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On the Offensive

How Canadian companies use trade and investment agreements to bully foreign governments for billions

Hadrian Mertins-Kirkwood

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ABOUT THE AUTHOR

Hadrian Mertins-Kirkwood is a senior researcher with the Canadian Centre for Policy Alternatives.

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On the Offensive

Introduction

"CANADA IS A trading nation" is a message often repeated by Canadian officials and business interests to justify the proliferation of international investment agreements (IIAs) signed by the government.[1] These deals include free trade agreements (FTAs) and bilateral investment treaties that Canada calls foreign investment promotion and protection agreements (FIPAs). By the end of 2021, Canada had started or completed negotiations toward 85 different FTAs and FIPAs, of which 53 are currently in force covering trade and investment relations with 75 different countries.

However, modern free trade and investment agreements go much further than merely protecting market access. They also provide foreign investors with powerful rights not afforded to domestic investors. One particular provision known as investor–state dispute settlement (ISDS), which is included in nearly all Canadian IIAs, allows foreign investors to sue governments in private arbitration tribunals if the investor believes the terms of an international investment agreement have been violated. The ISDS system is ostensibly intended to provide recourse to investors who are treated unfairly by governments. The Canadian government, with the backing of the private sector, has long promoted and defended dispute settlement as an essential component of a rules-based international market system.[2]

In practice, the ISDS system has emerged as a serious threat to public interest regulation around the world, especially in vulnerable developing countries. Dispute settlement is no longer a tactic of last resort for aggrieved investors but increasingly a tool leveraged by wealthy multinational corpora-

Previous papers in this series

This report builds on previous work documenting investor–state dispute settlement cases published by the Canadian Centre for Policy Alternatives as part of the Trade and Investment Research Project. These are the other papers in the series:

Scott Sinclair, *The Rise and Demise of NAFTA Chapter 11*, April 2021

Hadrian Mertins-Kirkwood & Ben Smith, *Digging for Dividends: The use and abuse of investor–state dispute settlement by Canadian investors abroad*, April 2019

Scott Sinclair, *Canada's Track Record Under NAFTA Chapter 11: North American Investor–state Disputes to January 2018*, January 2018

Hadrian Mertins-Kirkwood, *A Losing Proposition: The Failure of Canadian ISDS Policy at Home and Abroad*, August 2015

Scott Sinclair, *NAFTA Chapter 11 Investor–state Disputes to January 1, 2015*, January 2015

Scott Sinclair, *NAFTA Chapter 11 Investor–state Disputes to October 2010*, November 2010

tions and their financiers to extract significant payouts from governments in the Global South. Canadian companies in particular have earned a reputation for taking the ISDS system on the offensive against poor countries in Latin America, Africa and Eastern Europe. Closer to home, ISDS is back in the news as TC Energy and an Alberta crown corporation use the system to challenge the revocation of the Keystone XL pipeline.

The global debate over foreign investor protections is heating up in growing recognition of the threats posed by the ISDS system. Many countries are backtracking on their ISDS commitments and calling for global reform. Until those efforts succeed on a large scale, the spectre of the ISDS system will continue to loom large over global efforts to act on issues of public interest, including climate change. Investors' use of the ISDS system is at all-time highs and unlikely to slow in the face of further state actions to protect the environment.

This report is the latest instalment in a series of critical analyses of the investor–state dispute settlement mechanism published by the Canadian Centre for Policy Alternatives over the past twelve years (see box). The series has approached Canada's relationship with ISDS from two angles: first, from the perspective of Canada under the North American Free Trade Agreement

(and its replacement, the Canada–United States–Mexico Agreement), which has largely put Canada on the defensive against claims from American investors; and second, from the perspective of Canadian investors abroad, who are increasingly using ISDS to challenge public interest measures elsewhere. This report continues the latter line of research, evaluating the use of ISDS by Canadian investors abroad everywhere *except* Mexico and the United States.

We begin with an overview of Canada's investment agreement regime and a critical explanation of the investor–state dispute settlement system before turning to an analysis of the 56 known cases of Canadian investors suing foreign governments outside of NAFTA through to December 31, 2021. We find a clear and troubling trend toward Canadian mining and energy companies challenging environmental policy and resource management decisions made by developing countries, often for hundreds of millions or even billions of dollars in compensation. We conclude with a discussion of one of the greatest threats posed by the ISDS system moving forward—obstruction of global climate policy—before presenting a series of potential policy solutions for the federal government.

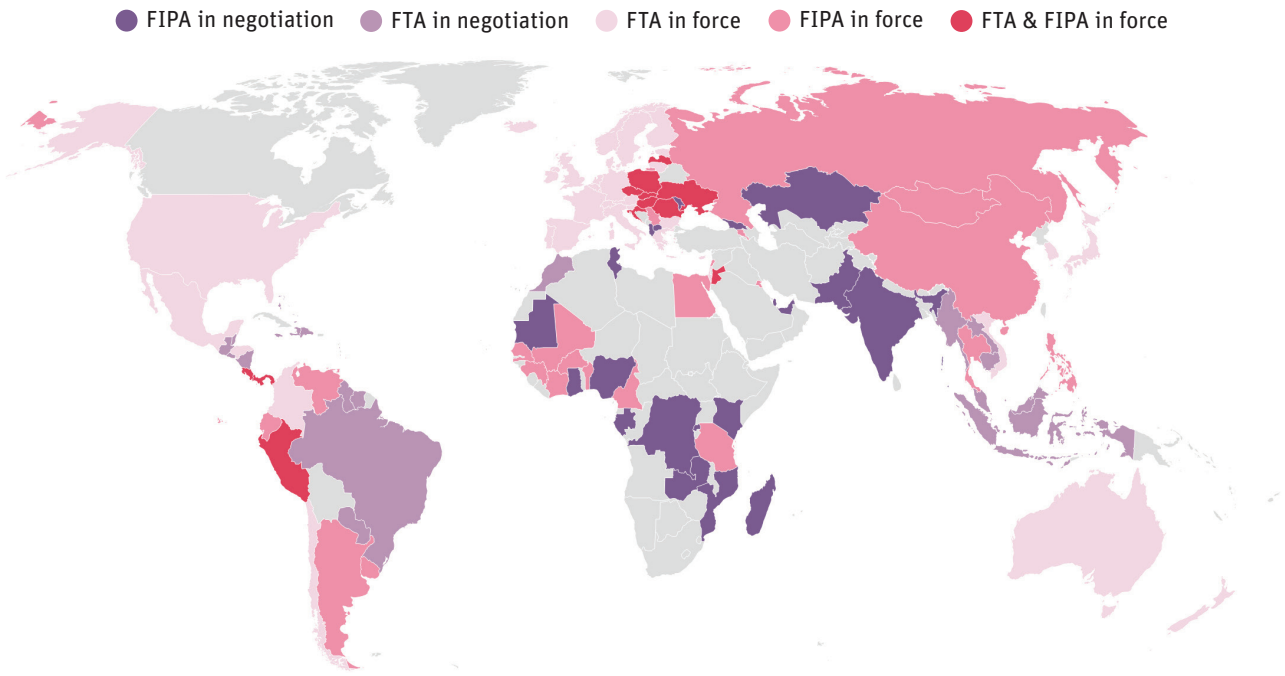
A complete database of the 56 cases evaluated in this report is available along with methodological notes in the appendix. This database—and this report more generally—should be understood as a companion to the database and analysis included in Scott Sinclair's 2021 report, *The Rise and Demise of NAFTA Chapter 11*.

The growing reach of international investment protection

CANADA WAS A founding member of the General Agreement on Tariffs and Trade (GATT), which came into force in 1948 and later became the World Trade Organization (WTO). However, protection for investment (as opposed to trade in goods and services) was not initially a core part of the global trade regime. It wasn't until the late 1980s that Canada began to specifically pursue bilateral and regional agreements with strategic partners that included specific investment protections, starting with the Canada–U.S. Free Trade Agreement (CUSFTA) in 1987, which was superseded by the North American Free Trade Agreement (NAFTA) in 1994. Since then, Canada has concluded 15 bilateral or regional free trade agreements as well as 38 foreign investment promotion and protection agreements.[3] These 53 active agreements govern trade and investment relations with 75 countries that are together host to 89% of Canadian direct investment abroad.[4] Twelve countries, including Jordan, Peru and Ukraine, are covered by both an active FTA and an active FIPA with Canada.

In addition, Canada has started but not yet concluded negotiations toward 11 new free trade agreements (covering 40 countries) and 15 new bilateral investment treaties (see Figure 1). If all these agreements were to come into force, they would provide coverage for an additional 3% of Canadian foreign

FIGURE 1 Countries covered by Canadian international investment agreements



investment, as well as creating overlapping coverage for several countries, such as Argentina, Barbados and the Philippines.

Despite the comprehensive coverage offered by existing IIAs, the Canadian government continues to prioritize "negotiating...new bilateral and regional trade agreements [and] expanding Foreign Investment Promotion and Protection Agreements" in various international markets.[5] It is the government's position that Canada's "prosperity hinges on modern trade rules which open markets for our goods, services and investment."[6]

In practice, there is mixed evidence that international trade and investment agreements "encourage the economic growth and increase the prosperity of both partners in the agreement," as the government claims.[7] As we discuss below, many of the benefits of this regime are largely taken on faith. Studies of the economic impact of IIAs have repeatedly found that "the effect of [IIAs] and other forms of investor protection on [foreign direct investment] is negligible or nonexistent in economic terms."[8]

Moreover, Canada's dozens of bilateral and regional agreements piled on top of underlying multilateral agreements have created what some experts refer to as a "spaghetti bowl" of trade rules. The term is intended as a criti-

Types of investor protections under international investment agreements

The following investor protections are included in the majority of Canadian IIAs and most commonly form the legal basis for ISDS cases involving Canadian investors:

National treatment ensures a foreign investor will be treated at least as well as any domestic investor. National treatment provisions allow investors to bypass or challenge measures intended to promote domestic growth or to privilege local workers, businesses and communities.

Most-favoured nation (MFN) treatment ensures a foreign investor will be treated at least as well as any other foreign investor from any other country. In practice, MFN allows investors to access investor protections that they wouldn't otherwise have any right to claim, such as IIAs with other countries or even private contracts.

Indirect expropriation protects investors against any government measure that would negatively affect the value of a covered investment. Almost any law or regulatory measure that affects a foreign investor's profitability can be considered indirect expropriation.

Fair and equitable treatment (FET) protects a foreign investor from arbitrariness or abuse by a host government. This broadly worded protection can be interpreted to apply to almost any government measure. Most ISDS claims reference FET in some form.

cism of states' growing preference for targeted agreements that introduce complexity and barriers to the global trading system. As of June 2021, there were well over 2,500 such agreements in force globally.[9] Liberal economists prefer the relative efficiency of multilateral trade and investment rules set by groups such as the WTO.[10] However, a bigger problem with this web of IIAs is its stickiness. If a country like Canada wants to reform its trade policy, it must navigate and renegotiate dozens of overlapping agreements. Unlike domestic policy, there is no single locus for addressing points of contention.

Unpacking the investor–state dispute settlement system

One of those key points of contention is the investor–state dispute settlement mechanism found in the majority of Canadian IIAs. The ISDS system is a quasi-judicial mechanism for foreign investors to claim compensation from a sovereign state if the investor believes their rights under the terms of an international investment agreement have been violated (see box). An aggrieved investor can unilaterally invoke an arbitration process to seek

recompense for measures that affected the value or expected profitability of their investment. The arbitration tribunal, which is composed of private trade lawyers who are not impartial, independent or bound by past precedent, can make binding rulings that usually cannot be appealed through the judicial system and only then on very limited grounds. There is no cap on the amount that an investor can claim in damages, including for lost future profits. This has permitted claims to balloon into the hundreds of millions or even billions of dollars.[11]

The ISDS mechanism received relatively little attention from either investors or states when it was first introduced in the 1990s. However, as the potential profitability of ISDS claims has become more obvious and alluring over the past twenty years, multinational corporations and foreign investors have increasingly taken advantage of the system. The year 2021 saw a record number of new ISDS cases globally and there is little indication the trend will slow down.[12] Government actions taken to address the COVID-19 pandemic, conflict in Ukraine and climate change (which we will consider in more detail later in this report) could trigger many more cases in the coming years.

In response, states, civil society organizations and trade experts have raised a wide variety of criticisms of the system. According to the United Nations working group on the issue of human rights and transnational corporations, concerns with the ISDS system can be grouped into three main categories: privileged access, rights without responsibilities and regulatory constraints.[13]

Privileged access

The ISDS mechanism can only be used in one direction: i.e., with the foreign investor as claimant and the host government as defendant. The system cannot be used by any other actor, whether state or civil society, to sue an investor or to hold an investor accountable for alleged violations of human, Indigenous or environmental rights. Nor can it be used by domestic investors to challenge their own government. ISDS therefore offers an exceptional privilege to foreign investors to bypass the domestic legal system and other conventional avenues of dispute resolution in order to bring their case directly before private arbitrators. Investors are, in effect, given a legal status on par with sovereign states.

Inequitable access to the ISDS system is compounded by the phenomenon of "treaty shopping," whereby an investor exploits a multinational corporate structure to access whichever investment agreement best serves their purposes.

For example, in *Gold Reserve v Venezuela*, an American mining company incorporated an office in Canada to gain access to the Canada–Venezuela investment treaty, even though Gold Reserve was not, in practice, a Canadian investor and did not have a substantial business interest in the country. Many multinational corporations are set up with holding companies or other legal entities in multiple jurisdictions. Besides enabling them to shift profits to the lowest-taxed jurisdiction, this gives the company access to multiple, often overlapping, sets of international investor protections.

Rights without responsibilities

Multinational corporations are not only the biggest beneficiaries of the ISDS system but also generally immune to its costs. In principle, states can file counterclaims to ISDS suits brought by investors, but in practice counterclaims face significant obstacles due to the design of the ISDS system in most treaties.[14] Notwithstanding an investor's obligation to cover a state's legal fees if a claim fails, access to ISDS does not come with any commensurate responsibilities or obligations on the part of investors.

When adjudicating a dispute, tribunals consider broadly worded protections like "fair and equitable treatment" or "indirect expropriation" as the standards by which to resolve an investment dispute. If an investor has been slighted, regardless of the legitimacy of the state action in question, the tribunal can rule in the investor's favour if these broad standards are met. In contrast, the vast majority of IIAs are not "actionable in the manner of their protections" for human rights, labour rights, environmental protection or the public interest more generally.[15] That means those concerns are considered extraneous to the ISDS process. Arbitrators do not need to consider any obligation that does not fall specifically under the enforceable terms of the relevant IIA.

