

Abbott, K., 165	allocative thesis of jurisdictional authority,
Abu Dhabi, SWFs in, 216n29, 226n85, 231	285–289, 309–310, 311, 313
Abu Dhabi Investment Authority, 216n29	American International Group (AIG), 250
Ackerman, F., 88–89	Anastasiou I, 322
ACP/EU Sugar Protocol, 32n58	Antarctica, 321114
Addis Ababa, Declaration on the International	Anti-Counterfeiting Trade Agreement, 56
Financial Crisis, 73	antidumping
admission model BIT, 168	EC-Bed Linen, 264
advanced developing countries (ADCs), 73.	photocopiers, 327n41. See also
See also Brazil; China; India;	Argentina-Poultry case
sub-Saharan Africa	apartheid, 337, 338, 343
Africa	Argentina
agricultural issues, 74-76, 80-81	financial crisis in, 194. See also
exports, 70	Argentina-Poultry case
hunger in, 75n50	Argentina-Poultry case, 290–295
trade with India, 95	application of RTA rules, 294-295
as undertrading continent, 82-83n88.	example of DSU Article 3.2 argument,
See also Doha Development Agenda	293–294
(DDA) negotiations, with Africa; Doha	jurisdictional arguments, 290–291
Round, obstacles to outcomes for	norm fragmentation and, 301-302
Africa; sub-Saharan Africa; individual	third-party arguments, 292-293
country	Article 13, of Doha Ministerial Declaration, 7
African Growth Opportunity Act (AGOA),	Arusha Development Benchmarks, 71
105n178	Arusha Ministerial Declaration on
agriculture	Commodities, 71
in Africa, 74–81	ASEAN, 145n89
bananas, 31n57, 292n46	Asian financial crisis, 246
cotton trade, 75, 80–81	asset augmentation, 169
dairy products, 67, 266–267	asset exploitation, 169
sugar, 266–267, 268–269, 272	Atomic Energy Act, 349–350n54
Ahdieh, R., 340	Australia
Aid for Trade (AfT) Initiative, 86–88	and Anti-Counterfeiting Trade Agreement,
Alaska	56
and divestment, 339	and judicial economy, 264
and SWF transparency, 226	and New Zealand-Australia Free Trade
Alberta, Canada, and SWF transparency, 226	Agreement, 26



1. ()	LILL LIPTE (0
Australia (cont.)	pre-establishment model BlT, 168
trade with PIF islands, 33n66. See also	proliferation of, 166–167
Australia-United States Free Trade	restrictive approach to, 166
Agreement (AUSFTA)	US Model BIT, 139
Australia-New Zealand Closer Economic	widespread admission model BIT, 172.
Relations Trade Agreement	See also China, BIT policy since
(ANZCERTA) (CER), 8, 211112, 26–27	1980s; European Union (EU) bilateral
Australia New Zealand Therapeutic Products	investment treaties (BITs);
Authority (ANZTPA), 27–29	South-South bilateral investment
Australian Therapeutic Goods Association, 25	treaties (BITs)
Australia-United States Free Trade Agreement	binary coding, 189
(AUSFTA), 8	Blackhurst, R., 71
anti-evergreening provisions, 25	blue state federalism, 343n24
cost-benefit analysis of IP Chapter	Blüthner, A., 267
management costs, 45n17, 48-49	Bolle, M. J., 58
multilateralization of preferred IP	Boutë, A., 95
standards, 49–52	Brazil
tangible gains, 47–48	Brazil-Tyres, 274–275
implications for New Zealand, 27–30	transparency and, 73. See also
indirect implications for New Zealand, 22,	Argentina-Poultry case; BRIC
23–24	countries
innovative medical products, 25	Brazil-Ghana trade, 97n150
intellectual property, 23, 24–25	breaking the buck, 251
intellectual property commitments, 24n25,	Bretton Woods, 2, 227
41	Bretton Woods, 1944–1973
P-4 Agreement effects, 29–30	demise of monetary system, 241
pharmaceuticals trade, 23, 24–25	design issues with, 240–241
therapeutic product regulation, 27–30	fundamental features of, 240
Trans-Tasman Mutual Recognition	international financial law under, 239–241
	international organizations linked with,
Arrangement, 26	_
Austria, BITs in, 147–148, 151	Protter Weeds 2 2 2
aviation policy, 159–160	Bretton Woods 2.0, 2
Dagwell V and	BRIC countries, 102, 136, 233–234
Bagwell, K., 2015	Brita Case, 323
Bananas I, 292n46	Broude, T., 284
Bank for International Settlements (BIS), 227,	Brownback, S., 355–356
240, 241–242, 246	Brunei Darussalam, 29–30
Bank of America, 224–225, 250	Buchanan, A., 125
Barclays, 211, 224–225	Burkina Faso, 76, 78, 79n68
Basel Capital Accord, 242, 259	Burma procurement law, 337, 344, 346
Basel Committee, 227, 245, 246–247, 259	Bush, G. W., and Trade Promotion Authority,
Bayindir v. Pakistan, 200	42n7, 57
Benin, 76, 78	Bush administration
Bergsten, F., 136	objections to divestment, 350–351
Bhala, R., 265–266, 270	relation with China, 181
bilateral investment treaties (BITs), 11	
admission model BIT, 168	Cai, 175, 180
defining, 164	Cairo Declaration, 71
degree of legalization of, 165–166, 330	Cairo Road Map on the Doha Work
and FDI exporters, 167	Programme, 71
overview of global system, 164–168	California, and divestment, 344



