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Treaty Shopping in International Investment Arbitration:

How often has it occurred and how has it been
perceived by tribunals?

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Abstract

This paper examines the practice of treaty shopping in international investment arbitration. It estimates how often treaty shopping might have taken place in the past investor-state dispute settlement cases by verifying whether a claimant has its parent company incorporated or headquartered in another country. Then, it looks into the varied perception and responses of arbitral tribunals towards treaty shopping. Based on these analyses, some implications are drawn; treaty shopping adds potential loss to developing countries in the current investment regime, countries should more carefully design texts of international investment agreements and a multilateral investment regime would be an ultimate solution to treaty shopping.

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Acronyms, Abbreviations and Key Terms

BIT	Bilateral Investment Treaty
CAFTA-DR	Dominican Republic-Central America-United States Free Trade Agreement
CECA	Comprehensive Economic Cooperation Agreement
ECT	Energy Charter Treaty
FCN treaty	Treaty of Friendship, Commerce and Navigation
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GNI	Gross National Income
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
ISDS	Investor-State Dispute Settlement
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
UNCTAD	United Nations Conference on Trade and Development
UNCTRAL	United Nations Commission on International Trade Law
WTO	World Trade Organisation

Introduction

The current international investment regime is not governed by a set of multilateral rules which can be applied almost universally, such as the WTO laws in international trade. Instead, it consists of thousands of international investment agreements (IIAs)¹, whose application is restricted to contracting states and investors with the nationality of the contracting states. Since the first bilateral investment treaty (BIT) was signed in 1959 between Pakistan and Germany, the number of concluded IIAs has been rapidly increasing, reaching 3,196 by the end of 2012 (UNCTAD, 2013). Such an increase can be explained by competition between developing countries, which are mainly capital-importing countries, to attract foreign investment by committing to protecting investors' rights, despite bearing reduced policy tools.

The investor-state dispute settlement (ISDS) clauses are a main investor protection mechanism, adopted by most IIAs. The ISDS clauses enable foreign investors to take legal action in international arbitration against host countries, thus giving them a fair hearing opportunity before an independent and neutral tribunal. Since the first publicly available ISDS case was initiated in 1987, the number of known ISDS cases has been rising and reached 568 by the end of 2013, with 57 cases registered in 2013 alone (UNCTAD, 2014b). However, the increasing number of ISDS cases has brought concerns for host countries and has revealed deficiencies of the current ISDS mechanism such as a lack of transparency, inconsistencies of arbitration decisions and the possibility of treaty shopping.

Treaty shopping refers to the conduct of foreign investors who deliberately shop at their convenience for home countries that have favourable IIAs with the host countries where their investments are to be made (Van Harten, 2010; Skinner et al., 2010; UNCTAD, 2005). The typical practice of treaty shopping in international investment arbitration is witnessed when claims are brought by an investor whose capital originates from corporations or natural persons of different nationality, who cannot directly resort to international arbitration due to the absence of IIA between their home country and host country. The practice of treaty shopping is controversial because of its undesirability and still-disputed legality. Until

¹ According to the UNCTAD (2013), this term refers not only to bilateral investment treaties (BITs) but also to economic agreements that include investment-related provisions, such as framework agreements on economic cooperation and free trade agreements (FTAs) that have investment chapters.

recently, many host countries had not realised that broad languages in their IIAs could subject themselves to the practice of treaty shopping, which would result in the reduced scope of their regulatory policy tools even to unintended nationals. Treaty shopping also violates the principle of reciprocity on which IIAs are based and therefore, undermines the legitimacy of the ISDS mechanism. Recognising such consequences, the European Parliament, in 2011, called for the assessment of the causal relationship between a broad definition of ‘foreign investors’ and the abusive practices of some enterprises to file against their own countries via BITs signed by third countries as well as a clearer definition of investment and investors (European Parliament, 2011, para.E&J) so that speculative forms of investment would not be protected. In a similar respect, the OECD (2008a, p.13) has also set the use of ‘appropriate’ international dispute settlement mechanisms as one of the guidelines for multinational enterprises.

Despite increased attention to treaty shopping, however, little empirical research has been carried out in this area. There have been some analyses² on understanding the scale of treaty shopping in Dutch BITs and on a few specific legal cases but there has not been an effort to grasp the overall size of treaty shopping in international investment arbitration. This may be due to the lack of transparency in the ISDS system, which limits the knowledge of disputes’ existence, the access to the arbitration process and the access to the decisions (Blackaby, 2003, p.359) and the nature of treaty shopping that it is hard for a third party to find out how investments are structured and the motives behind such structuring. However, these obstacles should not prevent more extensive research on treaty shopping because knowing the scope of the practice should be the first step in dealing with the issue.

Against this backdrop, this paper focuses on estimating how frequently treaty shopping has taken place in international investment arbitration by quantifying the cases of ‘potential treaty shopping’ out of the publicly available ISDS cases. I define ‘potential treaty shopping’ as when a claimant has its parent company incorporated or headquartered in a different country and I try to verify such information via web portal searches and arbitration decisions or awards. In addition, to find out characteristics of potential treaty shopping cases, I also look (i) whether there was an applicable IIA with ISDS clauses between the country of a claimant’s parent company and host country and (ii) whether the invoked IIA has the denial of benefits clause. However, as the quantification of potential treaty shopping cases alone,

² Such as skinner et al. (2010) and Van Os & Knottnerus (2011)

without knowing how it has been treated in international arbitration, cannot bring as many implications, I also analyse a few legal cases where treaty shopping has been an issue and find out how arbitral tribunals have differently perceived and responded to such a practice.

This paper will develop in the following manner. The first chapter explains the theoretical background which the analysis of this paper is based on: ISDS mechanism and treaty shopping, including related elements such as a definition of investors and the denial of benefits clause. The second chapter attempts to quantify potential treaty shopping cases with the methodology used, main findings and limitations of the analysis. The third chapter analyses how arbitral tribunals have perceived treaty shopping differently by looking into the arbitration decisions or awards of representative cases. Based on these two main analyses, the fourth chapter draws implications of treaty shopping for developing countries and the current international investment regime. The paper will then conclude with a discussion of how this research contributes to the field of international investment arbitration as well as its limitations.

I. Theoretical Background

1. ISDS mechanism

One of the most distinctive features of IIAs is the inclusion of ISDS clauses. The ISDS mechanism enables foreign investors to take legal action in international arbitration against the host country where investments are made, for its alleged breach of an obligation under a treaty to which both the home country of the foreign investor and the host country are contracting parties. Upon the submission of claims by an investor, an arbitral tribunal is formed according to a set of rules³ which contracting parties of the treaty have agreed to. The arbitral tribunal then produces a final and binding decision, which could order monetary compensation to the respondent state in cases where the investor's claims are accepted (International Institute for Sustainable Development, 2014).

³ In most IIAs, these are either the Convention of the International Centre for Settlement of Investment Disputes (ICSID) or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

Before the ISDS mechanism was introduced in the mid-twentieth century, disputes between a foreign investor and host state could be resolved either by an investor bringing claims before a court or administrative tribunal of the host state or by an investor resorting to its home government to seek diplomatic protection (OECD, 2012, p.7; UNCTAD, 2013, pp.111-112). The former option could subject the claimant to partial and disadvantageous decisions under political pressure due to the nature of claims that they challenge policies or measures taken by the host country whereas in the latter case investor's interests would not be represented as effectively as when investors bringing claims themselves (Bernardini, 2011, p.246; Blyschak, 2011b, p.195). Therefore, ISDS clauses, which aim to create a forum offering foreign investors a fair hearing before an independent and neutral tribunal, have soon appeared in most IIAs, as it can be seen as increased legal protection to foreign investors and therefore, as an incentive for foreign investors to invest (OECD, 2012, p.8; Tienhaara, 2006, p.76). In particular, the inclusion of ISDS clauses would be a significant advantage for countries whose legal system is unreliable and local courts are ill-equipped.

However, as the number of ISDS cases rises, antipathy towards the current ISDS system has grown as well. Some of the 'systemic deficiencies' of the ISDS mechanism that the UNCTAD (2013, p.112) points out are: (i) a lack of transparency that its proceedings can be kept fully confidential even in cases involving public interest, (ii) inconsistencies in arbitration decisions, because they are not binding to precedents and arbitration is on ad-hoc basis and (iii) the possibility of treaty shopping, which is a main concern of this paper, deriving from the fragmented regime of thousands of individual IIAs. This led some countries to abandon ISDS clauses or withdraw from the ICSID Convention. For example, in 2011 Australia decided to abandon ISDS clauses in future IIAs, recognising that the ISDS mechanism confers greater legal rights on foreign investors compared to domestic investors and restricts the room of policy manoeuvre (Australian Government, 2011). Furthermore, Bolivia, Ecuador and Venezuela withdrew from the ICSID in 2007, 2009 and 2012, respectively (Peterson, 2009; Ripinsky, 2012).

2. Treaty shopping

2.1. What is treaty shopping and why does it matter?

The term ‘treaty shopping’ can be defined as the conduct of foreign investors who deliberately shop at their convenience for home countries that have favourable IIAs with the host countries where their investments are to be made so that their investment can qualify for protection conferred by the treaties (Van Harten, 2010; Skinner et al., 2010; UNCTAD, 2005; Gaukrodger & Gordon, 2012). Treaty shopping takes place in two dimensions; one is nationality planning of natural persons, when a natural person acquires another or additional nationality; the other is nationality planning of legal persons, or corporations, when an investment is structured through a corporate entity in a third country (Gaukrodger & Gordon, 2012; Wilske, 2011). Nationality planning can occur before a dispute arises as well as after, such as when selling the disputable asset to a subsidiary established in a third state that the host state has a more favourable IIA with (Skinner et al., 2010, pp.260-261). Treaty shopping should be distinguished from ‘forum shopping,’ although sometimes used interchangeably, as the latter means choosing the most favourable forum out of already-available multiple fora, such as choosing between ICSID and arbitration under UNCTRAL arbitration rules or between domestic courts and international arbitration (Gaukrodger & Gordon, 2012, p.52).

There are typically two situations which can motivate investors to engage in treaty shopping: (i) when an investor’s home country X does not have IIA with a host country Y but a third country Z has IIA with country Y; (ii) when country X has IIA with country Y but country Z has more advantageous IIA with country Y (Skinner et. al, 2010, p.267). From an investor’s perspective, an IIA can be more advantageous than another in terms of substance (i.e. stronger protection of investor’s rights) or procedure (i.e. inclusion of ISDS clauses and ease of invoking such clauses). The following Figure 1 depicts those two situations.

So, why should treaty shopping matter? Although some scholars (Dolzer & Schreuer, 2012) argue that treaty shopping is not illegal as long as investors meet the nationality requirement stipulated in the applicable IIA, there certainly are aspects which make treaty shopping undesirable. Firstly, treaty shopping is an unintended consequence of host countries

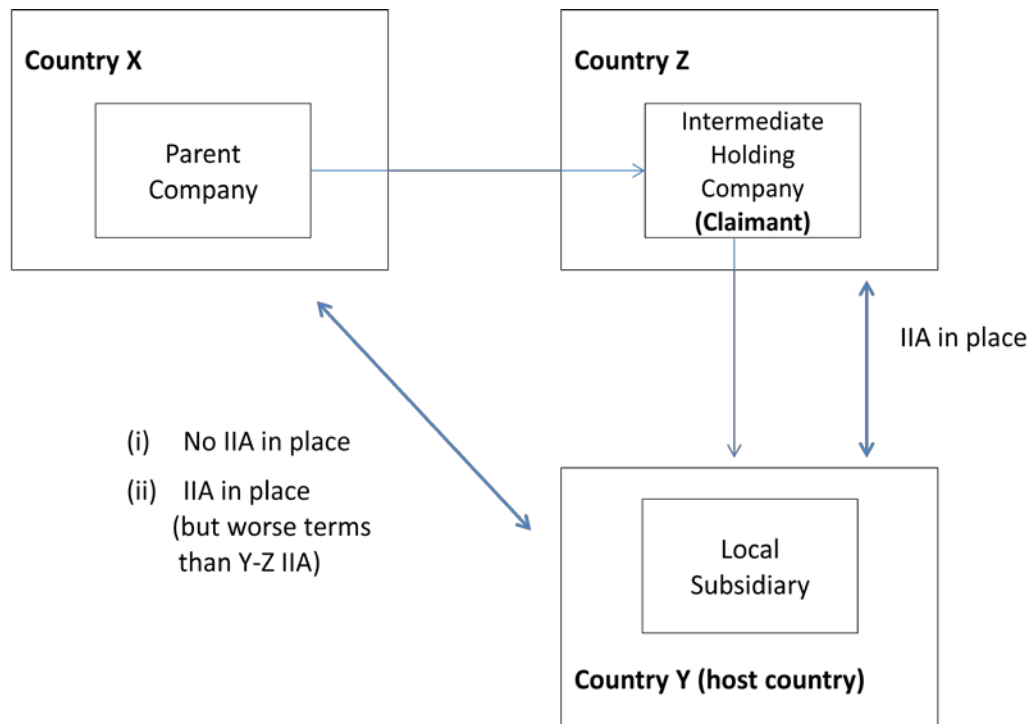


Figure 1. Typical situations of treaty shopping (modified from the figure in Van Os & Knottnerus, 2011, p.10)

– most host countries seem not to have anticipated that broad languages in IIAs would give ground for treaty shopping (Van Os & Knottnerus, 2011, p.11; Guzman, 1998). Secondly, treaty shopping violates the principle of reciprocity that IIAs are based on by establishing reciprocal rights and obligations between contracting parties (Van Os & Knottnerus, 2011, p.12; Gaukrodger & Gordon, 2012, p.57). Under the practice of treaty shopping, investors of a third country can benefit from an investment treaty without its home government undertaking any obligation created by the treaty (Gaukrodger & Gordon, 2012, p.57). Thirdly, from a host country's welfare perspective, treaty shopping results in a reduced scope of regulatory tools of the host country, since it exposes the host country to claims by investors who would otherwise not be eligible to invoke a treaty when regulatory action is taken (Van Os & Knottnerus, 2011, p.12; Muchlinski, 2011, p.19). Fourthly, treaty shopping creates a situation where the playing field among domestic investors is not level because the host country nationals seeking to have access to international investment arbitration by establishing a corporate entity in a third country are privileged compared to their local competitors who are short of resources and access to legal expertise to practice treaty shopping (Muchlinski, 2011, p.19).

2.2. Determining the nationality of investors

How to define the nationality of investors is a key determinant of the scope of treaty shopping; depending on how an investment treaty defines the link required between the host country and investors, the range of investors eligible to bring claims under the treaty will be decided (Martin, 2011; Gaukrodger & Gordon, 2012; OECD, 2008b).

Almost all IIAs give criterion of determining investors' nationality when defining investors. First of all, IIAs tend to adopt the following four criteria to determine the nationality of legal persons: (i) place of incorporation, (ii) place of its seat, i.e. administrative seat or statutory seat of a company, (iii) place of constitution in accordance with the law in force in the country, (iv) the country of control⁴, i.e. nationality of its majority of shareholders (German Branch of the International Law Association [ILA], 2011; OECD, 2008b, pp.18-19). It seems that the place of incorporation or place of constitution are the most frequently used in BITs concluded between 1995 and 2006 (Gaukrodger & Gordon, 2012, pp.55-56). On the other hand, the most commonly used criterion to determine the nationality of natural persons is citizenship according to the national law of each contracting party, although residence of the investor is also considered in some cases⁵ (ILA, 2011, p.17).

Legal persons lack the inherent effects of a natural person's nationality; they exist only through extraneous ownership (ILA, 2011, p.45). In this respect, "corporate nationality ... is peculiarly subject to manipulation" (American Law Institute, 1987, §203, cited in ILA, 2011, p.45). Therefore, nationality planning of corporations seems to be more of issue in international investment arbitration than that of natural persons.

2.3. Denial of benefits

According to UNCTAD (2013, p.119), the 'denial of benefits' clause in IIAs gives contracting states the right to "deny treaty protection to investors who do not have substantial

⁴ Usually this criterion is used to give protection to legal persons who are not incorporated or constituted in contracting parties but are controlled by nationals of contracting parties.