Regulatory constraints

No international investment agreement explicitly prevents a state from regulating in the public interest, but IIAs do entitle investors to compensation for government measures that are not in accordance with the treaty. This means that costly and punitive ISDS cases can discourage governments from pursuing legitimate public policies or can pressure them into changing policies altogether. For example, after Canada banned MMT, a toxic gasoline additive, an American chemical company launched an ISDS claim against

the government for hundreds of millions of dollars in compensation. In an eventual settlement the government of Canada revoked the ban and apologized to the company.[16]

The impact of so-called "regulatory chill," whereby a government abstains from acting in the public interest for fear of a costly ISDS case, is less obvious and therefore more insidious. Kyla Tienhaara identifies three varieties of this phenomenon:[17]

1. **Internalization chill**: regulators internalize the threat of ISDS into the policy-making process and pre-emptively rule out or modify prospective policies to avoid triggering disputes.

2. **Threat chill**: an investor makes a direct threat of an ISDS case to discourage a government from proceeding with a proposed policy.

3. **Cross-border chill**: an investor initiates an ISDS case in one jurisdiction, whether or not it is likely to succeed, to warn other governments against enacting similar policy measures in their own jurisdictions.

In each of these scenarios, the mere existence of the ISDS system can have a material effect on a sovereign state's policy-making process.

In sum, the ISDS system creates a parallel pseudo-judicial process whereby a select few private entities—multinational corporations and foreign investors—can receive unlimited compensation for alleged breaches of an international investment agreement regardless of the legitimacy of the policy or regulation that is in dispute. In response, states may be pressured to avoid, modify or withdraw public policies that risk triggering a costly ISDS claim. Otherwise, states may be forced to accept ISDS payouts to foreign investors as the cost of acting in the public interest.

With downsides like these, why include ISDS in trade and investment agreements at all? One of the long-standing justifications of the system is that it encourages productive investment. However, there is little evidence that ISDS itself attracts new investment.[18] A related argument is that ISDS is necessary for protecting investors from "unreliable or inadequate domestic legal systems."[19] We address that point in the conclusion, but even if it were true in some or all cases, giving foreign investors super-judicial rights is not the only possible solution.

As we illustrate in the next section, which analyzes every known case of a Canadian investor invoking the ISDS system outside North America, the downsides of the system are so significant that any benefits should have to clear an exceptionally high bar to be justified.

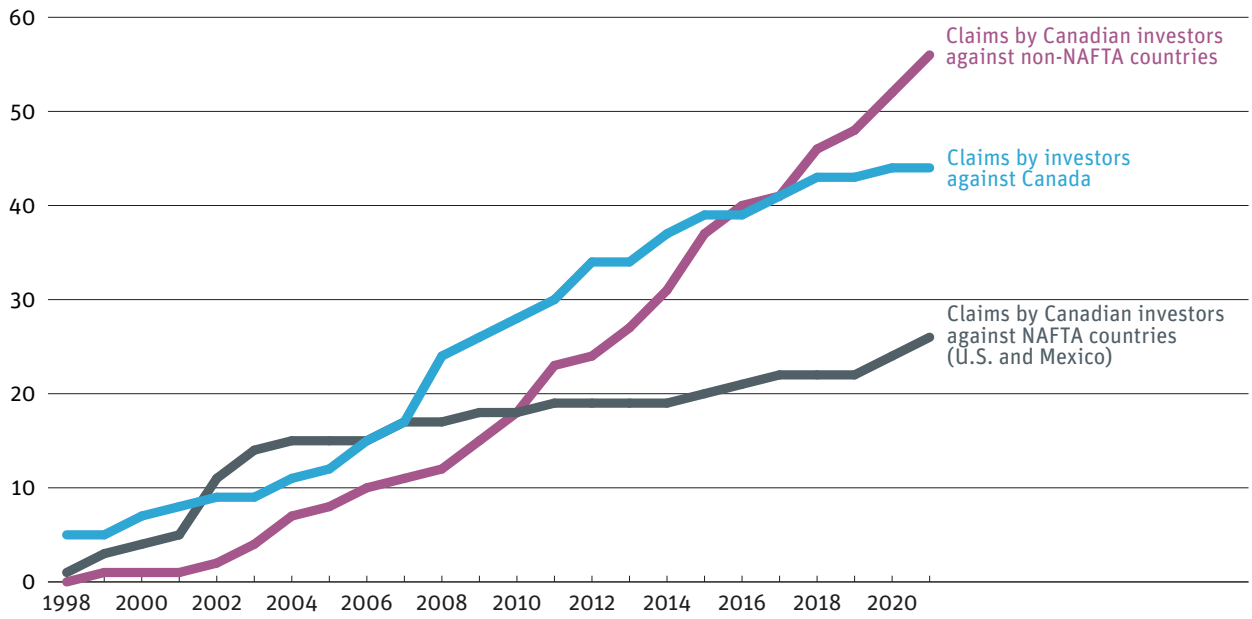
How Canadian investors are using ISDS abroad

THIS SECTION HIGHLIGHTS key trends in the use of investor–state dispute settlement by Canadian investors abroad through to December 31, 2021. Our complete database of known ISDS cases involving Canadian investors outside of NAFTA is included in Appendix B. For each case, we identify the parties involved, key dates, the treaty invoked, the government measure in question, the relevant industry, the amounts claimed and awarded, and the status or outcome of the case. Our methodology for coding cases is included in Appendix A.

Number of cases

Canada's first 20 years under the ISDS regime was mainly a story of U.S. investors making claims against Canadian governments under NAFTA. There have been 44 such cases since NAFTA came into force in 1994. However, with the curtailment of the ISDS system in the renegotiated Canada–United States–Mexico Agreement, at least with respect to Canadian investment in the United States and vice versa, that trend has slowed. Claims by Canadian investors against the United States and Mexico have similarly plateaued,

FIGURE 2 Known ISDS cases involving Canada and Canadian investors through 2021



notwithstanding the significance of a few recent challenges, including to the U.S. government's revocation of the Keystone XL pipeline by TC Energy Corporation and the Alberta Petroleum Marketing Commission. In contrast, the number of cases of Canadian investors suing foreign governments outside North America continues to rise at a steady clip, reaching 56 known cases by the end of 2021 (see Figure 2).

Investor nationality

The majority of investors in our database are corporations based in Canada making claims directly against foreign governments. Where corporate headquarters could be identified, these investors were most commonly based in British Columbia (20 cases), Ontario (13) and Alberta (9). British Columbia in particular is one of the most popular headquarters for the global mining industry.[20]

However, we have identified a number of cases of treaty shopping. For example, in *Alhambra Resources v Kazakhstan*, the Calgary-based mining company used a subsidiary in the Netherlands to levy a claim through a Netherlands–Kazakhstan bilateral investment treaty. In the more convoluted

example of *Tethyan v Pakistan*, Toronto-based Barrick Gold accessed the Australia–Pakistan BIT through the Australian subsidiary of Barrick's partner on the project, Antofagasta, which is a mining company based in Chile but nominally headquartered in the United Kingdom.

In addition to Canadian companies using foreign shell companies, there are cases of foreign companies taking advantage of Canadian investment treaties. For example, in *Sanitek v Armenia*, a Lebanese company invoked the Canada–Armenia FIPA via a Canadian national, Elias Doumet, who is an investor in the company.

In total, we counted 18 cases of corporate shell structures that potentially qualify as treaty shopping, though we cannot say for certain whether in all cases the investor was deliberately taking advantage of their multi-jurisdictional structure to access ISDS provisions.

A related issue is third-party financing of ISDS claims, which we discuss in a previous version of this report.[21] Increasingly, foreign investors are seeking financial backing—often from a financial institution in a country that is not involved in the claim—when pursuing ISDS cases. The financier fronts all or a portion of the litigation costs, and if the investor wins the financier receives a cut of the award. Although, as we shall see, many cases brought by investors are not successful, the compensation awarded in winning cases is so large that the expense of bringing a case is often well worth the risk. Financiers can effectively securitize ISDS claims by backing many investors in the hopes that even the occasional win will more than pay for the losses.

Despite these caveats, for the purposes of this analysis we've counted as "Canadian" any investor who is based in Canada or is accessing a Canadian IIA.

Countries targeted

Canadian investors have initiated ISDS claims against 30 countries outside of North America, nearly half of which (26 cases) targeted countries in South and Central America. Twelve cases have been brought against Asian countries and nine have been brought against African countries. The countries most frequently challenged are Venezuela (seven cases), Colombia (five), Ecuador (four) and Kazakhstan (four). See Figure 3 for more detail.

The majority of these countries are developing or transition countries (as defined by the United Nations), which does not reflect where most Canadian direct investment abroad is located. Excluding the United States and Mexico, only a third of Canadian foreign investment is hosted in developing or

FIGURE 3 Defendant countries in ISDS cases initiated by Canadian investors abroad through 2021

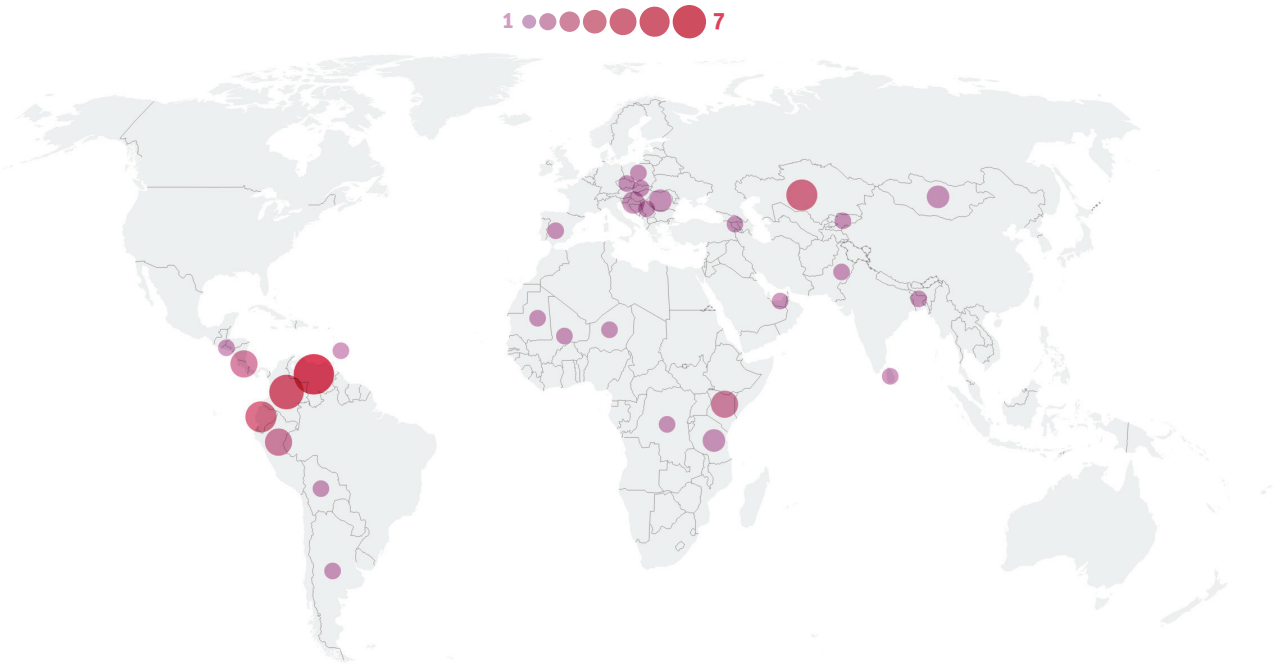
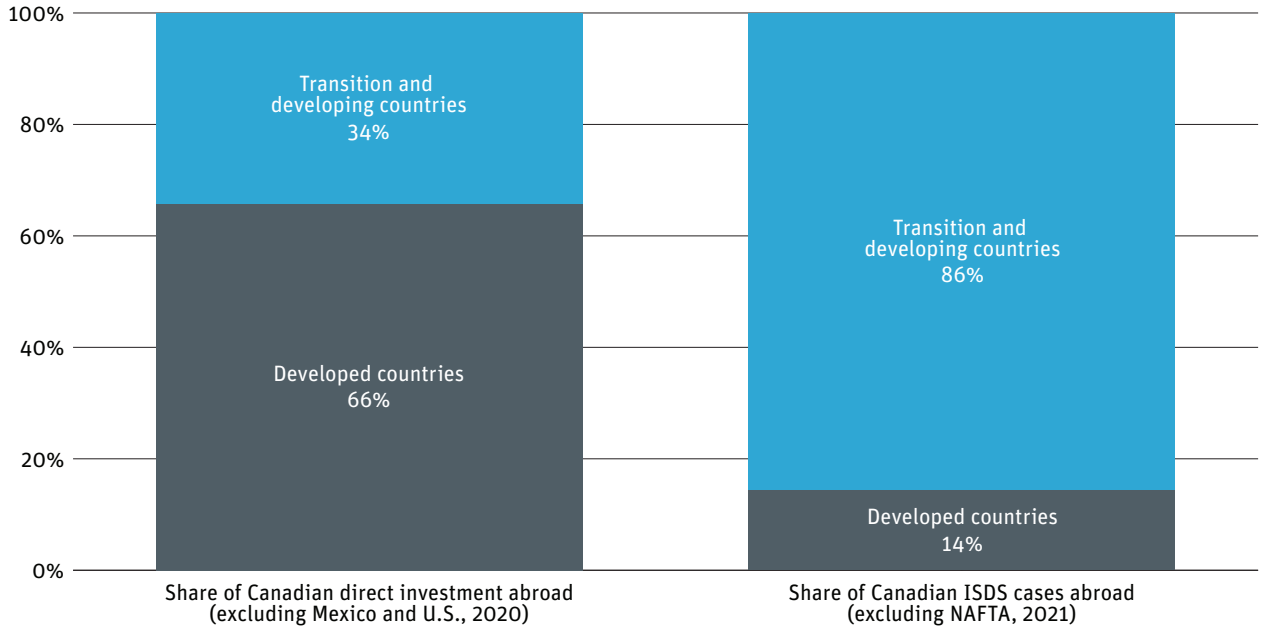


FIGURE 4 Development level of defendant countries in ISDS cases initiated by Canadian investors abroad through 2021



Source Statistics Canada, "Table 36-10-0009-01: International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by North American Industry Classification System (NAICS) and region, annual (x 1,000,000)," last modified March 3, 2022.

transition countries; however, these countries have been the target of 86% of Canadian ISDS claims abroad (see Figure 4).

Treaties invoked

The 56 cases involving Canadian investors outside NAFTA have involved 27 different international investment agreements. The majority of cases (36) involved a Canadian FTA or FIPA, but 11 cases involved an FTA or FIPA to which Canada is not a party. In addition, there are 10 cases of Canadian investors invoking ISDS via a private contract or other agreement with a host government.

Nearly all these cases were registered with either the International Centre for Settlement of Investment Disputes (ICSID) (33 cases) or the United Nations Commission on International Trade Law (UNCITRAL) (20 cases). These two international bodies oversee and facilitate the vast majority of trade disputes globally.