Index 365

Sino-US BIT negotiations, 181-184 and global financial crisis, 184 and Anti-Counterfeiting Trade Agreement, and market access, 183 and judicial economy, 297-298n68 and national security concerns, 183-184 pre-establishment model BITs in, 168 standard provisions of BITs, 172 Canada-EU Summit, 145n92 traditional restrictive BIT approach, 170-174 change to legalized approach, 171 Capling, A., 52 CARIFORUM, 147, 160 first-generation BITs, 172-174 Carriage of Goods by Sea, 305, 305n95 national treatment provision, 178 Chad, 76, 78 restrictive approach, 172 checkerboard justice, 303n90 China-Africa trade, 95n138, 97 Chile, 29-30, 58, 146 China and US as new "G-2," 136 China Investment Corporation, 216n29 capital flows to developed countries, 216 choice of law analysis, 294-295, 302 and counterfeiting and piracy, 51n34 Chorzow Factory doctrine, 307 Churchill, Winston, 239 and foreign direct investment, 162 free trade agreement with New Zealand, CISADA 2, 353-354, 356-357 Citic Securities, 216n29 Going Global strategy, 170 Citigroup, Inc., 211, 217, 224-225 and sovereign wealth funds, 217, 226 CME v. Czech Republic, 200-201 state-controlled investment bank, 216n29 comity doctrine, 286-287, 288-289, 309, 311 and transparency, 73, 226. See also BRIC Committee on Payment and Settlement countries Systems (CPSS), 246n21, 246, 247 China, BIT policy since 1980s, 10-11, 162-163 Committee on the Global Financial System, and European Union, 183n70 246-247 growth of outward FDI flows, 168-170 Committee on Trade and Development business-level drivers, 169-170 (CTD), 85-86 government-level drivers, 170 Common Commercial Policy, 144 increase in BITs signed by, 171 Compact of Free Association, 36 second-generation BITs, 174-181 Compaore, B., 78 consequences of, 180-181 competing jurisdictions in WTO and RTA with developing countries, 176 disputes, 285-289 minimum standard of treatment competitive liberalization theory, 44 provision, 177-178 Comprehensive Anti-Apartheid Act, 343 national treatment provision, 178-180: Comprehensive Economic and Trade and developed countries, 178-180; and Agreement (CETA), 145n92 developing countries, 178 Comprehensive Iran Sanctions, weakened, with developing countries, Accountability, and Divestment Act (CISADA), 353-354 requirement to exhaust Administrative constituent diplomacy, 340n16 Cook Islands, 30n54, 34n69, 35 Review Procedure, 175-176 transnational arbitration, 175-176 copyright, in Australia, 49n29 transnational arbitration, limits to use, Cotton-Four (Benin, Burkina Faso, Chad, 180 Mali), 78 war and civil strife provisions, 176 Cotton Initiative, 78, 80-81 Sino-Botswana BIT, 178 cotton trade, 75, 80-81 Sino-Iceland BIT, 173 Credit Suisse, 211 Sino-Japan BIT, 173 Cuba, sanctions against, 346 Sino-Mexico BIT, 176, 177 currency transfer. See South-South bilateral Sino-Slovenia BIT, 173 investment treaties (BITs) Sino-UK BIT, 173 Customs Cooperation Council (CCC), 331



366 Index

Cyprus, and ROOs, 322 Czech Republic, 142 dairy products Canada-Dairy, 266-267 exports subsidies on, 67 Darfur, 338-339 Davey, W., 267 Decision on Implementation-Related Issues and Concerns ("Decision"), 85-86 Declaration on Fundamental Principles and Rights at Work (1998 ILO), 59n63 Declaration on the International Financial Crisis, 73 Delegation Theory, 31111121 Destler, I. M., 59 DFQF, 79-80, 90 Digital Millennium Copyright Act, 43n8 Dispute Settlement Understanding, 267n25 divestment, 14-15 during 2008 U.S. Presidential election, 338-339 business objections to sanctions, 345 Congressional support for dialogic federalism, 347-359 constitutionality of, 343-345 contemporary constitutional theory on, defining, 337n1 downtick in interest in, 339-340 future of, 359-361 from Iran, 346, 352-359 media renewed interest in, 338 NFTC opposition to economic sanctions, 345-347 one voice frame for targeted divestment, 347 political context of, 345-347 public objections to sanctions, 345-346 renewed interest in, 337-339 state, 340-341 from Sudan, 345-346, 347-352 unilateralism threat, 346 Doha Development Agenda (DDA), 64-65 Africa and process of, 70-74 agriculture, non-trade concerns, 101 and BRIC countries, 102 consequences of failure of, 102-104 and failed initiatives and proposals, 68-69 good faith promises of, 68