⁵ Article 8(5) of the Argentina–United Kingdom BIT stipulates that provisions regarding Settlement of Disputes between an Investor and the Host State do not apply when an investor is a natural person who has been ordinarily resident in the territory of the host state for a period of more than two years before the original investment was made.

business activities⁶ in their alleged home state and who are owned and/or controlled by nationals of the denying state or of a state not a party to the treaty.” The objective of the denial of benefits clause is to exclude the so-called shell companies, which are established in the territory of a contracting state only to benefit from a certain IIA but do not have an economic connection to the state. Therefore, it is considered as a countermeasure for host states to deal with treaty shopping practices (Dolzer & Schreuer, 2012, p.55).

The denial of benefits clause seems to have originated from the U.S. treaties of Friendship, Commerce and Navigation (FCN treaties) after World War II (Mistelis & Baltag, 2009). For example, the U.S. FCN Treaty with China, signed in 1946, states that each contracting party reserves the right to deny any of the rights and privileges accorded by the Treaty to corporations or associations created under the laws of the other contracting party which is directly or indirectly owned or controlled by investors of any third countries (Ibid., p.1304). These days, similar wording is often seen in most BITs signed by the United States⁷ and the Energy Charter Treaty (ECT), among others. For example, the denial of benefits clause, Article 17(2)⁸ of the United States 2004 Model BIT, a more elaborate version than that of the 1994 Model BIT is as follows:

A Party may deny the benefits of this Treaty to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party and persons of a non-Party, or of the denying Party, own or control the enterprise.

6 Although treaties in general do not further define ‘substantial business activities,’ it seems to imply activities well above minimum business activities, such as paying taxes or holding shareholders meetings, which might be already required under the law for a corporation to exist (ILA, 2011, p.64)

7 Most of the US BITs have denial of benefits as a separate clause, although some signed before 1994 have similar wording inserted in the provision defining investors (Mistelis & Baltag, 2009, p.1304).

8 The Article 17 also denies benefits when an investor of the other Party is owned or controlled by persons of a non-Party with which the denying Party does not maintain diplomatic relations with or with respect to which the denying Party adopts measures which would be violated if the treaty is applied. However, this is not within the scope of this paper.

II. Quantification of Potential Treaty Shopping Cases

In this chapter, I look into past ISDS cases to estimate how often treaty shopping might have occurred in international investment arbitration.⁹ Due to the feasibility of data collection, the quantitative analysis in this chapter is limited to ‘potential treaty shopping’ cases where a claimant has a parent company incorporated or with an administrative seat (headquarters) in another country, regardless of which nationals actually own or control the parent company. Furthermore, the analysis is also limited to nationality planning of corporations because it is almost impossible to find out that of natural persons without knowing specific backgrounds of claimants. Once potential treaty shopping cases are verified, I attempt to sort the cases according to countries involved as a host country, the home country of the claimant and the home country of the parent company of the claimant. In addition, I also conduct two more layers of analysis to identify characteristics of potential treaty shopping cases: (i) whether there already existed an IIA between home country of the parent company and host country and if so, whether the IIA contains ISDS clause and (ii) whether the treaty applied to the case in question includes the denial of benefits clause.

1. Methodology

1.1. Selecting and gathering data

The subject of this analysis is the publicly available ISDS cases listed on the ‘UNCTAD database of treaty-based investor-state dispute settlement cases (UNCTAD, 2014a)’ as of the 28 April, 2014, which constitutes a total of 499 cases, initiated between 1987 and 2012, regardless of their arbitration status. The UNCTAD database seems to be the best available source of publicised ISDS cases, encompassing cases brought before the ICSID and the Stockholm Chamber of Commerce and under the Arbitration Rules of the UNCTRAL.¹⁰ The information about the 499 cases was then verified using the Energy Charter webpage (Energy Charter Secretariat, 2014) which lists ISDS cases brought under the

⁹ The analysis in this chapter cannot ‘confirm’ treaty shopping cases but estimates ‘potential’ treaty shopping cases because it is impossible to verify the genuine intention of multinational corporations which seem to have engaged in treaty shopping.

¹⁰ The database has been a basis for analysis in a few quantitative research works regarding IIAs in the past such as Gallagher & Shrestha (2011) and Franck (2004 & 2007).

ECT, the Investment Treaty Arbitration (2014) and the ICSID (2014) websites as well as arbitration decisions and awards of cases.

1.2. Coding process

To verify whether a claimant has a parent company incorporated or headquartered in another country, I mostly relied on general web portal searches (with keywords such as parent, affiliate and subsidiary) and Businessweek company lookup (Businessweek, 2014), where the existence or even the nationality of the parent company could be confirmed. In some cases, this was complemented by arbitration decisions or awards and research papers. In cases where a claimant's direct parent is a subsidiary of another entity, the parent company of the claimant refers to its 'ultimate' parent company.

Based on this search, the ISDS cases are grouped into three categories: potential treaty shopping cases, non-treaty shopping cases and unverified cases. Taking a conservative approach, only those cases where a claimant is confirmed to have a parent company incorporated or headquartered in another country are codified into potential treaty shopping cases¹¹. By contrast, non-treaty shopping cases are those where the information of the claimant is found but claimant (i) is verified to have a parent company in the same country or (ii) does not seem to have a parent company. A case is considered unverified when no further information about a claimant was found outside arbitration decisions or awards.

To see if treaty shopping particularly affects developing countries, countries involved in potential treaty shopping cases were then classified according to the World Bank's criterion (World Bank, 2014) based on gross national income (GNI) per capita in 2013, which categorises the world's economies into four groups: high-income economies (GNI per capita of \$12,746 or more), upper-middle-income economies (GNI per capita less than \$12,746 but \$4,125 or more), lower-middle-income economies (GNI per capita more than \$1,045 but less than \$4,125) and low-income economies (GNI per capita of \$1,045 or less). This paper also borrows use of the term 'developing countries' by the World Bank's classification, which refers to low- and middle-income economies.

¹¹ In defining the parent-subsidiary relationship, I included not only direct subsidiary but also indirect subsidiary and affiliate.

For potential treaty shopping cases, the UNCTAD database of International Investment Agreements (UNCTAD Division on Investment and Enterprise, 2014) was used to check whether IIAs already existed between the home country of the parent company and the host country. For matters of convenience, I used ‘the time when the case was initiated’ as a basic criterion. Only when the time between the initiation of a case and when the treaty went into force was less than five years, I verified in arbitration decisions or awards ‘whether the dispute arose before the treaty entered into force.’¹² Once the pre-existence of an IIA between the two countries was confirmed, I also checked if the IIA includes ISDS clauses, by looking at the IIA’s text provided in the database. Texts provided by the same UNCTAD database were also used to determine whether the treaty applied to a case includes the ‘denial of benefits’ clause, either as a separate clause or as a part of the definition clause. For some treaties whose texts are only available in languages other than English, a google translator was used to detect the inclusion of ISDS clauses or the denial of benefits clause to an extent to which a translated text is comprehensible.

2. Findings

2.1. General findings

Out of the 499 ISDS cases available in the UNCTAD database, 9 cases do not have enough information for the analysis; at least one entry is unknown among the respondent country and the nationality of claimant. 70 cases are found to have been brought only by natural persons, which would be beyond the scope of analysis of this chapter, since the subject of the analysis is limited to the cases brought by legal persons. Therefore, 420 cases of the 499 cases are subject to analysis in this chapter. Based on the coding process explained in the methodology chapter, 66 cases were found to be potential treaty shopping cases, which accounts for 15.7% of the 420 cases (See Appendix 1A for the list of potential treaty shopping cases). This can be considered a significant portion given that treaty shopping has only been an issue in a few cases. Although the first known ISDS case was initiated in 1987, it was not until 2000 that the first potential treaty shopping case appeared. The number of potential treaty shopping cases shows an increasing trend between the year 2000 and 2012, with those

¹² When such verification was unavailable, I conservatively assumed that an IIA existed.

initiated in 2012 reaching 11 cases. For the rest of the 420 cases, 317 cases are considered non-treaty shopping cases and 37 cases remain unverified (See Appendix 2 and Appendix 3 for the lists of non-treaty shopping cases and unverified cases, respectively).

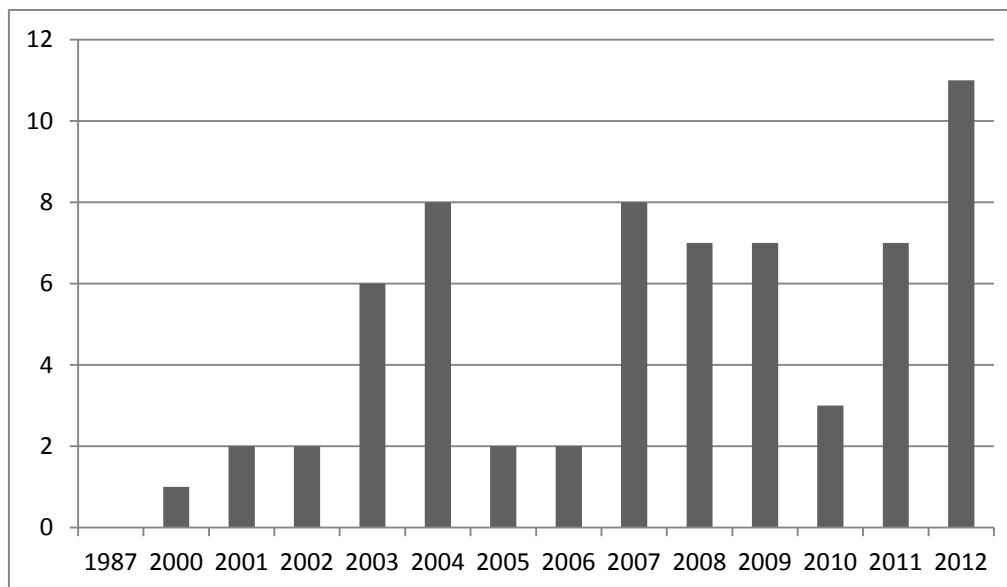


Figure 2. The number of potential treaty shopping cases by the year of initiation

2.2. Countries involved in potential treaty shopping

2.2.1. Host country

Host country refers to the respondent state which has hosted investment from claimants. Venezuela has appeared most frequently as a host country, involved in 11 cases, followed by India (8 cases) and Hungary (5 cases). Both Argentina and Czech Republic have been involved in 4 cases, Bolivia and Russia, 3 cases (See Table 1 for the rest of the respondent states). According to the World Bank's classification, high-income countries were respondent states in 13 cases, whereas upper-middle-income countries and lower-middle-income countries, 29 cases and 24 cases, respectively. No case has been brought against a low-income country. Therefore, developing countries have been respondents in 53 out of 66 cases, which accounts for 80.3% of the potential treaty shopping cases. Moreover, countries in Latin America and Caribbean (27 cases, 40%) as well as Europe and Central Asia (22 cases,

34%) have been faced with the highest number of claims whereas only one case is brought against a Sub-Saharan African country.

Country	Frequency	Income group	Region
Venezuela	11	Upper middle income	LAC
India	8	Lower middle income	SA
Hungary	5	Upper middle income	ECA
Argentina	4	Upper middle income	LAC
Czech Republic	4	High income	ECA
Bolivia	3	Lower middle income	LAC
Russia	2	High income	ECA
Egypt	2	Lower middle income	ME & NA
Georgia	2	Lower middle income	ECA
Kazakhstan	2	Upper middle income	ECA
Mexico	2	Upper middle income	LAC
Mongolia	2	Lower middle income	EAP
Australia	1	High income	EAP
Azerbaijan	1	Upper middle income	ECA
Chile	1	High income	LAC
Ecuador	1	Upper middle income	LAC
El Salvador	1	Lower middle income	LAC
Guatemala	1	Lower middle income	LAC
Indonesia	1	Lower middle income	EAP
Macedonia	1	Upper middle income	ECA
Paraguay	1	Lower middle income	LAC
Peru	1	Lower middle income	LAC
Poland	1	High income	ECA
Republic of Korea	1	High income	EAP
Romania	1	Upper middle income	ECA
Senegal	1	Lower middle income	SSA
Slovak Republic	1	High income	ECA
Slovenia	1	High income	ECA
Turkmenistan	1	Upper middle income	ECA
Uruguay	1	High income	LAC
Yemen	1	Lower middle income	ME & NA
Total	66		

Table 1. Host countries in potential treaty shopping cases

(LAC: Latin America & Caribbean; SA: South Asia; ECA: Europe & Central Asia; ME & NA: Middle East & North Africa; EAP: East Asia & Pacific; SSA: Sub-Saharan Africa)

2.2.2. Home country of claimant

In quantifying claimants' nationalities, the number of claimants of different nationalities in each case is added up rather than the mere number of cases.¹³ *Ternium S.A. and Consorcio Siderurgia Amazonia S.L. v. Bolivarian Republic of Venezuela* and *Itera International Energy LLC and Itera Group NV v. Georgia (ICSID Case No. ARB/09/22 and ICSID Case No. ARB/08/7)* are the three cases where two claimants of different nationalities brought claims invoking two different IIAs, and therefore, two nationalities are counted. On the other hand, in other two cases, *Emmis International Holding B.V. and others v. Hungary* and *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, where there also are claimants of two different nationalities, claimants of only one nationality seem to have engaged in treaty shopping and therefore, only one nationality is counted. In the end, the base unit for this analysis is 69 claimants rather than 66 cases.

Dutch firms seem to have been most frequently involved in treaty shopping as the number of cases where Dutch investors with a parent company outside the Netherlands act as claimants reaches 27, meaning that 38% of the potential treaty shopping cases have been initiated by Dutch investors. It also accounts for a staggering 54% of the 50 ISDS cases initiated by Dutch investors between 1987 and 2012. These findings suggest that the Netherlands' BITs might seem particularly advantageous to investors, which is also supported by some researchers in that broad definitions of 'investment' and 'investor' in Dutch BITs attract investors with not much economic linkage to the Netherlands to initiate claims under the Dutch BITs (Van Os & Knottnerus, 2011; Henquet, 2010). Besides the Netherlands, United Kingdom, United States, Cyprus and Luxembourg seem to have been frequently used as a home country of convenience by claimants (See Table 2 for the rest of home countries of claimants).

When looking at both the host country and the home country of the claimant, seven cases have been brought by Dutch investors against Venezuela, followed by four cases brought by Dutch investors against Czech Republic. In addition, the finding that out of the eleven cases brought against Venezuela between 1987 and 2012, seven cases were via the Netherlands – Venezuela BIT explains why Venezuela withdrew from the BIT with the

¹³ In some cases, there is more than one nationality of claimants so counting the number of cases cannot reflect this.

Netherlands in 2008 (Peterson, 2008; Van Harten, 2010, p.4). Table 3 is the cross tabulation of the top 6 host countries which have been most frequently involved in potential treaty shopping cases and the home country of convenience that claimants chose to bring claims against those host countries.

Country	Frequency
Netherlands	27
United Kingdom	8
United States	7
Cyprus, Luxembourg	4
Belgium, Mauritius	3
Singapore, Spain	2
Argentina, Austria, Barbados, Chile, France, Hong Kong, Italy, Switzerland, UAE (9 countries)	1
Total	69

Table 2. Claimants' home countries in potential treaty shopping cases

Host country Claimant's home country	Venezuela	India	Hungary	Argentina	Czech Republic	Bolivia	Total
Netherlands	7	2	1		4	2	16
United Kingdom		1	2	1			4
Cyprus		1	1				2
Luxembourg	2					1	3
Belgium			1	2			3
Mauritius		3					3
Singapore		1					1
Spain	2						2
Barbados	1						1
Chile				1			1
Total	12¹⁴	8	5	4	4	3	

Table 3. Cross tabulation of top 6 host countries and corresponding claimants' home countries

¹⁴Although only 11 cases were brought against Venezuela, the number of claimant's nationality totals 12 because in *Ternium S.A. and Consorcio Siderurgia Amazonia S.L. v. Bolivarian Republic of Venezuela*, two claimants (one from Spain and the other, Luxembourg) brought the case.

2.2.3. Home country of parent company of the claimant

Out of the 66 potential treaty shopping cases, the United States is found to be the home country of a parent company of the claimant in 21 cases (31.8%). British and Italian corporations have also been frequently involved in potential treaty shopping cases as the parent company of claimants (six and five cases, respectively). According to the World Bank's classification, in 58 cases (87.9%) parent companies are nationals of high-income countries and only in 8 cases, upper-middle-income countries. This leaves no case where a parent company is a national of either lower-middle-income countries or low-income countries.

