE CORE ELEMENTS OF INTERNATIONAL INVESTMENT AGREEMENTS IN THE APEC REGION

FINAL REPORT

Kuala Lumpur, Malaysia
15-19 June 2009
CTI 31/2009T

Organized jointly by the Secretariats of the Asia-Pacific Economic Cooperation (APEC) and of the United Nations Conference on Trade and Development (UNCTAD), and the Ministry of International Trade and Industry (MITI), Malaysia

Produced for:
Asia Pacific Economic Cooperation Secretariat
35 Heng Mui Keng Terrace
Singapore 119616
Tel: (65) 68919 600  Fax: (65) 68919 690
Email: info@apec.org
Website: www.apec.org

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OUTCOME

The Regional Training Course on the Core Elements of International Investment Agreements (IIAs) in the APEC Region, held in Kuala Lumpur, Malaysia, from 15 to 19 June 2009, was organized jointly by the Secretariats of APEC and UNCTAD, and hosted by the Ministry of International Trade and Industry (MITI) of the Government of Malaysia.

Course Background

The training course constituted the third phase of the APEC Investment Expert Group (IEG) Core Elements Project, jointly undertaken in cooperation with UNCTAD. Phase I of the project included a stocktaking of core elements in 28 intra-APEC IIAs. It investigated the core elements by analyzing the way in which they may assist in liberalising, protecting and facilitating investment in and between the Parties to the agreements.

Phase II further enhanced the work with a significant analytical exercise, the mapping of a sample of 200 investment treaties. This work allowed identifying investment principles that are addressed in a consistent way and consistently included by economies in IIAs.

Phase III is the technical assistance part of the project and is based on the research undertaken under phases I and II. This training course is the first activity of phase III. It aimed at fostering APEC-wide understanding among investment treaty negotiators and investment policy makers of key elements in investment liberalization, protection and facilitation.

Participants and Resource Persons

The course brought together 62 participants (35 women and 27 men) from 16 economies of the APEC region (Australia, Brunei Darussalam, Chile, People’s Republic of China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Peru, Philippines, Russian Federation, Singapore, Chinese Taipei, Thailand, Viet Nam). The list of participants is included in the report. The course was delivered in English.

Participants benefited from presentations of experienced resource persons, who were former or actual negotiators of IIAs, legal practitioners, academics and experts from UNCTAD. The list of resource persons and their biographical notes is attached.

Most participants were involved in the negotiation of investment agreements. Some assume other functions relevant to the issue, such as handling investment disputes. The quality of participants allowed for in-depth coverage of topics, interesting discussions, sharing of experiences among participants and a rich dialogue with the resource persons.
At the end of the course, participants became members of the UNCTAD's network of IIA experts, which allows for continued interactive discussion and dissemination of information on IIA issues and investment disputes.

Training Methodology

The course curriculum and material was prepared by UNCTAD's work programme on IIA to enable participants to obtain the necessary expertise on the negotiation and implementation of IIAs. The programme of the training course is attached.

After an introduction on the universe of IIAs and the definition of investment, substantive issues were addressed through three sessions: investment liberalization, investment protection and investment facilitation. The course ended with a full day of a negotiation simulation.

Each topic was addressed in the following way: the presentation of the issue by a key expert, comments by national experts discussing relevant treaty practice or giving a country-specific perspective on the issue, and a discussion with all the participants to better illustrate the topic through an exchange of practices and experiences.

The final simulation exercise on the negotiation of an investment treaty gave a practical dimension to this learning process. The group was divided into ten negotiating teams resulting in five negotiations. It allowed participants to put into practice knowledge acquired during the course. Two resource persons provided the necessary coaching. Negotiations were followed by brief presentations by the negotiating teams and a debriefing session in which resource persons provided useful comments and advice to the participants. At the end of the course, participants received a certificate of attendance.

The course was tailored to APEC member economies and made use of examples from the region, including treaties and arbitration cases. This was exemplified by comments made on specific country experiences. Commentators were from Chile, China, Australia, Thailand, Japan, Malaysia and Peru. A representative from the Attorney General's Chambers of Malaysia also made a presentation.

Training material

Participants received the training material in the form of a CD-Rom which contains UNCTAD's main publications on investment, selected IIAs (including treaties signed by the respective economies), selected dispute settlement cases and a bibliography. The table of contents of the CD-Rom is included. Key publications were also distributed during the training course, as well as copies of all presentations.

The presentations will be posted in the APEC website for further consultations.
Opening Ceremony

The training course was opened by Ms. Datuk Dr Rebecca Fatima Sta Maria, Deputy Secretary General (Trade), MITI. Ms. Daratul Bai da D zulkifly, Assistant Resident Representative, UNDP Malaysia and Ms. Anna Joubin-Bret, Course Director, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE), UNCTAD, also participated.

Evaluation and Follow-up

UNCTAD and APEC evaluations of the training course show very good results. Consolidation of the UNCTAD's questionnaire showed that the course fully reached the expectations of 74% of the participants. In addition, participants rated the efficiency and the usefulness of the course to their official duties as excellent (42%) and good (50%).

The UNCTAD secretariat has been asked to intensify its technical assistance work with APEC and its member economies through further activities, especially in the context of the Core Elements Project. This course provided an excellent opportunity for the UNCTAD secretariat and APEC to enhance their working relationship. Planning is now underway to organize two other advanced capacity-building activities on investor-State dispute settlement and investment dispute prevention policies in 2009. Future activities could include follow-up training courses on IIAs on an annual basis.

Side Event

At the request of the Attorney General's Chambers of Malaysia, a half-day workshop on Investor-State Dispute Settlement and Dispute Prevention Policies took place on 19 June 2009. The event provided a venue for presentations and open discussions on the trends and implications of investor-State dispute settlement, on dispute avoidance, prevention and alternative dispute resolution, and on the pros and cons of adopting a concise vs. comprehensive ISDS model text. The programme of the event is attached.

Course Organization

The regional training course was organized by Ms. Ho Soo Quen, Ms. Atasha Mohd Noh, Ms. Norshahida Zolkiaply and Mr. Muhd Ikram Zulkurnain from the APEC Division, MITI, Ms. Roeslina Abbas, Ms. Gheeta Devi Rengasamy and Mr. Vinodh Mariappa from the International Cooperation Division, Malaysian Industrial Development Authority (MIDA), Ms. Anna Joubin-Bret, Ms. Marie-Estelle Rey and Mr. Jan Knoerich from the International Agreements Section, Division on Investment and Enterprise (DIAE), UNCTAD, and Ms. Hiroko Taniguchi and Ms. Norila bte Mohd Ali from the APEC Secretariat.
APEC-UNCTAD Regional Training Course on the Core Elements of International Investment Agreements in the APEC Region

15-19 June 2009
Kuala Lumpur, Malaysia

Organized by the Secretariats of the Asia-Pacific Economic Cooperation (APEC) and of the United Nations Conference on Trade and Development (UNCTAD) and the Ministry of International Trade and Industry (MITI), Government of Malaysia

COURSE PROGRAMME
Background and objectives:

This activity constitutes the third phase and the technical assistance component of an ongoing APEC IEG project on the core elements of investment agreements. It follows completion of Phase II encompassing a report on "investment principles" and the mapping of 200 international investment agreements (IIAs) and builds on the earlier Phase I report, "Identifying Core Elements in Investment Agreements in the APEC Region".

The regional training course on the core elements of IIAs is designed for government officials and policy-makers from the APEC economies involved in negotiations on investment or in the management of investor-State disputes.

