

The Future of Investment Treaties (Track 2)

‘Fair’ and ‘equitable’ treatment provisions in investment treaties A large-sample survey of treaty provisions

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Context, purpose, and structure of this note

1. Investment treaties¹ concluded since the early 1959 almost universally contain a reference to ‘fair’ and ‘equitable’² treatment. Among the 2,670 sample treaties concluded by the 99 jurisdictions³ that are invited to participate in OECD-hosted work on the *Future of Investment Treaties*,⁴ almost 95% contain such references.⁵ Some recent treaties, as well as earlier-generation treaties, do not contain provisions on ‘fair’ and ‘equitable’ treatment.

2. ‘Fair’ and ‘equitable’ treatment provisions in investment treaties have become over the past two decades the principal ground of alleged liability in many if not most investment treaty claims. Arbitral tribunals have found breaches of ‘fair’ and ‘equitable’ treatment provisions in many cases.⁶ Uncertainty about the scope of obligations under the concept of ‘fair’ and ‘equitable’

¹ The terms ‘investment treaties’, ‘international investment agreements’ (IIAs) and treaty arrangements are used interchangeably in this note and include bilateral investment treaties (BITs), multilateral and plurilateral investment treaties, as well as investment chapters included in bilateral or plurilateral preferential trade agreements (PTAs) or free trade agreements (FTAs). Treaties of Friendship, Commerce and Navigation are not included in the sample of this survey. Detailed information about the sample composition is available in Annex A and Annex B.

² The use of quotation marks emphasizes that the present description focuses on treaty language rather than referring to doctrinal concepts and interpretations that have been at times associated with fair and equitable treatment.

³ Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guinea, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo*, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, European Union.

* This designation is without prejudice to positions on status and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo's declaration of independence.

⁴ The composition of the sample, the sampling method and other issues related to methodology and terminology are set out in Annex A and Annex B.

⁵ There is some minor variation in the terms used, especially in older treaties concluded by a few jurisdictions. Throughout this note, statistical information on treaties includes treaties that refer to either “fair”, or “equitable”, or to “fair and equitable” combined.

⁶ Gaukrodger, D. (2017), “[Addressing the balance of interests in investment treaties: The limitation of fair and equitable treatment provisions to the minimum standard of treatment under customary international law](#)”, OECD Working Papers on International Investment, No.2017/03.

treatment has grown, exacerbated by the fact that ‘fair’ and ‘equitable’ treatment is an absolute and non-contingent standard of treatment and does not have close parallels in domestic law systems.

3. Over the history of the use of the clause, different approaches have been pursued to specify the contours of the concept. Since the early 2000s, approaches to clarify the notion of ‘fair’ and ‘equitable’ treatment have principally sought to reframe the notion of ‘fair’ and ‘equitable’ treatment or contain language that provides interpretative guidance intended to specify the ‘fair’ and ‘equitable’ treatment obligations. Separately, some jurisdictions have opted to omit ‘fair’ and ‘equitable’ treatment provisions altogether, while others clarify that defined elements or scenarios do not constitute breaches of the provision, or do not permit access to investor-state dispute settlement.⁷

4. This note statistically describes the treaty approaches and designs observed with respect to clauses on ‘fair’ and ‘equitable’ treatment in investment treaties.⁸ It sets out:

- How ‘fair’ and ‘equitable’ treatment clauses in treaties concluded by the 99 jurisdictions that are invited to participate in the OECD-hosted work programme on the *Future of Investment Treaties* used to frame the ‘fair’ and ‘equitable’ clauses in earlier decades;
- which designs have developed and proliferated more recently and how they circumscribe obligations to afford ‘fair’ and ‘equitable’ treatment; and
- to what extent these newer designs are observed in individual jurisdictions’ and the collective treaty samples.

⁷ The [Australia-China FTA \(2015\)](#), for example, states, in Article 9.11 “*Measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order shall not be the subject of a claim under this Section*”. While this framing does not refer to the term ‘fair’ and ‘equitable’ treatment, it captures at least some of the cases in which tribunals have found liability under ‘fair’ and ‘equitable’ treatment.

Also, a number of recent plurilateral treaties provide only for state-to-state dispute settlement (SSDS) for all investment and trade claims. Under the [RCEP](#) for example, only governments can bring claims including under the ‘fair’ and ‘equitable’ treatment provision (RCEP, Arts.19(1)(a), 19(3), 19(8)). The [USMCA](#), which replaced NAFTA, has both a general SSDS and an exceptional ISDS regime for claims under its ‘fair’ and ‘equitable’ treatment provision. In general, only a government can bring a FET claim under the [USMCA](#) ([USMCA](#), Article 14.D.3. Only in certain economic sectors and where a specific type of contract exists, such claims in ISDS are possible between Mexico and the United States. [USMCA](#), Annex 14-E).

⁸ Earlier OECD work that contains statistical descriptions of the design of ‘fair’ and ‘equitable’ treatment clauses in investment treaties features additional observations on other parameters, in particular linguistic variation in detail (in particular wording that deviates from the terms ‘fair’ and ‘equitable’; whether the treatment is to be granted to investors, investments, or similar designations; whether the treatment is due “at all times” or “in each case”, etc.; and where references to ‘fair’ and ‘equitable’ treatment are observed in treaty text). This material, which is available for example in [DAF/INV/WD\(2017\)2/REV1](#) and [DAF/INV/WD\(2021\)2/ADD2](#), is not reproduced here given that this variation occurs in relatively few treaties, is concentrated in treaties by only a few countries, has likely limited practical relevance, and is mainly observed in older treaties and thus less relevant for the forward-looking perspective of this note and work under the programme on the [Future of Investment Treaties](#) – Track 2 more generally.