Interestingly, there is a case where the claimant's parent company actually has the nationality of the respondent state: *Azpetrol International Holdings B.V. and others v. Republic of Azerbaijan*. In this case, all the claimants are legal persons of the Netherlands but the ultimate parent of them are Azpetrol, a legal person of Azerbaijan, which is a respondent state in the case.

Country	Frequency	Income Group
United States	21	High income
United Kingdom	7	High income
Italy	5	High income
Canada	3	High income
France	3	High income
Russia	2	High income
Luxembourg	2	High income
Mexico	2	Upper middle income
Switzerland	2	High income
Australia, Belgium, Germany, Japan, Korea, New Zealand, Norway, Spain, Israel, Bahamas, Cyprus, Kuwait, UAE (13 countries)	1	High income
Argentina, Azerbaijan, Kazakhstan, Malaysia, South Africa, Turkey (6 countries)	1	Upper middle income
Total	66	

Table 4. Home country of parent company of the claimant

2.3. Whether an IIA already existed between home country of parent company of the claimant and host country

Excluding the *Azpetrol International Holdings B.V. and others v. Republic of Azerbaijan*, where the claimant's parent company has the nationality of the respondent state, there are 65 potential treaty shopping cases subject to this analysis (See Appendix 1B for the detailed data of each case). In 31 cases, there was no IIA applicable to the case between the home country of parent company of the claimant and the host country.¹⁵ In particular, in *Aguas del Tunari S.A. v. Bolivia* and *Fireman's Fund Insurance Company v. Mexico*, effective BITs already existed at the time of initiation of each case but it is verified from arbitration decisions or awards that disputes arose before the BITs became effective, thus those two cases are included.

Out of the remaining 34 cases with applicable IIAs, for two cases (*Philip Morris v Australia* and *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*), the respective IIAs (United States-Australia BIT and Israel-Egypt BIT) do not contain ISDS clauses, meaning that the parent companies themselves could not bring claims before international arbitration through those IIAs. For other two cases (*Rompotrol Group N.V. v. Romania* and *Garanti Koza LLP v. Turkmenistan*), there was no access to the texts of relevant IIAs (Kazakhstan-Romania BIT and Turkey-Turkmenistan BIT), so whether or not they have ISDS clauses is not verified.

Therefore, for 30 cases, or 46.8% of the 65 potential treaty shopping cases, there were applicable IIAs with ISDS clauses between the host country and the home country of the parent company. For those cases, investors might have been motivated to shop for treaties since applicable IIAs between their home country and the host country might not be as advantageous. However, for the five cases which were brought under the ECT and in which the home country of the parent company is also a contracting party to the Treaty, the possibility of treaty shopping is significantly reduced, as the parent company would not have needed to bring claims through its subsidiary in a third country.

¹⁵ There are three situations where there is no applicable IIA to a certain case : (i) there has been no IIA signed at all between the two countries, (ii) an IIA now exists but a dispute arose before the IIA entered into force, (iii) there was an IIA in effect when a dispute arose but not applicable to the case (for example, in *HICEE v. Slovak Republic*, both the host country and home country of the parent company were already contracting parties to the ECT but the dispute in question was not in the area covered by the treaty.)

2.4. Denial of benefits clause

Since seven out of the 66 potential cases of treaty shopping are brought under two IIAs, in total 73 legal instruments invoked for 66 cases are subject to this analysis (See Appendix 1B for the detailed data of each case). For Hungary-United Kingdom BIT and Yemen-UAE BIT, the inclusion of the denial of benefits clause was not verified¹⁶. Therefore, out of the 71 IIAs with valid information, only 17 IIAs (23.9%) include the denial of benefits clause, either as a separate clause or within the definition provision, implying that about three quarters of invoked IIAs in potential treaty shopping cases do not have the safeguard measure to protect host states from treaty shopping. In the end, it is only seven different IIAs (ECT, NAFTA, CAFTA-DR, United States-Georgia BIT, United States-Egypt BIT, Switzerland-Hungary BIT, CECA Singapore-India) invoked by claimants which have the denial of benefits clause.

3. Conclusion and limitations

After verifying whether a claimant has a parent company incorporated or headquartered in a third country, 66 potential treaty shopping cases were found. Analysing those cases by host country, home country of claimant and home country of claimant's parent company suggests that treaty shopping is negatively skewed towards developing countries; in about 80% of potential treaty shopping cases, developing countries have been respondent states whereas about 88% of the cases are brought by claimants which have a parent company incorporated or headquartered in developed countries. It has been also revealed that particular countries such as the Netherlands have been frequently used as a home country of convenience by investors, which implies that investors are attracted to certain countries with more advantageous IIAs. When considering who controls parent companies, there will be more cases similar to *Azpetrol International Holdings B.V. and others v. Republic of Azerbaijan*, where host country nationals bring claims against their own country via treaty shopping, and they will be further discussed in the next chapter as they seem to be of particular concern for respondent states and for some tribunals. Further analysis of an IIA already existed between the home country of the parent company of the claimant and the host

¹⁶ The legal text of the former was unavailable and that of the latter was only available in Arabic the English translation of which was beyond comprehension.

country and whether the IIA applied to a case has the denial of benefits clause has helped extrapolate some characteristics of potential treaty shopping cases and even inform an estimate of the investors' intention of treaty shopping.

There are some limitations to the quantitative analysis carried out in this chapter. First of all, the UNCTAD database of treaty-based investor-state dispute settlement cases is not an extensive list of all the publicly available ISDS cases. This is due to the ad-hoc nature of the current international investment arbitration consisting of multiple fora, which makes it difficult to keep the registry of claims. Secondly, it is impossible to know how many ISDS cases are out there which have not been made public and therefore, as Franck (2007, p.19) points out, it is difficult to establish whether the population of publicised ISDS cases is a representative subset of the population of all ISDS cases. It could be that private cases are more sensitive and controversial. Thirdly, given that it is hard to confirm that a claimant does not have a parent company merely because of a lack of relevant information online, some cases which are considered as non-treaty shopping cases in this chapter actually turn out to constitute treaty shopping when further information is provided.

III. How Has Treaty Shopping Been Perceived by Tribunals?

While the previous chapter focuses on grasping the landscape of treaty shopping in international investment arbitration by quantifying potential treaty shopping cases, this chapter aims to see how tribunals have perceived and reacted to the practice of treaty shopping; it is ultimately the tribunals' opinions and decisions which would influence investors' engagement in the practice. There are a few cases where tribunals have dealt with the matter – although in most cases they do not adopt the definite term of treaty shopping – and have had to decide whether to consider the origins of the claimant's capital in determining the claimant's eligibility to invoke a certain IIA.

1. Permissively

In *Saluka Investments B.V. v. The Czech Republic* (2006), a company within the Nomura group – a Japanese merchant banking and financial services group of companies – bought the shares in one of the major Czech banks and transferred them to another Nomura subsidiary, Saluka Investments B.V. (“Saluka”), incorporated under the laws of the Netherlands (para.1). Saluka later brought claims against the Czech Republic under the Netherlands- the Czech Republic BIT (Ibid.).

The Czech Republic contended that Saluka was not a real investor under the Netherlands-the Czech Republic BIT as it was “nothing more than a shell used by Nomura for its own purposes” and did not maintain real and continuous links to the Netherlands (Ibid., para.227). The Tribunal shared “sympathy for the argument that a company which has no real connection with a State party to a BIT, and which is in reality a mere shell company controlled by another company which is not constituted under the laws of that State, should not be entitled to invoke the provisions of that treaty,” admitting the subsequent possibility of abuse of the international arbitral procedure via practices of treaty shopping (Ibid., para.240). However, the Tribunal concluded that it should be guided by the terms of the Treaty where the parties have agreed to establish the Tribunal’s jurisdiction and it could not impose a narrower definition of investor which would have the effect of excluding entities such as Saluka from the Treaty’s protection when the Treaty only requires the claimant-investor to be constituted under the laws of the Netherlands (Ibid., para.229 & 241).

In *Yukos Universal Limited v. The Russian Federation* (“*Yukos Universal v. Russia*”) (2009), Russia’s argument that Yukos Universal was not entitled to the protection under the ECT since “it is a shell company beneficially owned and controlled by Russian nationals and, as such, by nationals of the host State” was also rejected by the Tribunal (para.407). Although the Tribunal also shared the sympathy that the Tribunal of *Saluka Investments B.V. v. The Czech Republic* had towards treaty shopping, it was of the view that “a treaty must be interpreted first on the basis of its plain language” as the Article 31 of the Vienna Convention on the law of treaties¹⁷ states (Ibid., para.411). Since the ECT Article 1(7), which defines investors, does not make further requirements other than the claimant be “duly organised in

¹⁷ Article 31(1) stipulates that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”

accordance with the law applicable in a Contracting Party,” the Tribunal held the view that “companies incorporated in Contracting Parties are embraced by the definition, regardless of the nationality of shareholders, the origin of investment capital or the nationality of directors or management” (Crawford, 2006, para.126, cited in *Yukos Universal v. Russia*, 2009, para.411).

In addition, the Tribunal of *Yukos Universal v. Russia* also conservatively interpreted the conditions and circumstances where a contracting party can exercise its right under the Article 17(1) of the ECT, the so-called denial of benefits clause, thus being “favourable to the interests of shell companies and their owners and controllers” (Blyschack, 2011b, p.201). The Tribunal concluded that Article 17(1) does not automatically deny the benefits of the ECT but rather ‘reserves the right’ of each contracting party to deny them and therefore, a party must ‘exercise’ the right to benefit from the provision (*Yukos Universal v. Russia*, 2009, para.456). Furthermore, affirming that the article is unavailable to respondent states to deny an investor standing once the investor has already commenced arbitral proceedings, the Tribunal made it even harder for respondent states to invoke the denial of benefits clause despite its presence (Blyschack, 2011b, p.181).

The Tribunal of *ADC Affiliate Limited and others v. The Republic of Hungary* (2006) had a similar position regarding the respondent’s argument that the claimants could not get Cypriot nationality under the Hungary-Cyprus BIT because (i) the source of funds and the control of the claimants rested with Canadian entities and (ii) they lacked a “genuine connection between the corporation and the State of its claimed nationality,” which Hungary argued is a fundamental requirement of the rules of international law (para.355&356). The Tribunal concluded that (i) considerations of where the claimants’ capital comes from and whose nationals control it are irrelevant because there is no room for the consideration of customary law principles of nationality when the matter of nationality is settled unambiguously by the ICSID Convention and the BIT and (ii) the genuine connection argument cannot be held either as no such requirement is present in the Hungary-Cyprus BIT (*Ibid.*, para.357&359).

Rejecting the respondent’s objection to the jurisdiction that the availability of the Netherlands-Bolivia BIT was merely the result of strategic changes in the corporate structure which rose to the level of fraud or abuse of corporate form, the Tribunal of *Aguas del Tunari*

S.A. v. Republic of Bolivia (2005) explicitly gave legitimacy to the practice of treaty shopping, that “it is not uncommon in practice, and – absent a particular limitation – not illegal to locate one's operations in a jurisdiction perceived to provide a beneficial regulatory and legal environment in terms, for example, of taxation or the substantive law of the jurisdiction, including the availability of a BIT” (para.330). The Tribunal also added that a broad definition of ‘national’ or ‘investor’ in many BITs is expression of the contracting parties’ intention to encourage investments through the availability of a neutral forum and therefore, the Tribunal should respect the plain language of treaties (Ibid., para.332).

2. Prohibitively

Although many tribunals took a conservative approach as stated above, the tribunals in the following two cases took a more prohibitive position towards the practice of treaty shopping. In *Phoenix Action, Ltd. v. The Czech Republic* (2009), the claim arose out of the acquisition of two Czech companies, Benet Praha and Benet Group, by Phoenix Action Ltd. (“Phoenix”), incorporated under the laws of Israel (Skinner et. al, 2010, p.280). Benet Praha and Benet Group were controlled by a Czech citizen and Phoenix was also controlled by his family members (Ibid.). Phoenix then brought claims against the Czech Republic under the Israel-Czech Republic BIT, complaining about the mistreatment of its investment (Benet Praha and Benet Group) by the Czech Republic that Czech courts failed to promptly resolve proceedings that Benet Praha and Benet Group were involved in and had already taken place before the acquisition by Phoenix (*Phoenix Action, Ltd. v. The Czech Republic*, 2009, para.2&31).

Reflecting that the purpose of the ICSID is “not to protect nationals of a Contracting State against their own State” but to “facilitate the settlement of disputes between States and foreign investors”, the Tribunal required that for an investment to benefit from the international protection of ICSID, the investment in question should be *bona fide* (Ibid., para.88&114). According to the Tribunal, considerations for a *bona fide* investment are (i) timing of the investment, (ii) timing of the claim, (iii) substance of transaction and (iv) true nature of the operation (Ibid., para.135-143). Then, taking those into account, the Tribunal concluded that the Phoenix’s pursuit of the arbitration was an abuse of the system of international investment arbitration and ascertained that accepting the Tribunal’s jurisdiction

for Phoenix's claim would allow pre-existing national disputes to be brought before ICSID by a transfer of economic interests to a foreign entity (Ibid., para.144). However, while clarifying that "a corporation cannot modify the structure of its investment for the sole purpose of gaining access to ICSID jurisdiction, after damages have occurred," the Tribunal also stated that investors can freely choose the vehicle through which they perform their investment, which meet the requirement of participating in the economy of the host State (Ibid., para.92&94).

The Tribunal of *Mobil Corporation and others v. Bolivarian Republic of Venezuela* (2010) reached a similar conclusion. In this case, Mobil Corporation, an American multinational oil and gas corporation, brought claims against the Government of Venezuela under the Netherlands-Venezuela BIT through its Dutch subsidiary, regarding the nationalisation measure against its investment in Venezuela. The Tribunal concluded that it had jurisdiction since the nationalisation measure by the Venezuelan authorities took place only after the restructuring of Mobil Corporation's investments (Ibid., para.193). The Tribunal also stated that restructuring is legitimate as long as disputes arise after the restructuring whereas restructuring investments merely to gain jurisdiction under a BIT for pre-existing disputes would constitute "an abusive manipulation of the system of international investment protection under the ICSID Convention and the BITs" (Ibid., para.205).

Although the Tribunal of *Tokios Tokelés v. Ukraine* (2004a) refused to consider the origin of the capital, or the nationality of predominant shareholders and managers, in determining the nationality of investor, contending that such requirement did not exist in the Ukraina-Lithuania BIT and the ICSID Convention (para.80&81), the President of the Tribunal, Prosper Weil, expressed dissenting opinion. In his dissenting opinion, he argued that Tokios Tokelés did not meet the requirement of having nationality of Lithuania, when considering the object and purpose of the ICSID Convention (*Tokios Tokelés v. Ukraine*, 2004b, para.5). He also stated that as the ICSID arbitration mechanism is meant only for disputes between States and foreign investors and serves to protect and encourage international private investment, the international character of an investment should be ascertained, in deciding the jurisdiction of the ICSID, which makes the origin of the capital relevant (Ibid., para.19&20). The ICSID mechanism is not meant to allow nationals of a state party to the ICSID Convention to use a foreign corporation, as a means of evading the jurisdiction of their domestic courts and the application of their national law (Ibid., para.30).

3. Conclusion

It seems that tribunals have failed to set a uniform criterion for dealing with the practice of treaty shopping. Some tribunals took a permissive position, refusing to bring additional considerations in deciding whether a claimant meets the requirement of national investor under an applicable treaty when the treaty in question simply requires incorporation or constitution test. Furthermore, the Tribunal of *Yukos Universal v. Russia* (2009) conservatively interpreted the denial of benefits clause by claiming that the presence of the clause does not automatically exclude the possibility of treaty shopping. The Tribunal of *Aguas del Tunari v. Republic of Bolivia* (2005) even gave legitimacy to treaty shopping, although the Tribunals of *Saluka Investments B.V. v. The Czech Republic* (2006) and *Yukos Universal v. Russia* (2009) recognised its undesirability, acknowledging the possible abuse of international investment arbitration system through the practice.