preferential market access, 101 and protectionism, 104n173 reasons African countries embraced, 69-70 technical assistance and capacity building, 101-102 transparency of, 101 Doha Development Agenda (DDA), and SSA Countries, 98-101 domestic reform, 100-101 competitiveness, 100 diversification, 100-101 mainstreaming, 101 intraregional trade, 98-100 Doha Development Agenda (DDA) negotiations, with Africa agriculture proposals, 74-81 current state of play, 79-81 Key African proposals, 76-78 relevance of sector, 75-76 development proposals, 82-88 current state of play, 85-88 infrastructure, 84-85 key proposals, 83-85 relevance and scope of issue, 82-83 factors undermining effective participation, Doha Ministerial Declaration, 70-74 Doha Round, obstacles to outcomes for Africa, 9, 88-97 North-South issues, 88-90 South-South issues, 90-91 Lamy Triangle negotiations, 91-93 market access in emerging economies, preference erosion, 94 transparency issues, 93 dormant foreign affairs power, 344 double jeopardy, 286n15 Dow Jones & Company, Inc v Gutnick, 49n30 Drezner, D., 57 DSU, 271 Dubai, and SWFs, 216n29, 226 Dubai International Capital, 216n29 Durbin, R., 347 Durbin bill, 347, 350 Eastern Sugar v. Czech Republic, 142 EC-Bed Linen, 264 EC-Commercial Vessels, 289n27

Economic Partnership Agreements (EPAs), 32

Pacific Islands Nations, 22-23, 30-33

and Lamy Triangle, 73



Index

367

EcoSoc, 237, 239, 240	post-Lisbon policy, 134–135, 148–157
EC-Sugar, 266–267, 268–269, 272	EU Model-Investment-Protection
EEC-Import Regime for Bananas, 31n57	Agreement, 155–157
Egypt, and rules of origin, 325	explicit competences on investment, 14
electa una via clause, in Olivos Protocol, 286,	future of existing member states BITs,
290, 291, 294, 300, 304, 306	151–152
Elliott, K., 59	and ICSID Convention, 156
embedded liberalism, 6–7	new agreements on portfolio
Enabling Clause, 34–35	investments, 152–154
endowment effect, 340	politicization of Common Commercial
epistemic legitimacy, 124n120	Policy, 154–155
ERTA-Doctrine, 153, 160	scope of competences, 149–151
estoppel doctrine, 291n34, 292n42	pre-Lisbon FDI protection, 134,
EU-Chile-Agreement, 146	140–148
EU-India FTA, 146	external dimension policy, 143–148
EU-Israel Association Agreement, 322–323	internal investment policy, 140-143
European Community (EC)	termination of BITs, 142n71
banana program, 31n57	and Trade Barrier Regulation, 154,
exports subsidies on dairy products, 67	156–157
judicial economy, 297–298n68. See also	and Treaty on European Union, 133, 155,
European Union (EU)	157
European Convention on Human Rights	and Treaty on the Functioning of the
(ECHR), 140	European Union, 133, 150, 152
European Court of Justice (ECJ)	Europe's Everything But Arms, 31
and aviation policy, 159–160	evergreening notification provision, 25
Brita Case, 323	exchange rate, fixed, 239, 241
and harmonization, 152–153	exclusive jurisdiction clause, 289n27
and parallel internal/external	
competencies, 143–145	Federated States of Micronesia, 35, 36
and right to property, 141	Feinberg, R. E., 43
European Union (EU)	Fiji Islands, 34n69, 35
and Anti-Counterfeiting Trade Agreement,	finance, global
56	interwar period, 238
and China BITs, 183n70	pre-World War I, 238
establishment of, 242	financial crisis, 12
and PTAs, 145–147, 160	Financial Stability Forum (FSF), 246, 246n2
reasons for using FTAs, 19–20	256n43
relation with Taiwan, 321n15	Finland, BITS in, 147–148
response to sanctions, 346	Food and Drug Administration (FDA), 25
transparency and, 73	Foreign Commerce Clause, 344
European Union (EU) bilateral investment	foreign direct investment (FDI)
treaties (BITs)	and bilateral investment treaties, 167
and competition of systems, 134, 135-140	and China, 162, 167, 168–170
and ERTA-Doctrine, 153, 160	and European Union, 134, 140–148
extending EU competencies, 135, 157–161	vs. portfolio investment, 222–223. See also
Community vs. mixed agreements,	bilateral investment treaties (BITs)
159–160	Forum for China Africa Cooperation
post-Lisbon environment, 158–159	(FOCAC), 97
pre-Lisbon environment, 158	Forum Island Countries, 35–36
MFN clauses, 157, 160	forum non conveniens, 286
mixed agreements, 135n9	forum selection rule, 306, 307