Investor industries

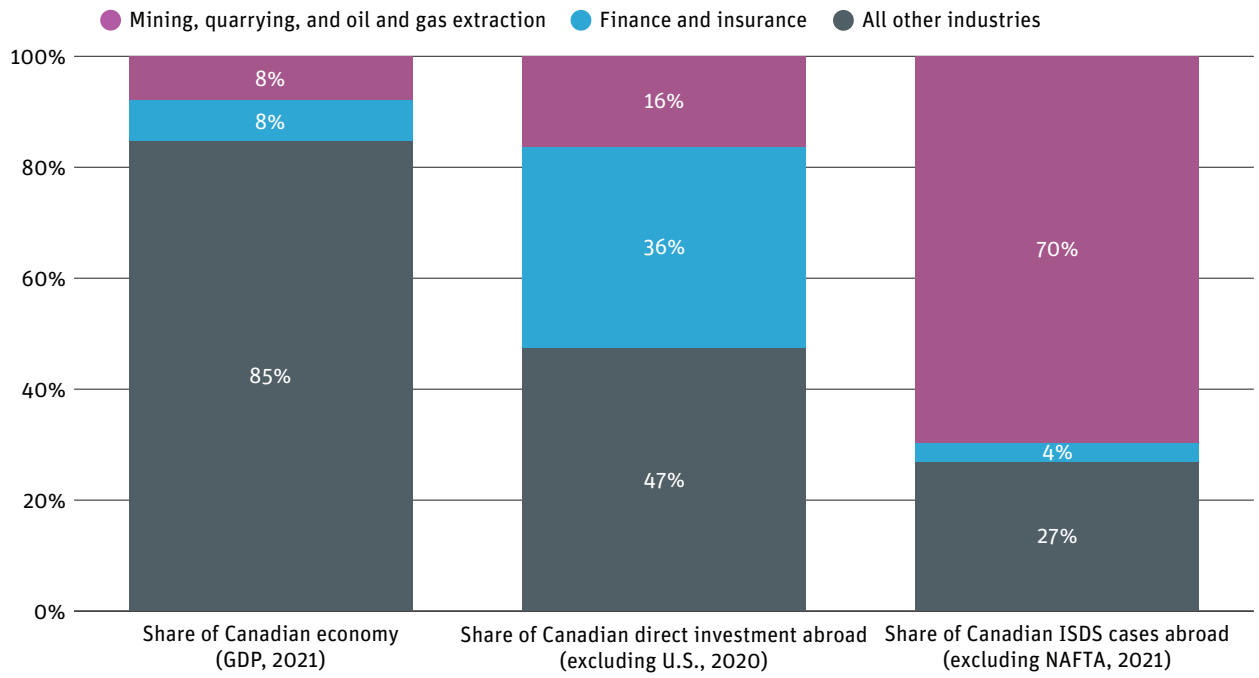
The types of Canadian investors involved in ISDS cases abroad do not reflect Canadian foreign investment more generally and certainly do not reflect the makeup of the Canadian domestic economy. Whereas mining and other natural resource industries account for just 8% of Canada's GDP and 16% of Canadian investment abroad (outside of the United States), these industries account for 70% of Canadian ISDS cases outside North America (see Figure 5).

Specifically, mining companies account for 35 of the 56 cases in our database. Indeed, the Canadian mining industry is overwhelmingly the primary beneficiary of Canada's ISDS regime. In Latin America in particular, Canadian-based corporations are responsible for more mining-related ISDS claims than investors from any other country.[22]

Government measures challenged

Investors will often provide a long list of violations as grounds for an ISDS claim, but in most cases there is a single root cause for the dispute in question, such as the revocation of a mining permit, the implementation of a new tax or the creation of a publicly owned competitor. We find that the most com-

FIGURE 5 Industry breakdown of Canadian economy, Canadian foreign investment and in ISDS cases initiated by Canadian investors abroad through 2021

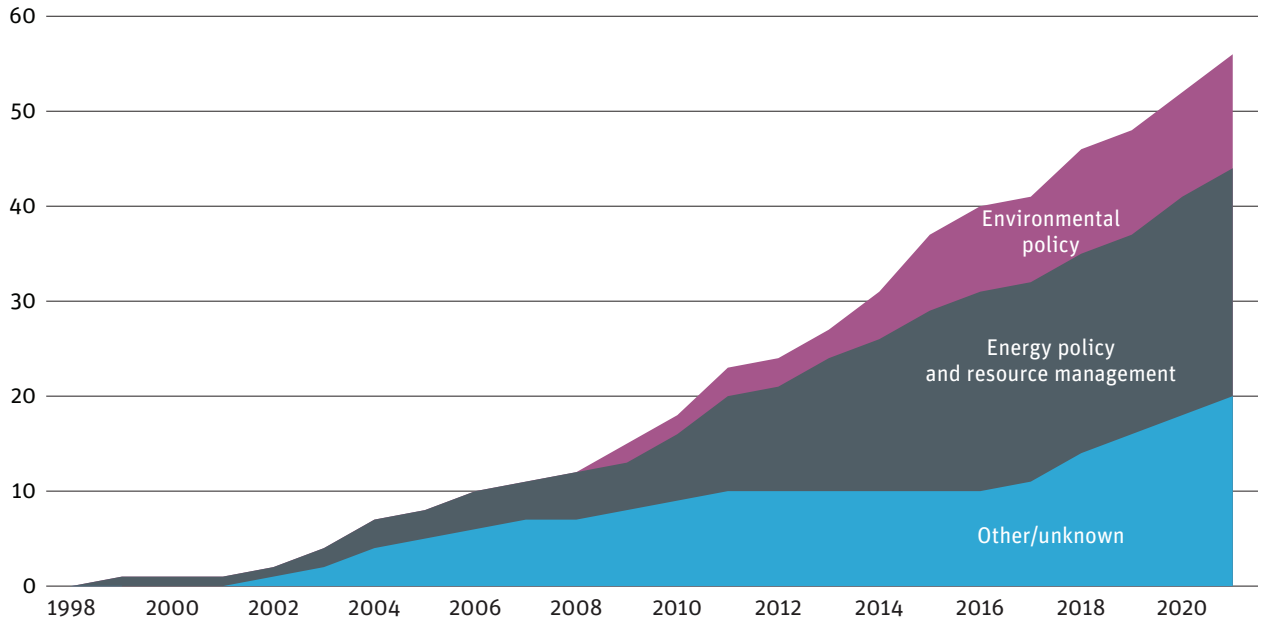


Sources Statistics Canada, "Table 36-10-0434-03: Gross domestic product (GDP) at basic prices, by industry, annual average (×1,000,000)," last modified March 3, 2022; and Statistics Canada, "Table 36-10-0009-01: International investment position, Canadian direct investment abroad and foreign direct investment in Canada, by North American Industry Classification System (NAICS) and region, annual (×1,000,000)," last modified March 3, 2022.

mon root causes for Canadian ISDS claims are energy policy and resource management decisions (24 cases, or 43%), followed by environmental policies (12 cases, or 21%), though in recent years there have been more new cases in other areas, such as taxation and land rights enforcement (see Figure 6).

In many cases, the government measure in question was in response to a public outcry over the behaviour of the investor. For example, in *South American Silver v Bolivia*, the government ended the Canadian mining company's concession only after the company had engaged in violent clashes with Indigenous people who had never given their consent for the project. Public demonstrations against the company prompted the Bolivian government to act, but South American Silver still won its ISDS case. The majority of mining-related ISDS cases in Latin America involve some degree of community resistance to a project on human rights or environmental grounds.[23]

FIGURE 6 Government measures challenged in ISDS cases initiated by Canadian investors abroad through 2021



Case disposition

The ISDS process is notoriously drawn-out—it's not unusual for cases to take a decade to resolve—so it is perhaps no surprise that 22 of the 56 cases in our database are still pending a resolution. Another two cases are coded as inactive, because they have not been resolved but also have not moved forward in many years. Of the 32 cases that have reached a resolution, 12 were dismissed by the tribunal, which means arbitrators rejected the investor's claim, usually on jurisdictional grounds, before hearing the merits of the case. One case, *Bank of Nova Scotia v Argentina*, was voluntarily withdrawn by the claimant. In two cases, the parties reached a private settlement before a tribunal could make a ruling.

That leaves 17 ISDS cases involving Canadian investors abroad where a tribunal was constituted, the parties made their cases and arbitrators delivered a decision. To date, the claimant investor has won 10 of these cases (59%) while the defendant state has won seven (41%).

Damages claimed and awarded

The amount of money sought by investors often undergoes revisions during the ISDS process and the amount of money awarded in a tribunal decision is not always made public, so our figures in this area are only approximate. To date we are aware of US$56 billion in total ISDS claims by Canadian investors abroad. Between tribunal decisions and settlements, investors have been awarded US$10.2 billion in compensation. The average claim is US$1.3 billion, and the average award or settlement is US$929 million.

The largest single payout involving a Canadian investor in our database is the US$5.84 billion awarded in *Tethyan v Pakistan*. Incredibly, Tethyan (and its Canadian co-owner Barrick Gold), won this multibillion-dollar payout despite having invested only US$220 million into feasibility studies of the Reko Diq mine. In determining the damages, the tribunal ruled that "if [Pakistan] had not denied [Tethyan's mining lease], the Reko Diq project would have gone forward and become operational and profitable in due course."[24] Pakistan was ordered to pay the company for work it never did and profits it never earned.

These figures represent enormous real and potential costs to the countries involved, many of which are very poor. The countries that have settled or lost an ISDS case to a Canadian investor so far—Bolivia, Democratic Republic of the Congo (DRC), Ecuador, Kyrgyzstan, Mongolia, Niger, Pakistan, Peru and Venezuela—have an average GDP per capita of only US$3,000 per year, compared to US$46,000 in Canada.[25] Damages incurred by the DRC, Pakistan and Venezuela amount to more than 2% of GDP in those countries, which does not include compensation paid to investors from other countries. Venezuela in particular has been required to pay out billions to investors from around the world due to ISDS losses.[26]

Claims in the 22 undecided cases involving Canadian investors abroad total US$10.6 billion, although this number is an undercount because claim values have not yet been made public in several of those cases. The 15 countries involved in these cases have an average GDP per capita of US$7,100 per year. The largest outstanding claim is US$4.4 billion in a case against Romania, which amounts to nearly 2% of that country's GDP.

Notably, defending against an ISDS claim is expensive even if states win the case. Legal fees for the defendant average US$5 million, not to mention the administrative burden of managing an ISDS case over the many years it typically takes to resolve.[27]

Summary

The archetypal experience of a Canadian investor using the ISDS system abroad is that of (1) a mining company suing (2) a developing country over (3) an environmental policy or resource management decision. Half of the cases in our database (28 of 56) fit this mold exactly, and three quarters of cases check at least two of the three boxes.

In some cases, that "Canadian" investor is actually a multinational company treaty shopping in Canada. In other cases, a Canadian-headquartered investor leverages a shell company to access an international investment treaty to which Canada is not a party. In yet other cases, an investor receives financial backing for their ISDS claim from a financier in a third country. Whatever the legal arrangement, there is a clear trend toward the ISDS system being used by wealthy corporations to punish poor governments for taking action to control their own resources, protect the environment or otherwise act in the public interest.

Even if a state successfully defends against an ISDS case, they are often on the hook for millions of dollars in legal fees. In the event the state loses, the damage awards can be disastrous, especially for low-income developing countries. To date, Canadian investors have won more than half of decided ISDS cases resulting in damage awards of, on average, nearly a billion dollars per claim.

The costs are not only financial. There is a "fundamental tension" between the ISDS system, which privileges investor and property rights, and human rights considerations.[28] In *Bear Creek v Peru*, for example, local Indigenous groups protested a mine that would threaten drinking water and "negatively affect their land and thereby their cultural identity," which ultimately led the state to revoke the mining permit.[29] Despite the rights of those Indigenous protesters under domestic and international law, the ISDS tribunal found that the government had "deprived the investor of all major rights" and awarded US$24 million in compensation. The result has inflamed tensions and provoked calls for further protest and mobilization against both the state and the investor.[30]

For all the damage investor–state dispute settlement has caused so far, the worst may yet be to come. In the next section, we turn from the historical record to consider the potential future ramifications of the ISDS system as governments around the world embark on an ambitious, state-led effort to transition the global energy system away from fossil fuels.

Threats to climate action from international investment agreements

NO CHALLENGE FACING the world today is more important in the long term than combating the global climate crisis. In warning after warning, climate scientists point to the "urgency of immediate and more ambitious action" to address existential risks to human wellbeing and societies.[31] The specific actions required for achieving net-zero greenhouse gas emissions are beyond the scope of this report, but it is increasingly apparent that transforming the global energy system will require ambitious public leadership through some mix of regulation, financing and direct investment by states.[32]

Already, fossil fuel companies have challenged measures by governments to restrict fossil fuel production and use in Canada, Ecuador, Italy, the Netherlands, the United States and elsewhere.[33] That tactic may become more widespread as other countries move to restrict the production and distribution of coal, oil and natural gas on climate grounds. Law firms are already advising their clients that ISDS will be an "increasingly important avenue for the resolution of climate change disputes."[34]

International investment agreements in general, and the investor–state dispute settlement in specific, pose serious challenges to public climate policy for three main reasons.

First, IIAs often place clear restrictions on the implementation of policy measures or the creation of public institutions that may be necessary to accelerate climate action. For example, the Canada–European Union Comprehensive Economic and Trade Agreement (CETA) includes a "standstill and ratchet" mechanism that locks in the current level of services liberalization in covered countries with only narrow exceptions.[35] A state that attempts to create a new public energy utility or expand the public sector role in renewable energy, for example, even at the sub-national level, could be in violation of the agreement. Similarly, many IIAs place restrictions on local content standards (so-called "performance requirements") that a state could otherwise use to accelerate the growth of domestic green industries. For example, local content requirements to incentivize the development of renewable energy in the province of Ontario were successfully challenged by Japan and the EU as "discriminatory" under WTO rules and subsequently rescinded by the province.[36]

Second, IIAs generally do not make exceptions for measures taken to reduce greenhouse gas emissions or that otherwise act to fight climate change. The 2018 Canada–United States–Mexico Agreement includes a chapter on the environment, for example, but fails to name climate change as an issue and does not include binding protections for environmental measures that might otherwise violate the agreement's investor protections.[37] The limitations of environmental "exceptions" were made glaringly obvious in *Eco Oro v Colombia*, where an ISDS tribunal ruled that the investor, a Canadian mining company, was owed compensation for a government measure to protect the country's drinking water and vulnerable ecosystems despite the environmental exceptions included in the Canada–Colombia FTA.[38] Without strong, enforceable carve-outs for climate action, investor rights will always take precedence in trade and investment disputes.