In contrast, the Tribunals of *Phoenix Action, Ltd. v. The Czech Republic* (2009) and *Mobil Corporation and others v. Bolivarian Republic of Venezuela* (2010) were warier of the treaty shopping practice, clearly rejecting the legitimacy of restructuring investments once a dispute arises. The Tribunal of *Phoenix Action, Ltd. v. The Czech Republic* (2009) and the chairman of the Tribunal of *Tokios Tokelés v. Ukraine* (2004b) highlighted the purpose of the ICSID Convention and accepted the need of considering external factors other than the mere text of a treaty in deciding the nationality of a claimant, which would make it more difficult for investors engaging in treaty shopping to benefit from a targeted treaty.

IV. Implications

1. Lessons for developing countries

The findings from the quantitative analysis of the previous ISDS cases have shown that developing countries have been respondents in about 80% of the potential treaty shopping cases. Although this is in line with the general fact that more ISDS cases are brought against developing countries than developed countries since the former are mostly capital-importing

countries¹⁸, it still suggests that developing countries, in particular, should be warier of the consequences of their commitment to international investment arbitration through ISDS clauses.

Countries give consent to compulsory international investor-state arbitration, in spite of sacrificing policy space, or the ability to regulate investment for social goals and ensure that foreign investment meets national development goals, with the belief that such commitment would attract more foreign direct investment (FDI) (Van Harten, 2008, p.102). However, despite the findings of Neumayer and Spess (2005) that developing countries which sign more BITs with developed countries tend to have an increase in FDI inflows, many researchers have identified that the role of BITs in attracting FDI remains uncertain (Hallward-Driemeier, 2003; Tobin & Rose-Ackerman, 2003; Chowla, 2005). Compared to the uncertain gain from BITs, loss is rather definite; the first is the huge financial burden, which a host country should undertake in case a tribunal awards in favour of the investor and the second is the reduction of policy tools that policy makers can freely utilise without being concerned about being brought before an international arbitration by foreign investors (Hallward-Driemeier, 2003). The study by Gallagher and Shrestha (2011) confirms empirically that such loss is more skewed towards developing countries in that (i) even if there are not many claims against the least developed countries they are in a larger proportion to those countries' share of global foreign investment and (ii) awards to be paid to investors by developing countries are much larger relative to their size of the economy developing countries, meaning that the loss would affect developing countries more greatly than developed countries.

The finding that the practice of treaty shopping is skewed negatively towards developing countries adds another dimension to the loss that developing countries would experience under the current ISDS mechanism. The practice of treaty shopping brings unexpected and unintended results of expanded renunciation of their policy autonomy to host country's own nationals as well as nationals of non-party states to an IIA, who otherwise would not be able to bring the host state's regulatory authority under international arbitration. This increased loss of policy space should also be taken into account when examining the effects of IIAs.

¹⁸ Among 499 publicly available ISDS cases initiated between 1987 and 2012, 374 cases were brought against developing countries, accounting for 76.5% of the 489 case, excluding 10 cases where the host country is unknown.

2. Need for careful designing of IIA text

The reason why tribunals have permissively perceived treaty shopping in the past few relevant cases is that they were reluctant to apply general international law regarding nationality¹⁹ but bound themselves strictly to the terms of treaty. This is the so-called principle of *lex specialis*, meaning that when a matter is governed both by a general law (general international law) and a special law (international investment law), the latter overrides the former (United Nations, 2006, cited in ILA, 2011). Moreover, in the current international investment arbitration system where the doctrine of *stare decisis*²⁰ is not held, prohibitive responses of the Tribunals of *Phoenix Action, Ltd. v. The Czech Republic* (2009) and *Mobil Corporation and others v. Bolivarian Republic of Venezuela* (2010) do not direct opinions of future tribunals. The finding that certain treaties such as Dutch BITs with lax definition of investors and without the denial of benefits clause have been used more frequently as a vehicle in the potential treaty shopping cases also adds to the importance of the terms of treaty. Therefore, the most definite way for host countries to avoid being brought before international investment arbitration by the practice of treaty shopping is to use clear language when designing the definition of investors and the denial of benefits clause.

Countries should pay more attention to the wording of treaty and its consequences when negotiating new IIAs. For already signed IIAs, efforts to revise them to reduce the scope of investors eligible to invoke the agreements are needed. However, as revision requires consent by all contracting parties, it might not be as easy to gain consent from mainly capital-exporting states. In this respect, Van Harten (2008) suggests a joint strategy, such as seeking joint interpretations, to be pursued by developing countries, which are mainly capital-importing countries, for the revision of investment treaties.

However, developing countries might not have adequate capacity to fine-tune IIAs to safeguard their interests and block unintended consequences such as being victimised by the practice of treaty shopping. UNCTAD (2005) views that the least developed countries especially lack the human and financial resources to properly safeguard their interests under the current investment regime and underlines the importance of capacity-building technical

¹⁹The requirement of the ‘genuine link’ stated in the *Nottebohm* case of the International Court of Justice is regarded as principle in general international law although whether it is only limited to diplomatic protection of natural persons or can be applied to deciding nationality of corporations is disputed (ILA, 2011, pp.55-58).

²⁰ Under the doctrine of *stare decisis*, tribunals should be bound to the decisions or principles by precedent tribunals.

cooperation. Many researchers have also suggested capacity building in legal expertise for developing countries as a feasible improvement to the current investment regime (Walde, 2004; Tianhaara, 2006). However, most discussions have focused on giving legal aid once countries face disputes; *ex-ante* capacity building should also be considered to help countries better understand the current international investment regime and thus, clearly design their IIA texts so that they can avoid otherwise potential disputes.

3. Need for a multilateral investment regime

Bilateralism has become an even more increasing trend in the international investment regime as a result of developing countries successfully blocking the launch of negotiations for more extensive WTO agreement on investment in the 2003 Cancun Ministerial meeting (Chowla, 2005; Smythe, 2003). In spite of the belief by developing countries that a multilateral agreement on investment would increase burdens on developing countries, a well-balanced multilateral investment regime could benefit them particularly reducing the possibility of treaty shopping.

A multilateral investment regime would be an ultimate solution to the practice of treaty shopping. Treaty shopping arises from the fact that international investment agreements have different scopes of procedural and substantial provisions and therefore, some treaties are more advantageous than others, which give investors a reason to shop for a certain treaty. However, under a multilateral regime, treaty shopping cannot take place because countries would be subject to one universal set of investment laws.

A multilateral regime is also necessary to deal with the lack of consistency and transparency of arbitration decisions, which not only creates general uncertainty for regulators but also makes it difficult for countries to fully grasp the practice of treaty shopping and effectively deal with it. Although creating a standing international investment court even without multilateral investment rules has been suggested as a feasible solution, UNCTAD (2013) points out that such a court might not work well under the current regime composed of thousands of IIAs because applicable laws would still vary from cases to cases. Therefore, a permanent international investment court to fix the challenges of the current ISDS system would only work under multilateral rules. Additionally, multilateral rules would also solve the

collective action problem witnessed in the currently fragmented investment regime, where developing countries compete to attract more foreign investment by inserting more investor-friendly provisions in their IIAs (Chowla, 2005), which prevents them from progressively safeguarding their interests in the regulatory sphere.

Conclusion

Treaty shopping undermines the principle of reciprocity which bilateral treaties are based on and subjects host countries of FDI to more investor-state disputes, which otherwise could not be brought before international arbitration. Therefore, it further damages the current international investment regime functioning upon the ISDS mechanism of ad-hoc nature, which has already been going through the so-called ‘legitimate crisis,’ characterised by an inconsistency of rulings and opacity of arbitral procedures (Blyschak, 2011a; Franck, 2004). This paper has estimated how often treaty shopping might have occurred in the publicly available ISDS cases; the estimate suggests that the practice might have been more frequent than it has been noticed. It has found that developing countries are much more likely to be victimised by investors engaging in the treaty shopping practice, implying that they should be more careful in examining the effects of IIAs. By reviewing how arbitral tribunals have perceived treaty shopping and reacted to it, this paper has also underlined the importance of the careful design of IIA texts to prevent treaty shopping and the development into a multilateral investment regime as an ultimate solution.

There are some limitations to this paper, particularly with regard to the quantification of potential treaty shopping cases in the past. For example, it is highly likely that the dataset used is not an exhaustive list of publicly available ISDS cases due to the ad-hoc nature of the current international investment arbitration system and that it could not identify the investors’ precise intention in potential treaty shopping cases owing to unavailability of such information. However, as the first quantitative effort to sketch a landscape of treaty shopping complemented by qualitative study into the perception of various tribunals towards the practice, this paper has contributed to the field of international investment arbitration by

giving researchers as well as practitioners a systematic and extensive analysis of treaty shopping. I believe this paper has laid the foundation for more active and in-depth research on the issue of treaty shopping in the future; access to more information about already publicly available cases as well as to currently unpublicised cases will open up opportunities for more accurate and extensive research into treaty shopping.

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Appendix 1. List of potential treaty shopping cases (66 cases)

Appendix 1A. Verifying potential treaty shopping cases

Initiated year	Parties	Host country	Home country of the claimant	claimant's parent company	Home country of the parent company
2000	CME v. Czech Republic	Czech Republic	Netherlands	CME Group	United States
2001	AES Summit Generation Ltd. v. Hungary (ICSID Case No. ARB/01/4)	Hungary	United Kingdom	AES Corporation	United States
2001	Saluka Investments BV v. Czech Republic	Czech Republic	Netherlands	Nomura	Japan
2002	Aguas del Tunari S.A. v. Bolivia (ICSID Case No. ARB/02/3)	Bolivia	Netherlands	Bechtel Corporation	United States
2002	Fireman's Fund Insurance Company v. Mexico (ICSID Case No. ARB(AF)/02/1)	Mexico	United States	Allianz SE	Germany
2003	ADC Affiliate Limited and others v. Republic of Hungary (ICSID Case No. ARB/03/16)	Hungary	Cyprus	Airport Development Corporation	Canada
2003	Camuzzi International S.A. v. Argentine Republic (ICSID Case No. ARB/03/2)	Argentina	Belgium	Enel Rete Gas S.p.A.	Italy
2003	Camuzzi International S.A. v. Argentine Republic (ICSID Case No. ARB/03/7)	Argentina	Belgium	Enel Rete Gas S.p.A.	Italy
2003	Capital India Power Mauritius I and Energy Enterprises (Mauritius) Company v. Government of India	India	Mauritius	General Electric & Bechtel Corporation	United States
2003	Enerdis, S.A. and others v. Argentine Republic (ICSID Case No. ARB/03/21)	Argentina	Chile	Enel	Italy
2003	Joy Mining Machinery v. Egypt (ICSID Case No. ARB/03/11)	Egypt	United Kingdom	Joy Global Inc.	United States
2004	Alstom Power Italia S.p.A and Alstom S.p.A v. Republic of Mongolia (ICSID Case No. ARB/04/10)	Mongolia	Italy	Alstom	France
2004	ANZEF Ltd. v. India	India	United Kingdom	Australia & New Zealand Banking Group Limited	Australia
2004	Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States (ICSID Case No. ARB(AF)/04/5)	Mexico	United States	Tate & Lyle plc	United Kingdom
2004	Cemex Asia Holdings Ltd v. Indonesia (ICSID Case No. ARB/04/3)	Indonesia	Singapore	Cemex	Mexico
2004	Eastern Sugar v. Czech Republic	Czech Republic	Netherlands	Tate & Lyle plc	United Kingdom
2004	Interbrew v. Slovenia (ICSID Case No. ARB/04/17)	Slovenia	Netherlands	Interbrew	Belgium
2004	Offshore Power Production C.V. and others v. India	India	Netherlands	General Electric	United States
2004	Sociedad Anónima Eduardo Vieira v. Republic of Chile (ICSID Case No. ARB/04/7)	Chile	Argentina	Grupo S.A. Eduardo Vieira	Spain
2005	Hulley Enterprises Ltd. v. Russian Federation (PCA Case No. AA 226)	Russian Federation	Cyprus	GML Limited	United Kingdom
2005	RosInvestCo UK Ltd. v. Russian Federation (V 079 / 2005)	Russian Federation	United Kingdom	Elliott Associates LP	United States
2006	Azpetrol International Holdings B.V. and others v. Republic of Azerbaijan (ICSID Case No. ARB/06/15)	Azerbaijan	Netherlands	Azpetrol	Azerbaijan

2006	The Rompetrol Group N.V. v. Romania (ICSID Case No. ARB/06/3)	Romania	Netherlands	Joint Stock Company National Company KazMunay Gas	Kazakhstan
2007	AES Summit Generation Limited and AES-Tisza Eromu Kft. v. Republic of Hungary (ICSID Case No. ARB/07/22)	Hungary	United Kingdom	AES corporation	United States
2007	Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Republic of Paraguay (ICSID Case No. ARB/07/9)	Paraguay	Netherlands	Bureau Veritas Group	France
2007	Electrabel S.A. v. Republic of Hungary (ICSID Case No. ARB/07/19)	Hungary	Belgium	GDF Suez	France
2007	Eni Dación B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/4)	Venezuela	Netherlands	Eni S.p.A.	Italy
2007	Invesmart v. Czech Republic	Czech Republic	Netherlands	Invesmart Inc.	United States
2007	Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan (ICSID Case No. ARB/07/14)	Kazakhstan	Netherlands	Citco C&T Holdings	Luxem-bourg
2007	Mobil Corporation and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/27)	Venezuela	Netherlands	Exxon Mobil	United States
2007	Railroad Development Corporation v. Republic of Guatemala (ICSID Case No. ARB/07/23)	Guatemala	United States	YooChang Construction	Republic of Korea
2008	AEI Luxembourg Holdings v. Bolivia	Bolivia	Luxembourg	AEI Services LLC	United States
2008	CEMEX Caracas Investments B.V. et al v. Venezuela (ICSID Case No. ARB/08/15)	Venezuela	Netherlands	Cemex	Mexico
2008	HICEE v. Slovak Republic	Slovak Republic	Netherlands	Penta Cyprus	Cyprus
2008	Itera International Energy LLC and Itera Group NV v. Georgia (ICSID Case No. ARB/08/7)	Georgia	United States & Netherlands	Rosneft	Russia
2008	Mercuria Energy Group Limited v. Poland	Poland	Cyprus	Mercuria Energy Group Limited	Switzerland
2008	Millicom International Operations BV and others v. Senegal (ICSID Case No. ARB/08/20)	Senegal	Netherlands	Millicom International Cellular SA	Luxem-Bourg
2008	Perenco Ecuador Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (ICSID Case No. ARB/08/6)	Ecuador	France	Perenco PLC	United Kingdom
2009	E.T.I. Euro Telecom International N.V. v. Republic of Bolivia	Bolivia	Netherlands	Italy	Italy
2009	GEM Equity Management AG v. Republic of Kazakhstan	Kazakhstan	Austria	GEM Global Equities Management S.A.	Bahamas
2009	Holcim Limited and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/09/3)	Venezuela	Netherlands	Holcim Swiss	Switzerland
2009	Inspection and Control Services Limited (ICS) v. Argentina	Argentina	United Kingdom	PWC Logistics	Kuwait
2009	Itera International Energy LLC and Itera Group NV v. Georgia (ICSID Case No. ARB/09/22)	Georgia	United States & Netherlands	Rosneft	Russia
2009	MTN (Dubai) Limited and MTN Yemen for Mobile Telephones v. Republic of Yemen (ICSID Case No. ARB/09/7)	Yemen	UAE	MTN group	South Africa
2009	Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12)	El Salvador	United States	Pacific Rim Mining Co.	Canada

