UNCTAD Meeting on the Transformation of the International Investment Agreement Regime

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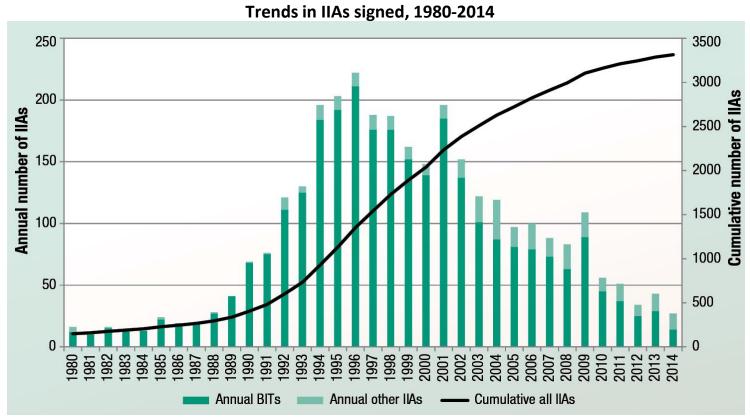
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Countries concluded one international investment agreement (IIA) every other week

• In 2014, 27 new IIAs were signed, bringing the total number of IIAs to 3,268



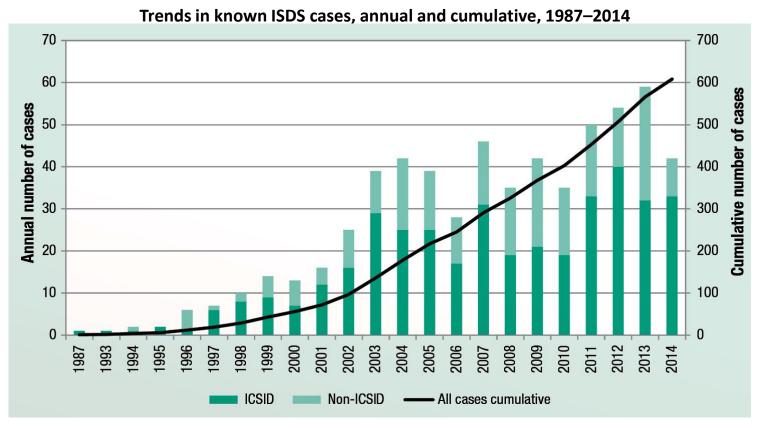
Source: UNCTAD, IIA database. Note: Preliminary data for 2014.





Investors continue to use the investor-State dispute settlement mechanism

• In 2014, 42 new ISDS cases were filed, bringing the total number of known ISDS cases to 608



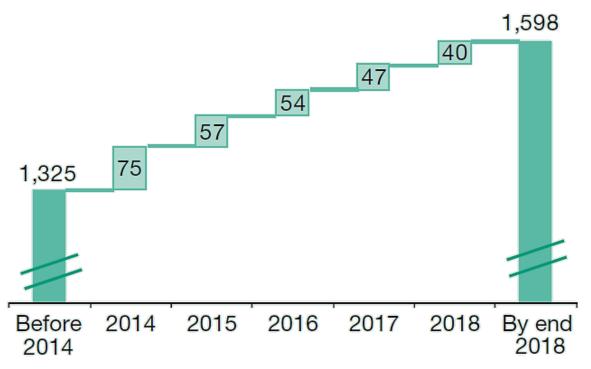
Source: UNCTAD, ISDS database. Note: Preliminary data for 2014.



By the end of 2013, more than 1,300 BITs reached the stage where they can be terminated or renegotiated at any time

- Treaty expiration provides a window of opportunity for improving the IIA regime
- Countries need to analyze the pros and cons of treaty termination and its implication for the overall investment climate and existing investments

Cumulative number of BITs that can be terminated or renegotiated



Source: UNCTAD, WIR 2013.





UNCTAD has defined five options for reforming the ISDS system

 ISDS is a system of application of the law; improvements to the ISDS system should go hand in hand with progressive development of substantive int'l investment law

Tailoring the existing system through individual IIAs

Promoting alternative dispute resolution (ADR)

- Fostering ADR methods (e.g. conciliation or mediation)
- Fostering dispute prevention policies (DPPs) (e.g. ombudsman)
- Emphasizing mutually acceptable solutions and preventing escalation of disputes
- Implementing at the domestic level, with (or without) reference in IIAs

- Setting time limits for bringing claims
- Expanding the contracting parties' role in interpreting the treaty.
- Providing for more transparency in ISDS
- Including a mechanism for early discharge of frivolous claims

Limiting investor access to ISDS

- Reducing the subject-matter scope for ISDS claims
- Denying potection to investors that engage in "nationality planning"
- Introducing the requirement to exhaust local remedies before resorting to ISDS

ISDS reform

Introducing an appeals facility

- Allowing for the substantive review of awards rendered by tribunals (e.g. reviewing issues of law)
- Creating a standing body (e.g. constituted of members appointed by States)
- Requiring subsequent tribunals to follow the authoritative pronouncements of the appeals facility

Creating a standing international investment court

- Replacing the current system (of ad hoc tribunals) with a new institutional structure
- Creating a standing international court of judges (appointed by States)
- Ensuring security of tenure (for a fixed term) to insulate judges from outside interests (e.g. interest in repeat appointments)
- Considering the possibility of an appeals chamber.

Source: UNCTAD, WIR 2014.





Reform of the IIA regime – four paths of action in WIR 2014

Path	Policy action
Status quo	Abstaining from substantive changes to IIA policies
Disengagement	Eliminating international investment-related commitments
Selective adjustments	Pursuing selective changes to integrate selected sustainable development elements and other features into <i>future</i> IIAs
Systematic reform	Redesigning IIAs to promote sustainable development, balance rights and obligations and reform ISDS, including in existing treaties

Source: UNCTAD, WIR 2014.



THANK YOU!

The Investment Policy Hub:

http://investmentpolicyhub.org

UNCTAD websites:

www.unctad.org/diae
www.unctad.org/wir
www.unctad.org/fdistatistics
www.unctad-worldinvestmentforum.org