Third, the ISDS system is a ready-made tool for powerful corporate interests, especially in the fossil fuel industry, to challenge government climate policy at every step. The oil majors are among the wealthiest and most internationalized corporations in the world, so they are well-positioned to leverage the ISDS system through any number of agreements. Such obstructionism would not be without precedent. The tobacco industry has demonstrated that ISDS claims are a "viable tactic" for opposing public health measures targeting cigarette smoking.[39] As discussed above, regulatory chill poses a serious threat even where ISDS is never formally invoked. The Canadian oil company Vermilion, for example, was successful in weakening a proposed

French law restricting oil extraction by threatening an ISDS claim against the country.[40]

The dangers of the ISDS system for climate action are especially pronounced in the Global South, where domestic budgets are more vulnerable to claims from powerful fossil fuel companies. Countries like Canada and the United States can afford to push ahead with policies to phase out coal power, for example, even if it requires paying out hundreds of millions of dollars in compensation to foreign investors. However, coal-dependent, lower-income countries like Mongolia or Indonesia cannot necessarily afford to be so aggressive. The risk will only snowball as wealthy countries decarbonize in the coming decades, leaving poorer countries as the only remaining targets for oil industry profitability. That risk is exacerbated by calls to displace Russian oil in the global market, which could encourage states to commit to new production that would lay the groundwork for future claims.

Conclusions and recommendations

INVESTOR–STATE DISPUTE SETTLEMENT allows foreign investors to sue governments for compensation if the investor believes the state has violated their rights under an international investment agreement. These claims are heard by private arbitration tribunals who can award unlimited monetary compensation to the investor. Whereas states can only hope to not lose a case after a protracted legal battle, there is very little downside for investors. They either win a sizable award or find themselves back where they started.

The ISDS system is ostensibly intended to protect foreign investors from the vagaries and alleged abuses of host-state political and legal processes. In practice, it is increasingly being used by multinational corporations to challenge measures taken by governments in the public interest. Canadian investors in particular have overwhelmingly used the ISDS system to challenge environmental policy and resource management measures in developing countries. Not only has that imposed significant costs on already vulnerable countries, but it also bodes poorly for global efforts to tackle climate change, which may require greater state intervention in energy markets and the broader economy that are in turn liable to trigger ISDS claims.

The government of Canada has begun to acknowledge these concerns in some areas. Canada's new model FIPA seeks to address treaty shopping and other flagrant abuses of the system.[41] The renegotiated Canada–United States–Mexico Agreement largely excludes ISDS, and Canada does not appear

to be seeking an ISDS mechanism in its bilateral trade negotiations with the United Kingdom. Yet, on the whole, the government remains committed to entrenching the ISDS system through new and existing agreements in other parts of the world, especially with new partners in the Global South.

To respect the sovereignty and development path of Canada's trading partners and to ensure international investment agreements do not stand in the way of state action on pressing global issues, we make the following recommendations to the federal government.

Stop negotiating investor–state dispute settlement into new trade and investment agreements and remove the ISDS mechanism from existing treaties

The costs of ISDS, both at home and especially abroad, far outweigh the system's benefits. Canada should remove ISDS from its model agreements and no longer agree to include ISDS in any future agreements.

Moreover, Canada should make every effort to untangle and undo the web of agreements containing ISDS to which it is currently a party. Fortunately, there is ample precedent for this approach. Many countries, such as Bolivia, India, Indonesia and South Africa, have withdrawn from ISDS treaties with little consequence.[42] Indeed, investment flows to those countries "were more likely to increase rather than decrease after [investment treaty] termination."[43] Some countries, such as Brazil, have never consented to ISDS in the first place. Canada already renegotiated NAFTA to partially remove ISDS and could build on that momentum with other partners.

Champion an enforceable global exception for government measures intended to fight climate change and to protect the public interest

Even without ISDS, international investment agreements privilege investor rights over vital social, environmental and economic priorities. The exceptions for public interest regulation in current IIAs have proven to be weak and generally unenforceable.

Canada should clarify and elevate these exceptions in the process of "modernizing" its many IIAs to remove ISDS. In addition, Canada should champion a new multilateral carve-out for climate action. Making it clear through a global climate waiver that efforts to reduce greenhouse gas emissions and adapt to the impacts of climate change are not violations of trade and investment agreements will empower Canada and the world to tackle this vital issue with greater urgency. A sweeping multilateral agreement

"could neuter ISDS challenges among the signatories with a single stroke of the pen," which would be simpler and more watertight than renegotiating every individual agreement.[44]

Encourage alternative forms of investor protection

Canadian investors—and the Canadian governments determined to support them—have several tools for protecting foreign investment that do not infringe on the rights of foreign governments to the same extent as ISDS. First, where countries genuinely lack capacity or sophistication in their legal systems, Canada can help build that capacity through aid and the sharing of expertise. Capacity building does not mean drafting policy on behalf of other countries, which is common practice for Canada today, but rather strengthening public institutions. As a matter of policy, the government of Canada should not condone or facilitate the bypassing of domestic legal systems abroad.

Second, where Canadian investors are worried about political risk in a foreign country, they can purchase political risk insurance to protect their investments against arbitrary state action. It is not the Canadian government's responsibility to completely de-risk an investment in a foreign country.

Finally, if absolutely necessary, Canadian investors can negotiate dispute settlement into individual contracts. Although subject to many of the same pitfalls as treaty-based ISDS, contract-based dispute settlement is at least limited in scope to particular projects and therefore cannot easily open the door to unforeseen future claims.

Appendix A: Methodology

IN ADDITION TO the administrative data collected for each case (e.g., dates, parties, claim values), we have categorized each ISDS case according to the investor's industry, the government measure challenged and the case outcome. The following definitions have been designed to avoid overlap between categories, but where a case may reasonably fall into more than one category the most relevant category is used.

Investor industries

We identified the primary industry of the investor for each case. Many multinational corporations are engaged in multiple industries, so we limited our categorization to the specific area of the dispute. For example, some claims surrounding resource management decisions are brought by hedge funds or other corporate owners that are ostensibly in the financial industry. We nevertheless classified these cases as resource-sector disputes.

We then assigned each industry a corresponding North American Industry Classification System two-digit code (Canada 2017 Version 2.0) so that direct comparisons could be made to other data sources.

Case outcomes

We identified the overall outcome of the dispute for each case. The official range of ISDS outcomes is unduly narrow, so we incorporated additional categories to better represent the breadth of possible outcomes (see list of case outcomes below).

Classification of case outcomes

Dismissed
The tribunal dismissed the entire claim (usually on jurisdictional grounds) before the merits of the case could be heard.

Inactive
The case did not reach a decision through the tribunal process nor was it formally withdrawn by the claimant.

Investor wins
The tribunal decided fully or partially in favour of the claimant and awarded monetary damages.

Pending
The tribunal is currently hearing the case but a final decision has not yet been reached or announced.

Settlement
The parties negotiated a settlement before a tribunal could decide on the merits of the claim. A settlement usually includes the withdrawal of the arbitration case.

State wins
The tribunal decided in favour of the state by rejecting the claimant's case on its merits.

Withdrawn
The case was formally withdrawn by the claimant without a settlement. For example, in many cases the investor's claim was dismissed on jurisdictional grounds, which is technically a win for the defending government, but these are not clearly "state wins" because the merits of the case were never debated. Our narrower definition of state and investor wins provides a more nuanced picture of arbitration decisions.

Government measures challenged

We identified the primary government measure at the core of the dispute for each case (see list of government measures below). The actual measure in question does not always align with the investor's claim, which required us to exercise some judgment. For example, in several cases an investor alleged expropriation of a resource asset due to rejected permits or other regulatory hurdles, but they did not name the environmental policy underpinning the alleged expropriation. We have still coded these cases as "environmental policy" because it is the root issue at play, even if that policy only indirectly provoked the ISDS case.

Classification of government measures challenges

Administration of justice
The party's legal system failed to uphold a foreign investor's rights under domestic law. The government may have failed to respect a previous court decision (or even an ISDS decision) in the investor's favour.

Agricultural and industrial policy
The government acted to manage the agricultural industry or another industrial sector (excluding energy and resources) with adverse consequences for a foreign investor. The government may have imposed controls on the production, import or export of certain agricultural products, or the government may have imposed local development criteria or other restrictions on industrial investment.

Cultural policy
The government acted to protect or promote cultural heritage or a domestic cultural industry, including the telecommunications and broadcasting sectors, with adverse consequences for a foreign investor.

Energy policy and resource management
The government acted to manage the energy or resource sector for reasons other than environmental protection with adverse consequences for a foreign investor. The government may have invoked national security interests, energy security concerns or the stability of the energy market as reasons for the decision to take ownership of a project, impose pricing controls or otherwise intervene in the energy and resource markets.

Environmental policy

The government acted to protect the environment or combat climate change with adverse consequences for a foreign investor. The government may have rejected or withdrawn approval for a project on environmental grounds or otherwise changed the conditions for an existing investment based on new environmental evidence.

Financial policy and taxation

The government enacted a fiscal or monetary policy with adverse consequences for a foreign investor, such as the introduction (or removal) of a tax subsidy for certain kinds of investors. The government may have introduced new regulations for the banking and financial sectors, but the measure was not intended as industrial policy.

Health policy and pharmaceutical regulation

The government acted to protect public health or the health care system with adverse consequences for an investor. The government may have imposed new regulatory standards or delayed the approval process for new pharmaceuticals.

Property and land rights enforcement

The government failed to uphold a foreign investor's ownership rights over land or other private property (excluding intellectual property rights in the health and culture industries). The government may have abetted or permitted the degradation or expropriation of a foreign investor's land and physical assets by non-state actors.

Public services and government procurement policy

The government's monopoly control over a service or service contract had adverse consequences for a foreign investor. A public service may be in competition with a private supplier, or a government procurement contract may have imposed restrictions on foreign suppliers.

Social and other public policy

Excluding measures captured in other categories (e.g., health, cultural, environmental or industrial policy), a government acted to protect the public interest or advance a social priority with adverse consequences for a foreign investor. A government may have applied controls on citizenship or immigration, imposed sectoral restrictions on moral grounds (e.g., gambling), promoted rights for Indigenous peoples or other marginalized groups, or introduced labour law reforms, among other possible measures.

Tariffs and trade remedies

The government imposed tariffs or duties, or otherwise deliberately restricted trade, with adverse effects on a foreign investor. The government may have acted in response to a real or perceived trade barrier in another jurisdiction.

Transportation policy

The government acted to control the transportation of people or goods within or between the parties, including policies restricting or managing transportation by truck, ship, rail or air.

Unknown

The government measure cannot be identified based on available information.

Appendix B: ISDS claims by Canadian investors outside North America through to December 31, 2021

Mihaly v Sri Lanka

Claimant: Mihaly International Canada Ltd. (Oakville, ON)
via Mihaly International Corp. (California, United States)
Respondent: Sri Lanka
Date initiated: July 29, 1999
Treaty invoked: United States–Sri Lanka BIT

In February 1993, Mihaly International, a Canadian financial services company, won the temporary exclusive right to develop a proposal for a thermal power station in Sri Lanka. Mihaly began development of the project immediately, although a contract for construction, ownership and operation of the power station was never signed. When Sri Lanka ultimately decided not to contract Mihaly for the project, the company brought a claim against the government through its American subsidiary under the United States–Sri Lanka BIT. It sought reimbursement for its expenditures on the proposal and for lost future profits.

Industry: Energy (electricity)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: On March 15, 2002, the tribunal ruled that Mihaly's Canadian ownership did not disqualify its American subsidiary from filing a claim under the BIT, despite Sri Lanka's objections. However, the tribunal also decided that the disputed project did not qualify as a protected investment under the BIT due to its provisional nature. Therefore, the tribunal lacked jurisdiction over the claim.
Outcome: **Dismissed**

Hussein Nuaman Soufraki v UAE

Claimant: Hussein Nuaman Soufraki (Canada)
via Hussein Nuaman Soufraki (Italy)
Respondent: United Arab Emirates
Date initiated: May 16, 2002
Treaty invoked: Italy–UAE BIT

In October 2000, Hussein Soufraki, a Canadian investor, won a 30-year concession to develop, manage and operate the Port of Al Hamriya. The government of the United Arab Emirates subsequently cancelled the concession, provoking Mr. Soufraki to file an arbitration claim for damages of up to US$2.5 billion. Mr. Soufraki brought the claim under the Italy-UAE BIT based on his Italian nationality by birth, even though he legally gave up his Italian citizenship when he acquired Canadian citizenship in 1991.

Industry: Private investor (transportation)
Type of measure challenged: Administration of justice
Amount claimed: US$2.5 billion

Status: On June 5, 2007, the tribunal ruled that the investor did not have Italian nationality and it therefore lacked jurisdiction over the claim.
Outcome: **Dismissed**

EnCana v Ecuador

Claimant: EnCana Corp. (Calgary, AB)
Respondent: Ecuador
Date initiated: March 14, 2003
Treaty invoked: Canada–Ecuador BIT

EnCana, a Canadian energy company, disputed changes to the Ecuadorian tax regime that reduced or denied value-added tax credits and exploration refunds to oil companies. EnCana claimed that credits and refunds owed to its Ecuadorian subsidiaries, AEC Ecuador Ltd. and City Oriente Ltd., both incorporated in Barbados, were effectively expropriated. The company claimed that Ecuador's tax reforms violated several provisions in the Canada–Ecuador BIT, including the fair and equitable treatment, national treatment, and expropriation provisions.

Industry: Energy (oil and gas)
Type of measure challenged: Financial policy and taxation
Amount claimed: US$80 million

Status: On February 3, 2006, the tribunal dismissed the fair and equitable treatment and national treatment claims on the grounds that tax-related measures were not subject to the BIT (except under circumstances not applicable to the case). The tribunal did consider the expropriation claim on its merits but ruled against EnCana in a split decision. Notably, an American company, Occidental Exploration, brought an analogous claim against Ecuador under the United States-Ecuador BIT in 2002. In that case, the tribunal ruled in favour of the investor and awarded US$75 million.
Outcome: **State wins**

TG World v Niger

Claimant: TG World Energy Corp. (Calgary, AB)
via TG World Petroleum Ltd. (Bahamas)
Respondent: Niger
Date initiated: November 13, 2003
Treaty invoked: Contract

TG World Energy, a Canadian energy company, owned concessions to the Ténéré Block of oil and gas reserves in Niger through its Bahamian-incorporated subsidiary, TG World Petroleum. In September 2003, the government of Niger terminated the concessions and in November effectively granted them to a competitor, China National Petroleum Corp. (CNPC) and its affiliates. TG World subsequently brought a claim against Niger to ICSID's little-used conciliation commission, which issues non-binding dispute resolutions.