2010	FTR Holding S.A., Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay	Uruguay	Switzerland	Philip Morris	United States
2010	Tidewater Inc. and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/10/5)	Venezuela	Barbados	Tidewater, Inc.	United States
2010	Universal Compression International Holdings S.L.U. v. Venezuela (ICSID Case No. ARB/10/9)	Venezuela	Spain	Exterran Holdings, Inc.	United States
2011	DP World Callao S.R.L. and others v. Republic of Peru (ICSID Case No. ARB/11/21)	Peru	United Kingdom	DP World	UAE
2011	Garanti Koza LLP v. Turkmenistan (ICSID Case No. ARB/11/20)	Turkmenistan	United Kingdom	Garanti Koza Insaat Sanayi ve Ticaret A.S.	Turkey
2011	Kahn Resources Inc. and others v. the Government of Mongolia and Monatom Co., Ltd	Mongolia	Netherlands	Khan Resources, Inc. (Canada)	Canada
2011	Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/19)	Venezuela	Luxembourg	Koch Industries, Inc.	United States
2011	OI European Group B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/25)	Venezuela	Netherlands	Owens-Illinois, Inc.	United States
2011	Philip Morris v Australia	Australia	Hong Kong	Philip Morris	United States
2011	The Williams Companies and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/10)	Venezuela	Netherlands	Williams Companies, Inc.	United States
2012	Ampal-American Israel Corporation and others v. Arab Republic of Egypt (ICSID Case No. ARB/12/11)	Egypt	United States	Bank Hapoalim	Israel
			Germany ²¹	N/A	N/A
2012	Axiata Group v. India	India	Mauritius	Axiata Group Berhad	Malaysia
2012	Capital Global and Kaif Investment v. India	India	Mauritius	Loop Telecom	United Kingdom
2012	Emmis International Holding B.V. and others v. Hungary (ICSID Case No. ARB/12/2)	Hungary	Netherlands	Emmis Communications	United States
			Switzerland ²²	N/A	N/A
2012	Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/21)	Venezuela	Netherlands	Owens-Illinois, Inc.	United States
2012	Guardian Fiduciary Trust, Ltd. and others v. Macedonia, former Yugoslav Republic of (ICSID Case No. ARB/12/31)	Macedonia, TFYR	Netherlands	Guardian Fiduciary Trust Limited	New Zealand
2012	LSF-KEB Holdings SCA and others v. Republic of Korea (ICSID Case No. ARB/12/37)	Republic of Korea	Luxembourg	Lone Star Funds	United States
2012	Telenor v. India	India	Singapore	Telenor ASA	Norway
2012	Ternium S.A. and Consorcio Siderurgia Amazonia S.L. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/19)	Venezuela	Luxembourg & Spain	Techint group	Argentina
2012	The Children Investment Fund (TCI) v. India	India	Cyprus	Children's Investment Fund Management	United Kingdom
2012	Vodafone v. India	India	Netherlands	vodafone group	United Kingdom
Total	66 cases	66	69	66	66

²¹ Claimants of Germany do not seem to engage in treaty shopping case

²² Claimants of Switzerland do not seem to engage in treaty shopping

Appendix 1B. Verifying existence of denial of benefits clause in the applied IIAs, existence of IIA and ISDS clauses between home country of claimant's parent company and host country

Initiated year	Parties	Legal instrument	Denial of benefits clause	Host country (A)	Home country of claimant's parent company (B)	IIA between A and B ²³	ISDS clauses
2000	CME v. Czech Republic	Czech Republic-Netherlands BIT	N	Czech Republic	United States	Czech Republic-US BIT (1992)	Y
2001	AES Summit Generation Ltd. v. Hungary (ICSID Case No. ARB/01/4)	ECT	Y	Hungary	United States	X	-
		Hungary-UK BIT	?				
2001	Saluka Investments BV v. Czech Republic	Czech Republic-Netherlands BIT	N	Czech Republic	Japan	X	-
2002	Aguas del Tunari S.A. v. Bolivia (ICSID Case No. ARB/02/3)	Bolivia-Netherlands BIT	N	Bolivia	United States	X [Bolivia-US BIT (2001)]	-
2002	Fireman's Fund Insurance Company v. Mexico (ICSID Case No. ARB(AF)/02/1)	NAFTA	Y	Mexico	Germany	X [Mexico-Germany BIT (2001)]	-
2003	ADC Affiliate Limited and others v. Republic of Hungary (ICSID Case No. ARB/03/16)	Cyprus-Hungary BIT	N	Hungary	Canada	X Hungary-Canada BIT (1993)	Y
2003	Camuzzi International SA v. Argentine Republic (ICSID Case No. ARB/03/2)	Belgium & Luxembourg-Argentina BIT	N	Argentina	Italy	X Argentina-Italy BIT (1993)	Y
2003	Camuzzi International S.A. v. Argentine Republic (ICSID Case No. ARB/03/7)	Belgium & Luxembourg-Argentina BIT	N	Argentina	Italy	X Argentina-Italy BIT (1993)	Y
2003	Capital India Power Mauritius I and Energy Enterprises (Mauritius) Company v. Government of India	India-Mauritius BIT	N	India	United States	X	-
2003	Enersis, S.A. and others v. Argentine Republic (ICSID Case No. ARB/03/21)	Argentina-Chile BIT	N	Argentina	Italy	X Argentina-Italy BIT (1993)	Y
2003	Joy Mining Machinery v. Egypt (ICSID Case No. ARB/03/11)	Egypt-UK BIT	N	Egypt	United States	X Egypt-US BIT (1992)	Y
2004	Alstom Power Italia SpA and Alstom SpA v. Republic of Mongolia (ICSID Case No. ARB/04/10)	ECT	Y	Mongolia	France	ECT	Y
		Italy-Mongolia BIT	N				
2004	ANZEF Ltd. V. India	India-UK BIT	N	India	Australia	X India-Australia BIT (2000)	Y
2004	Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States (ICSID Case No. ARB(AF)/04/5)	NAFTA	Y	Mexico	United Kingdom	X [Mexico-UK BIT (2007)]	-
2004	Cemex Asia Holdings Ltd v. Indonesia (ICSID Case No. ARB/04/3)	1987 ASEAN	N	Indonesia	Mexico	X	-
2004	Eastern Sugar v. Czech Republic	Czech Republic-Netherlands BIT	N	Czech Republic	United Kingdom	X Czech Republic-UK BIT (1992)	Y
2004	Interbrew v. Slovenia (ICSID Case No. ARB/04/17)	Netherlands-Slovenia BIT	N	Slovenia	Belgium	X Slovenia-Belgium BIT (2002)	Y

²³ The year in a parenthesis refers to the year when an IIA became effective. Even if there is no IIA 'applicable' to a case, if an IIA exists, the name of the IIA is stated within a bracket.

2004	Offshore Power Production C.V. and others v. India	India-Netherlands BIT	N	India	United States	X	-
2004	Sociedad Anónima Eduardo Vieira v. Republic of Chile (ICSID Case No. ARB/04/7)	Argentina-Chile BIT	N	Chile	Spain	Chile-Spain (1994)	Y
2005	Hulley Enterprises Ltd. v. Russian Federation (PCA Case No. AA 226)	ECT	Y	Russia	United Kingdom	ECT	Y
2005	RosInvestCo UK Ltd. v. Russian Federation (V 079 / 2005)	Russia-UK BIT	N	Russia	United States	X [Russia-US BIT not in force yet]	-
2006	Azpetrol International Holdings B.V. and others v. Republic of Azerbaijan (ICSID Case No. ARB/06/15)	ECT	Y	Azerbaijan	Azerbaijan	N/A	-
2006	The Rompetrol Group N.V. v. Romania (ICSID Case No. ARB/06/3)	Netherlands-Romania BIT	N	Romania	Kazakhstan	Romania-Kazakhstan (1997)	?
2007	AES Summit Generation Limited and AES-Tisza Eromu Kft. v. Republic of Hungary (ICSID Case No. ARB/07/22)	ECT	Y	Hungary	United States	X	-
2007	Bureau Veritas, Inspection, Valuation, Assessment and Control, BIVAC B.V. v. Republic of Paraguay (ICSID Case No. ARB/07/9)	Netherlands-Paraguay BIT	N	Paraguay	France	Paraguay-France BIT (1980)	Y
2007	Electrabel S.A. v. Republic of Hungary (ICSID Case No. ARB/07/19)	ECT	Y	Hungary	France	ECT	Y
2007	Eni Dación B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/4)	Netherlands-Venezuela BIT	N	Venezuela	Italy	Venezuela-Italy BIT (1993)	Y
2007	Invesmart v. Czech Republic	Czech Republic-Netherlands BIT	N	Czech Republic	United States	Czech Republic-US BIT (1992)	Y
2007	Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan (ICSID Case No. ARB/07/14)	ECT	Y	Kazakhstan	Luxemburg	ECT	Y
2007	Mobil Corporation and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/07/27)	Netherlands-Venezuela BIT	N	Venezuela	United States	X	-
2007	Railroad Development Corporation v. Republic of Guatemala (ICSID Case No. ARB/07/23)	CAFTA-DR	Y	Guatemala	Republic of Korea	Guatemala-Korea BIT (2002)	Y
2008	AEI Luxembourg Holdings v Bolivia	Bolivia-Luxembourg-Belgium BIT	N	Bolivia	United States	Bolivia-US BIT (2001)	Y
2008	CEMEX Caracas Investments B.V. et al v Venezuela (ICSID Case No. ARB/08/15)	Netherlands - Venezuela BIT	N	Venezuela	Mexico	Colombia-Mexico-Venezuela FTA (1995)	Y
2008	HICEE v Slovak Republic	Netherlands-Slovak Republic BIT	N	Slovak Republic	Cyprus	X [ECT but not applicable to this case]	-
2008	Itera International Energy LLC and Itera Group NV v. Georgia (ICSID Case No. ARB/08/7)	US-Georgia BIT	Y	Georgia	Russia	X	-
		Netherlands-Georgia BIT	N				
2008	Mercuria Energy Group Limited v. Poland	ECT	Y	Poland	Switzerland	ECT	Y
2008	Millicom International Operations BV and others v. Senegal (ICSID Case No. ARB/08/20)	Netherlands-Senegal BIT	N	Senegal	Luxemburg	X	-

2008	Perenco Ecuador Limited v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (ICSID Case No. ARB/08/6)	Ecuador-France BIT	N	Ecuador	United Kingdom	Ecuador-UK BIT (1995)	Y
2009	E.T.I. Euro Telecom International N.V. v. Republic of Bolivia	Bolivia-Netherlands BIT	N	Bolivia	Italy	Bolivia-Italy BIT (1992)	Y
2009	GEM Equity Management AG v. Republic of Kazakhstan	EC-Kazakhstan Cooperation Agreement	N	Kazakhstan	Bahamas	X	-
2009	Holcim Limited and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/09/3)	Venezuela-Netherlands BIT	N	Venezuela	Switzerland	Venezuela-Switzerland BIT (1994)	Y
2009	Inspection and Control Services Limited (ICS) v. Argentina	UK-Argentina BIT	N	Argentina	Kuwait	X	-
2009	Itera International Energy LLC and Itera Group NV v. Georgia (ICSID Case No. ARB/09/22)	US-Georgia BIT	Y	Georgia	Russia	X	-
		Netherlands-Georgia BIT	N				
2009	MTN (Dubai) Limited and MTN Yemen for Mobile Telephones v. Republic of Yemen (ICSID Case No. ARB/09/7)	Yemen-UAE BIT	?	Yemen	South Africa	X [Yemen-South Africa BIT but not in force yet]	-
2009	Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12)	CAFTA-DR	Y	El Salvador	Canada	X [El Salvador-Canada BIT but not in force yet]	-
2010	FTR Holding S.A., Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay	Switzerland-Uruguay BIT	N	Uruguay	United States	Uruguay-US BIT (2006)	Y
2010	Tidewater Inc. and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/10/5)	Barbados-Venezuela BIT	N	Venezuela	United States	X	-
2010	Universal Compression International Holdings S.L.U. v. Venezuela (ICSID Case No. ARB/10/9)	Spain-Venezuela BIT	N	Venezuela	United States	X	-
2011	DP World Callao S.R.L. and others v. Republic of Peru (ICSID Case No. ARB/11/21)	UK-Peru BIT	N	Peru	UAE	X	-
2011	Garanti Koza LLP v. Turkmenistan (ICSID Case No. ARB/11/20)	UK-Turkmenistan BIT	N	Turkmenistan	Turkey	Turkmenistan-Turkey BIT (1997)	?
2011	Kahn Resources Inc. and others v. the Government of Mongolia and Monatom Co., Ltd	ECT	Y	Mongolia	Canada	X	-
2011	Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/19)	Belgium-Luxemburg-Venezuela BIT	N	Venezuela	United States	X	-
2011	OI European Group B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/25)	Netherlands-Venezuela BIT	N	Venezuela	United States	X	-
2011	Philip Morris v Australia	Hong Kong-Australia BIT	N	Australia	United States	Australia-US FTA (2005)	N
2011	The Williams Companies and others v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/10)	Netherlands-Venezuela BIT	N	Venezuela	United States	X	-
2012	Ampal-American Israel Corporation and others v. Arab Republic of Egypt (ICSID Case No. ARB/12/11)	US-Egypt BIT	Y	Egypt	Israel	Egypt-Israel FTA (1985)	N
		Germany-Egypt BIT	N/A		N/A	N/A	-
2012	Axiata Group v. India	Mauritius-India BIT	N	India	Malaysia	India-Malaysia BIT (1997)	Y

2012	Capital Global and Kaif Investment v. India	Mauritius - India BIT	N	India	United Kingdom	India-UK BIT (1995)	Y
2012	Emmis International Holding B.V. and others v. Hungary (ICSID Case No. ARB/12/2)	Netherlands-Hungary BIT	N	Hungary	United States	X	-
		Switzerland-Hungary BIT	N/A		N/A	N/A	-
2012	Fábrica de Vidrios Los Andes, C.A. and Owens-Illinois de Venezuela, C.A. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/21)	Netherlands-Venezuela BIT	N	Venezuela	United States	X	-
2012	Guardian Fiduciary Trust, Ltd. and others v. Macedonia, former Yugoslav Republic of (ICSID Case No. ARB/12/31)	Macedonia-Netherlands BIT	N	Macedonia, TFYR	New Zealand	X	-
2012	LSF-KEB Holdings SCA and others v. Republic of Korea (ICSID Case No. ARB/12/37)	Luxembourg and Belgium-Korea BIT	N	Republic of Korea	United States	X [Korea-US FTA (2012)]	-
2012	Telenor v. India	CECA Singapore-India	Y	India	Norway	X	-
2012	Ternium S.A. and Consorcio Siderurgia Amazonia S.L. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/19)	Luxembourg-Belgium-Venezuela BIT	N	Venezuela	Argentina	Venezuela-Argentina BIT (1995)	Y
		Spain-Venezuela BIT	N				
2012	The Children Investment Fund (TCI) v. India	Cyprus-India BIT	N	India	United Kingdom	India-UK BIT (1995)	Y
2012	Vodafone v. India	Netherlands-India BIT	N	India	United Kingdom	India-UK BIT (1995)	Y
Total	66 cases	73	17	66	66	34	30

Appendix 2. List of non-treaty shopping cases (317 cases)

