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Fostering sustainable development under the *EU–Vietnam Investment Protection Agreement*: a need for enhancing cooperation through support mechanisms

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Abstract: The *EU–Vietnam Investment Protection Agreement* (*EVIPA*), signed by the parties in 2019, represents a significant shift from traditional investment treaties by integrating sustainable development objectives and explicitly recognizing the host state's regulatory autonomy. The agreement also includes a number of provisions aimed at balancing investor protection with public policy goals. However, concerns persist regarding the clarity and effectiveness of these novel regulations for achieving this balance. The parties to the *EVIPA* have agreed to introduce a groundbreaking investment dispute settlement mechanism designed to enhance legal stability and clarity in the treaty's interpretation and implementation. This study underscores the importance of prioritizing these mechanisms while addressing existing limitations in the regulatory framework, particularly concerning the right to regulate and exception clauses.

Keywords: EVIPA*, general exceptions, IIA, Investment Court System, ISDS, right-to-regulate clause, sustainable development*

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1. Introduction

In 2019, Vietnam and the EU strengthened their economic partnership by signing the *EU–Vietnam Free Trade Agreement* (*EVFTA*) and the *EU–Vietnam Investment Protection Agreement* (*EVIPA*), which are expected to bring significant changes to trade and investment flows between the parties (Tran, 2019; Ha, 2022). The *EVIPA* is often termed a "new-generation" international investment agreement (IIA) because of its emphasis on sustainable development and state regulatory rights. It refines the provisions on indirect expropriation and fair and equitable treatment (FET) to safeguard regulatory autonomy. By signing the *EVIPA*, both Vietnam and the EU reaffirm their commitment to balancing policy space and foreign direct investment. However, some studies still highlight lingering ambiguities in the *EVIPA*, particularly in the indirect expropriation provision, which may create broad discretion for investor-state dispute settlement (ISDS) tribunals to interpret and implement the rules (Henckels, 2016; Ortino, 2016).

To contribute to the literature on this issue, this article identifies lingering ambiguities in drafting the right-to-regulate and exception clauses within the *EVIPA*. It argues that if the parties wish to ensure policy space in implementing this Agreement, the innovative cooperation mechanisms included in the *EVIPA*—such as distinctive ISDS mechanisms, particularly the Investment Committee and the Investment Court System (ICS)—require special attention. The article stresses the importance of collaborative efforts in establishing and operationalizing these bodies. Using a combined legal doctrinal and comparative approach, it assesses the clarity and enforceability of *EVIPA*'s provisions on sustainable development and regulatory autonomy. The analysis is contextualized within the broader framework of IIAs and policy initiatives that promote sustainable development. By addressing these ambiguities and ensuring the effective functioning of the *EVIPA*'s institutional mechanisms, this article contributes to the understanding of how IIAs can balance investment protection with the preservation of regulatory autonomy for sustainable development.

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2. Sustainable development and regulatory autonomy in the *EVIPA*: identified weaknesses

The *EVIPA* outlines its goal in the Preamble: to strengthen the economic, trade and investment relationships among parties in line with sustainable development, focusing on high standards of environmental and labor protection. However, it lacks an explicit reference to the right to regulate, which weakens the acknowledgment of the state regulatory authority alongside investment protection.

Scholars are divided on how effective preamble statements affirm the right to regulate and protect the host state's policy space (Kawharu, 2015). Nevertheless, explicitly preserving this right in the Preamble would likely enhance the host state's regulatory authority. Articles 31(1) and 31(2) of the *Vienna Convention on the Law of Treaties* indicate that substantive provisions should be interpreted in light of the Preamble. This is especially relevant in investor-state disputes, where tribunals may emphasize the treaty's "object and purpose" (Kim, 2018), as evidenced in cases such as 'Siemens v Argentina' (2004, para. 81) and 'SGS v Philippines' (2004, para. 116).

Indeed, incorporating the right-to-regulate clause in the Preamble would have a profound impact on all provisions of the agreement, ensuring that the host state's regulatory authority is consistently acknowledged by tribunals when evaluating compliance with substantive standards. This emphasizes that the right to regulate belongs to the host state, alongside the protections in IIAs (Korzun, 2017). Conversely, a specific provision on regulatory power may have a narrower application.