The aim of the workshop is to deepen knowledge and understanding of the key and emerging issues in investment liberalization, protection and facilitation. The course will explain the key issues, provide a stocktaking of treaty provisions, analyse the different approaches and the recent treaty practice, present cases of jurisprudence, identify options for negotiators, and study interactions between issues and concepts. The course will end with a simulation exercise of a negotiation allowing participants to put into practice the knowledge acquired. Examples of treaty provisions and arbitration cases will be linked to the practice and experience of the APEC region and economies. In addition, comparisons in approaches between APEC IIAs and APEC investment instruments will be provided when relevant.

Resource persons will be experienced negotiators, UNCTAD experts, university professors, arbitrators and practitioners.

Host economy: Malaysia

Venue: Sheraton Imperial Kuala Lumpur Hotel

Coordination:
Project overseer: Ms. Ho Soo Queen, Senior Principal Assistant Director, APEC Division, Ministry of International Trade and Industry Malaysia

UNCTAD secretariat:
Ms. Anna Joubin-Bret, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE)
Ms. Marie-Estelle Rey, Legal Expert and Technical Assistance Coordinator, Work Programme on International Investment Agreements, Policies and Capacity-building Branch, DIAE
Mr. Jan Knorich, Associate Expert, Work Programme on International Investment Agreements, Policies and Capacity-building Branch, DIAE
Monday 15 June

09:00 **Opening Session**
Datuk D r Rebecca Fatima Maria, Deputy Secretary General (Trade), MITI
Daratul Bai da D zulkifly, Assistant Resident Representative, UNDP Malaysia
Anna Joubin-Bret, Course Director, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE), UNCTAD

09:30 Coffee break

10:00 **INTRODUCTION:**
*International investment rule-making: trends and emerging issues*
- FDI: trends and implications
- Objectives of the legal investment framework
- Trends in IIAs
- Features and challenges
Jan Knörich, Course Coordinator, Associate Expert, Working Programme on International Investment Agreements, DIAE, UNCTAD

11:15 **Scope and definition of investment and investor**
- FTA approach (investment and services)
- BIT approach
- ASEAN approach
- Treaty practice and case law
Presentator: Anna Joubin-Bret, DIAE, UNCTAD
Commentator: Raimundo Gonzalez, Legal Advisor of Service, Investment and Air Transport Department, DIRECON, Chile

13:00 Lunch

14:30 **SESSION 1: INVESTMENT LIBERALIZATION**

**Admission and establishment of investment**
- Presentation of the concept
- Treaty practice
- Case law
- Regional perspectives
Presentator: Anna Joubin-Bret, DIAE, UNCTAD
Commentator: Raimundo Gonzalez, Legal Advisor of Service, Investment and Air Transport Department, DIRECON, Chile

16:00 Coffee break
16:15  **National treatment**
- Presentation of the concept
- Exceptions
- Treaty practice
- Case law

Presentator: Alejandro Fay, Consultant, Professor of Law, Universidad Iberoamericana and Universidad Nacional Autónoma de México, former Chief Negotiator of Investment Treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico

Commentator: Wenhua Shan, Professor, Xi'an Ji aotong University, China, and Oxford Brookes University, England

18:00  End of the working day
09:00  **Most-favoured-nation treatment**
- Presentation of the concept
- Interactions and scope
- Treaty practice
- Case law

Presentator: Alejandro Fay, Consultant, Professor of Law, Universidad Iberoamericana and Universidad national autónoma de México, former Chief Negotiator of investment treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico
Commentator: Michael Gardner, Policy Analyst, Foreign Investment & Trade Policy Division, Department of Treasury

11:00  Coffee break

11:15  **MFN (cont’d) Discussions**

11:45  **Transfer of funds**
- Presentation of the concept
- Treaty practice and relevant case law

David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State
Anna Joubin-Bret, DIAE, UNCTAD

13:00  Lunch

14:30  **SESSION 2: INVESTMENT PROTECTION**

**Fair and equitable treatment**
- Presentation of the concept
- Interactions with other standards
- Treaty practice
- Case law

Presentator: David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State
Commentator: Wenhua Shan, Professor, Xi'an Jiaotong University, China, and Oxford Brookes University, England

18:00  End of working day
Wednesday 17 June

09:00  **Expropriation and compensation**
- Presentation of the concept
- Treaty practice
- Case law

Presentator: Alejandro Faya, Consultant, Professor of Law, Universidad Iberoamericana and Universidad nacional autónoma de México, former Chief Negotiator of investment treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico

Commentator: Vilawan Mangklatanakul, Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand

11:00  Coffee break

11:15  **Expropriation (cont'd)**
- Discussions

11:45  **Scheduling of reservations**
- Presentation of the positive and negative lists approaches and other approaches
- Country experience

Presentator: Masafumi Sugano, Deputy Director, Economic Partnership Division, Trade Policy Bureau, Ministry of Economy, Trade and Industry, Japan

13:00  Lunch

14:30  **Dispute settlement in IIAs**
- State-State vs. investor-State dispute settlement
- ISDS mechanisms and rules (ICSID, UNCITRAL...)
- Recent innovations in dispute settlement

Anna Joubin-Bret, DIAE, UNCTAD

- Management of investment treaty disputes

David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State

16:30  Coffee break

- The experience of Thailand in ISDS

Vilawan Mangklatanakul, Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand

- The experience of Malaysia with ICSID

Osman Affendi, Attorney General Chambers of Malaysia

18:00  End of working day
Thursday 18 June

09:00  Coherence and consistency in IIAs
- Explanation
- Analysis of ASEAN and APEC FTAs and BITs
Presentator: Anna Joubin-Bret, DIAE, UNCTAD
Commentators:
Sufian Jusoh, NCCR Research Fellow, World Trade Institute (WTI), Berne, Switzerland
Masafumi Sugano, Deputy Director, Economic Partnership Division, Trade Policy Bureau, Ministry of Economy, Trade and Industry, Japan

11:00  Coffee break
11:15  Preparation of the simulation exercise
13:00  Lunch

SESSION 3: INVESTMENT FACILITATION

14:30  The generations of investment facilitation
- Liberalization of FDI regimes
- Marketing of economies
- Investor targeting
Anna Joubin-Bret, DIAE, UNCTAD

15:30  Investment facilitation provisions in international investment agreements
Anna Joubin-Bret, DIAE, UNCTAD

16:15  Coffee break
16:30  Alternative dispute resolution and dispute prevention policies
David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State

17:15  The institutional framework for investment protection and promotion
- National experiences
- Technical assistance
Anna Joubin-Bret, DIAE, UNCTAD
Country experts: Vanessa Rivas Plata Saldarriaga, Legal Adviser, Office of International Economy, Competition and Private Investment Affairs & David Barrientos Gonzales, Third Secretary, Ministry of Foreign Affairs, Peru

18:00  End of working day
<table>
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<tr>
<th>Time</th>
<th>Activity</th>
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<tr>
<td>09:00</td>
<td><strong>SESSION 4: SIMULATION EXERCISE</strong></td>
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<tr>
<td>09:00</td>
<td>Negotiation of a high-standard investment agreement</td>
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<td>09:00</td>
<td>Coaches: Alejandro Fay a, Consultant, Professor of Law, Universidad Ibericoamericana and Universidad Nacional Autónoma de México, former Chief Negotiator of Investment Treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico. Jan Knöerich, Course Coordinator, Associate Expert, Work Programme on International Investment Agreements, D IAE, UNCTAD.</td>
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<tr>
<td>09:00</td>
<td>Preparation of the negotiations in small groups</td>
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<td>11:00</td>
<td><strong>Simulation of negotiations</strong></td>
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<td>13:00</td>
<td>Lunch break as part of the practical exercise</td>
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<td>14:30</td>
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<td>16:00</td>
<td><strong>Debriefing</strong>: presentation by each group of the results of the negotiation</td>
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<td>17:00</td>
<td><strong>Closing session</strong></td>
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<td>17:30</td>
<td>End of the training course</td>
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LIST OF PARTICIPANTS AND RESOURCE PERSONS
LIST OF PARTICIPANTS

