

PROSPECTS IN INTERNATIONAL INVESTMENT LAW AND POLICY

The negotiation of a patchy but burgeoning network of international investment agreements and the increasing use to which they are put is generating a growing body of jurisprudence that, while still evolving, requires closer analytical scrutiny. Drawing on many of the most distinguished voices in investment law and policy, and offering novel, multi-disciplinary perspectives on the rapidly evolving landscape shaping international investment activity and treaty-making, this book explores the most important economic, legal and policy challenges in contemporary international investment law and policy. It also examines the systemic implications flowing from frenetic recent judicial activism in investment matters and advances several innovative propositions for how best to promote greater overall coherence in rule-design, treaty use and policy-making and thus offer a better balance between the rights and obligations of international investors and host states.

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P R E F A C E

Launched in 1997, the World Trade Institute (WTI) annual World Trade Forum has established itself as an important hub for leading experts from academia, governments, international organisations and civil society to brainstorm, from a multidisciplinary perspective, on the new and unsettled challenges in global economic governance and to identify forward-looking solutions.

In 2010 the WTI launched the 'International Investment Initiative' (I³), a programme aimed at promoting research, advanced training, policy advice and dialogue in the fast-moving field of international investment law and policy. The WTI thus decided that it would devote its September 2011 World Trade Forum to the most central challenges arising from the evolving landscape of international investment flows, rules and jurisprudence. The Forum's main objective was to tap into the pluridisciplinary expertise of some of the world's leading trade and investment experts and take stock of the most salient trends in cross-border investment.

This edited volume presents the results of the Forum's deliberations. As befits all such publications, the volume is the last element in a long supply chain of dedicated individuals who contributed to its timely assembly. Our first thanks are directed to the volume's contributors, both lead authors and discussants, a truly remarkable group of some of the most brilliant minds in investment law and policy. The quality of their insights made our task as editors immeasurably easier. We also owe an important debt of gratitude to the United Nations Conference on Trade and Development (UNCTAD), and in particular the Investment Division, guided by its director James Zhan, for its invaluable collaboration in helping to organise and finance both the Forum itself and the UNCTAD Experts Group Meeting that the WTI had the honour to host immediately preceding the Forum. This volume would not have been possible without the funding assistance of the Swiss National Science Foundation through its support of the WTI-anchored National Centre for Competence in Research (NCCR) on Trade Regulation. Special thanks are also owed to the Silva

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Bern, 8 August 2012

ABBREVIATIONS

AAA	American Arbitration Association
ACIA	ASEAN Comprehensive Investment Agreement
AD	anti-dumping
ADR	alternative dispute resolution
ASCM	Agreement on Subsidies and Countervailing Measures
ASEAN	Association of Southeast Asian Nations
BITs	bilateral investment treaties
BRICs	Brazil, Russia, India and China
CGD	Center for Global Development
CMMs	conflict management mechanisms
CSR	corporate social responsibility
CVD	countervailing duty
DPM	dispute prevention mechanism
DPP	dispute prevention policy
DR–CAFTA	Dominican Republic–Central America Free Trade Agreement
DSD	dispute systems design
DSU	Dispute Settlement Understanding
ECT	Energy Charter Treaty
EITI	Extractive Industries Transparency Initiative
EPZ	Export Processing Zones
EU	European Union
FCN treaties	friendship, commerce and navigation treaties
FCTC	Framework Convention on Tobacco Control
FDI	foreign direct investment
FET	fair and equitable treatment
FINSA	Foreign Investment and National Security Act (2007)
FIPA	Foreign Investment Promotion and Protection Agreement (Canada)
FIRA	Foreign Investment Review Act (Canada)
FIT	(Ontario) Feed-in Tariff
FRG	Federal Republic of Germany
FTAs	free trade agreements
FTC	Free Trade Commission (of the NAFTA)

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LIST OF ABBREVIATIONS

G8	Group of Eight
G20	Group of Twenty
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GRI	Global Reporting Initiative
GVCs	global supply/value chains
HDI	Human Development Index
HKIAC	Hong Kong International Arbitration Centre
IBA	International Bar Association
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965
IFC	International Finance Corporation
IAs	international investment agreements
IIL	international investment law
IISD	International Institute for Sustainable Development
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
IPAs	investment promotion agencies
IPFSD	Investment Policy Framework for Sustainable Development
IS	investment and securities
ISDS	investor–state dispute settlement
ITO	International Trade Organization
LCIA	London Court of International Arbitration
LGA	Lead Government Agency
MAI	Multilateral Agreement on Investment
M&As	mergers and acquisitions
MEA	multinational environmental agreement
MFN	most-favoured nation
MIGA	Multilateral Investment Guarantee Agency
MNC	multinational corporation
MNEs	multinational enterprises
NAFTA	North American Free Trade Agreement
NCCR	National Centre for Competence in Research
NEMs	non-equity modes
NGOs	non-governmental organisations
NPM	non-precluded measures

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OECD	Organisation for Economic Co-operation and Development
OPIC	Overseas Private Investment Corporation
PCA	Permanent Court of Arbitration
PTAs	preferential trade agreements
PTIAs	preferential trade and investment agreements
RTA	regional trade agreement
SCC	Stockholm Chamber of Commerce
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SD	sustainable development
SIAC	Singapore International Arbitration Centre
SMEs	small and medium-sized enterprises
SOEs	state-owned enterprises
SPS Agreement	Agreement on the Application of Sanitary and Phytosanitary Measures
SRS	UN Special Representative of the Secretary-General on Business and Human Rights
STEs	state trading enterprises
SWEs	sovereign wealth enterprises
SWFs	sovereign wealth funds
TNCs	transnational corporations
TPP	Trans-Pacific Partnership
TRIM	trade-related investment measure
TRIMs Agreement	Agreement on Trade-Related Investment Measures
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
VCLT	Vienna Convention on the Law of Treaties
WG	Working Group on the relationship between Trade and Investment
WHO	World Health Organization
WIF	World Investment Forum
WTI	World Trade Institute
WTO	World Trade Organization