2.1 The right-to-regulate clause

In the context of the *EVIPA*, Article 2(2) establishes that the parties retain the right to regulate within their territories to achieve legitimate policy objectives, including public health, safety, environmental protection, public morals, social or consumer protection and cultural diversity. It should be noted that paragraphs 3 and 4 of Article 2(2) of the *EVIPA* cover more specific situations related to subsidies provided or granted by the host state and, therefore, will not be discussed in this article. Paragraph 1 protects the regulatory rights of both parties, while paragraph 2 clarifies that investment protection obligations do not prevent the host state from modifying its legal and regulatory framework. The phrase “*such as*” indicates that the examples are illustrative rather than exhaustive. Additionally, paragraph 2 states that investment commitments should not prohibit changes to regulatory frameworks, even if those changes adversely affect investments or profit expectations, linking it to Article 2(5) on FET. Although Article 2(2) provides some protection for the state’s right to regulate, its effectiveness in safeguarding policy space raises concerns, as it does not guarantee strong protection for regulatory authorities (Trujillo, 2018; Chi, 2018; Martini, 2017; Kim, 2018). The factors contributing to these limitations are explored below:

1) Article 2(2) of the *EVIPA* resembles a preamble and lacks the precision to establish concrete rights or obligations. A similar wording of such IIA objectives can be found in the model IIAs of countries, that is, the US Model Bilateral Investment Treaty (SNBT, 2015, p. 14). This vagueness hinders tribunals in assessing the legitimacy of measures and balancing public interest against investor rights (Martini, 2017), contradicting the well-established principle of state sovereignty (Levashova, 2019) and the jurisprudence of investment arbitration (‘AWG v Argentina’, 2010, para. 262; ‘Impregilo v Argentina’, 2011, para. 229; ‘Urbaser v Argentina’, 2016, para. 622; ‘Chemtura v Canada’, 2010, para. 266), making such an affirmation essentially unnecessary.
2) The scope of this right within the IIL framework remains ambiguous (Vanduzer, Simons and Maeda, 2013; Tran, 2024). While designed as an exception to investment protections, it is unclear whether its invocation relieves the host state of all compensation liability. This uncertainty arises from the complexities involved in determining a state’s legitimate measures, necessitating a nuanced analysis of investment standards, customary law and treaty obligations.
3) The clause lacks concrete criteria for legitimizing policy objectives, creating ambiguity (Coleman *et al.*, 2018, p. 86; Levashova, 2019). Tribunals would usually define whether the objectives can be substantiated by the host state through records of compliance with national law or international obligations under international treaties (Levashova, 2019). Although arbitral practice offers some guidance, the varied nature of public interest objectives limits the effectiveness of this regulation in protecting the host state’s policy space.

In fact, the right-to-regulate clause is a recent innovation observed in the negotiations of new-generation IIAs aimed at addressing the limitations of simply mentioning regulatory rights in the Preamble. The interpretation of ISDS practices regarding this clause is relatively limited. In evaluating Article 2(2) of the *EVIPA*, it is likely that ICS tribunals will apply a proportionality analysis, also known as a "reasonableness test" (Henckels, 2018b). The principle has been applied especially by the EU Court of Justice and the European Court of Human Rights. This approach balances competing interests and is commonly used in various legal contexts. It helps align state regulatory powers with the protection standards outlined in IIAs, a point emphasized by Calamita (2013).

The application of proportionality analysis in cases such as 'PL Holdings Sàrl v Republic of Poland' (2017, paras. 355–357, 375, 389–391) and 'Occidental v Ecuador II' (2012, paras. 428–446) shows its growing acceptance. Other disputes, including 'Tecmed v Mexico' (2003), 'Saluka v Czech Republic' (UNCITRAL, 2006), 'Electrabel v Hungary' (2015), 'Philip Morris v Uruguay' (2016), also illustrate how tribunals use this principle to balance investor rights and state regulatory powers, even without explicit mention in the treaties.

The proportionality test is used to evaluate regulatory power under Article XX of the *General Agreement on the Tariffs and Trade* (*GATT*) of the World Trade Organization (WTO) and is essential for promoting environmental policy among member parties through dispute resolution mechanisms (Hush, 2018). This principle involves a three-pronged test (Calamita, 2013; Ortino, 2016; TiTi, 2018).

1) *Suitability*: is the measure appropriate for achieving the goal?
2) *Necessity*: Is the applied measure necessary to achieve the pursued aim?
3) *Proportionality stricto sensu*: Even if there are no less restrictive measures, is the burden on the individual excessive relative to the benefits secured by the state objective?

In a context where IIAs provide limited clarification on specific issues, such as regulatory rights, tribunals typically do not rely solely on the text of the investment treaty. They may reference general international law when interpreting guarantees. This interpretative approach provides a foundation for future *EVIPA* tribunals to apply the principle of proportionality—despite its absence from the treaty's text—as a tool for assessing states' regulatory rights under Article 2(2). The principle of proportionality enables tribunals to balance competing interests while respecting state sovereignty without resorting to judicial borrowing (Zarra, 2017; Henckels, 2012).