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Tel. No./ E-mail</th>
</tr>
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<tbody>
<tr>
<td></td>
<td><strong>AUSTRALIA</strong></td>
<td></td>
</tr>
</tbody>
</table>
| 1.  | Mr. Michael Gardner                       | Tel.No.: +612 6263 3082  
Policy Analyst  
Department of The Treasury  
Foreign Investment and Trade  
E-mail: michael.gardner@treasury.gov.au |
|     | **BRUNEI DARUSSALAM**                     |                                                      |
| 2.  | Ms. Dk. Nooraslena Pg Sallehuddin          | Tel.No.: + 673 238 3374  
Second Secretary  
Trade Development Department  
Ministry of Foreign Affairs and Trade  
E-mail: nooraslena.sallehuddin@mfa.gov.bn |
|     | **CHILE**                                  |                                                      |
| 3.  | Mr. Raimundo Gonzalez                     | Tel.No.: (56-2) 827-5553  
Legal Adviser  
Services, Investment and Air Transport Department  
E-mail: rgonzalez@direcon.cl |
| 4.  | Mr. Cristian Rodriguez                    | Tel.No.: (56-2) 827-5553  
Legal Adviser  
Services, Investment and Air Transport Department  
E-mail: crodriguez@direcon.cl |
|     | **PEOPLE'S REPUBLIC OF CHINA**            |                                                      |
| 5.  | Mr. Chen Chao                             | Tel.No.: 0086-10-65197778  
Deputy Director  
Ministry of Commerce  
E-mail: chenchao@mofcom.gov.cn |
| 6.  | Mr. Li Sen                                | Tel.No.: 0086-10-65197150  
Officer  
Ministry of Commerce  
E-mail: lisen@mofcom.gov.cn |
|     | **INDONESIA**                             |                                                      |
| 7.  | Mr. Noor Fuad Fitrianto                    | Tel.No.: +6221-5252769  
Head Section, ASEM Corporation  
Investment Coordinating Board,  
Directorate of Regional Cooperation  
E-mail: noorfuad_007@yahoo.co.uk |
| 8.  | Mr. Nova Erlangga Masrie                   | Tel.No.: +6221-5252769  
Staff  
Investment Coordinating Board,  
Directorate of Regional Cooperation  
E-mail: Nova_masrie@yahoo.com |
| 9.  | Mr. Abid Wahid Sasmito                     | Tel.No.: +6221-5269874  
Staff  
Investment Coordinating Board,  
Bureau of Legal and Public Relations  
E-mail: Wahid_Shide@yahoo.com |
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Position</th>
<th>Organization</th>
<th>Telephone</th>
<th>Email</th>
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<tbody>
<tr>
<td>10.</td>
<td>Ms. Erliana Novy Siregar</td>
<td>Staff</td>
<td>Investment Coordinating Board, Directorate of Bilateral and Multilateral Cooperation</td>
<td>+6221-5202045</td>
<td><a href="mailto:Erliana.siregar@yahoo.com">Erliana.siregar@yahoo.com</a></td>
</tr>
<tr>
<td>11.</td>
<td>Mr. Bambang Eko Sulistianto</td>
<td>Staff</td>
<td>Investment Coordinating Board, Bureau of Legal and Public Relations</td>
<td>+6221-5269874</td>
<td><a href="mailto:Bambang_bkpm@yahoo.co.id">Bambang_bkpm@yahoo.co.id</a></td>
</tr>
<tr>
<td>12.</td>
<td>Mr. Yudi Pramadi</td>
<td>Director</td>
<td>International Economic Cooperation</td>
<td>+6221-3521849</td>
<td><a href="mailto:yudip@ekon.go.id">yudip@ekon.go.id</a></td>
</tr>
<tr>
<td>13.</td>
<td>Mr. Bobby Chris Siagian</td>
<td>Deputy Director</td>
<td>International Economic Cooperation</td>
<td>+6221-3521849</td>
<td><a href="mailto:bobsiagion@yahoo.com">bobsiagion@yahoo.com</a></td>
</tr>
<tr>
<td>14.</td>
<td>Mr. Randi Anwar</td>
<td>Director for Regional Cooperation</td>
<td>Investment Coordinating Board</td>
<td>+6221-5252769</td>
<td><a href="mailto:radianwar@bkpm.go.id">radianwar@bkpm.go.id</a></td>
</tr>
<tr>
<td>15.</td>
<td>Mr. Amri Zuhdi</td>
<td>Deputy Director</td>
<td>Intra Regional Cooperation</td>
<td>+6221-5252008</td>
<td><a href="mailto:amri@bkpm.go.id">amri@bkpm.go.id</a></td>
</tr>
<tr>
<td>16.</td>
<td>Mr. Bahrnis Paseng</td>
<td></td>
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</tr>
<tr>
<td>17.</td>
<td>Mr. Takayuki Shiina</td>
<td>Officer</td>
<td>Ministry of Economy, Trade and Industry</td>
<td>+81-3-3501-5909</td>
<td><a href="mailto:shina-takayuki@meti.go.jp">shina-takayuki@meti.go.jp</a></td>
</tr>
<tr>
<td>18.</td>
<td>Mr. Masafumi Sugano</td>
<td>Deputy Director</td>
<td>Ministry of Economy, Trade and Industry</td>
<td>+81-3-3501-1700</td>
<td><a href="mailto:Sugano-masafumi@meti.go.jp">Sugano-masafumi@meti.go.jp</a></td>
</tr>
<tr>
<td>19.</td>
<td>Ms. Datin Noor Haliza Binti Mohd Noor</td>
<td>Deputy Director</td>
<td>Economic Planning Unit</td>
<td>03-8888 2740</td>
<td><a href="mailto:haliza@epu.gov.my">haliza@epu.gov.my</a></td>
</tr>
<tr>
<td>20.</td>
<td>Ms. Jeannie Christie</td>
<td>Assistant Director</td>
<td>Economic Planning Unit</td>
<td>03 – 8888 2649</td>
<td><a href="mailto:jeannie@epu.gov.my">jeannie@epu.gov.my</a></td>
</tr>
<tr>
<td>21.</td>
<td>Ms. Nuruljannah Mohd Ariff Sabri</td>
<td>Senior Executive</td>
<td>Bank Negara Malaysia</td>
<td>03 – 2698 8044 Ext.7905</td>
<td><a href="mailto:jannah@bnm.gov.my">jannah@bnm.gov.my</a></td>
</tr>
<tr>
<td>22.</td>
<td>Ms. Nik Nurazlina Ali</td>
<td>Manager</td>
<td></td>
<td>03- 2698 8044 Ext.8466</td>
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<tr>
<td>No.</td>
<td>Name and Position</td>
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</tbody>
</table>
| 23. | Ms. Kristina Rai  
Manager  
Bank Negara Malaysia | Tel.No.: 03- 2698 8044 Ext. 7933  
E-mail : Kristina@bnm.gov.my |
| 24. | Mr. Budiman Lutfi  
Senior Federal Counsel  
Attorney-General's Chambers  
Malaysia | Tel.No.: +603 8885 5736  
E-mail : lutfi@agc.gov.my |
| 25. | Mr. Kamal Baharin Omar  
Senior Federal Counsel  
Attorney-General's Chambers  
Malaysia | Tel.No.: +603 8885 5708  
E-mail : kamalbaharin@agc.gov.my |
| 26. | Mr. Simon Lee Yew Weng  
Director, International Corporate Division, Malaysian Industrial Development Authority | Tel.No.: +603-22673668  
E-mail : simon@mida.gov.my |
| 27. | Mr. Jayasigan Narayanan Nair  
Senior Dep. Director, International Corporate Division, Malaysian Industrial Development Authority | Tel.No.: +603-22673670  
E-mail : jeyasigan@mida.gov.my |
| 28. | Ms. Roeslina Abbas  
Dep. Director, International Corporate Division, Malaysian Industrial Development Authority | Tel.No.: +603-22673671  
E-mail : Roeslina@mida.gov.my |
| 29. | Ms. Noor Suziyanti Saad  
Senior Assistant Director, International Corporate Division, Malaysian Industrial Development Authority | Tel.No.: +603-22673672  
E-mail : suziyanti@mida.gov.my |
Director, Kuala Lumpur Regional Centre for Arbitration. | Tel.No.: +603-2142 0103  
E-mail : director@rcakl.org.my |
| 31. | Ms. Olivia Tan Swee Leng  
Legal Counsel  
Kuala Lumpur Regional Centre for Arbitration | Tel: 603-2142 0103  
Email: counsel2@rcakl.org.my |
| 32. | Ms. Shereen Khan  
Legal Counsel, Kuala Lumpur Regional Centre for Arbitration | Tel.No.: +603- 2142 0103  
E-mail : counsell@rcakl.org.my |
| 33. | Ms. Saovanee Chan Somchit  
Associate  
Research and Investment Strategy  
Khazanah Nasional Berhad | Tel.No.: +603–2034 0142  
E-mail : saovanee.chan@khazanah.com.my |
| 34. | Ms. Wan Khatina Nawawe  
Senior Vice President Research and Investment Strategy  
Khazanah Nasional Berhad | Tel.No.: +603–2034 0134  
E-mail : wan.khatina@khazanah.com.my |
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
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</tr>
</thead>
</table>
| 35  | Ms. Talagavathi Karapayah   | Director                                    | Investment Policy and Trade Facilitation Division | Tel.No.: +603–6203 4714  
                          |                             | Ministry of International Trade and Industry | E-mail : talaga@miti.gov.my           |
| 36  | Mr. Hairil Yahri Yaacob     | Senior Principal Assistant Director         | Investment Policy and Trade Facilitation Division | Tel.No.: +603–6203 4711  
                          |                             | Ministry of International Trade and Industry | E-mail : hairil@miti.gov.my           |
| 37  | Ms. Mazmen Abdul Hamid      | Assistant Director                          | Investment Policy and Trade Facilitation Division | Tel.No.: +603–6203 4764  