Industry: Energy (oil and gas)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: The parties reached an "out-of-court" settlement in December 2004, which saw CNPC assume all costs for the Ténéré Block project while TG World retained a 20% carried interest.
Outcome: **Settlement**

Alasdair Ross Anderson v Costa Rica

Claimant: Alasdair Ross Anderson et al. (Canada)
Respondent: Costa Rica
Date initiated: May 10, 2004
Treaty invoked: Canada–Costa Rica BIT

Between 1998 and 2002, more than 6,000 investors bought into a currency exchange scheme operated by Costa Rican nationals that promised extremely high returns on a minimum initial investment of $10,000. In 2002, the operation was revealed to be a Ponzi scheme. In 2004, 137 Canadian investors who had lost their deposits in the scheme brought "separate and distinct" arbitration claims against the government of Costa Rica, although they were consolidated into a single case for arbitration. The investors claimed compensation for their deposits on the grounds that the government had failed to provide proper vigilance and regulatory supervision.

Industry: Private investor (finance)
Type of measure challenged: Financial policy and taxation
Amount claimed: Unknown

Status: On May 19, 2010, the tribunal decided that the deposits amounted to personal loans, not "investments" as defined in the BIT, and were therefore not subject to protection. The tribunal ruled that it lacked jurisdiction over the claim.
Outcome: **Dismissed**

Vannessa Ventures (Infinito Gold) v Venezuela

Claimant: Vannessa Ventures Ltd. (now Infinito Gold Ltd.) (Calgary, AB)
Respondent: Venezuela
Date initiated: July 9, 2004
Treaty invoked: Canada–Venezuela BIT

Vannessa Ventures, a Canadian mining company, acquired concessions to the Las Cristinas mine in July 2001 in a private sale that the government considered illegal. In November 2001, the mine was seized by a Venezuelan state-owned enterprise and the Venezuelan government subsequently changed the law in order to take legal control of the mine. In 2002, the government granted new concessions to Las Cristinas to Crystallex, a different Canadian mining company. Between 2001 and 2003, Vannessa Ventures launched 10 unsuccessful domestic court challenges before finally turning to international arbitration under the Canada–Venezuela BIT in 2004. The company alleged expropriation and a breach of fair and equitable treatment, claiming more than US$1 billion in damages. Vannessa Ventures changed its name to Infinito Gold in May 2008.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$1 billion

Status: On January 16, 2013, the tribunal unanimously rejected Vannessa Ventures' claim on its merits. The tribunal decided that there had been no discriminatory treatment or violation of rights under the BIT.
Outcome: **State wins**

Nedjeljko Ulemek v Croatia

Claimant: Nedjeljko Ulemek (Canada)
Respondent: Croatia
Date initiated: 2004
Treaty invoked: Canada–Croatia BIT

Nedjeljko Ulemek left behind an investment in Jugoturbina Select, a Croatian office supplies venture, when he left the country for Canada during the Croatian War of Independence in the early 1990s. He claimed that, as a consequence of the war and various state actions, he had suffered discrimination, unfair treatment and expropriation.

Industry: Private investor (manufacturing)
Type of measure challenged: Unknown
Amount claimed: US$2.6 million

Status: On May 25, 2008, the tribunal reportedly ruled that the actions of the Croatian government had not been in violation of the BIT and it consequently rejected the investor's claim, although no official documents have been released.
Outcome: **State wins**

Bank of Nova Scotia v Argentina

Claimant: Bank of Nova Scotia (Toronto, ON)
Respondent: Argentina
Date initiated: April 7, 2005
Treaty invoked: Canada–Argentina BIT

The Bank of Nova Scotia's Argentine subsidiary, Scotiabank Quilmes, collapsed as a result of actions taken by the Argentine government during the country's banking crisis in 2002. Those actions—specifically, the forced conversion of United States-dollar deposits into pesos—were later ruled illegal by Argentina's Supreme Court. The Bank of Nova Scotia sought compensation on the grounds of discrimination and expropriation under the Argentina–Canada BIT.

Industry: Finance (banking)
Type of measure challenged: Financial policy and taxation
Amount claimed: US$600 million

Status: In July 2011, the bank reportedly withdrew its claim against Argentina, although no documents or official statements have been released.
Outcome: **Withdrawn**

Quadrant Pacific Growth Fund & Canasco v Costa Rica

Claimant: Quadrant Pacific Growth Fund L.P. and Canasco Holdings Inc. (Vancouver, BC)
Respondent: Costa Rica
Date initiated: December 28, 2006
Treaty invoked: Canada–Costa Rica BIT

Quadrant Pacific Growth Fund and Canasco Holdings, both Canadian companies, owned a citrus plantation in Costa Rica. Beginning in April 2003, one of their citrus farms was occupied by agrarian squatters, who have certain legal protections in Costa Rica. Although eventually the occupation was ruled illegal, local police were unable to remove the trespassers until September 2005. The companies claim that business was significantly disrupted during this time and that the squatters caused significant damage to the property. The companies brought an arbitration claim against the government of Costa Rica on the grounds that the government failed to protect its investment as required by the Canada–Costa Rica BIT.

Industry: Agriculture
Type of measure challenged: Property and land rights enforcement
Amount claimed: US$20 million

Status: Proceedings began in 2008 but stumbled in November 2009 when Quadrant Pacific and Canasco failed to pay their share of the ongoing arbitration costs and their legal counsel withdrew. On October 27, 2010, the tribunal decided to discontinue proceedings on the grounds of non-payment by the parties. Quadrant Pacific and Canasco were ordered to pay the entire cost of the proceedings.
Outcome: **Dismissed**

World Wide Minerals v Kazakhstan (1)

Claimant: World Wide Minerals Ltd. (Toronto, ON)
Respondent: Kazakhstan
Date initiated: 2006
Treaty invoked: Contract

World Wide Minerals (WWM), a Canadian mining company, briefly managed and operated a uranium processing facility under contract with the government of Kazakhstan beginning in 1996. Shortly thereafter, the government imposed a series of new bureaucratic and regulatory measures, which WWM claimed were a breach of contract. WWM's uranium facility subsequently went bankrupt and was confiscated by the state. WWM brought a series of claims against Kazakhstan through the US domestic court system before filing an international arbitration claim under UNCITRAL rules in 2006.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: On December 22, 2010, the tribunal reportedly ruled that under Kazakh law the investor's claims were time-barred (WWM waited too long before bringing the case to arbitration), although no official documents have been released.
Outcome: **Dismissed**

Frontier Petroleum Services v Czech Republic

Claimant: Frontier Petroleum Services Ltd. (Calgary, AB)
Respondent: Czech Republic
Date initiated: December 3, 2007
Treaty invoked: Canada–Czech Republic BIT

In 2000, Frontier Petroleum Services (FPS), a Canadian company, invested in a joint venture with Moravan-Aeroplanes (MA), a Czech company, to manufacture aircraft in the Czech Republic. After MA allegedly breached the contract in 2002, FPS initiated criminal proceedings against the company and members of its board of directors. FPS also launched an arbitration case against MA at the Stockholm Chamber of Commerce in 2003. Although it lost the domestic cases, FPS won the arbitration case and was awarded damages. However, MA did not compensate FPS and the Czech court system did not recognize or enforce the award. In 2007, FPS launched an arbitration claim against the Czech government for failing to protect its investment and accord it fair and equitable treatment pursuant to the Canada–Czech Republic BIT.

Industry: Manufacturing (aerospace)
Type of measure challenged: Administration of justice
Amount claimed: US$20 million

Status: On November 12, 2010, the tribunal ruled that the Czech courts were within their rights to reject the Stockholm award since it was incompatible with domestic bankruptcy rules. All of FPS's claims were rejected on their merits.
Outcome: **State wins**

Nova Scotia Power v Venezuela (1)

Claimant: Nova Scotia Power Inc. (Halifax, NS)
Respondent: Venezuela
Date initiated: October 1, 2008
Treaty invoked: Canada–Venezuela BIT

In 1999, Nova Scotia Power Inc. (NSPI), a Canadian energy company, negotiated a long-term coal supply contract with a Venezuelan state-owned enterprise that facilitated regular coal shipments to NSPI at a fixed price. Shipments continued until December 2007, when the contract was abruptly cancelled by a government directive. The company alleged that the breach of contract was illegal and brought an arbitration claim against Venezuela under the Canada–Venezuela BIT. The company opted for UNCITRAL arbitration even though the BIT requires ICSID arbitration if available.

Industry: Energy (electricity)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: On April 22, 2010, the tribunal ruled that it was inappropriate for NSPI to bring a claim under UNCITRAL rules since ICSID arbitration was available at the time. The tribunal decided that it lacked jurisdiction over the claim. On August 30, 2010, the tribunal ordered NSPI to pay Venezuela's legal costs.
Outcome: **Dismissed**

Pac Rim (OceanaGold) v El Salvador

Claimant: Pacific Rim Mining Corp. (now OceanaGold Corp.) (Vancouver, BC)
via Pac Rim Cayman LLC (Nevada, United States)
Respondent: El Salvador
Date initiated: April 30, 2009
Treaty invoked: Dominican Republic–Central America FTA (DR–CAFTA)

In 2002, Pacific Rim Mining Corp., a Canadian mining company, received an exploration licence for the El Dorado gold mine in El Salvador's Cabañas region. In 2004, the company transferred ownership of the mine to its Cayman-registered subsidiary, Pac Rim Cayman LLC, through which it applied for an exploitation permit to open the mine. In the face of significant public opposition to new mining projects on humanitarian and environmental grounds, the government of El Salvador delayed approval of the El Dorado mine for several years before finally announcing in 2008 that it would grant no new mining concessions. Pacific Rim moved its Cayman-based subsidiary to the United States in 2007. In 2009, it launched an arbitration claim for US$77 million against El Salvador under the Dominican Republic–Central America FTA (DR–CAFTA) to which the United States is a party. Pacific Rim also alleged violations of El Salvador's domestic laws covering mining and foreign investment.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$77 million

Status: In October 2016, the tribunal dismissed the investor's claims on their merits. The tribunal ordered the investor to pay the government of El Salvador US$8 million in compensation.
Outcome: **State wins**

Gold Reserve v Venezuela

Claimant: Gold Reserve Inc. (Washington, United States)
via Gold Reserve Inc. (Whitehorse, YT)
Respondent: Venezuela
Date initiated: October 21, 2009
Treaty invoked: Canada–Venezuela BIT

In 1992, Gold Reserve, an American mining company based in the state of Washington, acquired a concession for the Brisas gold and copper mine in central Venezuela. In 1999, Gold Reserve transferred ownership of the mine to a shell company incorporated in Canada. Between 1997 and 2009, Gold Reserve worked to develop the project, although its applications for permits to open the mine were repeatedly denied on environmental grounds. Relations between Gold Reserve and the government of Venezuela deteriorated until, in March 2009, the state revoked the concession and subsequently took control of the project. The government claimed that uncontrolled mining was causing serious environmental deterioration to rivers and biodiversity in the region. Later that year, Gold Reserve brought an arbitration case against Venezuela through its Canadian shell company under the Canada–Venezuela BIT. It alleged violations of the provisions on fair and equitable treatment, full protection and security, most favoured nation, and expropriation. Gold Reserve initially sought up to US$5 billion in compensation for lost future profits, but later reduced its claim to just over US$1.7 billion.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$1.7 billion

Status: The tribunal dismissed Venezuela's jurisdictional objection that Gold Reserve was effectively an American company and therefore not protected by the Canada–Venezuela BIT. The tribunal noted that the Canadian government had provided diplomatic assistance to Gold Reserve, implicitly endorsing its Canadian nationality. On September 22, 2014, the tribunal rejected several of Gold Reserve's claims but agreed that Venezuela had failed to accord fair and equitable treatment to the investor. The tribunal awarded Gold Reserve US$713 million in damages plus interest and legal costs.
Outcome: **Investor wins**

Peter A. Allard v Barbados

Claimant: Peter A. Allard (Canada)
Respondent: Barbados
Date initiated: 2009
Treaty invoked: Canada–Barbados BIT

Peter Allard, a Canadian investor, acquired 34 acres of wetlands in Barbados in 1994, which he developed into an eco-tourism project over the next 15 years. Mr. Allard alleges that the government of Barbados, by failing to prevent environmental degradation of the wetlands as required by both international and domestic law, caused extensive damage to his investment. In 2009, he brought an arbitration claim against Barbados under the Canada–Barbados BIT.

Industry: Private investor (tourism)
Type of measure challenged: Property and land rights enforcement
Amount claimed: US$35 million

Status: In June 2016, the tribunal rejected Peter Allard's claims on their merits and ordered Allard to reimburse the government of Barbados approximately US$3 million in arbitration and legal costs.
Outcome: **State wins**

Niko Resources v Bangladesh

Claimant: Niko Resources Ltd. (Calgary, AB)
via Niko Resources (Bangladesh) Ltd. (Barbados)
Respondent: Bangladesh
Date initiated: April 1, 2010
Treaty invoked: Contract

In 2003, Niko Resources, a Canadian energy company, entered into a joint venture agreement (JVA) with two Bangladeshi state-owned enterprises, Petrobangla and BAPEX, to develop the Feni natural gas field in Bangladesh. Niko began producing gas at the Feni site in 2004, but two disastrous gas blowouts in 2005, for which Niko was found legally responsible, resulted in a Supreme Court injunction against any payments to the company. Niko was also investigated for corruption in both Bangladesh and Canada during this time. Niko denied both the corruption charges and liability for the blowouts and continued to operate the Feni project. In 2006, Niko completed a gas purchase and sale agreement (GPSA) with Petrobangla and BAPEX, but both state-owned enterprises withheld payments as required by the injunction. In 2010, Niko brought an ICSID arbitration claim against Petrobangla, BAPEX and the government of Bangladesh through its Barbadian subsidiary. The company sought to resolve liability for the blowouts under the JVA. Niko also claimed payment from Petrobangla under the GPSA.

Industry: Energy (oil and gas)
Type of measure challenged: Administration of justice
Amount claimed: US$35.71 million

Status: On August 19, 2013, the tribunal dismissed the respondent's jurisdictional objection that Niko was a Canadian company, which was not a full party to the ICSID convention at the time. However, the tribunal did find that Bangladesh never consented to ICSID arbitration since the government was not explicitly party to either the JVA or GPSA. The tribunal consequently ruled that it lacked jurisdiction over the claim made against the state. Niko's arbitration case proceeded against Petrobangla and BAPEX at ICSID.
Outcome: **Dismissed**

Nova Scotia Power v Venezuela (2)

Claimant: Nova Scotia Power Inc. (Halifax, NS)
Respondent: Venezuela
Date initiated: November 2, 2010
Treaty invoked: Canada–Venezuela BIT

After its earlier claim was dismissed on jurisdictional grounds (see above), Nova Scotia Power Inc. (NSPI) brought a new claim against Venezuela through the Canada–Venezuela BIT in 2010. This time the company opted for ICSID arbitration in accordance with the BIT.