2.2 The general exception clause

The increasing prevalence of general exception clauses in contemporary IIAs reflects an ongoing effort to balance sustainable development objectives with the host state's policy space. According to the 2017 *World Investment Report*, 43% of BITs concluded between 2011 and 2016 included public policy exceptions (UNCTAD, 2017, pp. 119, 122). The *EVIPA* exemplifies this trend by incorporating various exceptions in Chapter 4, including those related to taxation (Article 4(1)) and security (Article 4(8)). However, this analysis primarily focuses on Article 4(6), which offers a broad justification for state policy measures.

Article 4(6) closely mirrors the language of the general exception clause in the WTO trade agreements, namely, Article XX of the *GATT* and Article XIV of the *General Agreement on Trade in Services* (*GATS*), especially regarding non-discrimination among countries under similar conditions. Nevertheless, Article 4(6) presents a more concise list of policy objectives than Article XX of the *GATT*. It is expected that future tribunals will easily determine whether measures align with the objectives of Article 4(6), as such issues are routinely addressed in investment arbitration and international trade disputes.

Article 4(6) echoes *GATT* Article XX by emphasizing the "good faith" application of measures, ensuring they are not discriminatory or misleadingly restrictive. Tribunals assess whether a measure leads to (a) arbitrary or unjustifiable discrimination or (b) a disguised restriction on investments. In the ISDS context, this often involves determining whether foreign investments receive less favorable treatment (Brew, 2019).

When invoking Article 4(6), the inquiry shifts from establishing violations of national treatment (NT) or most-favored-nation (MFN) obligations to whether the measure is "necessary" and related to legitimate policy objectives. If so, the focus then shifts to any issues of arbitrary discrimination or disguised restrictions.

Under the WTO's general exception approach, the host state must initially prove that a measure is necessary to achieve a legitimate policy objective, which can be a challenging requirement. Any measure differentiating between national and foreign investors or among foreign investors must be the least restrictive possible measure.

While the host state has advantages in terms of resources and information, it must show that there are no "like circumstances" between investor groups. If successful, the burden shifts to the investor to demonstrate that the measure is not "necessary" by proposing a less restrictive alternative. If an investor succeeds, the host state must argue that the alternative is inadequate. Ultimately, the investor must prove the existence of arbitrary discrimination or disguised restrictions. This allocation of the burden of proof aligns with the established principles of international law (Kim, 2018) and contributes to a more balanced and equitable ISDS system (Chauvel, 2017).

The strict "necessity test" in Article 4(6) of the *EVIPA* poses challenges for both investors and host states. Tribunals must assess whether the challenged measure is necessary and meets the criteria of the exception clause. If an investor can show that the measure is unnecessary or amounts to arbitrary discrimination, the exception clause does not apply, and the host state may be liable for violating IIA obligations. Conversely, if the host state proves the measure's necessity and legitimacy, it will not violate NT or MFN standards. This approach aligns with the *EVIPA*'s goal of promoting sustainable development while allowing host states policy flexibility.

In international investment dispute cases concerning NT, tribunals typically apply less stringent standards. They often determine whether the less favorable treatment of foreign investors is justified by a legitimate public policy objective (Chauvel, 2017). Unlike the stricter "necessity" test in Article 4(6), this approach does not require proof that the measure is the least restrictive option. The introduction of Article 4(6) may complicate NT and MFN obligations and lead to a "regulatory chill" (Chauvel, 2017). To address this, tribunals under the *EVIPA* should consider alternative frameworks, such as Chauvel's "causation analysis", which focuses on whether the measure itself has a negative impact on foreign investors. The causation analysis, as proposed by Chauvel, suggests that a case of less favorable treatment should be established if the disputed measure itself is found to be responsible for a significant disparate impact, thereby excluding less favorable treatment attributed solely to the circumstances of the case. Using such methods, tribunals can balance the right to regulate with NT and MFN principles.

ISDS jurisprudence shows differing interpretations of exception clauses. Some tribunals view these exceptions as affirmative defenses, requiring host states to prove their applicability after a violation of investment obligations (Henckels, 2018a). This is evident in early cases concerning the security exception under the *US–Argentina Bilateral Investment Treaty (BIT)* (1991, Article XI), such as ‘CMS v Argentina’ (2005, paras. 320–356, 374), ‘Enron v Argentina’ (2007, paras. 334, 339), and ‘Sempra v Argentina’ (2007, paras. 376, 388), in which tribunals scrutinized the circumstances justifying the state’s actions under the exception. In ‘LG&E v Argentina’ (2006, para. 132), the tribunal emphasized the security exception as a justification for actions that would otherwise constitute a breach of FET. This trend culminates in ‘Bear Creek v Peru’ (2017, para. 475), where the tribunal suggested that exception clauses can legitimize otherwise unfair conduct, aligning them with Article XX of the *GATT*.