France	at political level, 247
BITs in, 151	World Bank role, 244–245, 246
strategic investment fund in, 230. See also	WTO role, 247
European Union (EU); United	global financial crisis, 2
Nations Commission on International	initial phase, 249–250
Trade Law (UNCITRAL) Working	international financial law, 247-253
Methods	building excesses step in, 248–249
Frank, Barney, 352–353, 355	Going Global strategy, of China, 170
free riding, 326	gold standard, 238, 241
free trade agreements (FTAs)	Great Britain
Australia and US (See Australia-United	BITs in, 151. See also European Union
States Free Trade Agreement	(EU)
(AUSFTA))	Group of Eight (G-8), 102
China-New Zealand, 176, 177	Group of Ninety (G-90), 70
China-Peru, 177–178	Group of Seven (G-7), 2, 242, 252–253
Pacific Islands Nations, 22–23,	Group of Ten (G-10), 242, 245, 246–247
30-33	Group of Thirty-Three (G-33), 70
reasons for using, 19–20	Group of Twenty (G-20)
	and Africa, 70, 72–73, 104
GATT Article I, 30–32, 34–35	establishment of, 244
GATT Article XXIV, 31, 34–35, 335	as global coordinator SWFs, 233–234
GATT Article XXIV:8, definition of free-trade	members of, 233n129, 237n3
area, 32n61, 36	original members of, 244n17
GATT Article XXVI, 321, 3211112	replace of G-7 by, 2
General Agreement on Tariffs and Trade	statistics on, 72n38
(GATT), 240	worldwide financial crisi and, 252–253
Enabling Clause, 34–35	Guantánamo detainees, 358n87
most favored nation principle (See most	Guatemala
favored nation (MFN))	Guatemala-Cement II, 292n46
non-discrimination pillar of GATT, 2015	judicial economy, 297–298n68
reciprocity pillar of, 20n5	Guidelines for Multinational Enterprises
and Rules of Origin, 331	(OECD), 157
Generalized System of Preferences (GSP),	
31–32, 34, 57	Harmonized Commodity Description System
general taxation exception, in national	(Harmonized System), 319
treatment, 192	Hathaway, O., 29
Germany	Havana Charter of 1947/48, 137, 239
BITs in, 151. See also European Union	HBOS, 250
(EU)	Health Committee (New Zealand),
GIC, 216n29, 231	28–29
Global Competiveness Index, 100	Helms-Burton Act, 346
global economic crisis, 253–257	hierarchical modeling, 207n74
Group of Twenty (April 2009), 254–257	The Hollandia, 305n95
Group of Twenty (November 2008),	Holocaust Victim Insurance Relief Act, 344
253–254	IBCA Dialama Famor (India Brazil Couth
global finance 1997–2008, 244–247	IBSA Dialogue Forum (India, Brazil, South
BIS role, 246 at domestic financial services, 247	Africa), 91n124, 97
Financial Stability Forum role, 246	Iceland, 253 ICSID Convention, 156, 173–174
financial stability objective, 245–246	ideal types, 166n14
IMF role, 244, 246	Illinois, and divestment, 344, 346
, -, -, -, -, -, -, -, -, -, -, -, -,	, yTT, JT~



India	financial liberalisation, 243
and antidumping, 264	IMF and, 242
capital flows to developed countries, 216	principles of, 242–243
India-Quantitative Restrictions, 297	rise of "Gs," 242
trade with Africa, 95	World Bank and, 242
and transparency, 73	International Forum of Sovereign Wealth
US-ROOs for Textile Products Case,	Funds, 231
323-324. See also BRIC countries	International Monetary Fund (IMF), 239
India-Africa trade, 95	adoption/amendment to Articles of
India-Quantitative Restrictions, 297	Agreement, 239n8
input legitimacy criteria, 123–124	and global finance, 1997–2008, 244, 246
intellectual property (IP) rights, 8-9	and international financial law, 1973-1997,
detailed standards in, 40-41. See also	242
preferential trade agreements (PTAs)	International Organisation of Securities
interest rates, cut in, 252	Commissions (IOSCO), 227, 245,
International Accounting Standards Board	246n21
(IASB), 245, 246n21	International Petroleum Investment Corp.,
International Association of Insurance	226n85
Supervisors (IAIS), 246n21, 246, 247	International Trade Organisation (ITO),
International Bank for Reconstruction and	239–240
Development. See World Bank	International Tribunal for the Law of the Sea
international economic law, and politics	(ITLOS), 283
approaches to, 5-7	International Working Group of Sovereign
contemporary context of, 2–3	Wealth Funds (IWG), 228–231
diversity of interaction, 3–5	invisible hand, 218
international financial law	Iran, 338
under Bretton Woods 1944–1973, 239–241	sanctions against, 346
demise of international monetary system,	US divestment from, 346, 352-359
241	Brownback bill, 355-356
design issues with, 240–241	CISADA, 353–354
fundamental features of, 240	CISADA 2, 353–354, 356–357
international organizations linked with,	dialogism role in, 357, 358–359
240	Frank bill, 352–353, 355–356
and global finance 1997–2008, 244–247	Obama bill (Senator), 352
BIS role, 246	President Obama and, 354–355, 357–359
at domestic financial services, 247	Iran and Libya Sanctions Act, 346
Financial Stability Forum role, 246	Israel, and rules of origin (RoOs), 322-323, 325
financial stability objective, 245–246	issue avoidance techniques, 14, 276
IMF role, 244, 246	Istihmar, 216n29
at political level, 247	, ,
World Bank role, 244–245, 246	Japan
WTO role, 247	and Anti-Counterfeiting Trade Agreement,
and global financial crisis, 247–253	56
building excesses step in, 248–249	and antidumping, 327n41
economic crisis, 253–257	pre-establishment model BITs in, 168
initial phase of crisis, 249–250	response to sanctions, 346
return to new normal, 258	Joint Forum on Financial Conglomerates, 245
systemic financial crisis step in, 250–253	Joint Report on the EU-Canada Scoping
internationalisation, 1973–1997, 241–244	Exercise, 145–147n93
beginnings of financial crises and, 244	Jordan, 42, 56
BIS role, 242	and rules of origin, 325