Industry: Energy (electricity)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$180 million

Status: On April 30, 2014, the tribunal ruled that NSPI's contract with the Venezuelan supplier did not constitute an "investment" as defined in the BIT and therefore did not qualify for protection. The tribunal consequently rejected the claim on jurisdictional grounds.
Outcome: **Dismissed**

First Quantum Minerals v DR Congo

Claimant: First Quantum Minerals Ltd. et al. (Vancouver, BC)
Respondent: Democratic Republic of the Congo
Date initiated: 2010
Treaty invoked: Contract

First Quantum, a Canadian mining company, acquired the Kolwezi tailings project in the Democratic Republic of the Congo (DRC) in 2006. With several partners, including the World Bank's International Finance Corporation, First Quantum committed to a significant investment in the mine, although it never actually began production. In August 2009, the DRC requested the voluntary cancellation of the project. When First Quantum and its partners refused, the government seized the mine. The government then issued a new permit for the Kolwezi project to a subsidiary of the Kazakhstan-based Eurasian Natural Resources Corp. (ENRC). First Quantum challenged ENRC and the DRC through every available channel, including an arbitration claim lodged against the DRC at the International Chamber of Commerce in 2010.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$2 billion

Status: On January 5, 2012, First Quantum announced a surprise settlement with ENRC, who agreed to pay US$1.25 billion for First Quantum's assets in—and legal claims to—the Kolwezi project. As a condition of the settlement, First Quantum agreed to drop its litigation against ENRC and its arbitration case against the DRC. No documents from either case have yet been made public.
Outcome: **Settlement**

Khan Resources v Mongolia

Claimant: Khan Resources Inc. et al. (Toronto, ON)
Respondent: Mongolia
Date initiated: January 10, 2011
Treaty invoked: Contract

Between 2003 and 2005, Khan Resources, a Canadian mining company, acquired rights to the Dornod uranium project in eastern Mongolia. Khan invested in the development of the project between 2005 and 2009 with construction of an open-pit mine scheduled to begin later that year. In August 2009, Mongolia announced an intergovernmental joint venture with Russia to develop the Dornod project. In April 2010, the government of Mongolia invalidated Khan's licences. Khan successfully challenged the move in the domestic courts, but the government ignored the rulings. Khan and its affiliates brought an international arbitration case against Mongolia in 2011 claiming expropriation under the terms of their contract with the government as well as Mongolia's investment law. Khan's Dutch-registered sister company also alleged violations of the Energy Charter Treaty to which both Mongolia and the Netherlands are party.

Industry: Resources (mining)
Type of measure challenged: Administration of justice
Amount claimed: US$200 million

Status: In March 2015, the tribunal ruled in Khan's favour. It upheld jurisdiction over all claims and awarded US$80 million in compensation for the expropriated project plus interest and legal costs totalling roughly US$100 million. The government originally disputed the award and refused to pay full compensation. In May 2016, Khan agreed to settle for US$70 million in lieu of the full award.
Outcome: **Investor wins**

Crystallex v Venezuela

Claimant: Crystallex International Corp. (Toronto, ON)
Respondent: Venezuela
Date initiated: February 16, 2011
Treaty invoked: Canada–Venezuela BIT

Crystallex, a Canadian mining company, acquired rights to the Las Cristinas mine in 2002. The government of Venezuela had seized the mine a year earlier from another Canadian mining company (see Vannessa Ventures case above). A dispute arose between Crystallex and the government as early as 2008, when the company first signalled its willingness to arbitrate. After Venezuela terminated Crystallex's mine operation contract in 2011, the company followed through on its threat and registered an ICSID arbitration claim under the Canada–Venezuela BIT. Crystallex claimed nearly US$4 billion in compensation for violations of the BIT's provisions on expropriation, fair and equitable treatment, and discrimination.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$3.8 billion

Status: In April 2016, the tribunal ruled that Venezuela had breached the BIT. Venezuela was ordered to pay Crystallex US$1.2 billion in compensation.
Outcome: **Investor wins**

Zamora Gold v Ecuador

Claimant: Zamora Gold Corp. (Ecuador)
via Zamora Gold Corp. (Whitehorse, YT)
Respondent: Ecuador
Date initiated: 2011
Treaty invoked: Canada–Ecuador BIT

Zamora Gold, an Ecuadorian mining company incorporated in Canada, alleges that seven of its mining sites were expropriated by the government of Ecuador in April 2010. In 2011, the company brought an arbitration claim against Ecuador under the Canada–Ecuador BIT through its Canadian-registered shell company. No documents related to the case have yet been made public.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: Claim has made no progress since 2011.
Outcome: **Inactive**

Copper Mesa v Ecuador

Claimant: Copper Mesa Mining Corp. (Vancouver, BC)
Respondent: Ecuador
Date initiated: 2011
Treaty invoked: Canada–Ecuador BIT

Copper Mesa, a Canadian mining company, began operating in Ecuador in 2004 and acquired concessions to several areas, including the massive Junín region in western Ecuador. Public opposition to the Junín project was fierce and led to protests, clashes with police and legal challenges against the company. In 2008, the government of Ecuador nullified Copper Mesa's claim to the Junín concession for failing to provide an environmental impact study. In 2011, Copper Mesa brought an arbitration claim against Ecuador under the Canada–Ecuador BIT. The company alleged expropriation of two of its mining concessions.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$70 million

Status: In March 2016, the tribunal ruled that Ecuador had breached the investment treaty and must pay Copper Mesa approximately US$19 million in compensation. In August 2018, the investor released a public statement declaring that both parties had reached a settlement agreement related to the distribution of payments toward the total award figure.
Outcome: **Investor wins**

Tethyan v Pakistan

Claimant: Barrick Gold Corporation (Toronto, ON)
via Tethyan Copper Company Pakistan Limited (Australia)
Respondent: Pakistan
Date initiated: 2011
Treaty invoked: Australia–Pakistan BIT

The Tethyan Copper Company was jointly held by Barrick Gold, a Canadian mining company, and Atacama Copper, a mining company registered in Australia but owned and operated by the U.K.-headquarted Antofagasta. In 2006, Tethyan bought the rights to a prospective copper and gold mine at Reko Diq in the province of Balochistan, Pakistan, but the acquisition was opposed by local politicians that wanted to keep the project under public ownership. In 2011, the parliament of Balochistan rejected Tethyan's mining permit. Tethyan submitted a notice of arbitration under the Australia–Pakistan BIT in late 2011 and the tribunal was constituted in 2012. Even though mining had not yet started at Reko Diq and the company had only invested a few hundred million dollars in feasibility studies, it claimed damages of US$8.5 billion for the lost future value of the mine.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$8.5 billion

Status: The tribunal upheld jurisdiction over the claim despite Pakistan's objections and, in 2019, awarded US$4 billion in damages plus interest and legal costs amounting to US$5.84 billion based on the expected future value of the mine. Pakistan disputed the decision leading to numerous post-award proceedings. In early 2022, the parties announced a settlement that would see Barrick Gold proceed with the project in exchange for resolving some of the outstanding damages.
Outcome: **Investor wins**

Rusoro v Venezuela

Claimant: Rusoro Mining Ltd. (Moscow, Russia)
via Rusoro Mining Ltd. (Vancouver, BC)
Respondent: Venezuela
Date initiated: 2012
Treaty invoked: Canada–Venezuela BIT

Rusoro, a Russian mining company incorporated in Canada, owned several gold mining concessions in Venezuela. The company alleges that a series of changes to the country's legal regime for gold marketing led to the effective nationalization of its concessions. In 2012, Rusoro brought a claim against Venezuela for just over US$3 billion under the Canada–Venezuela BIT. The company reduced its claim to just over US$2.3 billion net of taxes in its final request for relief.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$2.3 billion

Status: In August 2016, the tribunal ruled that the government of Venezuela had breached the BIT by expropriating Rusoro's investment and ordered Venezuela to pay the investor US$966 million plus all costs associated with the arbitration proceedings. In October 2018, the parties entered into a settlement agreement. The government of Venezuela agreed to pay Rusoro US$1.28 billion in exchange for the claimant's mining data and full release from the arbitration award.
Outcome: **Investor wins**

South American Silver (TriMetals Mining) v Bolivia

Claimant: South American Silver Corp. (now TriMetals Mining Inc.) (Vancouver, BC)
via South American Silver Ltd. (Bermuda (United Kingdom)
Respondent: Bolivia Date initiated: 2013
Treaty invoked: United Kingdom–Bolivia BIT

In 2006, South American Silver (SAS), a Canadian mining company, acquired the Malku Khota silver mine in central Bolivia through its Bermudan shell company. SAS began exploration and development activities in the region but relations with local Indigenous groups quickly deteriorated. Violence between the company and local communities broke out, including a death and hostage taking, which provoked massive public protests in La Paz, the Bolivian capital, in May 2012. Responding to public pressure, the government of Bolivia ended SAS' mining concession by Supreme Decree in August 2012. Bolivia's assessment of the value of the project was US$19 million, which it was prepared to pay in compensation, but SAS claimed a much higher valuation. In 2013, the company brought an arbitration claim for US$386 million against Bolivia through its Bermudan shell company under the United Kingdom–Bolivia BIT. SAS alleges expropriation and violations of the fair and equitable treatment and national treatment provisions. South American Silver changed its name to TriMetals Mining in 2014.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$385.7 million

Status: In November 2018, the tribunal ruled in favour of the investor but only awarded compensation for the amount of the original investment (approximately US$18.7 million). The Bolivian government was also ordered to pay interest in the amount of US$9 million, for total compensation of approximately US$28 million.
Outcome: **Investor wins**

Stans Energy v Kyrgyzstan

Claimant: Stans Energy Corp. (Toronto, ON)
Respondent: Kyrgyzstan
Date initiated: 2013
Treaty invoked: Moscow Convention on Protection of the Rights of the Investor

In 2009, Stans, a Canadian mining company, acquired a licence to the Kutessay II rare earths project in northern Kyrgyzstan. Government prosecutors challenged the licensing process and in April 2013 won an injunction against Stans in the domestic courts, which brought work on the project to a standstill. In October 2013, Stans brought an arbitration claim for US$118 million to the Moscow Chamber of Commerce. The company alleged "expropriatory and unlawful treatment" under the Moscow Convention on the Protection of the Rights of Investors, an obscure investment treaty to which Kyrgyzstan is bound as a member of the Commonwealth of Independent States (CIS).

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$117.8 million

Status: In July 2014, Stans announced that the tribunal had ruled in its favour and awarded compensation of US$117.7 million plus legal fees. However, the government of Kyrgyzstan rejected the tribunal's ruling on jurisdictional grounds, refused to pay the award and then sought to annul the decision in the Moscow courts. After its initial appeals were dismissed, Kyrgyzstan won its case at the Moscow Circuit Court. In May 2015, Stans announced that it had filed a new arbitration against Kyrgyzstan, this time under UNCITRAL rules. On August 20, 2019, a UNCITRAL tribunal ruled in favour of the investor and awarded compensation, including interest, of approximately US$24 million.
Outcome: **Investor wins**

World Wide Minerals v Kazakhstan (2)

Claimant: World Wide Minerals Ltd. (Toronto, ON)
Respondent: Kazakhstan
Date initiated: 2013
Treaty invoked: Canada–USSR BIT

World Wide Minerals (WWM), a Canadian mining company, operated a uranium processing facility in Kazakhstan in the mid-1990s before it went bankrupt and was confiscated by the state. After its initial arbitration claim was dismissed in 2010 (see above), WWM brought a new case against the government of Kazakhstan in 2013. This time, the company invoked the 1989 Canada–USSR BIT on the grounds that Kazakhstan, as a former Soviet state, is bound by its provisions.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$371 million

Status: In January 2016, an arbitration tribunal convened under UNCITRAL rules found that the claims brought forward by the claimant were admissible under the Canada–USSR BIT. In October 2019, an UNCITRAL tribunal awarded approx. US$50 million in compensation in favour of the investors. However, in a judgment dated November 23, 2020, the High Court of Justice for England and Wales opted to set aside part of the award. After the initial award in 2019, Kazakhstan argued, and the judge in this case found, that the tribunal's decision contained issues on quantum and causation. In doing so, the judge agreed to set aside the relevant parts of the award and to remand the annulled sections of the award to the arbitral tribunal. This case is still pending.
Outcome: **Pending**

Vanoil Energy v Kenya

Claimant: Vanoil Energy Ltd. (Vancouver, BC)
Respondent: Kenya
Date initiated: July 7, 2014
Treaty invoked: Contract

Vanoil, a Canadian oil and gas company, acquired exploration rights to large areas of the Anza Basin in southeastern Kenya through a production-sharing contract (PSC) negotiated with the government in 2007. In 2013, public opposition and local unrest significantly disrupted the project and the government refused to extend the PSC. Vanoil alleges that the government failed to adequately protect the site in accordance with the contract. In 2014, Vanoil brought an arbitration claim against the government of Kenya under the terms of the PSC. The company says it is seeking more than US$150 million in compensation, although no official documents have yet been released.

