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

Presentations

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Pre establishment Chile’s Approach
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Pre and Post establishment

- All BITs Protect investment in the post establishment phase this is the investment has been made in the territory of one of the Parties.
- Investment admitted in accordance with the laws and regulations of the Party.
  - Investment made is protected.
  - Future investor will be subject to existing laws (could or not be less favorable)
  - Investor who seeks to invest is not.

Where and What?

1. Definition of investor:
   Investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality.

2. National Treatment
   Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

3. Most Favored Nation
   Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
Pre establishment

**Protects:**
Investor who seeks to investment
Investment that has not been established (in the process)

- **Why?**
- Isn’t giving the investor too much protection?
- Is it a “blank check”? NO

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Requirements and Exceptions

1. **Requisite of nationality**
   Dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality.
2. **Reservation of sectors and measures in Annex I and II**
3. **General Exception in the FTA applicable to all Chapter (GATS and GATT)**
4. A party may submit a claim to arbitration if:
   (i) the respondent has breached an obligation under Section A; and
   (ii) the claimant has incurred loss or damage by reason of, or arising out of, that breach;
5. **Footnote Chile Colombia and Peru FTA.**
   - For greater certainty, the Parties understood that an investor attempts to make an investment when he/she has made the essentially necessary acts to create an investment, such as the commitment to use resources for the constitution of the capital of an enterprise and the obtainment of permits or licences, among others.

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¡¡¡¡Thanks!!
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