Initiated year	Parties	Host country	Home country of the claimant	Legal instrument
1987	Asian Agricultural Products Ltd (AAPL) v. Sri Lanka (Case No. ARB/87/3)	Sri Lanka	United Kingdom	Sri Lanka-United Kingdom BIT
1993	American Manufacturing and Trading v. Zaire (ICSID Case No. ARB/93/1)	Congo, Democratic Republic of	United States	Zaire-United States BIT
1994	Saar Papier v. Poland I	Poland	Germany	Germany-Poland BIT
1996	Ameritech v. Poland	Poland	United States	Poland-United States BIT
1996	Biedermann v. Kazakhstan	Kazakhstan	United States	Kazakhstan-United States BIT
1996	France Telecom v. Poland	Poland	France	France-Poland BIT
1996	Saar Papier v. Poland II	Poland	Germany	Germany-Poland BIT
1997	Ceskoslovenska Obchodni Banka, a.s. v. The Slovak Republic (ICSID Case No. ARB/97/4)	Slovak Republic	Czech Republic	Czech Republic-Slovak Republic BIT
1997	Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic (ICSID Case No. ARB/97/3)	Argentina	France	Argentina-France BIT
1997	Ethyl Corp v. Canada	Canada	United States	NAFTA
1997	Lanco International Inc v. Argentine Republic (ICSID Case No. ARB/97/6)	Argentina	United States	Argentina-United States BIT
1997	Metalclad v. United Mexican States (ICSID Case No. ARB(AF)/97/1)	Mexico	United States	NAFTA
1998	S.D. Myers Inc. v. Canada	Canada	United States	NAFTA
1998	The Loewen Group, Inc. & Raymond L. Loewen v. United States of America (ICSID Case No. ARB(AF)/98/3)	United States	Canada	NAFTA
1998	Víctor Pey Casado and President Allende Foundation v. Republic of Chile (ICSID Case No. ARB/98/2)	Chile	Spain	Chile-Spain BIT
1998	Waste Management v. United Mexican States (I) (ICSID Case No. ARB(AF)/98/2)	Mexico	United States	NAFTA
1998	Wena Hotels Ltd. V. Egypt (ICSID Case No. ARB/98/4)	Egypt	United Kingdom	Egypt-United Kingdom BIT
1999	Alex Genin, Eastern Credit Limited, Inc v. Republic of Estonia (ICSID Case No. Arb/99/2)	Estonia	United States	United States-Estonia BIT
1999	Link-Trading Joint Stock Company v. Moldova	Moldova, Republic of	United States	Moldova-United States BIT
1999	Methanex Corp. v. United States	United States	Canada	NAFTA
1999	Mondev International Ltd. v. United States (ICSID Case No. ARB(AF)/99/2)	United States	Canada	NAFTA
1999	Pope & Talbot v. Canada	Canada	United States	NAFTA
1999	Swembalt AB v. Latvia	Latvia	Sweden	Latvia-Sweden BIT
2000	ADF Group Inc. v. United States (ICSID Case No. ARB(AF)/00/1)	United States	Canada	NAFTA
2000	Eastern Company v. Lebanon	Lebanon	Egypt	Egypt-Lebanon BIT
2000	Generation Ukraine v. Ukraine (ICSID Case No. ARB/00/9)	Ukraine	United States	Ukraine-United States BIT
2000	Mihaly International Corp v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/00/2)	Sri Lanka	United States	Sri Lanka-United States BIT
2000	Salini Costruttori and Italstrade v. Morocco (ICSID Case No. ARB/00/4)	Morocco	Italy	Italy-Morocco BIT
2000	Tecnicas Medioambientales, Tecmed v. United Mexican States (ICSID Case No ARB(AF)/00/2)	Mexico	Spain	Mexico-Spain BIT
2000	UK Bank v. Russian Federation	Russia	United Kingdom	Russia-United Kingdom BIT
2000	United Parcel Service of America Inc. v. Canada	Canada	United States	NAFTA

2000	Waste Management v. United Mexican States (II) (ICSID Case No. ARB(AF)/00/3))	Mexico	United States	NAFTA
2000	Yaung Chi OO Trading Pte Ltd. V. Government of the Union of Myanmar (ASEAN I.D. Case No. ARB/01/1)	Myanmar	Singapore	ASEAN Agreements
2001	AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Kazakhstan (ICSID Case No. ARB/01/6)	Kazakhstan	United States	Kazakhstan-United States BIT
2001	Azurix I v. Argentina (ICSID Case No. ARB/01/12)	Argentina	United States	Argentina-United States BIT
2001	Booker PLC v. Guyana (ICSID Case No. ARB/01/9)	Guyana	United Kingdom	Guyana-United Kingdom BIT
2001	CCL Oil v. Kazakhstan (SCC Case 122/2001)	Kazakhstan	United States	Kazakhstan-United States BIT
2001	CMS Gas Transmission Company v. Argentina (ICSID Case No. ARB/01/8)	Argentina	United States	Argentina-United States BIT
2001	Enron Corporation and Ponderosa Assets LP v. Argentina (ICSID Case No. ARB/01/3)	Argentina	United States	Argentina-United States BIT
2001	F-W Oil Interests, Inc. v. Republic of Trinidad & Tobago (ICSID Case No. ARB/01/14)	Trinidad and Tobago	United States	Trinidad and Tobago-United States BIT
2001	Impregilo, S.p.A and Rizzani De Eccher S.p.A. v. United Arab Emirates (ICSID Case No. ARB/01/1)	United Arab Emirates	Italy	Italy-United Arab Emirates BIT
2001	MTD Equity Sdn. Bhd. and MTD Chile S.A. v. Chile (ICSID Case No. ARB/01/7)	Chile	Malaysia	Chile-Malaysia BIT
2001	Noble Ventures v. Romania (ICSID Case No. ARB/01/11)	Romania	United States	Romania-United States BIT
2001	Nykomb Synergetics v. Latvia	Latvia	Sweden	ECT
2001	SGS v. Pakistan (ICSID Case No. ARB/01/13)	Pakistan	Switzerland	Pakistan-Switzerland BIT
2002	AES Corporation v. Argentine Republic (ICSID Case No. ARB/02/17)	Argentina	United States	Argentina-United States BIT
2002	Ahmonseto, Inc. and others v. Arab Republic of Egypt (Case No. ARB/02/15)	Egypt	United States	Egypt-United States BIT
2002	Calmark Commercial Development Inc. v. the United Mexican States	Mexico	United States	NAFTA
2002	Canfor Corp. v. United States	United States	Canada	NAFTA
2002	CDC Group plc v. Republic of Seychelles (ICSID Case No. ARB/02/14)	Seychelles	United Kingdom	Unknown
2002	Champion Trading Company and others v. Arab Republic of Egypt (Case No. ARB/02/9)	Egypt	United States	United States-Egypt BIT
2002	Crompton (Chemtura) Corp v. Canada	Canada	United States	NAFTA
2002	Four Seasons Hotel Group v. Venezuela	Venezuela	Canada	Canada-Venezuela BIT
2002	France Telecom v. Lebanon	Lebanon	France	France-Lebanon BIT
2002	GAMI Investments v. United Mexican States	Mexico	United States	NAFTA
2002	IBM World Trade Corp. v. Republic of Ecuador (ICSID Case No. ARB/02/10)	Ecuador	United States	Ecuador-United States BIT
2002	International Thunderbird Gaming Corporation v. United Mexican States	Mexico	Canada	NAFTA
2002	JacobsGibb Limited v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/02/12)	Jordan	United Kingdom	Jordan-United Kingdom BIT
2002	Kenex Ltd. v. United States	United States	Canada	NAFTA
2002	LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic (ICSID Case No. ARB/02/1)	Argentina	United States	Argentina-United States BIT
2002	Occidental Exploration and Production Company v. Ecuador (LCIA Case No. UN3467)	Ecuador	United States	Ecuador-United States BIT
2002	PSEG Global Inc., The North American Coal Corporation (NACC), and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey (ICSID Case No. ARB/02/5)	Turkey	United States	Turkey-United States BIT
2002	Salini Costruttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan (ICSID Case No. ARB/02/13)	Jordan	Italy	Italy-Jordan BIT

2002	Sempra Energy International v. Argentine Republic (ICSID Case No. ARB/02/16)	Argentina	United States	Argentina-United States BIT
2002	SGS v. Philippines (ICSID Case No. ARB/02/6)	Philippines	Switzerland	Philippines-Switzerland BIT
2002	Siemens v. Argentina (ICSID Case No. ARB/02/8)	Argentina	Germany	Argentina-Germany BIT
2002	Tokios Tokelés v. Ukraine (ICSID Case No. ARB/02/18)	Ukraine	Lithuania	Lithuania-Ukraine BIT
2003	Aguas Cordobesas, S.A., Suez, and Sociedad General de Aguas de Barcelona, S.A. v. Argentine Republic (ICSID Case No. ARB/03/18)	Argentina	Spain	Argentina-Spain BIT
2003	Anglian Water Group (AWG) PLC v. Argentina	Argentina	United Kingdom	Argentina-United Kingdom BIT
2003	Azurix v. Argentina (ICSID Case No. ARB/03/30)	Argentina	United States	Argentina-United States BIT
2003	Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (ICSID Case No. ARB/03/29)	Pakistan	Turkey	Pakistan-Turkey BIT
2003	BG Group Plc v. Argentina	Argentina	United Kingdom	Argentina-United Kingdom BIT
2003	Consortium Groupement L.E.S.I. - DIPENTA v. Algeria (ICSID Case No. ARB/03/8)	Algeria	Italy	Algeria-Italy BIT
2003	Continental Casualty Company v. Argentine Republic (ICSID Case No. ARB/03/9)	Argentina	United States	Argentina-United States BIT
2003	Ed. Züblin AG v. Kingdom of Saudi Arabia (ICSID Case No. ARB/03/01)	Saudi Arabia	Germany	Germany-Saudi Arabia BIT
2003	EDF International S.A., SAUR International S.A. and Léon Participaciones Argentinas S.A. v. Argentine Republic (ICSID Case No. ARB/03/23)	Argentina	France Luxembourg	Argentina-France BIT and Argentina-Belgium-Luxembourg BIT
2003	El Paso Energy International Company v. Argentine Republic (ICSID Case No. ARB/03/15)	Argentina	United States	Argentina-United States BIT
2003	Electricidad Argentina S.A. and EDF International S.A. v. Argentine Republic (ICSID Case No. ARB/03/22)	Argentina	France	Argentina-France BIT
2003	Encana v. Ecuador (LCIA Case No. UN3481)	Ecuador	Canada	Canada-Ecuador FIPA
2003	Eureko v. Poland	Poland	Netherlands	Netherlands-Poland BIT
2003	Eurotunnel Group v. France and United Kingdom	France/United Kingdom	France/United Kingdom	Treaty of Canterbury
2003	Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (ICSID Case No. ARB/03/25)	Philippines	Germany	Germany-Philippines BIT
2003	Gas Natural SDG, S.A. v. Argentine Republic (ICSID Case No. ARB/03/10)	Argentina	Spain	Argentina-Spain BIT
2003	Glamis Gold Ltd. v. United States	United States	Canada	NAFTA
2003	Impregilo S.p.A. v. Islamic Republic of Pakistan (ICSID Case No. ARB/03/3)	Pakistan	Italy	Italy-Pakistan BIT
2003	Lucchetti S.A. and Lucchetti Peru, S.A. v. Republic of Peru (ICSID Case No. ARB/03/4)	Peru	Chile	Chile-Peru BIT
2003	Metalpar S.A. and Buen Aire S.A. v. Argentine Republic (ICSID Case No. ARB/03/5)	Argentina	Chile	Argentina-Chile BIT
2003	Mimincó LLC and others v. Democratic Republic of the Congo (ICSID Case No. ARB/03/14)	Congo, Democratic Republic of	United States	Congo (Democratic Republic of)-United States BIT
2003	National Grid v. Argentina	Argentina	United Kingdom	Argentina-United Kingdom BIT
2003	Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic (ICSID Case No. ARB/03/13) (consolidated with ICSID Case No. ARB/04/8)	Argentina	United States	Argentina-United States BIT
2003	Petrobart v. Kyrgyzstan (Arb. No. 126/2003)	Kyrgyzstan	United Kingdom	ECT
2003	Pioneer Natural Resources Company, Pioneer Natural Resources (Argentina) S.A. and Pioneer Natural Resources (Tierra del Fuego) S.A. v. Argentine Republic (ICSID Case No. ARB/03/12)	Argentina	United States	Argentina-United States BIT

2003	Scotiabank (BNS) v. Argentina	Argentina	Canada	Argentina-Canada BIT
2003	Suez, Sociedad General de Aguas de Barcelona, S.A. and Interagua Servicios Integrales de Agua, S.A. v. Argentine Republic (ICSID Case No. ARB/03/17)	Argentina	France Spain	Argentina-France BIT and Argentina-Spain BIT
2003	Suez, Sociedad General de Aguas de Barcelona, S.A. and Interagua Servicios Integrales de Agua, S.A. v. Argentine Republic (ICSID Case No. ARB/03/17)	Argentina	France Spain	Argentina-France BIT and Argentina-Spain BIT
2003	Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic (ICSID Case No. ARB/03/19)	Argentina	France Spain	Argentina-France BIT Argentina-Spain BIT
2003	Telefónica S.A. v. Argentine Republic (ICSID Case No. ARB/03/20)	Argentina	Spain	Argentina-Spain BIT
2003	Telekom Malaysia v. Ghana	Ghana	Malaysia	Ghana-Malaysia BIT
2003	Unisys v. Argentine Republic (ICSID Case No. ARB/03/27)	Argentina	United States	Argentina-United States BIT
2004	ABN Amro N.V. v. India	India	Netherlands	India-Netherlands BIT
2004	BNP Paribas v. India	India	France	France-India BIT
2004	BP America Production Company, Pan American Sur SRL, Pan American Fuegoína, SRL and Pan American Continental SRL others v. Argentine Republic (ICSID Case No. ARB/04/8) (consolidated with ICSID Case No. ARB/03/13)	Argentina	United States	Argentina-United States BIT
2004	Cargill, Incorporated v. Republic of Poland (ICSID Case No. ARB(AF)/04/2)	Poland	United States	Poland-United States BIT
2004	CIT Group Inc. v. Argentine Republic (ICSID Case No. ARB/04/9)	Argentina	United States	Argentina-United States BIT
2004	Contractual Obligation Productions, LLC, Charles Robert Underwood & Carl Paolino v. Canada	Canada	United States	NAFTA
2004	Corn Products International, Inc. v. United Mexican States (ICSID Case No. ARB(AF)/04/1)	Mexico	United States	NAFTA
2004	Credit Lyonnais SA, (now Calyon SA) v. India	India	France	France-India BIT
2004	Credit Suisse First Boston v. India	India	Switzerland	India-Switzerland BIT
2004	Duke Energy Electroquil Partners and Electroquil SA v. Republic of Ecuador (ICSID Case No. ARB/04/19)	Ecuador	United States	Ecuador-United States BIT
2004	Erste Bank Der Oesterreichischen Sparkassen AG v. India	India	Austria	Austria-India BIT
2004	France Telecom v. Argentina (ICSID Case No. ARB/04/18)	Argentina	France	France-Argentina BIT
2004	Grand River Enterprises Six Nations, Ltd., et.al. v. United States	United States	Canada	NAFTA
2004	Iurii Bogdanov, Agurdino-Invest Ltd and Agurdino-Chimia JSC v. Republic of Moldova	Moldova, Republic of	Russia	Moldova-Russia BIT
2004	Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (ICSID Case No. ARB/04/13)	Egypt	Belgium	Belgium-Luxembourg-Egypt BIT
2004	Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic (ICSID Case No. ARB/04/16)	Argentina	United States	Argentina-United States BIT
2004	Motorola Credit Corporation, Inc. v. Republic of Turkey (ICSID Case No. ARB/04/21)	Turkey	United States	Turkey-United States BIT
2004	OKO Osuuspankkien Keskuspankki Oyj and others v. Republic of Estonia (ICSID Case No. ARB/04/6)	Estonia	Finland	Estonia-Germany BIT and Estonia-Finland BIT
2004	RGA Reinsurance Company v. Argentine Republic (ICSID Case No. ARB/04/20)	Argentina	United States	Argentina-United States BIT
2004	SAUR International v. Argentine Republic (ICSID Case No. ARB/04/4)	Argentina	France	Argentina-France BIT
2004	Standard Chartered Bank v. India	India	United Kingdom	India-United Kingdom BIT
2004	Talsud, S.A. v. United Mexican States (ICSID Case No. ARB(AF)/04/4)	Mexico	Argentina	Argentina-Mexico BIT