370 Index

judicial economy, WTO panel use of, 276n54 lex posterior doctrine, 287, 303-304, Argentina-Footwear (EC), 265 Australia-Salmon, 264 lex specialis doctrine, 287, 303-304, 310 Brazil-Tyres, 274-275 lis alibi pendens doctrine, 307-309 Canada-Auto, 276 Mexico-Soft Drinks case, 295-302 Canada-Dairy, 266–267 Mexico-Soft Drinks case ruling, 311 co-complainants, 278-279 need for private international law approach, conventional wisdom, 267-269 de facto stare decisis, 270 norm fragmentation, 301-302 political tensions, ways to defuse, 312-314 de jure stare decisis, 270 EC-Bed Linen, 264 private international law analogy, 305-309 EC-Biotech, 273-274 current state of trade law doctrine, EC-Hormones, 267 304-305 EC-Sugar, 266-267, 268-269, 272 inadequacies of public law solutions, issue avoidance techniques, 14, 276 issue-avoidance techniques, 263, 268 res judicata doctrine, 291, 292n42, 292n46, in dubio mitius, 268 294, 303, 307 non-liquet, 268 judicial economy overview, 264-267 Kabbaj, O., 98-99 Korea-Paper, 265 Kampala Ministerial Statement, 71, 78 methodology of study, 276-279 Karl, J., 144-145 Mexico-Soft Drinks, 265, 278 Kennedy, P., 162 Mexico-Telecoms, 273 Keohane, R., 123-124, 1241120, 125, 165-166112 mixed submissions, 263-264 Kigali Consensus, 71 precedent influence, 269-276 Kiribati, 33n66, 34n69, 35 Kirk, R., 40, 58 quasi-binding precedent, 265-266 remand issues, 268-269 Kole, 195-197n38 results of study, 279-280 Kong, 172 third-party input, 271-273 KORUS, 43 mixed third parties, 272 Koskenniemi, M., 6 non-partisan third parties, 272 United States-Shrimp, 270 capital flows to developed countries, 216 US-Lead and Bismuth II, 264 as developed country, 204 US-Wool Shirts and Blouses, 264-265 Kuwait-Iraq BIT, 186 Kyoto Convention, 319n5, 331 US-Zeroing (EC), 265 US-Zeroing (Mexico), 270 July Package, 79, 80, 80n74 labor and environment PTA (Peru-US), 56-63 jurisdictional authority Laborde, D., 95 allocative thesis of, 285-289, 310, 313 laissez faire, 210 allocative thesis vs., 309-311 Lamy, Pascal, 75 Lamy Triangle, 73, 91-93 Argentina-Poultry case, 290-295 choice of law analysis, 294-295, 302 last substantial process principle, 318-319, Chorzow Factory doctrine, 307 319n6 comity doctrine, 286-287, 288-289, 309, 311 Law of Constant Protectionism, 329 electa una via clause, 286, 290, 291, 294, League of Nations, mandate system of, 213 300, 304, 307–309 least developed countries (LDCs), in Africa, estoppel doctrine, 291n34, 292n42 65, 72 and cotton trade, 78, 79-80 forum nonconviens, 313 forum selection rule, 306, 307 Lee, Barbara, 347 identical dispute requirement, 307 legalization, of BITs, 165-166, 330