Industry: Energy (oil and gas)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$150 million

Status: Claim is apparently ongoing, although no official documents have been released and there is no evidence of the claim being formally registered with a known arbitration body. There has been no update on this case since 2015.
Outcome: **Pending**

Infinito Gold v Costa Rica

Claimant: Infinito Gold Ltd. (Calgary, AB)
Respondent: Costa Rica
Date initiated: 2014
Treaty invoked: Canada–Costa Rica BIT

Starting in 1993, Infinito Gold, a Canadian mining company, acquired a series of concessions to develop a gold mine in the Crucitas region of northern Costa Rica. The project provoked significant public opposition, which culminated in a nationwide ban on open-pit mining in 2010. Activists also brought a series of lawsuits against the company for humanitarian and environmental violations. In 2010, two public interest lawsuits that had been brought against Infinito Gold reached contradictory conclusions. One dismissed all objections to the Crucitas mine while the other required an injunction against the project, leaving Infinito Gold in a legal limbo. In 2014, the company brought an arbitration claim against the government of Costa Rica under the Canada–Costa Rica BIT. Infinito Gold claims compensation for expropriation and the violation of fair and equitable treatment under the BIT.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$321 million

Status: Proceedings were initially delayed by the investor's financial problems, but in December 2015, Infinito Gold entered into a litigation financing agreement with Vannin Capital to keep the case alive. In December 2017, the tribunal confirmed the case would proceed, although a decision on jurisdiction was delayed to the merits phase of the proceedings. On June 3, 2021, an ICSID tribunal upheld some claims for breaches of the Canada–Costa Rica BIT's fair and equitable treatment (FET) provision, but ultimately awarded no damages. On October 21, 2021, application for annulment of the tribunal's decision not to award any damages to the investor was brought forth by the Canadian miner. In support of its application, the investor argues that in the tribunal not only disregarded specific evidence on damages but also failed to provide reasons for its decisions and allegedly violated fundamental procedural rules. As of January 6, 2022, a committee was formed that will hear Infinito Gold's request to annul the June 2021 award.
Outcome: **Pending**

Belmont Resources & EuroGas Inc. v Slovakia

Claimant: Belmont Resources Inc. et al. (Vancouver, BC)
Respondent: Slovak Republic
Date initiated: 2014
Treaty invoked: Canada–Slovakia BIT

Belmont Resources, a Canadian mining company, and EuroGas, an American resource company, jointly controlled the Gemerská Poloma talc deposit in Slovakia. In 2005, the government of Slovakia revoked the companies' rights to the mine and granted them to a Slovak competitor. The Supreme Court of Slovakia subsequently ruled the government's actions to be illegal. In 2010, EuroGas threatened arbitration against Slovakia. In 2014, Belmont joined EuroGas in bringing a joint claim for several billion dollars in damages under the Canada–Slovakia BIT and United States–Slovakia BIT, respectively.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$3.2 billion

Status: In August 2017, the tribunal ruled that it lacked jurisdiction and thus dismissed the case. Both parties were found to be responsible for their own legal fees and arbitration costs. In December 2017, the claimants registered annulment proceedings that are currently pending.
Outcome: **Dismissed**

Bear Creek v Peru

Claimant: Bear Creek Mining Corp. (Vancouver, BC)
Respondent: Peru
Date initiated: 2014
Treaty invoked: Canada–Peru FTA

Bear Creek, a Canadian mining company, owned rights to the Santa Ana silver deposit in southern Peru. In early 2011, the proposed mine became the target of increasingly violent protests and in June 2011 the government of Peru revoked Bear Creek's concession by Supreme Decree. Opponents say the mine risks contaminating nearby Lake Titicaca, but Bear Creek denies any environmental risk. In 2014, the company successfully challenged the decree in the domestic courts. In August of the same year, Bear Creek brought a parallel arbitration case against Peru under the Canada–Peru FTA as insurance against settlement talks breaking down.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$522 million

Status: In November 2017, the tribunal ruled in favour of the investor and ordered Peru to pay US$18 million in damages plus 75% of the investor's legal fees for total compensation to Bear Creek of approximately US$24 million.
Outcome: **Investor wins**

WalAm Energy v Kenya

Claimant: WalAm Energy Inc. (Calgary, AB)
Respondent: Kenya
Date initiated: February 23, 2015
Treaty invoked: Contract

In 2007, WalAm Energy, a Canadian renewable energy company, acquired concessions to the Suswa geothermal field in central Kenya. In 2012, the government of Kenya cancelled the licence and seized the field on the grounds that the company had failed to carry out a required environmental assessment. In 2015, the company brought an ICSID arbitration claim against the government.

Industry: Energy (electricity)
Type of measure challenged: Environmental policy
Amount claimed: US$340 million

Status: In March 2017, the tribunal issued a preliminary decision confirming its jurisdiction over the dispute. In May 2018, Kenya filed an application for security for costs, which suggests the government is concerned that WalAm may not be able to pay its legal fees if the tribunal rules in the state's favour. In July 2020, a tribunal found that Kenya had validly declared that WalAm's geothermal exploration license was forfeited due to its failure to carry out physical activities on the license site for a period of more than six months. In turn, WalAm was ordered to pay 75% of Kenya's legal expenses (approx. €3.6 million and US$250,000), as well as 75% of the arbitration costs (US$1.3 million). WalAm filed for annulment of the award in November 2020, and as of February 2021, an ICSID ad hoc committee was in place to hear WalAm's bid to annul the award.
Outcome: **State wins**

Pacific Wildcat Resources v Kenya

Claimant: Pacific Wildcat Resources Corp. (West Kelowna, BC)
via Cortec Pty Ltd. & Stirling Capital Ltd. (United Kingdom)
Respondent: Kenya
Date initiated: 2015
Treaty invoked: United Kingdom–Kenya BIT

In 2010, Pacific Wildcat, a Canadian mining company, acquired rights to the Mrima Hills rare earth minerals project in the Kwale region of southern Kenya through two United Kingdom-registered subsidiaries. The company valued the site at more than US$60 billion and, in March 2013, secured a licence extension of 21 years. However, in August of that year, shortly following the Kenyan general election, the government revoked Pacific Wildcat's claim to the project as part of a nationwide re-evaluation of mining licences. The company challenged the government measure in the domestic courts but ultimately lost the case. In 2015, Pacific Wildcat used its United Kingdom-registered subsidiaries to bring an ICSID arbitration claim against the government through the United Kingdom–Kenya BIT. The company alleges expropriation and a breach of fair and equitable treatment under the BIT. No official documents have yet been released.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: On October 22, 2018, the tribunal dismissed Pacific Wildcat's claims on jurisdictional grounds and ordered the company to pay the Kenyan government US$3.5 million in legal and arbitral costs. Although it did not need to rule on the merits of the claim, in its final decision the tribunal nonetheless clarified that "on the merits… [the mining project] is not in any event a protected investment."
Outcome: **Dismissed**

Gabriel Resources v Romania

Claimant: Gabriel Resources Ltd. (Toronto, ON)
Respondent: Romania
Date initiated: 2015
Treaty invoked: Canada–Romania BIT

In 2000, Gabriel Resources, a Canadian mining company, acquired a licence to the Roşia Montană gold and silver mine in western Romania. The project would be the largest open-pit mine in Europe, although the company has so far been unable to secure all the necessary permits to begin operations. The project is deeply unpopular in Romania. Starting in 2013, protesters organized daily demonstrations in dozens of Romanian cities for 18 straight months. The proposed mine has also been the subject of extensive contentious legal and legislative disputes. So far, the government has been unable to pass a new law that would allow the project to proceed. In 2015, the company and its United Kingdom-registered affiliate brought an ICSID arbitration claim against the government under the terms of the Canada–Romania BIT and the United Kingdom–Romania BIT.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$4.4 billion

Status: In July 2021, UNESCO added the Roșia Montană mining landscape onto its List of World Heritage in Danger. Per a procedural order on September 30, 2021, the tribunal accepted a request by the claimants to admit new evidence including evidence relating to UNESCO's decision to inscribe the site onto its list and "a decision from local courts regarding the validity of one of the claimants' Archaeological Discharge Certificates." The claim is still ongoing.
Outcome: **Pending**

Corcoesto v Spain

Claimant: Edgewater Exploration Ltd. (Vancouver, BC)
via Corcoesto (Panama)
Respondent: Spain
Date initiated: 2015
Treaty invoked: Panama–Spain BIT

In October 2015, Corcoesto, S.A., the wholly-owned subsidiary of Canadian mining company Edgewater Exploration Ltd., notified the government of Spain of its intent to submit an arbitration claim under the Panama–Spain BIT. The dispute relates to the Autonomous Community of Galacia's decision to terminate Edgewater's mining concessions over doubts that the mining company had the technical or financial capacity to advance the mining project. Local protests were also influential in the dispute, with communities in the northwest of Spain concerned over the possible use of cyanide in the extraction process. ClaimTrading Ltd., a London-based litigation financing broker, was responsible for sourcing the third-party funding for Edgewater's arbitration claim. No official documents have been released.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: The arbitration was initiated in 2016 and hearings were held until April 2018. Spain raised five jurisdictional objections in the case, and while four of these objections were rejected, the fifth objection was upheld by a majority decision, resulting in the dismissal of the case. Corcoesto's parent company, Edgewater Exploration Ltd., announced that Edgewater and Corcoesto is considering avenues for legal redress, including an annulment proceeding in the French courts.
Outcome: **Dismissed**

Kazakhstan Goldfields Corp v Kazakhstan

Claimant: Kazakhstan Goldfields Corp (Toronto, ON)
Respondent: Kazakhstan
Date initiated: 2015
Treaty invoked: Canada–USSR BIT

In response to the jurisdictional ruling in the second World-Wide Minerals (WWM) v Kazakhstan dispute—where the tribunal ruled that Kazakhstan is bound by the 1989 Canada–USSR BIT—another Canadian mining company, Kazakhstan Goldfields Corp., submitted a claim for arbitration against Kazakhstan under the same treaty. Kazakhstan Goldfields and its subsidiary Gold Pool LP claim damages from Kazakhstan's decision to terminate mining privileges in 1997. Kazakhstan Goldfields originally initiated a contract-based arbitration in 1997 and sought damages in the amount of US$65 million, but that dispute was never resolved. No official documents from the ISDS case have been released.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$917 million

Status: A decision was issued on July 30, 2020, where a tribunal held that Kazakhstan was not bound by the 1989 USSR-Canada bilateral investment treaty. The tribunal therefore held that it had no jurisdiction over the dispute and ordered the claimant to reimburse Kazakhstan for the costs incurred in the arbitration. However, in its attempt to enforce the costs awarded, Kazakhstan has applied to the United States District Court for the Southern District of New York for a leave to serve subpoenas for discovery to a number of major clearing banks, who Kazakhstan alleges possess information regarding transactions that Gold Pool is believed to have entered into outside of the US. This application is due to the fact that Gold Pool is said to have currently paid no monies under the award to Kazakhstan.
Outcome: **Dismissed**

Cosigo Resources v Colombia

Claimant: Cosigo Resources Ltd. (Vancouver, BC)
Respondent: Colombia
Date initiated: August 5, 2015
Treaty invoked: United States–Colombia FTA

Three claimants, Cosigo resources (Canada), Cosigo Resources Sucursal Colombia (Colombia), and Tobie Mining and Energy Inc. (United States), all claim to have interests in a gold mining concession in Colombia's Taraira region, stating that the US investor "staked out" the interests in 2007, transferred a majority interest to the Canadian claimant Cosigo, and then took back most of that shareholding in 2015. The claimants said that a final legal approval of their venture was granted by the National Mining Agency in April 2009, but there was a five month delay and they were unable to sign the mining concession until October 2009. Allegedly, on the same day they were to sign, a resolution was published that created a national park in Colombia, which encompassed the area of the mining concession. The three companies alleged that the delay was a deliberate attempt by the Colombian authorities in order to first establish the national park. The claimants notified Colombia of a dispute in February 2016, but the case has been largely inactive since.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$16.5 billion

Status: The case has not been formally closed but has been inactive for several years. The parties never proceeded to constitute the arbitral tribunal after the initiation of the arbitration in 2016.
Outcome: **Inactive**

Alhambra Resources v Kazakhstan

Claimant: Alhambra Resources Ltd. (Calgary, AB)
via Alhambra Cooperatief U.A. (Netherlands)
Respondent: Kazakhstan
Date initiated: 2016
Treaty invoked: Netherlands–Kazakhstan BIT

In December 2015, Alhambra Resources, a Canadian mining company, notified the government of Kazakhstan of its intent to submit an investment arbitration claim under the 2002 Kazakhstan–Netherlands BIT. Alhambra claims to have a wholly-owned Dutch subsidiary through which it will bring the case, although the name of the subsidiary is omitted from the claimant's notice of intent. The dispute relates to the government's declaration that Alhambra's Kazakhstan-based subsidiary, Sage Creek Gold, was bankrupt. According to the claimants, the government's assessment of taxes and withholding of financing and mining approvals led to Sage Creek Gold's economic downturn.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$100 million

Status: The tribunal rendered an award on November 16, 2020, but the content of the award is still undisclosed. Allegedly, the tribunal upheld jurisdiction over one of the two claimants and found certain BIT violations. However, both parties filed annulment applications on March 23, 2021. As of April 16, 2021, an ICSID annulment committee was in place to hear the parties' request for annulment of the award.
Outcome: **Pending**

Eco Oro Minerals Corp v Colombia

Claimant: Eco Oro Minerals Corp. (Vancouver, BC)
Respondent: Colombia
Date initiated: 2016
Treaty invoked: Canada–Colombia FTA

In 1994, Eco Oro Minerals—known then as Greystar Resources Ltd.—acquired the Angostura gold mine in Colombia. In 2014, the Colombian Ministry of Environment passed a resolution that prohibited mining projects in the Colombian páramo, a high-altitude ecosystem that provides approximately 70% of Colombia's drinking water. While the Angostura concession was originally exempted from the resolution, the Colombian Constitutional Court tightened the regulation in 2016, thereby nullifying Eco's exemption. Eco Oro Minerals initially claimed damages of approximately US$300 million but later raised the claim to US$764 million.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$764 million

Status: In February 2019, the ICSID tribunal for this case rejected an application by six NGOs to intervene as non-disputing parties, as well as refused to grant the NGOs access to the documents produced in the arbitration proceedings. In a non-disputing party submission, Canada argued that "bona fide non-discriminatory regulatory measures designed to protect the environment should ordinarily not amount to indirect expropriations, even if they are based on the precautionary principle." On September 9, 2021, the tribunal upheld jurisdiction over the claims but was split on its merits. Notably, the panel rejected Canada's interpretation of the treaty's general exceptions clause. Ultimately, the tribunal decided to reject the expropriation claim, uphold the fair and equitable treatment claim and provide certain directions on quantum, requiring further information before coming to a final decision. The claim is ongoing.
Outcome: **Pending**

Miedzi Copper (Lumina Copper) v Poland

Claimant: Lumina (Miedzi) Copper Corp (Vancouver, BC)
Respondent: Poland
Date initiated: 2016
Treaty invoked: Canada–Poland BIT

Following a series of disputes in 2014, Lumina Copper, a subsidiary of Canadian mining company First Quantum Minerals, submitted a claim for arbitration under the Canada–Poland BIT. The dispute concerns Poland's Ministry of Environment awarding valuable copper extraction permits to KGHM, a partly state-owned mining firm. Miedzi Copper Corp., a subsidiary of Lumina Copper, alleges that the Polish government reneged on two promised copper mining permits that were later awarded to KGHM. Lumina Copper is claiming damages of at least US$100 million.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: US$100 million

Status: In December 2021, the Polish government announced that the arbitration tribunal dismissed "approximately 99.83% of the demanded compensation." No documents have been released and it remains unclear whether the tribunal found in favour of Lumina on the merits of at least some of its claim.
Outcome: **Pending**

Air Canada v Venezuela

Claimant: Air Canada (Montreal, QC)
Respondent: Venezuela
Date initiated: 2017
Treaty invoked: Canada–Venezuela BIT

In January 2017, Air Canada registered an arbitration claim against Venezuela under the Canada–Venezuela BIT. The dispute revolves around Air Canada's decision to suspend services to Venezuela following protests that began in 2014. The airline was subsequently unable to repatriate funds it had remaining in Venezuela due to currency controls introduced by the Maduro administration.