                          |                             | Ministry of International Trade and Industry | E-mail : mazmen@miti.gov.my           |
| 38  | Ms. Siti Sarah Rosli        | Assistant Director                          | Investment Policy and Trade Facilitation Division | Tel.No.: +603 - 62035536  
                          |                             | Ministry of International Trade and Industry | E-mail : sarah@miti.gov.my            |
| 39  | Ms. Mariam Md Salleh        | Director                                    | ASEAN Economic Cooperation Division           | Tel.No.: +603 - 62034779  
                          |                             | Ministry of International Trade and Industry | E-mail : mariam@miti.gov.my           |
| 40  | Ms. Sumathi Balakrishnan    | Principal Assistant Director                | Multilateral Policy and Negotiations Division | Tel.No.: +603 – 62034703  
                          |                             | Ministry of International Trade and Industry | E-mail : sumathi@miti.gov.my          |
| 41  | Ms. Madihah Zainol          | Legal Advisor                               | Ministry of International Trade and Industry | Tel.No.: +603 – 6203 1764  
                          |                             |                                             | E-mail : madihah@miti.gov.my          |
| 42  | Mdm Adelina Christine Awen Son | Assistant Secretary, Loan Management, Financial Market & Actuary Division | Ministry of Finance | Tel.No.: +603 8882 3556  
                          |                             |                                             | E-mail : adelina.awenson.treasury.gov.my |
| 43  | Mr. Imran Jamil Johari      | Assistant Director                          | Pemudah Secretariate                          | Tel.No.: 603 6203 1876  
<pre><code>                      |                             | Ministry of International Trade and Industry | E-mail : imran@miti.gov.my            |
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<table>
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<th>No.</th>
<th>Name</th>
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<th>Organization</th>
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<tbody>
<tr>
<td>44.</td>
<td>Mr. Muhd Ikram Zulkurnain</td>
<td>Assistant Director</td>
<td>Asia Pasific Cooperation Division Ministry of International Trade and Industry</td>
<td>603 6203 4707</td>
<td><a href="mailto:mikram@miti.gov.my">mikram@miti.gov.my</a></td>
</tr>
<tr>
<td>45.</td>
<td>Ms. Dolores Gloria Zamora Romero</td>
<td>Deputy Director Bilateral Treaties and APEC Ministry of Economic</td>
<td>(52)(55) 52296167</td>
<td><a href="mailto:dzamora@economia.gob.mx">dzamora@economia.gob.mx</a></td>
<td></td>
</tr>
<tr>
<td>46.</td>
<td>Ms. Mariel Velazquez De Landa</td>
<td>Deputy Director International Investments Agreements Ministry of Economic</td>
<td>(52)(55) 52296100</td>
<td><a href="mailto:mvelazquexdel@economia.gob.mx">mvelazquexdel@economia.gob.mx</a></td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>Mr. Thomas Haidon</td>
<td>Trade Specialist Ministry of Foreign Affairs and Trade</td>
<td>+64 4 439 8808</td>
<td><a href="mailto:Thomas.haidon@mfat.govt.nz">Thomas.haidon@mfat.govt.nz</a></td>
<td></td>
</tr>
<tr>
<td>48.</td>
<td>Mr. David Barrientos Gonzales</td>
<td>Third Secretary Ministry of Foreign Affairs</td>
<td>(511) 623 3187</td>
<td><a href="mailto:dbarrientos@rree.gob.pe">dbarrientos@rree.gob.pe</a></td>
<td></td>
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<tr>
<td>49.</td>
<td>Ms. Rivas Plata Saldarriaga Vanessa del Carmen</td>
<td>Consultant Ministry of Economy and Finance</td>
<td>(511) 3115930 ext 3538</td>
<td><a href="mailto:vrivasplata@mef.gob.pe">vrivasplata@mef.gob.pe</a></td>
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<tr>
<td>50.</td>
<td>Ms. Fretti Ganchoon</td>
<td>State Counsel III Department of Justice</td>
<td>(632) 536 0458</td>
<td><a href="mailto:fgganchoon@yahoo.com">fgganchoon@yahoo.com</a></td>
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<tr>
<td>51.</td>
<td>Ms. Nyriam Sedillo Hernandez</td>
<td>Senior State Solicitor Office of the Solicitor General (OSG)</td>
<td>(632) 892 20 87</td>
<td><a href="mailto:nyriamsusan@yahoo.com">nyriamsusan@yahoo.com</a></td>
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<tr>
<td>52.</td>
<td>Ms. Alexandra Chagovets</td>
<td>Adviser of Services and Investment Division Ministry for Economic Development</td>
<td>+ 7 (495) 651-75-98</td>
<td><a href="mailto:ChagovetsAA@economy.gov.ru">ChagovetsAA@economy.gov.ru</a></td>
<td></td>
</tr>
<tr>
<td>53.</td>
<td>Ms. Anna Zhur</td>
<td>Expert of Services and Investment Division Ministry for Economic Development</td>
<td>+ 7 (495) 651-75-98</td>
<td><a href="mailto:ZhurAV@economy.gov.ru">ZhurAV@economy.gov.ru</a></td>
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<tr>
<td><strong>54. Ms. Ong Kiat Yeng</strong></td>
<td>Senior Assistant Director</td>
<td>Tel.No.: (+65) 6332 7724</td>
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<td></td>
<td>Ministry of Trade and Industry</td>
<td>E-mail : <a href="mailto:Ong-kiat-yeng@mti.gov.sg">Ong-kiat-yeng@mti.gov.sg</a></td>
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<tr>
<td><strong>55. Mr. Ong Chin Heng</strong></td>
<td>State Counsel</td>
<td>Tel.No.: +65 6332 2912</td>
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<td></td>
<td>Attorney-General’s Chambers</td>
<td>E-mail : <a href="mailto:Ong_chin_heng@agc.gov.sg">Ong_chin_heng@agc.gov.sg</a></td>
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<td><strong>56. Mr. Haur-Jiunn Shyu</strong></td>
<td>Officer</td>
<td>Tel.No.: 886-2-23892111ext. 614</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ministry of Economic Affairs</td>
<td>E-mail : <a href="mailto:hjshu@moea.gov.tw">hjshu@moea.gov.tw</a></td>
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<td><strong>57. Ms. Asara Punggalan</strong></td>
<td>Senior Investment Promotion Officer</td>
<td>Tel.No.: +662 537 8084</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Office of the Board of Investment</td>
<td>E-mail : <a href="mailto:siriporn.n@boi.go.th">siriporn.n@boi.go.th</a></td>
<td></td>
</tr>
<tr>
<td><strong>58. Ms. Potchamas Saengthien</strong></td>
<td>Third Secretary</td>
<td>Tel.No.: (662) 643-5000 ext 4065</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Division of International Economic Affairs, Ministry of Foreign Affairs</td>
<td>E-mail : <a href="mailto:potchamass@mfa.go.th">potchamass@mfa.go.th</a></td>
<td></td>
</tr>
<tr>
<td><strong>59. Ms. Rutaichanok Manivat</strong></td>
<td>Head of International Investment Agreement Bureau</td>
<td>Tel.No.: (662) 283 5384</td>
<td></td>
</tr>
<tr>
<td></td>
<td>International Economic Department, Bank of Thailand</td>
<td>E-mail : <a href="mailto:RutaicM@bot.or.th">RutaicM@bot.or.th</a></td>
<td></td>
</tr>
<tr>
<td><strong>60. Ms. Kengjai Watjanapukka</strong></td>
<td>Economist</td>
<td>Tel.No.: (662) 283 5190</td>
<td></td>
</tr>
<tr>
<td></td>
<td>International Economic Department</td>
<td>E-mail : <a href="mailto:KengjaiW@bot.or.th">KengjaiW@bot.or.th</a></td>
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<td><strong>61. Ms. Thai Thu Phuong</strong></td>
<td>Deputy Head of Investment Promotion Division</td>
<td>Tel.No.: 84-4-37343758</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foreign Investment Agency</td>
<td>E-mail : <a href="mailto:phuongfia@mpi.gov.vn">phuongfia@mpi.gov.vn</a></td>
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<td></td>
<td>Ministry of Planning and Investment</td>
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<tr>
<td><strong>62. Ms. Pham Thi Thuong</strong></td>
<td>Official</td>
<td>Tel.No.: 84-8044515</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Department of Legislation,</td>
<td>E-mail : <a href="mailto:Thuongpham411@yahoo.com">Thuongpham411@yahoo.com</a></td>
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<td>Ministry of Planning and Investment</td>
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LIST OF RESOURCE PERSONS