Conversely, other tribunals interpret exception clauses as delimiting the scope of investment protections. In ‘CMS v Argentina’ (2007, para. 129) and ‘Continental Casualty Company v Argentine’ (2008, paras. 164, 168), the tribunals emphasized that exception clauses “reserve rights” for state parties, implying that they “set aside or suspend” substantive obligations when applicable. This perspective is further supported by the tribunal’s decision in ‘Copper Mesa v Ecuador’ (2016, para. 6(58)), which held that an expropriation claim could only be established if the impugned measure fell outside the scope of the exception (Henckels, 2018a).

Differing interpretations underscore the ambiguity surrounding the relationship between exception clauses and substantive investment obligations. Viewing exceptions as affirmative defenses may limit states’ regulatory flexibility. Clarifying how parties perceive exceptions within the *EVIPA* framework is essential to navigate these challenges. The tools discussed later in this paper can help articulate mutual intent regarding these provisions, guiding the *EVIPA* tribunal in dispute resolution.

The preceding analysis demonstrates that the provisions intended to preserve the state’s right-to-regulate for the purposes of sustainable development under the *EVIPA* remain ambiguous and potentially ineffective as there is no unified understanding of these provisions (Nguyen, 2022). Unlike traditional IIAs, the *EVIPA* includes innovative mechanisms, such as the Investment Committee, which fosters ongoing dialogue and cooperation. The transition to an ICS also presents an opportunity to align the Agreement with sustainable development objectives. The following section explores the potential roles of these mechanisms in promoting sustainable investment and protecting the parties’ policy space.

3. The Investment Committee and the Investment Court System as critical mechanisms in supporting sustainable development and the host states' right to regulate

Similar to other IIAs concluded between the EU and its partners, such as the *Canada–European Union Comprehensive Economic and Trade Agreement* and the *EU–Singapore Trade and Investment Agreements*, the *EVIPA* offers valuable mechanisms to maintain the right to control the application of the agreements between them, especially the ICS and the Investment Committee.

3.1 The expected role of the Investment Committee

The *EVIPA* establishes an Investment Committee that mirrors the structure of the Trade Committee under the *EVFTA* (Article 17). This Committee, co-chaired by representatives from Vietnam and the European Commission, is mandated to supervise and facilitate the implementation and application of the agreement (*EVIPA*, Article 4(1)). Significantly, the Committee is empowered to consider and recommend amendments to the Agreement (*EVIPA*, Article 4(1para. 4(b))) and, crucially, to adopt binding interpretations of its provisions, including all substantive provisions (*EVIPA*, Article 4(1), para. 4(c)).

With its authority, the Investment Committee plays a crucial role in clarifying ambiguities within the *EVIPA*. Through deliberations, it provides guidance for investment tribunals, ensuring that the Agreement aligns with the parties' shared objectives. For example, the Committee can clarify the burden of proof in disputes and interpret the function of exception clauses—either as limits on investment protections or as defenses for host states (Henckels, 2018a). These clarifications are essential for maintaining a balance between investment protection and state regulatory autonomy. The Investment Committee is expected to safeguard the implementation of the *EVIPA*, ensuring coherence, stability and adaptability in its application. By providing authoritative interpretations and facilitating dialogue between the parties, it enhances legal certainty for both investors and host states.

The *EVIPA* ratification process has been slower than expected, hindered by the EU's shared competence with its Member States. The European Parliament ratified the *EVIPA* in February 2020 and Vietnam's National

Assembly in June 2020; yet, only 18 out of 27 EU Member States had ratified it by April 2025 (European Council, 2025). This delay has obstructed the operationalization of the Agreement and the establishment of the Investment Committee, which is crucial for its long-term success and for maintaining the host state's policy space. Lack of cooperation could further jeopardize the Agreement's goals.

3.2 The critical role of the Investment Court System

While recognizing the state's right to regulate, traditional ISDS tribunals may not be optimally suited to assess complex policy considerations (Brew, 2019). Developing a more suitable dispute settlement mechanism in investment treaties is therefore essential for balance.

The ICS is designed to facilitate this rebalancing process. Modeled after the WTO's dispute settlement mechanism, the ICS operates as a quasi-judicial body with two levels of review, enhancing consistency and predictability in treaty interpretation and application.

The appointment of ICS members, tasked with safeguarding the effective implementation of the *EVIPA*, is vital for both Vietnam and the EU. As noted by Paparinskis (2015), understanding international investment law requires a multifaceted skillset. ICS members must possess a strong foundation in international law and the ability to interpret treaties in accordance with the *Vienna Convention*. Additionally, they must navigate complex investment law issues, including jurisdictional challenges, admissibility standards and the interplay of rules. Given the hybrid nature of investment treaties, these experts shall also draw upon other areas of international law, such as human rights and environmental law, to address gaps and resolve ambiguities (Paparinskis, 2015). Furthermore, they must be attuned to domestic policy considerations and uphold host state regulatory autonomy, as enshrined in the *EVIPA*. Although identifying individuals with this diverse expertise is challenging, establishing a high-caliber ICS is essential to ensure a balanced approach between investment protection and the state regulatory authority.