Legal Status of Eastern Greenland (Denmark v. Norway), 292n42	Minimum Platform on Investment (MPoI) for EU PTAs with third countries,
legitimacy	146–147, 160
epistemic, 124n120. See also United Nations	minimum standard of treatment provision,
Commission on International Trade	177–178
Law (UNCITRAL) Working Methods	Mitchell, A., 24
Lehman Brothers, 250	mixed agreements, in EU BITs, 135n9
lex fori, 305–306	Mixed Member Proportional representation,
lex loci arbitri, 305–306	28n45
lex posterior doctrine, 287, 303–304, 308–309	Morgan Stanley, 211
lex specialis doctrine, 287, 303–304, 310	Morocco, and Anti-Counterfeiting Trade
Libya, sanctions against, 346	Agreement, 56
The Linaburg-Maduell Transparency Index,	most favored nation (MFN), 334
231	and ACP countries, 31
lis alibi pendens doctrine, 307-309	and Chinese BITs, 173, 178
Lloyds TSB, 250	and EU BITs, 157, 160
Lomé Conventions, 31	and former colonies, 30–32
lumpy transfer exception, 195, 195–197n38	and South-South BITs, 188, 197, 200–201,
Lyakura, B., 71	202, 203
Lyon summit, 245	Mubadala Development Company, 216n29,
Lyon summit, 24)	231
Malaysia, and SWF transparency, 226	Mukherjee, P., 95
Mali, 76, 78	Multilateral Agreement on Investment (MAI),
Marshall Islands, 36	137
Marshall Plan, 240–241	multilateral development banks (MDBs),
Massachusetts, and divestment, 337, 344, 346	244–245
Mavroidis, P. C., 269	multilateral trading system, preference for, 38
McCain, J., 338–339	, y-
medical products, innovative, 25	Nairobi Ministerial Declaration, 71
Medicines and Medical Devices Safety	Namibia, and export subsidies, 76n56
Authority (Medsafe), 27–29	Nath, K., 92
MERCOSUR	National Foreign trade Council (NFTC), 344,
Protocol of Brasilia, 290–291	345–346
Protocol of Olivos, 290–291, 294. See also	nationalization, of financial institutions, 251
Argentina-Poultry	national treatment (NT) provisions, 178, 180,
merger and acquisitions (M&A), 169–170	188, 190–193
Merrill Lynch, 211, 217, 224–225	Nauru, 34n69, 35
Mexico	neo-colonialism, 213–214
and Anti-Counterfeiting Trade Agreement,	neo-functionalism, 320110
56	New International Economic Order (NIEO),
judicial economy, 297–298n68. See also	190, 211–212, 214
Mexico-Soft Drinks case	New York Convention, 142–143
Mexico-Soft Drinks case, 295–302	New Zealand
Appellate Body's ruling, 299–300	and Anti-Counterfeiting Trade Agreement,
arguments of parties, 295–298	56
norm fragmentation and, 301–302	AUSFTA implications for, 22, 23–24
Panel ruling in, 298–299	anti-evergreening provisions, 25
Micronesia, 36	implications for New Zealand, 27–30
Middle East, and SWFs, 217	innovative medical products, 25
millennium development goals (MDGs), 69	pharmaceuticals trade, 23, 24-25



New Zealand (cont.)	Pacific Islands Nations, and EPAs, 22–23,
Trans-Tasman Mutual Recognition	30-33
Arrangement, 26	EU arrangements with ACP countries,
TRIPS-plus intellectual propertion	30-33
provisions, 23, 24–25	and historical preferences, 33-35
free trade agreement with China, 176	relations with stronger countries, 36-38
FTA with Australia, 26	PACP states, 36
Mixed Member Proportional	Pakistan, Bayindir v. Pakistan, 200
representation, 28n45	Palau, 36
New Zealand-Australia Free Trade	Palin, Ś., 338–339, 339n12
Agreement, 26	Palmeter, D., 269
Niue, 30n54, 34n69, 35	Papua New Guinea, 34n69, 35
non-discrimination pillar of GATT, 2015	patent law, in Australia, 55n52
non-laws, 229	path dependence, 38
non-unilateral redress, 289n27	Pauwelyn, J., 287–288
North American Free Trade Agreement	Peru PTA, 56–59, 63
(NAFTA)	Pharmaceutical Benefits Advisory Committee
Article 2005.6, 308	(PBAC), 25, 36–38
investor-state dispute resolutions, 227n90	Pharmaceutical Management Agency
IP coverage in, 42, 308	(Pharmac), 28–29
political genesis of, 4. See also Mexico-Soft	pharmaceuticals trade, 23, 24–25
Drinks case	photocopiers, 327n41
North-South obstacles to outcomes for Africa,	Polaski, S., 89
88–90	Portugal, overseas provinces of, 321n13
Norway, SWFs in, 217, 225, 226, 231, 360	power of economic law-making, 8
nuclear power plants, 349–350n54	pre-establishment model BIT, 168
Nye, Joseph, 123–124	preference erosion, 94n131, 94n133
	preferential trade agreements (PTAs)
Obama, B., and divestment, 338-339, 352,	approaches and objectives, US, 42–52
354-355, 357-359	cost-benefit analysis of, 46–52
Obama administration, and China-US BITs,	economic goals, 44–45
181–182	overview of, 42–43
OECD Declaration on SWFs, 228–231	political goals, 43–44
Office of Legal Counsel, 344–345	stakeholder goals, 45–46
one voice frame for targeted divestment, 347	and EU, 145–147, 160
online service provider (OSP) copyright	investment chapters in US, 138–139
liability, 48	IP-dependent industries, 45
"Open Skies Agreement," 159–160	labor and environment PTA, 56-63
output legitimacy criteria, 123–124	avoidance of PTA standards, 61
Oyejide, A., 71	benefits to stakeholders and US, 62
	criticisms of legislative decrees involving,
P-4 Agreement, 29–30	60–61
Pacific Agreement on Closer Economic	labor and environmental chapters,
Relations (PACER), 22–23n19,	56–60, 63
32-33	political costs, US approach, 52–56
Pacific Gas & Electric Co. v. State Energy	for IP owners in implementation, 55
Resources Conservation &	negative reactions, 53–55
Development Comm'n, 349–350n54	recognized/unrecognized costs, 52–56
Pacific Island Countries Trade Agreement	side letters, 43
(PICTA), 35–36	transaction costs, reducing, 44–45
Pacific Islands Forum (PIF), 8, 32–33	President's Trade Policy Agenda, 40