Osman Affendi  
Attorney General Chambers of Malaysia

Alejandro Faya  
Consultant, Professor of Law, Universidad Iberoamericana and Universidad Nacional Autonoma de Mexico, former Chief Negotiator of Investment Treaties, Directorate General for Foreign Investment, Ministry of Economy, Mexico  
Tel: +52 55 55538630, Email: afayardz@gmail.com

Anna Joubin-Bret  
Course Director, Senior Legal Advisor, Policies and Capacity-building Branch, Division on Investment and Enterprise (DIAE), UNCTAD  
Tel: +41 22 917 5897, Fax: +41 22 917 0194, Email: anna.joubin-bret@unctad.org

Sufian Jusoh

Jan Knoerich  
Course Coordinator, Associate Expert, Work Programme on International Investment Agreements, DIAE, UNCTAD  
Tel: +41 22 917 5911, Fax: +41 22 917 0194, Email: jan.knoerich@unctad.org

Vilawan Mangklatanakul  
Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand  
Tel: 66 2 643 5000 ext 4095, Fax: 66 2 643 5250, Email: vilawanm@mfa.go.th

David Pawlak  
Consultant - International Arbitration, Washington D.C. & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State  
Tel: +48 511 242 010, Email: dapawlak@aol.com

Wenhua Shan  
Professor, Xi’an Jiaotong University, China, and Oxford Brookes University, England  
Email: shan@mail.xjtu.edu.cn
APEC-UNCTAD Regional Training Course on the Core Elements of International Investment Agreements in the APEC Region

15-19 June 2009
Kuala Lumpur, Malaysia

Organized by the Secretariats of the Asia-Pacific Economic Cooperation (APEC) and of the United Nations Conference on Trade and Development (UNCTAD) and the Ministry of International Trade and Industry (MITI), Government of Malaysia

BIO NOTES OF KEY SPEAKERS
Alejandro Faya-Rodriguez

Consultant on economic law, with a focus on foreign investment, treaties and regulation. He majored in law from the Universidad Iberoamericana of Mexico City, and has a Master in Law from the University of Oxford and a Master in Compared Public Policies from the Latin-American Faculty of Social Sciences.

In the private sector, he was a member of the law firms Camil Abogados and Lopez Velarde, Heftye y Soria, where he participated in several investment projects (foreign and national) and corporate transactions.

From 2003 to 2009 he worked for the Ministry of Economy of Mexico, where he was Director of Legal Affairs and Deputy Director-General of International Affairs of the Directorate-General for Foreign Investment, as well as Senior Legal Adviser for competitiveness projects. Among others, he negotiated the last ten international investment treaties entered into by Mexico and gave legal opinion on bills and proposals on investment, including their consistency with treaties; also, on issues related to competition, regulatory improvement and competitiveness.

He works for governments and public entities, international organizations and think tanks. He is Professor at postgraduate level, at the Universidad Iberoamericana and the Universidad National Autónoma de México, where he teaches law on foreign investment, treaties and economic regulation. He has several publications and has been speaker in numerous seminars on investment and international law issues.

Anna Joubin-Bret

Ms. Anna Joubin-Bret is Senior Legal Adviser with the Division on Investment and Enterprise of the United Nations Conference on Trade and Development (UNCTAD) in Geneva.

She is an expert on national and international investment legal frameworks. She is providing expertise to developing countries through the delivery of technical assistance and capacity-building activities (training courses and advisory services) and participation in national, regional and international conferences and seminars. She also contributes to and oversees the publications of the Division, in particular the Series on issues in international investment agreements, the Series on International Investment Policies for development, the seminal studies on international investment rule-making, and the investment policy reviews.

Ms. Joubin-Bret holds a post-graduate degree in Private International Law from the University of Paris I, Panthéon-Sorbonne. She graduated in International Economic Law and in Political Science.
She has been Legal Counsel in the legal department of the Schneider Group; General Counsel of the KIS Group and Director-Export of Pomagalski S.A.. She has been appointed judge at the Commercial Court in Grenoble (France).

Jan Knoerich

Mr. Jan Knoerich is an Associate Expert in international investment law and policies in the Division on Investment and Enterprise of the United Nations Conference on Trade and Development (UNCTAD). He joined UNCTAD’s Work Programme on International Investment Agreements in 2008, where he works as a researcher in the area of investment policy analysis and as a coordinator of technical assistance and training activities. He contributes to the UNCTAD Series on International Investment Policies for Development and supports the intergovernmental activities of the programme. His main expertise is in the area of foreign direct investment and its development implications, as well as outward foreign direct investment from emerging economies.

Mr. Knoerich holds a Master’s Degree in Diplomacy and International Relations from Seton Hall University, New Jersey, USA, and is candidate for a PhD in Economics at the School of Oriental and African Studies, University of London, United Kingdom.