2004	Telenor Mobile Communications AS v. Republic of Hungary (ICSID Case No. ARB/04/15)	Hungary	Norway	Hungary-Norway BIT
2004	Tembec Inc. et al. v. United States	United States	Canada	NAFTA
2004	Terminal Forest Products Ltd. v. United States	United States	Canada	NAFTA
2004	Total S.A. v. Argentine Republic (ICSID Case No. ARB/04/1)	Argentina	France	Argentina-France BIT
2004	Vannessa Ventures Ltd v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/04/6)	Venezuela	Canada	Canada-Venezuela BIT
2004	Western NIS Enterprise Fund v. Ukraine (ICSID Case No. ARB/04/2)	Ukraine	United States	Ukraine-United States BIT
2004	Wintershall Aktiengesellschaft v. Argentine Republic (ICSID Case No. ARB/04/14)	Argentina	Germany	Argentina-Germany BIT
2005	African Holding Company of America, Inc. and Société Africaine de Construction au Congo S.A.R.L. v. Democratic Republic of the Congo (ICSID Case No. ARB/05/21)	Congo, Democratic Republic of	United States	Congo, Democratic Republic of-United States BIT
2005	Amto v. Ukraine	Ukraine	Latvia	ECT
2005	Bayview Irrigation District and others v. United Mexican States (ICSID Case No. ARB(AF)/05/1)	Mexico	United States	NAFTA
2005	Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania (ICSID Case No. ARB/05/22)	Tanzania, United Republic of	United Kingdom	Tanzania, United Republic of-United Kingdom BIT
2005	Cargill, Incorporated v. United Mexican States (ICSID Case No. ARB(AF)/05/2)	Mexico	United States	NAFTA
2005	Compania General de Electricidad S.A. and CGE Argentina S.A. v. Argentine Republic (ICSID Case No. ARB/05/2)	Argentina	Chile	Argentina-Chile BIT
2005	Daimler Chrysler Services AG v. Argentine Republic (ICSID Case No. ARB/05/1)	Argentina	Germany	Argentina-Germany BIT
2005	Desert Line Projects LLC v. Republic of Yemen (ICSID Case No. ARB/05/17)	Yemen	Oman	Oman-Yemen BIT
2005	EDF (Services) Limited v. Republic of Romania (ICSID Case No. ARB/05/13)	Romania	United Kingdom	BIT Romania-United Kingdom or United States
2005	EDF (Services) Limited v. Romania (ICSID Case No. ARB/05/13)	Romania	United Kingdom	Romania-United Kingdom BIT
2005	Empresa Electrica del Ecuador, Inc. (Emelec) v. Republic of Ecuador (ICSID Case No. ARB/05/9)	Ecuador	United States	Ecuador-United States BIT
2005	Helnan International Hotels A/S v. Arab Republic of Egypt (ICSID Case No. ARB/05/19)	Egypt	Denmark	Denmark-Egypt BIT
2005	Hrvatska Elektroprivreda d.d. (HEP) v. Republic of Slovenia (ICSID Case No. ARB/05/24)	Slovenia	Croatia	ECT
2005	Ioan Micula, Viorel Micula and others v. Romania (ICSID Case No. ARB/05/20)	Romania	Sweden	Romania-Sweden BIT
2005	LESI S.p.A. and Astaldi S.p.A v. Algeria (ICSID Case No. ARB/05/3)	Algeria	Italy	Algeria-Italy BIT
2005	Malaysian Historical Salvors, SDN, BHD v. Malaysia (ICSID Case No. ARB/05/10)	Malaysia	United Kingdom	Malaysia-United Kingdom BIT
2005	Mittal Steel Company N.V. v Czech Republic	Czech Republic	Netherlands	Czech Republic-Netherlands BIT
2005	Mytilineos v. Serbia-Montenegro	Serbia-Montenegro	Greece	Greece-Serbia/Montenegro BIT
2005	Noble Energy Inc. and Machala Power Cía. Ltd. v. Republic of Ecuador and Consejo Nacional de Electricidad (ICSID Case No. ARB/05/12)	Ecuador	United States	Ecuador-United States BIT
2005	Parkerings Compagniet AS v. Republic of Lithuania (ICSID Case No. ARB/05/8)	Lithuania	Norway	Lithuania-Norway BIT
2005	Rumeli Telekom A.S. & Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan (ICSID Case No. ARB/05/16)	Kazakhstan	Turkey	Kazakhstan-Turkey BIT
2005	Saipem S.p.A. v. People's Republic of Bangladesh (ICSID Case No. ARB/05/7)	Bangladesh	Italy	Bangladesh-Italy BIT

2005	TSA Spectrum de Argentina S.A. v. Argentine Republic (ICSID Case No. ARB/05/5)	Argentina	Netherlands	Argentina-Netherlands BIT
2005	Veteran Petroleum Ltd. v. Russian Federation (PCA Case No. AA 228)	Russia	Cyprus	ECT
2005	Walter Bau vs. Thailand	Thailand	Germany	Germany-Thailand BIT
2005	Yukos Universal Ltd. v. Russian Federation (PCA Case No. AA 227)	Russia	United Kingdom	ECT
2006	Barmek v Azerbaijan (ICSID Case No. ARB/06/16)	Azerbaijan	Turkey	ECT
2006	Cementownia "Nowa Huta" S.A. v. Republic of Turkey (ICSID Case No. ARB(AF)/06/2)	Turkey	Poland	ECT
2006	Cementownia Nowa Huta S.A. (Poland) and Polska Energetyka Holding S.A. (Poland) v. Republic of Turkey	Turkey	Poland	BIT Poland-Turkey
2006	Chevron Block Twelve & Chevron Blocks Thirteen and Fourteen v. People's Republic of Bangladesh (ICSID Case No. ARB/06/10)	Bangladesh	United States	Bangladesh-United States BIT
2006	Chevron Corporation and Texaco Petroleum Corporation v Ecuador	Ecuador	United States	BIT Ecuador-United States
2006	Czechoslonor v. Czech Republic	Czech Republic	Norway	Czech Republic-Norway BIT
2006	Great Lakes Farms LLC and Carl Adams v. Government of Canada	Canada	United States	NAFTA
2006	Libananco Holdings Co. Limited v. Republic of Turkey (ICSID Case No. ARB/06/8)	Turkey	Cyprus	ECT
2006	Merrill & Ring Forestry L.P. v. Canada	Canada	United States	NAFTA
2006	Nations Energy, Inc., Electric Machinery Enterprises Inc., and Jamie Jurado v. Republic of Panama (ICSID Case No. ARB/06/19)	Panama	United States	Panama- United States BIT
2006	Occidental Petroleum Corporation and Occidental Exploration and Production Company v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (ICSID Case No. ARB/06/11)	Ecuador	United States	Ecuador-United States BIT
2006	Oxus Gold v. Kyrgyzstan	Kyrgyz Republic	United Kingdom	BIT Kyrgyz Republic-United Kingdom
2006	Phoenix Action Ltd v. Czech Republic (ICSID Case No. ARB/06/5)	Czech Republic	Israel	Czech Republic-Israel BIT
2006	Quimica e Industrial del Borax Ltda. and others v. Republic of Bolivia (ICSID Case No. ARB/06/2)	Bolivia	Chile	Bolivia-Chile BIT
2006	Rail World LLC and others v. Republic of Estonia (ICSID Case No. ARB/06/6)	Estonia	Netherlands and United States	Estonia-Netherlands BIT and Estonia-United States BIT
2006	Renta 4 et al v Russian Federation (SCC Case No 24/2007)	Russia	Spain	Spain-USSR BIT
2006	Romak v Uzbekistan	Uzbekistan	Switzerland	BIT Switzerland-Uzbekistan
2006	Sancheti v United Kingdom	United Kingdom	India	BIT India-United Kingdom
2006	Shell Brands International AG and Shell Nicaragua S.A. v. Republic of Nicaragua (ICSID Case No. ARB/06/14)	Nicaragua	Netherlands	Netherlands-Nicaragua BIT
2006	Técnicas Reunidas, S.A. and Eurocontrol, S.A. v. Republic of Ecuador (ICSID Case No. ARB/06/17)	Ecuador	Spain	Ecuador-Spain BIT
2006	Vestey Group Ltd v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/06/4)	Venezuela	United Kingdom	United Kingdom-Venezuela BIT
2006	Vivendi v Poland	Poland	France	France-Poland BIT
2007	ALAS International Baustoffproduktions AG v. Bosnia and Herzegovina (ICSID Case No. ARB/07/11)	Bosnia and Herzegovina	Austria	Austria-Bosnia and Herzegovina BIT
2007	Austrian Airlines v Slovak Republic	Slovak Republic	Austria	BIT Austria-Slovak Republic
2007	Chemtura v. Canada	Canada	United States	NAFTA
2007	Domtar Inc. v. United States of America	United States	Canada	NAFTA
2007	E.T.I. Euro Telecom International N.V. v. Republic of Bolivia (ICSID Case No. ARB/07/28)	Bolivia	Netherlands	Bolivia-Netherlands BIT

2007	Fondel Metal v Azerbaijan (ICSID Case No. ARB/07/1)	Azerbaijan	Netherlands	Azerbaijan-Netherlands BIT
2007	Global Gold Mining LLC v. Republic of Armenia (ICSID Case No. ARB/07/7)	Armenia	United States	Armenia-United States BIT
2007	HOCHTIEF Aktiengesellschaft v. Argentine Republic (ICSID Case No. ARB/07/31)	Argentina	Germany	BIT Germany-Argentina
2007	Impregilo S.p.A. v. Argentine Republic (ICSID Case No. ARB/07/17)	Argentina	Italy	Argentina-Italy BIT
2007	Kalingrad Region v Lithuania	Lithuania	Russia	Lithuania-Russia BIT
2007	Laskaridis Shipping Co. and Ukraine	Ukraine	Greece	BIT Greece-Ukraine
2007	Mobil Investments Canada Inc. and Murphy Oil Corporation v. Canada (ICSID Case No. ARB(AF)/07/4)	Canada	United States	NAFTA
2007	Nordzucker v Poland	Poland	Germany	Germany-Poland BIT
2007	Pantechniki S.A. Contractors & Engineers v. Republic of Albania (ICSID Case No. ARB/07/21)	Albania	Greece	Albania-Greece BIT
2007	Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria (ICSID Case No. ARB/07/18)	Nigeria	Netherlands	Netherlands-Nigeria BIT
2007	Société Générale v Dominican Republic	Dominican Republic	France	Dominican Republic-France BIT
2007	TCW v Dominican Republic	Dominican Republic	United States	CAFTA-DR
2007	Toto Costruzioni Generali SPS v Lebanon (ICSID Case No. ARB/07/12)	Lebanon	Italy	BIT Italy-Lebanon
2007	Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/07/25)	Jordan	United States	Jordan-United States BIT
2007	Urbaser S.A. and Consorcio de Aguas Bilbao Biskaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic (ICSID Case No. ARB/07/26)	Argentina	Spain	Argentina-Spain BIT
2008	Alapli Elektrik B.V. v. Republic of Turkey (ICSID Case No. ARB/08/13)	Turkey	Netherlands	ECT and Netherlands-Turkey BIT
2008	Apotex v. United States (I)	United States	Canada	NAFTA
2008	Bosh International, Inc. and B&P, LTD Foreign Investments Enterprise v. Ukraine (ICSID Case No. ARB/08/11)	Ukraine	United States	Ukraine-United States BIT
2008	Brandes Investment Partners, LP v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/08/3)	Venezuela	United States	Venezuela's Law on the Promotion and Protection of Investments (LPPI)
2008	Burlington Resources, Inc. and others v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador (Petroecuador) (ICSID Case No. ARB/08/5)	Ecuador	United States	BIT Ecuador-United States
2008	Caratube International Oil Company LLP v. Republic of Kazakhstan (ICSID Case No. ARB/08/12)	Kazakhstan	United States	BIT Kazakhstan - United States
2008	GEA Group Aktiengesellschaft v Ukraine (ICSID Case No. ARB/08/16)	Ukraine	Germany	BIT Germany-Ukraine
2008	Impregilio Spa v Argentina (ICSID Case No. ARB/09/14)	Argentina	Italy	BIT Argentina-Italy
2008	Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine (ICSID Case No. ARB/08/8)	Ukraine	Germany	BIT Germany-Ukraine
2008	InterTrade v Czech Republic	Czech Republic	Germany	BIT Czech Republic-Germany
2008	Murphy Exploration and Production Company International v. Republic of Ecuador (ICSID Case No. ARB/08/4)	Ecuador	United States	BIT Ecuador-United States
2008	Quadrant Pacific Growth Fund L.P. and Canasco Holdings Inc. v. Republic of Costa Rica (ICSID Case No. ARB(AF)/08/1)	Costa Rica	Canada	BIT Canada-Costa Rica
2008	Sergei Paushok et al v Mongolia	Mongolia	Russia	BIT Mongolia-Russia
2008	Tatneft v. Ukraine	Ukraine	Russia	BIT Russia-Ukraine
2008	Turkcell v. Iran	Iran	Turkey	BIT Iran-Turkey
2009	Abengoa, S.A. y COFIDES, S.A. v. United Mexican States (ICSID Case No. ARB(AF)/09/2)	Mexico	Spain	BIT Spain-Mexico

2009	Apotex v. United States (II)	United States	Canada	NAFTA
2009	Canacar v. the United States	United States	Mexico	NAFTA
2009	Cesare Galdabini Spa v. Russia	Russia	Italy	Italy-Russia BIT
2009	Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador (ICSID Case No. ARB/09/17)	El Salvador	United States	CAFTA-DR
2009	Corporación Quiport S.A. and others v. Republic of Ecuador (ICSID Case No. ARB/09/23)	Ecuador	Canada	Unknown
2009	Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka (ICSID Case No. ARB/09/2)	Sri Lanka	Germany	BIT Germany-Sri Lanka
2009	Dow AgroSciences LLC v Canada	Canada	United States	NAFTA
2009	ECE Projektmanagement v. Czech Republic	Czech Republic	Germany	Czech Republic-Germany BIT
2009	EDF v. Hungary	Hungary	France	ECT
2009	Eureko v Slovak Republic	Slovak Republic	Netherlands	BIT Slovak-Netherlands
2009	EVN AG v. Macedonia, former Yugoslav Republic of (ICSID Case No. ARB/09/10)	Macedonia	Austria	ECT
2009	Global Trading Resource Corp. and Globex International, Inc. v. Ukraine (ICSID Case No. ARB/09/11)	Ukraine	United States	BIT United States-Ukraine
2009	Gold Reserve Inc. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/09/1)	Venezuela	Canada	BIT Canada-Venezuela
2009	H&H Enterprises Investments, Inc. v. Arab Republic of Egypt (ICSID Case No. ARB/09/15)	Egypt	United States	BIT United States-Egypt
2009	Howard and Centurion Health Corporation v. Canada	Canada	United States	NAFTA
2009	Iberdrola Energía, S.A. v. Republic of Guatemala (ICSID Case No. ARB/09/5)	Guatemala	Spain	BIT Spain-Guatemala
2009	Mærsk Olie, Algeriet A/S v. People's Democratic Republic of Algeria (ICSID Case No. ARB/09/14)	Algeria	Denmark	BIT Denmark-Algeria
2009	Swisslion DOO Skopje v. Macedonia, former Yugoslav Republic of (ICSID Case No. ARB/09/16)	Macedonia	Switzerland	BIT Swiss-Macedonia
2009	Ulysseas, Inc. v. Ecuador	Ecuador	United States	Ecuador-US BIT
2009	Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany (ICSID Case No. ARB/09/6)	Germany	Sweden	ECT
2010	AbitibiBowater v. Canada	Canada	United States	NAFTA
2010	AES Corporation and Tau Power B.V. v. Republic of Kazakhstan (ICSID Case No. ARB/10/16)	Kazakhstan	United States and Netherlands	Kazakhstan-US BIT and ECT
2010	Ascom S.A and others v. Kazakhstan	Kazakhstan	Moldova	ECT
2010	Border Timbers Limited, Border Timbers International (Private) Limited, and Hangani Development Co. (Private) Limited v. Republic of Zimbabwe (ICSID Case No. ARB/10/25)	Zimbabwe	Switzerland	Switzerland-Zimbabwe BIT
2010	Bosca v. Lithuania	Lithuania	Italy	Italy-Lithuania BIT
2010	China Heilongjiang International & Technical Cooperative Corp, Qinhuangdaoshi Qinlong International Industrial, and Beijing Shougang Mining Investment v. Republic of Mongolia	Mongolia	China	China-Mongolia BIT
2010	Convial Callao S.A. and CCI - Compañía de Concesiones de Infraestructura S.A. v. Republic of Peru (ICSID Case No. ARB/10/2)	Peru	Argentina	Argentina-Peru BIT
2010	EURAM Bank AG v. Slovak Republic	Slovak Republic	Austria	Austria-Czechoslovakia BIT
2010	Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/10/19)	Venezuela	Chile and Switzerland	BIT Switzerland-Venezuela and BIT Chile-Venezuela
2010	Guaracachi America, Inc and Rurelec PLC v. Bolivia	Bolivia	United Kingdom and United States	Bolivia-UK BIT & Bolivia-US BIT
2010	Içkale Insaat Limited Sirketi v. Turkmenistan (ICSID Case No. ARB/10/24)	Turkmenistan	Turkey	Turkey-Turkmenistan BIT