Index

373

private international law vs. public	veiled protectionism, 328-329
international law, 286. See also	weak legal regime, 329
jurisdictional authority	value-added, and FTAs, 21112
public international law, 286, 287–288. See	and WTO law, 331–334
also jurisdictional authority	limitations to, 331–334
O . LOUTE.	non-preferential RoOs, 333
Qatar, and SWF transparency, 226	origin requirements, 332
Qualifying Industrial Zone (QIZ), 325	preferential RoOs, 333
Quick, R., 267	Rules of Procedure of the General Assembly
Quintyn, M., 245	(RPGA), 109, 117
	Russia
Rana, K. A. A., 85	capital flows to developed countries, 216
Realm of New Zealand, 30n54. See also New	and sovereign wealth funds, 217. See also
Zealand	BRIC countries
reciprocity pillar of GATT, 20n5	
Recording Industry Association of America	Salacuse, J., 194
(RIAA), ₄ 6	Sally, R., 92–93
regional trade agreements (RTAs), 12–14.	Samoa, 35
See also jurisdictional authority	sanctions. See divestment
regulatory competition, 137	Santiago Principles, 215, 228–231
Republic of Korea. See South Korea	Sarkozy, N., 230
Republic of Marshall Islands, 35	Scharpf, F., 123–124
Republic of Palau, 35	sensitivity analysis, 205n70
Reserve Primary Fund, 250–251	Sherman Act, 305
res judicata doctrine, 291, 292n42, 292n46, 294,	side letters, 43
303, 307	Singapore
Ricoh, 327n41, 327, 328	and Anti-Counterfeiting Trade Agreement
Rio Tinto Group, 226	56
Rome Convention on the Law Applicable to	capital flows to developed countries, 216
Contractual Obligations, 305	and P-4 Agreement, 29–30
Roosevelt, F. D., 239	and sovereign wealth funds, 216n29, 224n7
rule-oriented diplomacy, 330	224–225, 2251174, 231
rules of origin (RoOs), 14	Sino-Barbados BIT, 174–175
and domestic politics, 326–328	soft law, 229
as foreign policy instrument, 319–325	Solomon Islands, 33n66, 34n69, 35
cumulation of origin, 324-325	South Africa, 337
Cyprus (Anastasiou I case), 322	South Korea
Israel (West Bank/Gaza Strip), 322–323	and Anti-Counterfeiting Trade Agreement
between Israel and Egypt, 325	56
between Israel and Jordan, 325	as developed country, 204
neo-functional approach to, 319–320	KORUS PTA, 43
political approach to, 322–325	South Pacific Regional Trade and Economic
practical approach to, 321	Cooperation Agreement
future of, 335–336	(SPARTECA), 34–35
last substantial process principle, 318–319,	South-South bilateral investment treaties
3 19n6	(BITs), 11
major aims and key principles, 318–319	balance-of-payments issues, 192t, 195–196
originating state, determining, 318–319	explanatory variables for study, 205–206
political employment of, 329–330	implications of, 198–203
restrictions on other trade barriers, 329	logistic regression techniques, 206–207
susceptibility to pressures, 328–329	methodology of study, 188–190



> Index 374

South-South bilateral (cont.) Steinberg, R., 267-268, 269-270 Sterling, A., 347, 350 MFN provisions, 188, 197, 200-201, 202, 203 national treatment clauses, 188, 190-193 obstacles to outcomes for Africa, 90-91 Lamy Triangle negotiations, 91-93 market access in emerging economies, preference erosion, 94 transparency issues, 93 repatriation of investment-related funds, sample and coding for study, 204-205 security exceptions, 197t, 196-197, 198 transfer clauses, 194-198 variable bias in study, 193 sovereign wealth funds (SWFs), 11-12 G20 as global coordinator, 233-234 good practices model, 227-234 IMF as global coordinator, 231-233 international market architecture, 227-228 market liberalism/nationalism, 234-235 "national interests" vs. "sovereignty," 212-218 and Common Commercial Policy, international law as shield and sword, 213-215 as old phenomenon, 215 reversal of capital flows, 215-218 and physical property, 220n47 politicization of investments, 234 potential of principles, 228-231 recipient country, 227–228. See also sovereign wealth funds (SWFs), non-Western sovereign wealth funds (SWFs), non-Western, 218-226 and diplomatic intervention, 223 FDI vs. portfolio investments, 222-223 home country accountability, 224-225 renewed interest in, 225-226 restrictions in recipient countries, 220-223 regulatory restrictions, 220-221 takings of SWF investments, 222-223 standard of compensation, 223. See also sovereign wealth funds (SWFs) SPARTECA, original members of, 34n69 special and differential treatment (SDT), in WTO agreements, 82–84, 85–86 Trachtman, J., 284 Special Safeguard Mechanisms (SSMs), 64 Trade Barrier Regulation (TBR), 154, 156-157 Staiger, R. W., 2015 Trade Promotion Authority (TPA), 42n7, 57

