



ISDS Fact Sheet

Overview of total number of cases:

- Number of known ISDS cases (worldwide): 568¹ (from when ISDS was introduced into Bilateral Investment treaties up through 2013; excludes cases brought in 2014)
- Over 90 percent of the nearly 2400 BITs in force have operated without a single investor claim of a treaty breach.
- Number of known ISDS cases initiated by investors in 2013: 56²
 - 26 cases against developed countries
 - 19 against developing countries
 - 11 against “transitioning” countries
- EU and ISDS cases
 - 42% of ISDS cases in 2013 were brought against the EU
 - of the 117 cases brought against EU member states, 88 (75%) are “intra-EU” disputes brought by investors from other EU Member States under intra-EU BITs and the ECT
 - in more than half of all EU cases, the respondents are Czech Republic or Spain³
 - More than 50% of disputes arose in the services industry, including financial services (banking, insurance, and other)
- Top five countries as respondents in ISDS cases:
 - Argentina (53 ISDS claims filed against)
 - Venezuela (36 ISDS claims filed against)
 - Czech Republic (28 ISDS claims filed against)
 - Egypt (23 ISDS claims filed against) *see below for specific case
 - Ecuador (22 ISDS claims against)

Claims filed by U.S. / EU investors:

- As would be expected, the EU and U.S. have been active users of ISDS provisions because they are the largest exporters of foreign investment capital.
- EU has filed 300 total claims worldwide (over 50% of all arbitration claims filed)
 - **So far, there has been no known ISDS claim by an investor from an EU Member State against the U.S.**
- US has filed 127 total claims (22%) worldwide, which is the largest individual country share of ISDS claims

¹ UNCTAD World Investment Report 2014, pg. 124
< http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf>

² Ibid., 124

³ Ibid., 125



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- **U.S. has filed 9 claims against the EU: Poland (4), Romania (3), Czech Republic (1), Estonia (1)**

U.S. / EU as Respondents in all cases:

- 16 ISDS cases have been filed against the U.S. to date (3% of all cases), none of these originated from an investor from an EU Member State⁴
 - 15 from Canada
 - 1 from Mexico
 - proceedings concluded in 9 of the 16 cases brought against the US
 - 9 ended in favor of the respondent, with the investor claims dismissed⁵
 - 7 cases pending
- **117 ISDS cases have been filed against the EU to date (20% of all cases), 88 of the 117 cases (75%) were intra-EU disputes**, and 9 of these cases were brought by claimants from the U.S.
 - distribution of cases brought against EU:
 - Czech Republic: 23%
 - Some involve challenges to the 2011 amendments that placed a levy on electricity generated from solar power plants
 - Poland: 14%
 - Hungary: 10%
 - Slovakia: 9%
 - Spain: 8%
 - Romania: 8%
 - Others 28%
 - Proceedings concluded in 54 of 117 cases brought against EU
 - 50% of claims in favor of state; 26% settled outside of court, 24% in favor of investor

Outcomes of ISDS cases:

- Outcomes of cases filed by investors from the U.S.
 - 42% in favor of the state
 - 30% in favor of investor
 - 28% settled
- Outcomes of cases filed by investors from the EU
 - 36% in favor of state
 - 34% in favor of investor
 - 30% settled⁶

⁴ UNCTAD “Investor-State Dispute Settlement: An Information Note on the United States and the European Union,” June 2014, v.2 pg. 1

< http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d4_en.pdf>

⁵ Ibid., 7



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Amount of Compensation:

- Amounts claimed by investors in cases against the EU range from 0.5 million to 30 billion USD
 - Largest known amount to be awarded by a tribunal against an EU member state was 553 million euros, in the *Ceskoslovenska Obchodni Banka vs. Slovak Republic*
- Amounts awarded by tribunals in all cases filed by U.S. investors range from 0.5 million to 1.8 billion USD; one known settlement agreement (Al-Kharafi vs. Libya) was for 900 million USD, in a case involving a tourism development project ⁷

Sectors Most Often Involved in ISDS Cases, which are often sectors with substantial state intervention (2013 data):

- Oil, gas, and mining 26%
- Electric power and other energy 13%
- Transportation 10%
- Construction 7%
- Finance 7%
- Others: Water, sanitation, and flood protection 6%; Information and communication 6%; Services and Trade 4%; Agriculture, fishing, and forestry 4%; Tourism 4%; Other 13%⁸

Popular sectors involving claims brought by U.S. investors:

- Oil and gas
- Mining
- Agriculture
- Power generation
- Chemicals

Popular sectors involving claims brought by EU Member State investors:

- Energy distribution
- Telecommunications
- Tourism Infrastructure management

⁶ Ibid., 12

⁷ UNCTAD "Recent Developments in Investor State Dispute Settlement (ISDS)," April 2014, v.1, pg. 21

⁸ Institutional Centre for Settlement of Investment Disputes, The ICSID Caseload - Statistics, (Issue 2014 -1), 2014, p.12, <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actinVal=ShowDocument&CaseLoadStatistics=True&language=English51>

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