2010	Metal-Tech Ltd. v. Republic of Uzbekistan (ICSID Case No. ARB/10/3)	Uzbekistan	Israel	Israel-Uzbekistan BIT
2010	Mr. Hassan Awdi, Enterprise Business Consultants, Inc. and Alfa El Corporation v. Romania (ICSID Case No. ARB/10/13)	Romania	United States	Romania-US BIT
2010	Oiltanking GMBH v. Bolivia	Bolivia	Germany	Bolivia-Germany BIT
2010	RSM Production Corporation and others v. Grenada (ICSID Case No. ARB/10/6)	Grenada	United States	Grenada-US BIT
2010	Standard Chartered Bank v. United Republic of Tanzania (ICSID Case No. ARB/10/12)	Tanzania	United Kingdom	Tanzania-UK BIT
2010	TECO Guatemala Holdings, LLC v. Republic of Guatemala (ICSID Case No. ARB/10/23)	Guatemala	United States	US-CAFTA-DR
2011	Agility for Public Warehousing Company K.S.C. v. Islamic Republic of Pakistan (ICSID Case No. ARB/11/8)	Pakistan	Kuwait	BIT Kuwait-Pakistan
2011	Baggerwerken Decloedt En Zoon NV v. Republic of the Philippines (ICSID Case No. ARB/11/27)	Philippines	Belgium	BIT Belgium-Philippines
2011	Bawabet Al Kuwait Holding Company v. Arab Republic of Egypt (ICSID Case No. ARB/11/6)	Egypt	Kuwait	BIT Egypt-Kuwait
2011	Burimi SRL and Eagle Games SH.A v. Republic of Albania (ICSID Case No. ARB/11/18)	Albania	Italy	BIT Italy-Albania
2011	Club Hotel Loutraki S.A. and Casinos Austria International Holding GMBH v. Republic of Serbia (ICSID Case No. ARB/11/4)	Serbia	Greece Austria	BIT Austria-Serbia & BIT Greece-Serbia
2011	Crystallex International Corporation v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/11/2)	Venezuela	Canada	Canada-Venezuela BIT
2011	Detroit International Bridge Company v Canada	Canada	United States	NAFTA
2011	Dialasie SAS v Vietnam	Vietnam	France	BIT France-Vietnam
2011	Ekran Berhad v. People's Republic of China (ICSID Case No. ARB/11/15)	China	Malaysia	BIT Malaysia-China
2011	EuroGas Inc. v Slovakia	EMPTY	United States	BIT United States-Slovak Republic and Czech Republic
2011	Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines (ICSID Case No. ARB/11/12)	Philippines	Germany	BIT Germany-Philippines
2011	Hussain Sajwani, Damac Park Avenue for Real Estate Development S.A.E., and Damac Gamsha Bay for Development S.A.E. v. Arab Republic of Egypt (ICSID Case No. ARB/11/16)	Egypt	United Arab Emirates	BIT UAE-Egypt
2011	Indorama International Finance Limited v. Arab Republic of Egypt (ICSID Case No. ARB/11/32)	Egypt	United Kingdom	BIT United Kingdom-Egypt
2011	Inter-Nexus Consulting Services v Mexico	Mexico	Spain	BIT Spain-Mexico
2011	Mamidoil Jetoil Greek Petroleum Products Societe Anonyme S.A. v. Republic of Albania (ICSID Case No. ARB/11/24)	Albania	Greece	-
2011	Merck v Ecuador	Ecuador	United States	BIT Ecuador-US
2011	Mesa Power Group, LLC v. Government of Canada	Canada	United States	NAFTA
2011	Mobile TeleSystems OJSC v. Turkmenistan (ICSID Case No. ARB(AF)/11/4)	Turkmenistan	Russia	BIT Russia-Turkmenistan
2011	Murphy Exploration and Production Company International v Ecuador (Murphy v Ecuador III)	Ecuador	United States	BIT Ecuador-US
2011	National Gas S.A.E. v. Arab Republic of Egypt (ICSID Case No. ARB/11/7)	Egypt	United Arab Emirates	BIT UAE-Egypt
2011	Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/11/1)	Venezuela	Canada	Canada-Venezuela BIT
2011	Oxus Gold v. Uzbekistan	Uzbekistan	United Kingdom	BIT United Kingdom-Uzbekistan
2011	Renée Rose Levy and Gremcitel S.A. v. Republic of Peru (ICSID Case No. ARB/11/17)	Peru	France	BIT France-Peru
2011	Servier v Poland	Poland	France	BIT France-Poland
2011	Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/26)	Venezuela	Portugal and Luxembourg	BIT Portugal-Venezuela & BIT Luxembourg-Venezuela

2011	Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey (ICSID Case No. ARB/11/28)	Turkey	Netherlands	BIT Netherlands-Turkey
2011	Türkiye Petrolleri Anonim Ortaklığı v. Republic of Kazakhstan (ICSID Case No. ARB/11/2)	Kazakhstan	Turkey	BIT Turkey-Kazakhstan & ECT
2011	Vincent J. Ryan, Schooner Capital LLC, and Atlantic Investment Partners LLC v. Republic of Poland (ICSID Case No. ARB(AF)/11/3)	Poland	United States	Poland-United States BIT
2011	Zamora Gold v Ecuador	Ecuador	Canada	BIT Canada-Ecuador
2012	"Telefónica S.A. v. United Mexican States (ICSID Case No. ARB(AF)/12/4)"	Mexico	Spain	BIT Spain-Mexico
2012	"Venoklim Holding B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/22)"	Venezuela	Netherlands	BIT Netherlands-Venezuela
2012	Accession Mezzanine Capital L.P. and Danubius Kereskedőház Vagyonkezelő Zrt. v. Hungary (ICSID Case No. ARB/12/3)	Hungary	United Kingdom	BIT UK-Hungary
2012	Apotex Holdings Inc. and Apotex Inc. v. United States of America (ICSID Case No. ARB(AF)/12/1)	United States	Canada	NAFTA
2012	Blue Bank International & Trust Ltd. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/20)	Venezuela	Barbados	BIT Barbados-Venezuela
2012	Bycell v India	India	Russia	BIT Russia-India and BIT Cyprus India
2012	Churchill Mining PLC v. Republic of Indonesia (ICSID Case No. ARB/12/14)	Indonesia	United Kingdom	BIT UK-Indonesia
2012	Dan Cake S.A. v. Hungary (ICSID Case No. ARB/12/9)	Hungary	Portugal	BIT Portugal-Hungary
2012	Elecnor S.A. and Isolux Corsán Concesiones S.A. v. Republic of Peru (ICSID Case No. ARB/12/5)	Peru	Spain	BIT Spain-Peru
2012	Gazprom v Lithuania II	Lithuania	Russia	BIT Russia-Lithuania
2012	Gazprom v Lithuania	Lithuania	Russia	BIT Russia-Lithuania
2012	Gelsenwasser AG v. People's Democratic Republic of Algeria (ICSID Case No. ARB/12/32)	Algeria	Germany	BIT Algeria-Germany
2012	Georg Gavrilovic and Gavrilovic d.o.o. v. Republic of Croatia (ICSID Case No. ARB/12/39)	Croatia	Austria	BIT Austria-Croatia
2012	Grupo Francisco Hernando Contreras v. Republic of Equatorial Guinea (ICSID Case No. ARB(AF)/12/2)	Republic of Equatorial Guinea	Spain	BIT Spain-Equatorial Guinea
2012	Inversión y Gestión de Bienes, IGB, S.L. and IGB18 Las Rozas, S.L. v. Kingdom of Spain (ICSID Case No. ARB/12/17)	Spain	Venezuela	BIT Venezuela-Spain
2012	Karkey Karakeniz Elektrik Uretim v Pakistan	Pakistan	Turkey	BIT Turkey-Pakistan
2012	Lao Holdings N.V. v. Lao People's Democratic Republic (ICSID Case No. ARB(AF)/12/6)	Laos	Netherlands	BIT Netherlands-Laos
2012	Mercer International, Inc. v. Canada (ICSID Case No. ARB(AF)/12/3)	Canada	United States	NAFTA
2012	MNSS B.V. and Recupero Credito Acciaio N.V v. Montenegro (ICSID Case No. ARB(AF)/12/8)	Montenegro	Netherlands	BIT Netherlands-Yugoslavia
2012	Muhammet Çap & Sehil Insaat Endüstri ve Ticaret Ltd. Sti. v. Turkmenistan (ICSID Case No. ARB/12/6)	Turkmenistan	Turkey	BIT Turkey-Turkmenistan
2012	Orascom Telecom Holding v Algeria	Algeria	Egypt	BIT Egypt-Algeria
2012	Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria (ICSID Case No. ARB/12/35)	Algeria	Luxembourg	BIT Algeria-Belgium/Luxembourg
2012	Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium (ICSID Case No. ARB/12/29)	Belgium	China	BIT China-Belgium
2012	Planet Mining Pty Ltd v. Republic of Indonesia (ICSID Case No. ARB/12/40)	Indonesia	Australia	BIT Australia-Indonesia
2012	Progas Energy Ltd v Pakistan	Pakistan	Mauritius	BIT Mauritius-Pakistan
2012	Repsol, S.A. and Repsol Butano, S.A. v. Argentine Republic (ICSID Case No. ARB/12/38)	Argentina	Spain	BIT Spain-Argentina
2012	Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/12/5)	Venezuela	Canada	BIT Canada-Venezuela

2012	Saint-Gobain Performance Plastics Europe v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/13)	Venezuela	France	BIT France-Venezuela
2012	Sanum Investments Ltd v Laos	Laos	China	BIT China-Laos
2012	Sistema JFSC v India	India	Russia	BIT Russia-India
2012	Slovak Gas Holding BV, GDF International SAS and E.ON Ruhrgas International GmbH v. Slovak Republic (ICSID Case No. ARB/12/7)	Slovakia	France, Germany, Netherlands	ECT
2012	Supervision y Control S.A. v. Republic of Costa Rica (ICSID Case No. ARB/12/4)	Costa Rica	Spain	BIT Spain-Costa Rica
2012	Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/23)	Venezuela	Luxembourg, Portugal	BIT belgium-Luxembourg-Venezuela, BIT Portugal-Venezuela
2012	Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan (ICSID Case No. ARB/12/1)	Pakistan	Australia	BIT Australia-Pakistan
2012	UAB E energija v. Republic of Latvia (ICSID Case No. ARB/12/33)	Latvia	Lithuania	BIT Lithuania-Latvia
2012	Valle Verde Sociedad Financiera S.L. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/18)	Venezuela	Spain	BIT Spain-Venezuela
2012	Vattenfall AB and others v. Federal Republic of Germany (ICSID Case No. ARB/12/12)	Germany	Sweden	ECT
2012	Veolia Propreté v. Arab Republic of Egypt (ICSID Case No. ARB/12/15)	Egypt	France	BIT France-Egypt

Appendix 3. List of unverified cases (37 cases)

Initiated year	Parties	Host country	Home country of the claimant	Legal instrument
1994	Tradex Hellas SA v. Republic of Albania (ICSID Case No. ARB/94/2)	Albania	Greece	Albania-Greece BIT (Albania Investment Laws)
1996	FEDAX N.V. v. Republic of Venezuela (ICSID Case No. ARB/96/3(1))	Venezuela	Netherlands	Netherlands-Venezuela BIT
1999	Middle East Cement Shipping and Handling Co v. Arab Republic of Egypt (ICSID Case No. ARB/99/6)	Egypt	Greece	Egypt-Greece BIT
2000	Consortium RFCC v. Morocco (ICSID Case No. ARB/00/6)	Morocco	Italy	Italy-Morocco BIT
2003	Inceysa Vallisoletana S.L. v. Republic of El Salvador (ICSID Case No. ARB/03/26)	El Salvador	Spain	El Salvador-Spain BIT
2003	M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador (ICSID Case No. ARB/03/6)	Ecuador	United States	Ecuador-United States BIT
2003	Plama Consortium Limited v. Republic of Bulgaria (ICSID Case No. ARB/03/24)	Bulgaria	Cyprus	ECT and Bulgaria-Cyprus BIT
2004	ABCI Investments v. Tunisia (ICSID Case No. ARB/04/12)	Tunisia	Netherlands Antilles	Netherlands-Tunisia BIT and Foreign Investment Law
2004	Gemplus, S.A., SLP, S.A., and Gemplus Industrial S.A. de C.V. v. United Mexican States (ICSID Case No. ARB(AF)/04/3)	Mexico	France	France-Mexico BIT
2004	Trinh Vinh Binh and Binh Chau Joint stock Company v. Socialist Republic of Viet Nam	Viet Nam	Netherlands	Netherlands-Viet Nam BIT
2005	Ares International S.r.l. and MetalGeo S.r.l. v. Georgia (ICSID Case No. ARB/05/23)	Georgia	Italy	Georgia-Italy BIT
2005	Asset Recovery Trust S.A. v. Argentine Republic (ICSID Case No. ARB/05/11)	Argentina	United States	Argentina-United States BIT
2005	European Media Ventures v. Czech Republic	Czech Republic	Luxembourg	Czech Republic-Luxembourg BIT
2005	I&I Beheer B.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/05/4)	Venezuela	Netherlands	Netherlands-Venezuela BIT
2005	K+Venture Partners v. Czech Republic	Czech Republic	Netherlands	Czech Republic-Netherlands BIT
2006	Sistem Muhendislik Insaat Sanayi ve Ticaret A.S. v. Kyrgyz Republic (Case No. ARB(AF)/06/1)	Kyrgyz Republic	Turkey	Kyrgyz Republic-Turkey BIT
2007	Alpha Projektholding GmbH v. Ukraine (ICSID Case No. ARB/07/16)	Ukraine	Austria	Austria-Ukraine BIT
2007	Europe Cement Investment and Trade S.A. v. Republic of Turkey (ICSID Case No. ARB(AF)/07/2)	Turkey	Poland	ECT
2007	Frontier Petroleum Services (FPS) v Czech Republic	Czech Republic	Canada	Canada-Czech Republic BIT
2007	S&T Oil Equipment & Machinery Ltd. v. Romania (ICSID Case No. ARB/07/13)	Romania	United States	Romania-United States BIT
2008	iZEE v Georgia	Georgia	United States	BIT Georgia - United States
2008	Karmer Marble Tourism Construction Industry and Commerce Limited Liability v Georgia (ICSID Case No. ARB/08/19)	Georgia	Turkey	BIT Turkey-Georgia
2008	Malicorp Limited v Egypt (ICSID Case No. ARB/08/18)	Egypt	United Kingdom	BIT Egypt-United Kingdom
2008	Participaciones Inversiones Portuarias SARL v. Gabon (ICSID Case No. ARB/08/17)	Gabon	Spain	Unknown
2008	Remington Worldwide Limited v. Ukraine	Ukraine	United Kingdom	ECT
2009	Dunkeld International Investment Limited v. Belize	Belize	United Kingdom	BIT United Kingdom-Belize

2009	International Company for Railway Systems (ICRS) and Privatization Holding Company (PHC) v. Hashemite Kingdom of Jordan (ICSID Case No. ARB/09/13)	Jordan	Kuwait	BIT Kuwait-Jordan
2009	KT Asia Investment Group B.V. v. Republic of Kazakhstan (ICSID Case No. ARB/09/8)	Kazakhstan	Netherlands	BIT Kazakhstan-Netherlands
2010	Kilic Insaat Ithalat Ihracat Sanayi ve Ticaret Anonim Sirketi v. Turkmenistan (ICSID Case No. ARB/10/1)	Turkmenistan	Turkey	BIT Turkey-Turkmenistan
2011	Accession Eastern Europe Capital AB and Mezzanine Management Sweden AB v. Republic of Bulgaria (ICSID Case No. ARB/11/3)	Bulgaria	Sweden	BIT Sweden-Bulgaria
2011	Copper Mesa v Ecuador	Ecuador	United States	BIT Ecuador-US
2011	Highbury International AVV and Ramstein Trading Inc. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/1)	Venezuela	Netherlands	BIT Netherlands-Venezuela
2011	Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/11/5)	Venezuela	Netherlands	BIT Netherlands-Venezuela
2011	Ranco v Peru	Peru	United States	FTA United States-Peru
2011	Vigotop Limited v. Republic of Hungary (ICSID Case No. ARB/11/22)	Hungary	Cyprus	BIT Cyprus-Hungary
2012	Novera AD, Novera Properties B.V. and Novera Properties N.V. v. Republic of Bulgaria (ICSID Case No. ARB/12/16)	Bulgaria	Netherlands	BIT Netherlands-Bulgaria
2012	Transban Investments Corp. v. Bolivarian Republic of Venezuela (ICSID Case No. ARB/12/24)	Venezuela	Barbados	BIT Barbados-Venezuela