David Pawlak

David Pawlak, an attorney admitted to the bar of the State of New York, provides advisory and representation services in international arbitration matters with a focus on investor-State disputes.

Mr. Pawlak has represented clients in arbitration matters under the rules of the United Nations Commission on International Trade Law (UNCITRAL); the International Centre for Settlement of Investment Disputes (ICSID) Additional Facility; the International Arbitral Center of the Austrian Federal Economic Chamber, Vienna (VIAC); and the International Chamber of Commerce (ICC).

Mr. Pawlak’s recent engagements include, among other matters, serving as lead counsel to the Slovak Republic in defense of a multi-million Euro investment treaty claim. He also led the defense of a multi-million dollar claim brought against Poland under the UNCTRAL Arbitration Rules and the Poland-U.S. bilateral investment treaty. He has been retained to advise the Ukraine in connection with two ICSID investment treaty matters.

Mr. Pawlak also has assisted the Colombian government in the implementation of its investment treaty obligations. UNCTAD has called upon him to provide training on investment treaty matters for officials from dozens of governments at courses in Ukraine, Belarus and Peru. He also has provided technical assistance to Morocco on the investment provisions of the Morocco-US Free Trade Agreement.
Until August 2005, Mr. Pawlak served as an Attorney-Adviser in the Office of the Legal Adviser at the US Department of State. He was a key member of the US legal team dedicated exclusively to investment treaty matters. The US team has prevailed in every investor-State arbitration that has been decided to date. He also advised on the drafting and negotiation of investment and dispute resolution provisions in BIT and investment chapters of FTAs.

Prior to beginning work with the US Department of State in 2001, Mr. Pawlak was an associate at Milbank, Tweed, Hadley & McCloy in New York. Prior to Milbank Tweed, he held the position of Assistant District Counsel in the US Department of Justice Honors Program.

Mr. Pawlak earned the US Department of State’s Meritorious Honor Award for his work on investment treaty arbitration. He received the Pro Bono Publico Award from the law firm Milbank Tweed Hadley & McCloy.

Mr. Pawlak is a graduate of the University of Pittsburgh’s joint-degree program offered by the School of Law and Graduate School of Public and International Affairs (JD/MPIA) and holds a graduate certificate from the University’s Center for Latin American Studies. He also undertook graduate studies at the Johns Hopkins School for Advanced International Studies. Mr. Pawlak earned his undergraduate degree from the University of Michigan at Ann Arbor.


Wenhua Shan

Professor Wenhua Shan is the Dean and Tengfei Professor of International Law at the School of Law of Xi’an Jiaotong University, PR China. He is also Professor of International Law at Oxford Brookes University, UK. Graduated with PhDs from both the University of Cambridge and Xiamen University, Professor Shan has written extensively on international investment law and arbitration and has advised various governments and investors on investment treaty negotiations and arbitration cases. His recent publications include Chinese Investment Treaties: Policies and Practice (co-authored with Ms Norah Gallagher, OUP 2009), The Legal Framework of EU-China Investment Relations: A Critical Appraisal (Hart Publishing 2005) and Redefining Sovereignty in International Economic Law (Hart Publishing 2008). He was recently awarded the title of "State Council Special Allowance Expert" by the State Council of PR China.
Workshop on Investor-State Dispute Settlement
And Dispute Prevention Policies

Attorney General's Chambers, Malaysia
19 June 2009, Training Room, 4th Floor

Programme

09:00 Welcome address

09:15 Investor-State dispute settlement: trends and implications
This module will present recent trends in the conclusion of international investment agreements (IIAs), highlight interpretations given by arbitral tribunals of key concepts of investment protection, and present recent developments in investor-State dispute settlement. It will discuss systemic issues, especially related to existing inconsistencies in the decisions made by international arbitral tribunals. Substantive issues, e.g. related to definitions, fair and equitable treatment and expropriation, will be reviewed through the analysis of particular case studies.

10:15 Open discussion

10:30 Coffee / tea break

10:45 Dispute avoidance / prevention and alternative dispute resolution
This module will address the issue of dispute avoidance, understood as the possibilities for early intervention to prevent a potential dispute from escalating to international arbitration. It will also discuss various approaches to the use of alternative dispute resolution methods once a dispute has already emerged. The experiences of Malaysia and other countries in the APEC region with both dispute avoidance and alternative dispute resolution are analyzed.

11:45 Pros and cons of adopting a concise vs. comprehensive ISDS model text
NAFTA-based ISDS introduced a comprehensive dispute settlement mechanism which has been adopted into the model investment texts of countries such as the US, Canada and Australia. This has been seen as attempting to replicate dispute settlement provisions which are already contained in the ICSID Arbitration Rules or UNCITRAL Arbitration Rules. An analysis of the relevant policy considerations in adopting comprehensive NAFTA-based ISDS provisions will be discussed in this module.
12:45 **Open discussion**
This interactive session provides a venue for further discussion of Malaysia’s particular experiences with investor-State dispute settlement, dispute avoidance and alternative methods of dispute resolution.

13:00 Lunch

Resource persons:
Ms. Anna Joubin-Bret,
*Senior Legal Advisor, Division on Investment and Enterprise, UNCTAD*

Mr. David Pawlak
*International Arbitration, Washington DC & Warsaw, Poland, former Attorney-Adviser, Office of the Legal Adviser, US Department of State*

Dr. Vilawan Mangkatanakul
*Department of International Economic Affairs, Ministry of Foreign Affairs, Thailand*
APEC-UNCTAD Regional Training Course on the Core Elements of International Investment Agreements in the APEC Region

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Organized by the Secretariats of the Asia-Pacific Economic Cooperation (APEC) and of the United Nations Conference on Trade and Development (UNCTAD) and the Ministry of International Trade and Industry (MITI), Government of Malaysia

TRAINING MATERIAL
1) UNCTAD publications

- Investment Provisions in Economic Integration Agreements
- Preserving Flexibility in IIAs: The Use of Reservations
- Investment Promotion Provisions in International Investment Agreements
- International Investment Rule-Making: Stocktaking, Challenges and the Way Forward
- Dispute Settlement: Investor-State Dispute Arising from Investment Treaties
- Investor-State Dispute Settlement and Impact on Investment Rulemaking
- The REIO Exception in MFN Treaty Clauses
- International Investment Agreements in Services
- South-South Cooperation in International Investment Agreements
- International Investment Agreements: Trends and Emerging Issues
- Assessing the Impact of the Current Financial and Economic Crisis on Global FDI Flows
- World Investment Report 2008: Transnational Corporations and the Infrastructure Challenge

IIA MONITORS:
- Latest Developments in Investor-State Dispute Settlement
- Recent Developments in International Investment Agreements
  IIA Monitor No. 2 (2008), UNCTAD/WEB/DIAE/IA/2008/1.