Industry: Transportation (airline)
Type of measure challenged: Financial policy and taxation
Amount claimed: US$210 million

Status: The tribunal dismissed damages for Air Canada's expropriation claim but upheld claims for breaches of the BIT's free transfer and fair and equitable treatment (FET) provisions. The final award was US$20 million to Air Canada plus interest and a portion of costs
Outcome: **Investor wins**

Gran Colombia Gold v Colombia

Claimant: Gran Colombia Gold Inc. (Toronto, ON)
Respondent: Colombia
Date initiated: October 10, 2016
Treaty invoked: Canada–Colombia FTA

In May 2018, Gran Colombia Gold Corp., a Canadian mining company, served the Republic of Colombia with a notice of arbitration under the Canada–Colombia BIT. The dispute concerns a gold mine in the Segovia region. Since September 2016, local miners have been staging protests and demonstrations in Segovia to put pressure on the Colombian government to formalize mining in the area. According to Gran Colombia, the civil unrest in the area has not been properly managed, resulting in interferences with its own mining activities. Gran Colombia is claiming damages of US$700 million.

Industry: Resources (mining)
Type of measure challenged: Property and land rights enforcement
Amount claimed: US$700 million

Status: The ICSID tribunal to hear this case was constituted on October 31, 2018, but one of the arbitrators was replaced in June 2019 due to a conflict-of-interest challenge. In its decision of November 23, 2020, the tribunal dismissed Colombia's attempt to deny the benefits of the underlying Canada–Colombia FTA to Gran Colombia Gold after finding that the complainant did have substantial business activities in Canada. On September 1, 2021, the tribunal had accepted, in part, a "friend of the court" (amicus curiae) application from the El Cogote Association, whose alleged mission is to "defend the possession of the El Cogote mine by traditional and ancestral miners." Claim is ongoing.
Outcome: **Pending**

Rand Investments v Serbia

Claimant: Rand Investments Ltd. (Vancouver, BC)
Respondent: Serbia
Date initiated: 2018
Treaty invoked: Canada–Serbia BIT; Serbia–Cyprus BIT

In March 2018, Rand Investments Ltd., a Canadian private equity firm, registered an arbitration claim with ICSID against the Republic of Serbia. The dispute relates to the privatization of a dairy farm (BD Agro) in Serbia, and the parties debate whether the claimant's alleged beneficial ownership of shares in BD Agro qualifies as a protected investment under the Canada–Serbia BIT and the Cyprus–Serbia BIT. Rand Investments argued that the unilateral termination of a privatization agreement by Serbia's privatization agency amounts to a breach of the Canada–Serbia BIT and Cyprus–Serbia BIT. Serbia claims that the termination was prompted by contractual breaches and is legitimate. The handful of claimants listed alongside Rand Investments include four Canadian nationals: William Rand, Kathleen Rand, Allison Rand and Robert Rand.

Industry: Agriculture
Type of measure challenged: Agricultural and industrial policy
Amount claimed: US$95.6 million

Status: The ICSID tribunal for this case made a procedural order on transparency in August 2019, meaning the arbitral records, including pleadings and transcripts of hearings, was made public. The public record showed that a previous procedural order on June 24, 2019, had rejected Serbia's request for bifurcation. On January 15, 2021, the tribunal held a hearing on provisional measures, and the claimants filed a request for provisional measures in relation to a criminal investigation lodged by Serbian authorities against witnesses for the complainants, but the tribunal dismissed the request. Further hearings on jurisdiction liability, and quantum were held between July 12 and July 20, 2021. Claim is ongoing.
Outcome: **Pending**

Galway Gold v Colombia

Claimant: Galway Gold Inc. (Toronto, ON)
Respondent: Colombia
Date initiated: 2018
Treaty invoked: Canada–Colombia FTA

In April 2018, Galway Gold, a Canadian mining company, submitted an arbitration claim under the Canada–Colombia FTA following the Colombian government's decision to prohibit mining activities in the páramo, a high-altitude ecosystem. Galway Gold's decision to pursue arbitration comes after a 2016 ruling by the Colombian Constitutional Court upheld an earlier decision by the Ministry of Environment to prohibit mining activities in all páramo ecosystems. The Court ruled that public interests supersede private interests, as the páramo provides approximately 70% of the country's water supply.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$196 million

Status: On September 25, 2019, an ICSID tribunal had been finalized to hear the claims brought by the parties. As of September 2020, the tribunal had declined Colombia's request for bifurcation of jurisdictional issues. There have been no further updates. Claim is ongoing.
Outcome: **Pending**

Red Eagle Exploration v Colombia

Claimant: Red Eagle Exploration Ltd. (Vancouver, BC)
Respondent: Colombia
Date initiated: September 14, 2017
Treaty invoked: Canada–Colombia FTA

In 2009, Red Eagle Exploration Ltd., a Canadian mining company, acquired the Vetas mining concession in Santander, Colombia. In 2016, the Colombian Constitutional Court upheld a regulatory ban on mining activities in the páramo, Colombia's high-altitude ecosystem. Red Eagle subsequently initiated discussions with the Colombian government over the damages associated with the portion of the Vetas mining concession located within the páramo. After Canadian mining companies Eco Oro Minerals and Galway Gold announced ISDS cases related to the same government measure (see above), Red Eagle registered an arbitration claim with ICSID to seek compensation.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$40 million

Status: In August 2020, Colombia requested, and was denied, to hear jurisdictional issues in a bifurcated proceeding, as well as denied Colombia's request to bifurcate issues of quantum. As of September 2020, the parties were debating issues of jurisdiction and liability. There have been no further updates. Claim is ongoing.
Outcome: **Pending**

Korsgaard v Croatia

Claimant: Haakon Korsgaard (Canada)
via ReCap International d.o.o. and Zagreb Panorama d.o.o. (Croatia)
Respondent: Croatia
Date initiated: 2018
Treaty invoked: Canada–Croatia BIT

Haakon Korsgaard is an individual Canadian investor. This claim arose out of the Croatian Government's alleged measures to prevent Mr. Korsgaard from obtaining ownership over several formerly socially-owned real estate properties in Croatia, mostly located on the Adriatic coast. The rights to use the relevant properties had previously belonged to Serbian socially-owned companies before the civil war broke out, and it is from these companies that Mr. Korsgaard claims to have acquired ownership. According to the claimant, he acquired the real estate from Serbian companies via two local subsidiaries, but this acquisition of property is disputed by the Croatian Government. Arbitration was scheduled to begin in September 2021 but no official documents have been released.

Industry: Real Estate
Type of measure challenged: Administration of justice
Amount claimed: US$224.30 million

Status: Claim is ongoing.
Outcome: **Pending**

Aecon v Ecuador

Claimant: Aecon Construction Group Inc. (Calgary, AB)
Respondent: Ecuador
Date initiated: 2019
Treaty invoked: Canada–Ecuador BIT

Aecon Construction Group Inc., a Canadian construction company, was previously involved in the design, financing, construction, and operation of a new airport in Ecuador's capital, Quito. Aecon alleges that, after receiving formal recognition of its status as a free trade zone user under the Canada–Ecuador BIT, they were granted certain income tax exemptions. However, the Ecuadorian internal revenue service (Servicio de Rentas Internas, or SRI), failed to recognize this tax exemption and demanded that the claimant provide separate payment for each year of construction, stating that the tax exemption under the BIT had been rendered invalid after a new domestic tax law took effect. The arbitration is still at an early stage and no official documents have been released.

Industry: Construction
Type of measure challenged: Financial policy and taxation
Amount claimed: Unknown

Status: Claim is ongoing.
Outcome: **Pending**

Lupaka v Peru

Claimant: Lupaka Gold Inc. (Vancouver, BC)
Respondent: Peru
Date initiated: December 12, 2019
Treaty invoked: Canada–Peru FTA

Lupaka Gold Inc. held rights to a gold mine in central Peru. In October 2018, a nearby community of Paran set up a blockade in protest of the mine and operations were halted due to the blocked access road. The investor claims that as a result of the blockade, it was unable to access the mine and therefore was unable to ship and sell its product, and its lenders foreclosed on loans to the project. The investor ultimately lost its entire investment and was unable to continue ownership of the gold mine. Lupaka claims that Peru breached the FTA's fair and equitable treatment and full protection and security standards, as well as the FTA's provisions on expropriation. Lupaka has filed a request for arbitration with ICSID.

Industry: Resources (mining)
Type of measure challenged: Property and land rights enforcement
Amount claimed: US$100 million

Status: Claim is ongoing.
Outcome: **Pending**

Winshear v Tanzania

Claimant: Winshear Gold Corp. (Vancouver, BC)
Respondent: Tanzania
Date initiated: January 10, 2020
Treaty invoked: Canada–Tanzania BIT

Winshear Gold Corp. is a gold exploration company who, after exploration activities in 2006, was granted four retention licenses, which covered the mineral resources in its project area, by the Tanzanian government. The complainant alleges that in 2017, Tanzania introduced amendments to its mining legislation which had the effect of abolishing retention licenses and in 2018, introduced further mining regulations which stipulated that all retention licenses issues prior to January 2018 were cancelled and the rights over the areas under the retention licenses was to be transferred to the government. Winshear claims that its project was rendered valueless and the company lost its investment due directly to the legislative and regulatory measures by the Tanzanian government. The Tribunal held its first session on March 16, 2021. No official documents have been released.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: CAD$124.8 million

Status: Claim is ongoing.
Outcome: **Pending**

Montero Mining v Tanzania

Claimant: Montero Mining and Exploration Ltd. (Vancouver, BC)
Respondent: Tanzania
Date initiated: January 17, 2020
Treaty invoked: Canada–Tanzania BIT

Montero Mining is an exploration company who, similar to Winshear v. Tanzania, had its retention license in Tanzania revoked for the Wigu Hill rare earth element mining project. The cancellation of the retention license followed amendments to Tanzania's mining legislation, discussed above in Winshear. Montero is bringing claims against the Government of Tanzania for the illegal expropriation and loss of the Wigu Hill mining project, including all costs associated with legal proceedings, and if necessary, enforcement of any awards. No official documents have been released.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: Claim is ongoing.
Outcome: **Pending**

Sukyas v Romania

Claimant: Edward and Jak Sukyas (Canada)
Respondent: Romania
Date initiated: 2020
Treaty invoked: Canada–Romania BIT

Two individuals, Jak Sukyas (a US National) and Edward Sukyas (a Canadian national) have initiated proceedings against Romania over the application of Romania's system for restitution of assets that were taken under the former communist regime. The company at the heart of the dispute, CIRO Films, was previously owned by the claimants' uncle and father, but was taken over by the communist regime after World War II and eventually became part of Romania's state-owned film distribution agency. Under new legislation enacted by the Romanian government, the claimants applied for restitution of the company, but their claim was denied in 2017. The claimants argue that this decision was arbitrary and inequitable and thus violated the Canada–Romania and Romania–US BITs. No official documents have been released.

Industry: Media
Type of measure challenged: Administration of justice
Amount claimed: US$100 million

Status: Claim is ongoing.
Outcome: **Pending**

Oyu Tolgoi LLC v Mongolia

Claimant: Turquoise Hill Resources (Montréal, QC)
via Oyu Tolgoi LLC (Ulaanbaatar)
Respondent: Mongolia
Date initiated: 2020
Treaty invoked: Contract

Oyu Tolgoi LLC is a Mongolian mining company operating a copper mine in Southern Mongolia. It is a subsidiary of Turquoise Hill Resources, a Canadian Mining Company, controlling 66% of Oyu Tolgoi's shares; the remaining 34% is controlled by the Mongolian government. Turquoise Hill Resources is, in turn, majority owned (50.8%) by Rio Tinto, an Anglo-Australian mining company. The dispute arose in January 2018, regarding a tax assessment by the Mongolian Tax Authority for the 2013–2015 period, in which it was ordered that Oyu Tolgoi pay US$155 million in unpaid taxes. After consecutive unsuccessful negotiations, as per the 2009 investment agreement between Oyu Tolgoi and the government of Mongolia as well as the 2015 agreement regarding the underground mine development and financing plan which both contained a dispute resolution clause, UNCITRAL arbitration was initiated by Oyu Tolgoi LLC on the request of Turquoise Hill Resources.

Industry: Resources (mining)
Type of measure challenged: Financial policy and taxation
Amount claimed: Unknown

Status: Claim is ongoing.
Outcome: **Pending**

B2Gold Corp. v Mali

Claimant: B2Gold Corporation (Vancouver, BC)
via Menankoto Sàrl (Mali)
Respondent: Mali
Date initiated: March 15, 2021
Treaty invoked: Menankoto Mining Convention

B2Gold Corp. is a gold exploration company, who had held a permit to explore the area of Menankoto, Mali for seven years. In February 2021, B2Gold asked the Mali Government for renewal of its exploration permit, but the permit was re-allocated to a third party, Little Big Mining. Allegedly, B2Gold assumed that the renewal would be granted as a matter of a right under the 2012 Mining Code. B2Gold petitioned the local courts to contest the re-allocation, but its request failed before the Supreme Court because the court found that B2Gold had been carrying out exploration activities for too long and was thus not entitled to an automatic renewal. Mali's Prime Minister then revoked the Supreme Court decision and allowed B2Gold to renew its application for the exploration license. However, B2Gold's new request was rejected by Mali's Ministry of Mines, Energy, and Water, which prompted the arbitration proceedings under the Menankoto establishment convention. B2Gold has also indicated that it could possibly bring a claim under the Canada–Mali BIT at a future date. No official documents have been released.

Industry: Resources (mining)
Type of measure challenged: Energy policy and resource management
Amount claimed: Unknown

Status: Claim is ongoing.
Outcome: **Pending**

Mauritanian Copper Mines v Mauritania

Claimant: First Quantum Minerals Ltd (Toronto, ON)
via Mauritanian Copper Mines S.A. (MCM) (Mauritania)
Respondent: Mauritania
Date initiated: 2021
Treaty invoked: Contract

Mauritanian Copper Mines (MCM) is a subsidiary, controlled 100% by First Quantum Minerals, a Canadian mining company. MCM is operating a gold and copper mine at Guelb Moghrein in Western Mauritania. Although little has been made public regarding the dispute, the relates to the application of a simplified taxation regime. MCM has argued that under the stabilization clause of the investment agreement, the new taxation regime should not apply as it was introduced after the signing of the investment agreement.

Industry: Resources (mining)
Type of measure challenged: Financial policy and taxation
Amount claimed: Unknown

Status: Claim is ongoing.
Outcome: **Pending**

Petaquilla Minerals v Peru

Claimant: Petaquilla Minerals Ltd (Vancouver, BC)
Respondent: Peru
Date initiated: October 5, 2021
Treaty invoked: Canada–Peru BIT

In 2005, Petaquilla Minerals was granted an exploitation concession in the Molejon Mine. Development began in January 2010, but in 2015, the Panamanian government terminated the concession agreement as Petaquilla Minerals failed to follow environmental policies and to pay the government the agreed upon amounts. In 2021, reports came out that the Panamanian government was considering giving the concession agreement to another company, namely Canadian Broadway Strategic Mines. At the same time, Petaquilla Minerals brought forth an arbitration claim against Panama for violations of provisions in the Canada–Panama BIT.

Industry: Resources (mining)
Type of measure challenged: Environmental policy
Amount claimed: US$2.8 billion

Status: Claim is ongoing.
Outcome: **Pending**

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