

FACT SHEET: U.S. INVESTMENT AGREEMENTS

LEVELING THE PLAYING FIELD FOR U.S. COMPANIES AND AMERICAN WORKERS

U.S. investment agreements, such as bilateral investment treaties (“BITs”) and the investment chapters of trade agreements, help increase U.S. international investment and level the playing field for U.S. companies overseas, ensuring that they can operate on a level playing field and are treated according to the rule of law in key foreign markets.

Strong, Enforceable Market-Opening Commitments and Legal Protections

U.S. investment agreements provide significant market openings for U.S. companies overseas and ensure that the investments they make enjoy high levels of legal protection. In particular, U.S. investment agreements:

- require **non-discriminatory treatment**, locking in and, in some cases, enhancing market access for our companies in foreign markets;
- provide U.S. investments in foreign markets with **strong legal protections**, including protections against arbitrary or discriminatory treatment; guarantees of compensation in the case of expropriations; the right to transfer funds into and out of the country; and prohibitions on local content requirements, technology transfer requirements, and other types of performance requirements; and
- enable U.S. investors to pursue **binding international arbitration** (“investor-State” arbitration) where a government has breached the agreement.

Core Obligations Based on U.S. Legal Principles and Practice

The obligations in U.S. investment agreements are based on the same legal principles and protections available under the U.S. Constitution and the U.S. legal system.

- The protections against discriminatory treatment are similar to the guarantees set out in the Equal Protection Clause of the U.S. Constitution.
- The right to “fair and equitable treatment” is akin to the U.S. law protection from “arbitrary and capricious” treatment in the Administrative Procedures Act.
- The protection against uncompensated expropriations is drawn from U.S. Supreme Court cases that interpret the Takings Clause of the U.S. Constitution.

Investor-State Arbitration

Investor-State arbitration provides investors with a fair and independent mechanism to enforce their rights under the agreement, which is vitally important in countries where local law or domestic courts may be uncertain. At the same time, the provisions of U.S. investment agreements are crafted to preserve that the ability of the U.S. government and our state and local governments to regulate in the public interest.

- U.S. investors have won or settled dozens of investor-State cases and received hundreds of millions of dollars in damages from foreign governments.
- The United States has won every one of the handful of cases that have been brought against it and has never paid a penny in damages or to settle a case.

Preserving the Right of Governments to Regulate in the Public Interest

U.S. investment agreements effectively safeguard the ability of U.S. regulators to protect the public interest.

- Nothing in U.S. investment agreements prevents a government from adopting or maintaining non-discriminatory laws or regulations that protect the environment, public health, safety, or other public welfare interests.
- Even if an investor can establish a violation of a U.S. investment agreement and demonstrate harm suffered as a result, a tribunal may only order the payment of monetary damages. It may not order the U.S. government or a state or local government to change its laws, regulations, or practices.

State-of-the-Art Transparency and Public Participation Provisions

U.S. investment agreements contain state-of-the-art provisions on transparency and public participation in investor-State arbitration.

- The 2012 U.S. model BIT and all recent U.S. trade agreement investment chapters require that investor-State arbitration proceedings and documents be open to the public and provide that tribunals may consider the views of the public.
- Party submissions, *amicus curiae* submissions, hearing transcripts, and other documents in investor-State cases filed against the United States are available on the U.S. Department of State website at <http://www.state.gov/s/1/c3439.htm>.

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