2) Selected International Investment Agreements

a. Bilateral Investment Treaties (BITs)

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<td>China, Republic of Korea, Oman</td>
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<td>Canada</td>
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<tr>
<td>Russia</td>
<td>Argentina, Austria, Belgium and Luxembourg, Australia, Bangladesh, Bolivia, Canada, China, Colombia, Cuba, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Japan, Korea, Lebanon, Malaysia, Netherlands, Norway, Portugal, Romania, Singapore, Spain, Switzerland, Thailand, Turkey, United Kingdom</td>
</tr>
<tr>
<td>Singapore</td>
<td>Cambodia, China, Czech Republic, Egypt, Ethiopia, France, Germany, Greece, Hungary, Italy, Japan, Korea, Myanmar, Netherlands, Pakistan, Peru, Singapore, Switzerland, Thailand, Turkey, United Kingdom, United States</td>
</tr>
<tr>
<td>Chinese Taipei</td>
<td>Belize, Macedonia TFYR, Marshall Islands, Swaziland, Thailand</td>
</tr>
<tr>
<td>Thailand</td>
<td>Argentina, Bahrain, Bangladesh, Belgium and Luxembourg, Bulgaria, Cambodia, China, Colombia, Cuba, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Indonesia, Iran, Israel, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Malaysia, Netherlands, Pakistan, Portugal, Romania, Russian Federation, Saudi Arabia, Singapore, Sri Lanka, Sweden, Switzerland, Chinese Taipei, United Kingdom, Vietnam, Zimbabwe, OPEC</td>
</tr>
<tr>
<td>United States</td>
<td>Albania, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Bolivia, Bulgaria, Cambodia, Chile, China, Cuba, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Estonia, Georgia, Germany, Ghana, Mauritius, Netherlands, Poland, Romania, Russian Federation, Rwanda, Senegal, South Africa, Sri Lanka, Trinidad and Tobago, Tunisia, Turkey, Ukraine, Uruguay, Uzbekistan</td>
</tr>
<tr>
<td>Viet Nam</td>
<td>Australia, Austria, Bangladesh and Luxembourg, Bulgaria, Cambodia, Chile, China, Cuba, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, Iceland, Italy, Japan, Korea, Malaysia, Netherlands, Norway, Paraguay, Portugal, Romania, Singapore, Spain, Sweden, Switzerland, Tajikistan, Thailand, United Kingdom</td>
</tr>
</tbody>
</table>

b. Model BITs
• Canadian Model BIT
• United States Model BIT

c. Free Trade Agreements and other investment instruments: selection

• APEC Non-binding Investment Principles
• Options for Investment Liberalization and Business Facilitation to Strengthen the APEC Economies
• APEC Transparency Standards on Investment
• ASEAN Comprehensive Investment Agreement
• C AFTA Investment Chapter
• FTA between ASEAN, Australia and New Zealand
• FTA between Australia and Thailand
• FTA between Canada and Colombia Investment Chapter
• FTA between Canada and EFTA
• FTA between Chile and Canada
• FTA between Chile and Peru
• FTA between Chile and Mexico
• FTA between Chile and China
• FTA between China and New Zealand
• FTA between China and Peru
• FTA between China and Singapore Investment Chapter
• FTA between Japan and Brunei
• EPA between Japan and Indonesia
• FTA between Japan and Malaysia
• FTA between Japan and Mexico
• FTA between Japan and the Philippines
• FTA between Japan and Thailand
• FTA between Japan and Singapore
• FTA between Korea and Singapore
• FTA between Malaysia and Pakistan
• FTA between Mexico and Bolivia
• FTA between Mexico, Guatemala, El Salvador and Honduras
• FTA between Singapore and Australia
• FTA between Singapore and India
• FTA between Singapore and New Zealand
• FTA between Singapore and Panama
• FTA between Thailand and New Zealand
• FTA between the United States and Colombia
• FTA between the United States and Korea
• FTA between the United States and Peru
• FTA between the United States and Chile
• FTA between the United States and Singapore
• N AFTA Investment Chapter
3) Teaching Material - Excerpts from UNCTAD Course on Dispute Settlement

1. General Topics
1.2 International Court of Justice (Mr. P. S. Rao)
1.3 Permanent Court of Arbitration (Ms. B. Shifman, Mr. H. Holtzmann)

2. International Centre for Settlement of Investment Disputes
2.1 Overview (Mr. C. Schreuer)
2.2 Selecting the Appropriate Forum (Mr. A. Reinisch)
2.3 Consent to Arbitration (Mr. C. Schreuer)
2.4 Requirements Ratione Personae (Ms. M. Al-Sharmani)
2.5 Requirements Ratione Materiae (Mr. A. Escobar)
2.6 Applicable Law (Mr. G. S. Tawil)
2.7 Procedural Issues (Mr. E. Schwartz, Mr. R. Mohtashami)
2.8 Post-Award Remedies (Ms. D. Wang)
2.9 Binding Force and Enforcement (Ms. D. Wang)

4) International Treaties on Arbitration and Related Instruments

ICSID
Convention on the Settlement of Investment Disputes between States and Nationals of Other States
Including:
- Administrative and Financial Regulations
- Rules of Procedure for Conciliation (Conciliation Rules)

UNCITRAL
- UNCITRAL Arbitration Rules (1976)
- UNCITRAL Conciliation Rules (1980)
- UNCITRAL Notes on Organizing Arbitral Proceedings (1996)

ICC
Rules of Arbitration of the International Chamber of Commerce
Including:
- Statutes of the International Court of Arbitration of the ICC
- Internal Rules of the International Court of Arbitration of the ICC

NY Convention
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958)
5) Bibliography


Schreuer, Christoph H.: Travelling th e Bit Ro ute—Of Waiting Periods, U mbrella Clauses and Forks in the Road, 5 The Journal of World Investment and Trade 231 (2004).


6) Case Study Material

Aguas del Tunari Case Study (decision on jurisdiction)

Autopista Concesionada de Venezuela Case Study (introductory note)
Autopista Concesionada de Venezuela Case Study (decision on jurisdiction)
Autopista Concesionada de Venezuela Case Study (decisión sobre competencia)
Autopista Concesionada de Venezuela Case Study (award of tribunal)
Autopista Concesionada de Venezuela Case Study (laudo del tribunal)

CMS Case Study (ancillary claims/objection of jurisdiction)
CMS Case Study Key (ancillary claims/objection of jurisdiction)
CMS Case Study (expropriation)
CMS Case Study Key (expropriation)

Luchetti Case Study (jurisdiction ratione temporis)
Luchetti Case Study Key (jurisdiction ratione temporis)
Agreement between Peru and Chile (Spanish)

Maffezini Case Study (MFN Treatment)
Maffezini Case Study Key (MFN Treatment)
Maffezini Case Study (Spanish) (MFN Treatment)
Maffezini Case Study Key (Spanish) (MFN Treatment)
Agreement between Argentina and Spain
Agreement between Chile and Spain

Metalclad Case Study (expropriation)
Metalclad Case Study Key (expropriation)
Metalclad Case Study (Spanish) (expropriation)
Metalclad Case Study Key (Spanish) (expropriation)

Methanex Case Study (place of proceedings)
Methanex Case Study Key (place of proceedings)
Methanex Case Study (amicus curiae)
Methanex Case Study Key (amicus curiae)
Methanex, letter on non-disputing party participation
Statement of the Free Trade Commission on non-disputing party participation

Milhaly Case Study (ratione materiae)
Milhaly Case Study Key (ratione materiae)
BIT between the US and Sri Lanka

Olguin Case Study (expropriation)
Olguin Case Study Key (expropriation)
Olguin Case Study (Spanish) (expropriation)
Olguin Case Study Key (Spanish) (expropriation)

Salini Case Study (amicable dispute settlement)
Salini Case Study Key (amicable dispute settlement)
Salini Case Study (procedures for the initiation of a claim)
Salini Case Study Key (procedures for the initiation of a claim)
Salini Case Study (ratione materiae)
Salini Case Study Key (ratione materiae)

Saluka Investments Case Study (partial award)

SGS Pakistan Case Study (contract vs. treaty claims)
SGS Pakistan Case Study Key (contract vs. treaty claims)
SGS Pakistan Case Study (procedures for the initiation of a claim)
SGS Pakistan Case Study Key (procedures for the initiation of a claim)
BIT between Switzerland and Pakistan

SGS Philippines Case Study (contract vs. treaty claims)
SGS Philippines Case Study Key (contract vs. treaty claims)
SGS Philippines Case Study (procedures for the initiation of a claim)
SGS Philippines Case Study Key (procedures for the initiation of a claim)
BIT between Switzerland and the Philippines

Tecmed Case Study (fair and equitable treatment)
Tecmed Case Study Key (fair and equitable treatment)
Tecmed Case Study (Spanish) (fair and equitable treatment)
Tecmed Case Study Key (Spanish) (fair and equitable treatment)
BIT between Spain and Mexico
Tokios Case Study (Jurisdiction ratione personae)
Tokios Case Study Key (Jurisdiction ratione personae)
Tokios Case Study (Introductory Note)
Tokios Case Study (Procedural Order No.1)
Tokios Case Study (Decision on Jurisdiction)
Tokios Case Study (Dissenting Opinion)
Tokios Case Study (Procedural Order No.3)

Vivendi Case Study Key (replacement disqualification of arbitrators)
Vivendi Case Study Key (replacement disqualification of arbitrators)
Vivendi Case Study Key (initiation of a claim)
Vivendi Case Study Key (initiation of a claim)

7) Selection of Cases

Please consult http://www.unctadxi.org/templates/Startpage____718.aspx for further reference on selected dispute settlement cases.