By establishing a consistent and predictable framework for dispute resolution, the ICS can address the shortcomings of traditional ISDS, in which tribunals have employed diverse and often inconsistent approaches to balancing competing interests (Henckels, 2018b). The consistent application of appropriate review methods by ICS tribunals will be crucial for ensuring that the agreement effectively balances investment protection with the legitimate regulatory objectives of the host state.

The ICS under the *EVIPA* aligns with the European Commission's goal of establishing a Multilateral Investment Court (MIC) (European Commission, 2025a), reflecting its decade-long role in UNCITRAL Working Group III on ISDS Reform (UNCITRAL, 2024). This alignment aims to harmonize the approach to legal issues, mirroring the WTO's model of dispute settlement mechanisms. The EU has advocated for a standing mechanism for international investment dispute resolution, as it could enhance impartiality and predictability in the course of dispute settlement while addressing shortcomings in the ad hoc arbitration system of the traditional ISDS system. To test and refine its reformation approach, while awaiting the outcome of the UNCITRAL negotiations, the EU has actively sought to introduce investment tribunal mechanisms in its IIAs with its FTA partners, including Canada, Chile, Singapore and Vietnam (European Commission, 2025b; Eliasson, 2015*)*. Arguably, the development of such tribunals may encounter challenges related to personnel selection and supervisory mechanisms.

Vietnam recognizes the importance of a robust ISDS for attracting investment and supporting economic growth and thus supports the EU's initiative. Following the ratification of the *EVFTA*, the government issued 'Decision 1201/QD-TTg' on August 6, 2020, designating agencies and appointing arbitrators for the upcoming ICS. Earlier, on June 18, 2020, the National Assembly of Vietnam issued 'Resolution 113/2020/QH14', which recognizes and enforces judgments from the ICS established under the *EVIPA*. This resolution codifies the provisions outlined in Article 3(57), which pertain to the enforcement of final awards. Notably, paragraph 2 states, "Each Party shall recognize a final award rendered according to this Section as binding and enforce the pecuniary obligation within its territory as if it were a final judgment of a court in that Party." The issuance of 'Resolution 113/2020/QH14' reflects the Vietnamese government's commitment to effectively implement the *EVIPA*. Vietnamese officials have also made significant diplomatic efforts to encourage EU member states to ratify the agreement (Vinh and Duy, 2025). However, once the EU completes its ratification, the Vietnamese government should be prepared to address any complaints arising from the investment activities of European investors governed by Chapter 3(B) of the *EVIPA* in the coming period. The initial preparation should focus on recognizing the critical role of the ICS in ensuring the effective application of the *EVIPA*, thereby maintaining a reliable ISDS system in anticipation of future claims.

4. Conclusion and outlook

The *EVIPA* reflects contemporary trends in investment treaty negotiations by defining substantive obligations and recognizing states' regulatory rights. This approach enhances control over the interpretation of the treaty by investment tribunals, particularly regarding the appropriate consideration of the regulatory space within the international investment framework. Models such as the *EU–Canada Comprehensive Economic and Trade Agreement* and the *Transatlantic Trade and Investment Partnership* are initial steps toward this goal (Eliasson, 2015).

However, full safeguarding of the regulatory space remains a work in progress. One proposed approach involves directing the attention of ICS to instruments such as the *Paris Agreement* and the UN Climate Change Conference declarations, highlighting the growing global commitment to sustainable development. As this principle evolves into customary international law, its persuasive power is expected to increase (Hush, 2018). Additionally, domestic laws and existing environmental agreements between the parties can offer insights into their intentions regarding sustainable development. These avenues allow for more effective integration of this concept into the Agreement, ensuring a balance between investor protection and environmental considerations. Referencing environmental obligations can strengthen the host state's right to regulate and support successful counterclaims in this area.

The ICS and the Investment Committee hold significant potential for safeguarding regulatory space through ongoing monitoring and collaboration. The strong relationship between the EU and Vietnam, and the European Commission's experience in legislative matters, suggest a favorable environment for such cooperation. However, the extent of the policy space under the *EVIPA* hinges on the practical realities of the ICS's operation. Further research is necessary to devise effective strategies for organizing and operating the ICS to achieve the Agreement's objectives. For instance, the appointment of ICS Members who will serve as future interpreters of the *EVIPA*, necessitates meticulous consideration, ensuring that they possess the requisite expertise in international law and the nuances of international arbitration. In addition, selecting and applying appropriate review methods to evaluate substantive investment standards is crucial for determining the liability or success of a claim. With the consistent application of review methods by ICS tribunals, the ability to uphold the parties' expected regulatory rights will be further ensured.