Strategic Economic Dialogue, 181 sub-Saharan Africa (SSA) and commitment to Doha Round, 66-67 and costs of failed Doha Round, 67 and development aspect of Doha Round, and Doha Development Agenda, 98-101 and domestic reform, 67 economic crisis, effects on, 65-66, 73, 103 relationship with ADCs, 67 and transparency, 73. See also Africa substantial interest, 271n41 substantial transformation, 334n75 Sudan, US divestment from, 345-346, 347-352 Bush administration objections, 350-351 Sudan-specific state law in Illinois, 344 Task Force, 345, 350. See also Sudan Accountability and Divestment Act (SADA) Sudan Accountability and Divestment Act (SADA), 338, 341, 346 Durbin bill difference from, 350 key provision of, 348 Sudan Divestment Task Force, 345, 350 sufficient working or processing, 319n6 Sweden, BITS in, 147-148 Switzerland Anti-Counterfeiting Trade Agreement, 56 exports subsidies on dairy products, 67 Taiwan European Union relation with, 321n15. See also China Tankeu, E., 98 tariff escalation, 96n142 tariff peaks, 96n142 Taylor, M., 245 Temasek Holdings, 224-225n74, 231 terra nullius, 213 Therapeutic Goods Authority (TGA), 27-29 therapeutic product regulation, 27-30 Tiebout, C., 136 Tietje, C., 149-151 Togo, 76 Tokelau, 30n54 Tonga, 34n69, 35



Trade Reform, Accountability, Development	overview of UNCITRAL, 107–109
and Employment Act of 2009, 59	tensions between France and US over,
transaction costs, of PTAs, 44-45	119–120
Trans Pacific Partnership, 45n16	US response to French challenge, 117–119
Trans-Pacific Strategic Economic Partnership	Working Methods overview, 109–113
Agreement (P-4 Agreement), 29–30	consensus, 110–111
transparency, 73, 93, 101, 226, 328–329	participation, 111–113
Trans-Tasman Mutual Recognition	United Nations Conference on Trade and
Arrangement (TTMRA), 26	Development (UNCTAD), 99, 1711132,
Treaty of Lisbon, 133–134, 145. See also	186
European Union (EU) bilateral	United States (US)
investment treaties (BITs)	and Anti-Counterfeiting Trade Agreement,
Treaty on European Union (TEU), 133, 155,	56
157	and dairy product export subsidies, 67
Treaty on the Functioning of the European	reasons to use FTAs, 19
Union (TFEU), 133, 150, 152	Sino-US BIT negotiations, 181–184
TRIPS-plus intellectual property provisions,	transparency and, 73
23, 24–25	US Model BIT, 139. See also bilateral
Troubled Assets Relief Plan (TARP), 251–252	investment treaties (BITs); Mexico-Soft
Tuvalu, 34n69, 35	Drinks case
1 41414, 341109, 3)	United States-Republic of Korea (KORUS), 43
UBS AG, 211	United States Trade Representative (USTR)
UN Commission on International Trade Law	designation of Qualifying Industrial Zones,
(UNCITRAL), 173–174	325
UN Draft Code on Transnational	and intellectual property rights, 42–43, 54,
Corporations, 191, 194	56, 58
UN Economic and Social Council (EcoSoc),	and labor, 57
237, 239, 240	and preferential trade agreements, 43,
unilateralism threat, to divestment, 346	45–46
unilateral redress, 289n27	Upland Cotton, 80–81
United Arab Emirates	Uruguay Round, 83–84
Anti-Counterfeiting Trade Agreement, 56	and Rules of Origin, 329, 331
capital flows to developed countries, 216	USA *Engage, 345
and SWF transparency, 226	US Food and Drug Administration (FDA), 25
United Nations (UN), 239	US-Peru Trade Promotion Agreement (Peru
United Nations Commission on International	TPA), 41
Trade Law (UNCITRAL) Working	US-ROOs for Textile Products Case, 323–324
Methods, 9–10	US-Singapore Free Trade Agreement, 324
France's challenge, 113–117	US-Sugar Quota case, 295–296
to consensus, 113–114	2 2 2 3 gar 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
to participation, 114–117	Vanuatu, 34n69, 35
international organization legitimacy,	veiled protectionism, 328–329
120–128	······································
global governance institutions, 121–125	Wälde, K., 195–197n38
input legitimacy, 123–124, 128	war and civil strife provisions, of BITS, 176
legitimacy of proposals by France,	Washington Mutual, 251
125–128	West and Central Africa (WCA), and cotton
output legitimacy, 124, 128	trade, 75
observations on Working Methods, 113–120	West Bank/Gaza Strip, and rules of origin,
observer states/organizations, 111–112n40,	322–323
112–113142, 113147, 128	Western Samoa, 34n69
2 1 2 112	/21 /



376 Index

widespread admission model BIT, 172
World Bank, 239, 240–241
role in global finance, 1973–1997, 242
role in global finance, 1997–2008, 244–245, 246
World Trade Organization (WTO), 240
dispute settlement mechanism (DSM)
and choice of law rules, 284–285
covered agreements, 301, 308
mandatory rules, 309
overview of, 282–283
problems with, 283–284
Ministerial at Hong Kong, 79–80, 86
role in global finance, 1997–2008, 247
and rules of origin (RoOs), 331–334

limitations to, 331–334
non-preferential RoOs, 333
origin requirements, 332
preferential RoOs, 333
special and differential treatment in
agreements, 82–84
on volume of world exports, 66n9. See also
free trade agreements (FTAs); judicial
economy, WTO panel use of
WTO African Regional Workshop on Cotton,
81n76

Yang, Y., 94n131, 94n133

Zoellick, R., 44