Metalclad Corporation v. United Mexican States (ICSID Case No. ARB(AF)/97/1)
- Award of the Tribunal (August 30, 2000) (PDF)
  National Court Decision:
- Supreme Court of British Columbia, Reasons for Judgment of May 2, 2001, The United Mexican States v. Metalclad Corporation, 2001 BCSC 664 (PDF)

Robert Azinian and others v. United Mexican States (ICSID Case No. ARB(AF)/97/2)
- Award of the Tribunal (November 1, 1999) (PDF)

Emilio Agustín Maffezini v. Kingdom of Spain (ICSID Case No. ARB/97/7)
- Decision on Jurisdiction (January 25, 2000) (PDF)
- Award of the Tribunal (November 13, 2000) (PDF)
- Rectification of the Award (January 31, 2001) (PDF)

Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/00/2)
- Award of the Tribunal (March 15, 2002) (PDF)

SGS Société Générale de Surveillance S.A. v. Islamic Republic of Pakistan (ICSID Case No. ARB/01/13)
- Decision of the Tribunal on Objections to Jurisdiction (August 6, 2003) (PDF)

SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (Case No. ARB/02/6)
- Summary of the Decision
- Decision of the Tribunal on Objections to Jurisdiction (January 29, 2004) (PDF)
- Declaration by one of the arbitrators (January 29, 2004) (PDF)

**Ceskoslovenska Obchodni Banka, A.S. (COSB) v. The Slovak Republic** (ICSID Case No. ARB/97/4)
- Decision on Objections to Jurisdiction (May 24, 1999) (PDF)
- Decision on the Further and Partial Objection to Jurisdiction (December 1, 2000) (PDF)

**Mondev International Ltd. v. United States of America** (ICSID Case No. ARB(AF)/99/2)
- Award of the Tribunal (October 11, 2002) (PDF)

**Tradex Hellas S.A. v. Albania** (ICSID Case No. ARB/94/2)
- Decision on Jurisdiction, 24 December 1996. (PDF)
- Final Award, 29 April 1999. (PDF)

**Plama Consortium Limited v. Bulgaria** (ICSID Case No. ARB/03/24 (Energy Charter Treaty))
- Decision on Jurisdiction, 8 February 2005. (PDF)
- Order on Provisional Measures, 6 September 2005. (PDF)

**CME Czech Republic B.V. v. Czech Republic**, UNCITRAL. (The Netherlands/Czech Republic BIT).
- Partial Award, 13 September 2001. (PDF)
- Dissenting opinion, 13 September 2001. (PDF)
- Final Award, 14 March 2003. (PDF)
- Separate Opinion on Final Award, 14 March 2003. (PDF)

**Lauder v. Czech Republic** UNCITRAL (United States/Czech Republic BIT).
- Final Award, 3 September 2001. (PDF)

**Saluka Investments BV** (The Netherlands) **v. The Czech Republic** (Dutch/Czech BIT)
- Decision on Jurisdiction over the Czech Republic's Counterclaim, 7 May 2004. (PDF)
- Partial Award, 17 March 2006. (PDF)
- Swiss Federal Tribunal Decision, 7 September 2006. (PDF)

**Genin and others v. Estonia**, Award (ICSID Case No. ARB/99/2) (United States/Estonia BIT)
- Award, 25 June 2001 (PDF)
- Decision on Request for Supplementary Decisions and Rectification, 4 April 2002 (PDF)

**ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary** (ICSID Case No. ARB/03/16 (Cyprus/Hungary BIT))
- Award, 2 October 2006 (PDF)

AES Summit Generation Ltd. v. Hungary (ICSID No. ARB/01/04)
- Settlement agreed by parties and proceedings discontinued at their request, 3 January 2002.

Telenor Mobile Communications A.S. v. Republic of Hungary (ICSID Case No. ARB/04/15 (Norway/Hungary))
- Award, 13 September 2006 (PDF)
- Summary of Award (PDF)

- Award, 29 March 2005 (PDF)

Eureko B.V. v. Republic of Poland (Netherlands/Poland BIT)
- Partial Award and Dissenting Opinion, 19 August 2005 (PDF)
- Judgment of Court of First Instance of Brussels on setting aside of award, 23 November 2006
- Judgment of Court of First Instance of Brussels on challenge to arbitrator, 22 December 2006

Tokios Tokelés v. Ukraine (ICSID Case No. ARB/02/18) (Lithuania/Ukraine BIT).
- Procedural Order No. 1, 1 July 2003 (PDF)
- Decision on Jurisdiction, 29 April 2004 (PDF)
- Dissenting opinion, 29 April 2004 (PDF)
- Procedural Order No. 3, 18 January 2005 (PDF)

Western NIS Enterprise Fund v. Ukraine, ICSID Case No. ARB/04/2 (US/Ukraine BIT).
- Order, March 16, 2006 (PDF)

Wena Hotels Ltd. v. Arab Republic of Egypt, ICSID Case No. ARB/98/4 (United Kingdom/Egypt BIT).
-Jurisdiction, 29 June 1999.
-Award on Merits, 8 December 2000.


Impregilo S.p.A. v. Islamic Republic of Pakistan, ICSID Case No. ARB/03/3 (Italy/Pakistan BIT). -Decision on Jurisdiction, 22 April 2005.

France Telecom v. Lebanon (France/Lebanon BIT).
- Swiss Federal Tribunal Decision I, 10 November 2005.
- Swiss Federal Tribunal Decision II, 10 November 2005.

CMS Gas Transmission Company v. Argentine Republic (ICSID Case No. ARB/01/8) Award of the Tribunal (May 12, 2005) (PDF)

Azurix Corp. v. Argentine Republic (ICSID Case No. ARB/01/12)
Decision on Jurisdiction (December 8, 2003) (PDF)
Award (July 14, 2006) (PDF)

LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic (ICSID Case No. ARB/02/1)
Decision on Liability (October 3, 2006) (PDF)

PSEG Global et al. v. Republic of Turkey, ICSID Case No. ARB/02/5.
-Award, 19 January 2007.

Soufraki v. United Arab Emirates, ICSID Case No. ARB/02/7 (Italy/United Arab Emirates BIT). -Decision of the Ad Hoc Committee on the Application for Annulment of Mr Soufraki, 5 June 2007.

Fedax N.V. v Venezuela, ICSID Case No. ARB/96/3 (The Netherlands/Venezuela BIT). - Award, 9 March 1998.


Malaysian Historical Salvors, SDN, BHD v. Malaysia, ICSID Case No. ARB/05/10 (UK/Malaysia BIT).
- Dissenting Opinion, 19 February 2009.
- Decision on the Application for Annulment, 16 April 2009.


Fraport AG v. Philippines, ICSID Case No. ARB/03/25 (Germany/Philippines BIT). - Award, 19 July 2007.