Vietnam's current IIAs restrict the government's ability to manage FDI and environmental protection (Tran and Ngo, 2017). In contrast, the *EVIPA* allows for post-signing adjustments, presenting Vietnam with an opportunity to strengthen its negotiation stance. Given the escalating pressure for effective environmental protection and climate change actions, it is imperative for Vietnam to robustly secure its rights within IIAs to mitigate the risk of increased investor claims. Indeed, ISDS disputes involving Vietnam have been on the rise, with a total of 13 cases to date (UNCTAD, 2025). Since the signing of the *EVFTA*, FDI from the EU has been modest owing to global fluctuations. Indeed, as of August 2022, the EU had 2,378 projects in Vietnam worth USD 27.59 billion, accounting for only approximately 3% of its total investment in ASEAN (Nguyen *et al.*, 2022, p. 21). However, investment facilitation regulations in the *EVFTA*, particularly in Chapter 7, regarding non-tariff barriers to trade and investment in renewable energy, suggest that FDI from the EU to Vietnam is likely to increase as their relationship strengthens. In this context, the Vietnamese government has no choice but to adopt a proactive and assertive stance in negotiations, moving away from a passive approach to safeguarding its legitimate objectives.

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References

'AWG Group v The Argentine Republic' (2010) UNCITRAL, Decision on Liability. ICSID Case No. ARB/03/19. United Nations Commission on International Trade Law, 30 July.

Baetens, F. (ed) (2013) *Investment law within international law – integrationist perspectives*. Cambridge: Cambridge University Press. Available at: https://doi.org/10.1017/CBO9781139855921

'Bear Creek Mining Corporation v Republic of Peru' (2017) ICSID Case No. ARB/14/21, Award. International Centre for Settlement of Investment Disputes, 30 November.

Brew, R. (2019) 'Exception clauses in international investment agreements as a tool for appropriately balancing the right to regulate with investment protection', *Canterbury Law Review*, 25, pp. 205–242.

Calamita, J.N. (2013) 'International human rights and the interpretation of international investment treaties: constitutional considerations', in F. Baetens (ed) *Investment law within international law – integrationist perspectives*. Cambridge: Cambridge University Press, pp. 164–184. Available at: https://doi.org/10.1017/CBO9781139855921.011

Chauvel, L.M. (2017) 'The influence of general exceptions on the interpretation of national treatment in international investment law', *Brazilian Journal of International Law*, 14(2), pp. 140–142. Available at: https://doi.org/10.5102/rdi/bjil.v14i2.4670

'Chemtura Corporation v Government of Canada' (2010) UNCITRAL Award. United Nations Commission on International Trade Law, 2 August.

Chi, M. (2018) *Integrating sustainable development in international investment law: normative incompatibility, system integration and governance implications*. Abingdon: Routledge. Available at: https://doi.org/10.4324/9781315642840

'CMS Gas Transmission Company v The Argentine Republic' (2005) ICSID Case No. ARB/01/8, Award. International Centre for Settlement of Investment Disputes, 12 May.

'CMS Gas Transmission Company v The Argentine Republic' (2007) ICSID Case No. ARB/01/8, Decision on Annulment. International Centre for Settlement of Investment Disputes, 17 July.

Coleman, J., Johnson, L., Sachs, L. and Gupta, K. (2018) 'International investment agreements 2015–2016: a review of trends and new approaches', in L. E. Sachs and L. Johnson (eds) *2015–2016 yearbook on international investment law and policy*. Oxford: Oxford University Press, pp. 42–108.

'Continental Casualty v The Argentine Republic' (2008) ICSID Case No. ARB/03/9 *Award*, International Centre for Settlement of Investment Disputes, 5 September.

'Copper Mesa Mining Corporation v The Republic of Ecuador' (2016) PCA Case No. 2012-2 Award. Permanent Court for Arbitration, 15 March.

'Council Decision (EU) 2019/1096 on the signing, on behalf of the Union, of the Investment Protection Agreement between the European Union and its Member States, of the one part, and the Socialist Republic of Viet Nam, of the other part' (2019) *Official Journal* L 175, 28 June.

'Electrabel S.A. v Republic of Hungary' (2015) ICSID Case No. ARB/07/19, Award. International Centre for Settlement of Investment Disputes, 25 November.

Eliasson, L.J. (2015) 'International standards: past free trade agreements and the prospects in the Transatlantic Trade and Investment Partnership', *Baltic Journal of European Studies*, 5(1), pp. 5–18. Available at: https://doi.org/10.1515/bjes-2015-0002

'Enron Corporation and Ponderosa Assents v The Argentine Republic' (2007) ICSID Case No. ARB/01/3, Award. International Centre for Settlement of Investment Disputes, 22 May.

European Commission (2025a) *Multilateral Investment Court project*. Available at: https://policy.trade.ec.europa.eu/enforcement-and-protection/multilateral-investment-court-project_en (Accessed: 5 April 2025).

European Commission (2025b) *Guide to Investment Court System*. Available at: https://trade.ec.europa.eu/access-to-markets/en/content/guide-investment-court-system (Accessed: 5 April 2025).

General Agreement on Tariffs and Trade (*GATT*) (1994) World Trade Organization, 15 April.

Ha, T.T.B. (2022) 'Vietnam's commitments under the European Union—Vietnam Investment Protection Agreement (EVIPA): some noteworthy points', *Vietnamese Journal of Legal Sciences*, 6(1), pp. 1–18. Available at: https://doi.org/10.2478/vjls-2022-0001

Henckels, C. (2012) 'Indirect expropriation and the right to regulate: revisiting proportionality analysis and the standard of review in investor-state arbitration', *Journal of International Economic Law*, 15(1), pp. 223–255. Available at: https://doi.org/10.1093/jiel/jgs012

Henckels, C. (2016) 'Protecting regulatory autonomy through greater precision in investment treaties: the TPP, CETA, and TTIP', *Journal of International*

Economic Law, 19(1), pp. 27–50. Available at: https://doi.org/10.1093/jiel/jgw001

Henckels, C. (2018a) 'Should investment treaties contain public policy exceptions?' *Boston College Law Review*, 59(8), pp. 2825–2844. Available at: https://doi.org/10.2139/ssrn.3209902

Henckels, C. (2018b) 'Balancing test: investment arbitration', *Max Planck Encyclopedias of International Law*. Available at: https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3420.013.3420/law-mpeipro-e3420?prd=MPIL (Accessed: 7 January 2025).

Hush, E. (2018) 'Where no man has gone before: the future of sustainable development in the Comprehensive Economic and Trade Agreement and new generation free trade agreements', *Columbia Journal of Environmental Law*, 43(1), pp. 93–148. Available at: https://doi.org/10.7916/cjel.v43i1.3741

'Impregilo S.p.A. v The Argentine Republic' (2011) ICSID Case No. ARB/07/17, Award. International Centre for Settlement of Investment Disputes, 21 June.

Investment Protection Agreement between the EU and its Member States, of the One Part, and the Socialist Republic of Viet Nam, of the Other Part (2019) *Official Journal* L 175, 28 June. Available at: https://www.consilium.europa.eu/en/documents/treaties-agreements/agreement/?id=2019015&DocLanguage=en (Accessed: 5 April 2025).

Kim, J. (2018) 'Balancing regulatory interests through an exceptions framework under the right to regulate provision in international investment agreements', *The George Washington International Law Review*, 50(2), pp. 289–355.

Kawharu, A. (2015) 'TPPA: Chapter 9 on investment', *Expert Paper No. 2, TPP Legal*. Available at: https://tpplegal.files.wordpress.com/2015/12/ep2-amokura-kawharu.pdf (Accessed: 7 January 2025).

Korzun, V. (2017) 'The right to regulate in investor-state arbitration: slicing and dicing regulatory carve-outs', *Vanderbilt Journal of Transnational Law*, 50(2), pp. 355–407.

Levashova, Y. (2019) *The right of states to regulate in international investment law: the search for balance between public interest and fair and equitable treatment*. Alphen aan den Rijn: Wolters Kluwer.

'LG&E Energy Corp., LG&E Capital Corp. and LG&E International, Inc. v The Argentine Republic' (2006) ICSID Case No. ARB/02/1, Decision on Liability. International Centre for Settlement of Investment Disputes, 25 July.

Martini, C. (2017) 'Balancing investors' rights with environmental protection in international investment arbitration: an assessment of recent trends in investment treaty drafting', *The International Lawyer*, 50(3), pp. 529–547.

Nguyen, A.T. *et al*. (2022) *FDI của EU vào Việt Nam trong bối cảnh thực thi EVFTA và EVIPA* (FDI flows from the EU to Vietnam in the context of *EVFTA* and *EVIPA*).

Report. Available at: https://www.kas.de/en/web/vietnam/single-title/-/content/fdi-flows-from-the-eu-to-vietnam-in-the-context-of-evfta-and-evipa (Accessed: 24 February 2025).

Nguyen, T.L.H. (2022) 'The inclusion of sustainable development into new-generation FTAs—what can be expected in reserving nations' rights to regulate?' *Vietnamese Journal of Legal Sciences*, 7(2), pp. 73–100. Available at: https://doi.org/10.2478/vjls-2022-0009

'Occidental Petroleum Corporation and Occidental Exploration and Production Company v The Republic of Ecuador II' (2012) ICSID Case No. ARB/06/11, Award. International Centre for Settlement of Investment Disputes, 5 October.

Ortino, F. (2016) 'Defining indirect expropriation: the Transatlantic Trade and Investment Partnership and the (elusive) search for "greater certainty"', *Legal Issues of Economic Integration*, 43(4), pp. 351–365. Available at: https://doi.org/10.54648/leie2016019

Paparinskis, M. (2015) 'International investment law and the European Union: a reply to Catharine Titi', *European Journal of International Law*, 26(3), pp. 663–670. Available at: https://doi.org/10.1093/ejil/chv041

'Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v Oriental Republic of Uruguay' (2016) ICSID Case No. ARB/10/7, Award. International Centre for Settlement of Investment Disputes, 8 July.

'PL Holdings Sàrl v Republic of Poland' (2017) SCC Case No. V2014/163, Partial Award. Swedish Supreme Court, 28 June.

'Saluka Investments B.V. v The Czech Republic' (2006) UNCITRAL, Partial Award. United Nations Commission on International Trade Law, 17 March.

'Sempra Energy International v The Argentine Republic' (2007) ICSID Case No. ARB/02/16, Award. International Centre for Settlement of Investment Disputes, 28 September.

'SGS Société Générale de Surveillance S.A. v Republic of the Philippines' (2004) ICSID Case No. ARB/02/6, Decision on Objections to Jurisdiction. International Centre for Settlement of Investment Disputes, 29 January.

'Siemens A.G. v The Argentine Republic' (2004) ICSID Case No. ARB/02/8, Decision on Jurisdiction. International Centre for Settlement of Investment Disputes, 3 August.

SNBT (2015) *"The right to regulate" in the trade agreement between the EU and Canada—and its implications for the agreement with the USA*. Stockholm: Swedish National Board of Trade.

'Técnicas Medioambientales Tecmed, S.A. v The United Mexican States' (2003) ICSID Case No. ARB(AF)/00/2, Award. International Centre for Settlement of Investment Disputes, 29 May.

Titi, A. (2018) 'Refining the expropriation clause: what role for proportionality?', in J. Chaisse (ed) *China–European Union investment relationships: towards a* *new leadership in global investment governance?* Cheltenham: Edward Elgar, pp. 111–113. Available at: https://doi.org/10.4337/9781788971904.00015

Tran, H.T.L. (2024) 'Commercial arbitration in Asia: legal developments and regional dynamics from an ASEAN perspective', *Asia Pacific Law Review*, pp. 1–26. Available at: https://doi.org/10.1080/10192557.2024.2445627

Tran, V.D. (2019) 'Vietnam's experiences with international investment agreements governance: issues and solutions', in *Asian Yearbook of International Law*, 25, pp. 84–104. Available at: https://doi.org/10.1163/9789004501249_005

Tran, V.D. and Ngo, N.T.V. (2017) 'The settlement practice of environmental disputes involving foreign investors in Vietnam—the two sides of the FDI coin', in *Asian Yearbook of International Law*, 23, pp. 137–172. Available at: https://doi.org/10.1163/9789004415829_010

Trujillo, E. (2018) 'Balancing sustainability, the right to regulate, and the need for investor protection: lessons from the trade regime', *Boston College Law Review*, 59(8), pp. 2735–2765.

UNCITRAL Working Group III (2024) *Standing mechanism—annotated comments*. Available at: https://circabc.europa.eu/ui/group/7fc51410-46a1-4871-8979-20cce8df0896/library/61f3e4bc-f692-4c29-b1a1-14ebd8e211d7/details?download=true (Accessed: 5 April 2025).

UNCTAD (2017) *World investment report 2017: investment and the digital economy*. Available at: https://unctad.org/system/files/official-document/wir2017_en.pdf (Accessed: 5 April 2025).

UNCTAD (2025) *Investment policy hub*. Available at: https://investmentpolicy.unctad.org/investment-dispute-settlement/country/229/viet-nam (Accessed: 5 April 2025).

'Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. The Argentine Republic' (2016) ICSID Case No. ARB/07/26, Award. International Centre for Settlement of Investment Disputes, 8 December.

Vanduzer, J.A., Simons, P. and Maeda, G. (2013) *Integrating sustainable development into international investment agreements: a guide for developing country negotiators*. London: Commonwealth Secretariat. Available at: https://doi.org/10.14217/9781848591424-en

Vinh Tho, D.L. (2025) 'Belgium to strengthen all-round ties with Vietnam, ratify EVIPA: King Philippe', *Tuoi Tre News*, 2 April. Available at: https://tuoitrenews.vn/news/politics/20250402/belgium-to-strengthen-allround-ties-with-vietnam-ratify-evipa-king-philippe/85705.html (Accessed: 5 April 2025).

Zarra, G. (2017) 'Right to regulate, margin of appreciation and proportionality: current status in investment arbitration in light of *Philip Morris v. Uruguay*', *Brazilian Journal of International Law*, 14(2), pp. 95–115. Available at: https://doi.org/10.5102/rdi.v14i2.4624