5. The purpose of this note is two-fold. It seeks, first, to inform governments of the 99 jurisdictions invited to participate in the Track 2 work of the *Future of Investment Treaties* work programme on whether it would be better if substantive treaty provisions of older treaties were more similar to designs found and now almost systematically applied in newer treaties. Second, the note offers comprehensive insights on the options that are being pursued in relation to ‘fair’ and ‘equitable’ treaty language.

6. The note is structured as follows: Following a Summary of findings, section 1. provides an overview of the presence of references to ‘fair’ and ‘equitable’ treatment clauses in IIAs and underline the ambiguity of such earlier designs. Section 2. considers the emergence and dissemination of new treaty designs and practices explicitly specifying ‘fair’ and ‘equitable’ treatment clauses. Section 3. sets out how the newer designs spread through the treaty population of individual jurisdictions and the global treaty population. A detailed description of the methodology in Annex A explains the composition of the survey sample and Annex B contains the full list of IIAs and related documents that are included in the survey sample.

Summary of findings

7. An assessment of 2,670 investment treaties concluded by the 99 jurisdictions that are invited to participate in the work on the Future of Investment Treaties, between 1959 and 2023 yields the following findings on the use and design of ‘fair’ and ‘equitable’ treatment clauses:

Trends and approaches to specifying ‘fair’ and ‘equitable’ treatment clauses

- Almost 95% of the treaties in the sample contain references to ‘fair’ and ‘equitable’ treatment. Treaties concluded in the earlier years covered by the sample and in most recent years do not systematically contain such references.
- Investment treaties reflect different approaches as to the framing of ‘fair’ and ‘equitable’ treatment clauses. Some of these approaches appear to be no longer pursued, but a large number of treaties with these features remain in force.
- In the sample, the following approaches are observed:
 - The most frequently observed approach, present in around 80% of the sample treaties, is characterised by a reference to ‘fair’ and ‘equitable’ treatment where the notion and contours of ‘fair’ and ‘equitable’ treatment are not specified. The use of such unspecified clauses has declined sharply in treaties concluded after 2003 and has all but ended for new treaties concluded after 2018.
 - All recently concluded treaties limit the scope of obligations associated with ‘fair’ and ‘equitable’ treatment, a trend that began in 2001. The limitation is achieved through a limit ‘fair’ and ‘equitable’ treatment to the minimum standard of treatment under customary international law. Separately, a smaller number of treaties contain an exhaustive list of elements that constitute a breach of ‘fair’ and ‘equitable’ treatment.
 - Some recent treaties as well as some very early treaties do not contain an obligation to provide ‘fair’ and ‘equitable’ treatment among post-establishment protection standards at all.
 - Several other approaches link the scope of ‘fair’ and ‘equitable’ treatment to “international law” without specifying the relationship, in particular without clarifying whether international law is a ceiling of the obligations or a minimum. Similarly, a few treaties contain open-ended lists of aspects that are contained in the scope of ‘fair’ and ‘equitable’ treatment.
 - A few treaties associate ‘fair’ and ‘equitable’ treatment with domestic law of the treaty parties.
- Only three of the abovementioned approaches appear to be pursued at present: The limitation of ‘fair’ and ‘equitable’ treatment to the minimum standard of treatment under customary international law, the specification of the scope of ‘fair’ and ‘equitable’ treatment through a closed list, and the non-inclusion of an obligation to accord ‘fair’ and ‘equitable’ treatment.

- Some additional specifications are observed in the context of the principal approaches. These include:
 - Rules on the method to determine whether a specific aspect is part of customary international law and which party has to bring evidence in this regard;
 - Whether breaches of domestic law of the treaty party or breaches of other obligations under the treaty constitute a breach of the obligation to provide ‘fair’ and ‘equitable’ treatment.
 - A reference to domestic law for the determination of the scope of the ‘fair’ and ‘equitable’ treatment obligation, in addition to another criterion.

The diffusion of new approaches that specify the scope of ‘fair’ and ‘equitable’ treatment throughout the treaty population is slow

- The diffusion of the new approaches to ‘fair’ and ‘equitable’ treatment obligations in investment treaties is slow. Most countries’ treaty samples continue to contain large shares of treaties with older designs, despite these jurisdictions’ consistent use of newer approaches.
- An important cause for the slow diffusion of newer designs in the treaty population is that most treaties with older designs remain in place unchanged. New designs enter the collective treaty population in relationships that had not previously been covered by a treaty at all.
- The collective treaty population of the 99 jurisdiction that are invited to participate in the work on the Future of Investment Treaties contains a large proportion of treaties with old designs. Even if all recently negotiated treaties were to come into force, the more recent designs would still only feature in around 20% of all treaties in force.

1. References to ‘fair’ and ‘equitable’ treatment in investment treaties: Emergence and earlier designs

1.1. References to ‘fair’ and ‘equitable’ treatment appear early and are an almost ubiquitous feature in investment treaties

8. The notion of ‘fair’ and ‘equitable’ treatment can be traced to treaty texts prepared in the late 1940s.⁹ The first reference to “fair” or “equitable” treatment in a BIT was observed in 1961 in a BIT concluded by Switzerland.¹⁰ A similar reference was subsequently introduced by Germany in its treaties as of 1962.

9. The 1962 version of the OECD [Draft Convention on the Protection of Foreign Property](#)¹¹ also included a provision on ‘fair’ and ‘equitable’ treatment. The provision was placed in its first article and complemented by an explanation in accompanying notes which stated that the standard of treatment required under that provision “conforms in effect to the ‘minimum standard’ which forms part of customary international law”.

10. The Netherlands, in 1963, Italy (1964), and Sweden (1965) were the next countries to include clauses referring to ‘fair’ and ‘equitable’ treatment in their BITs, before such language began to appear more broadly in other countries’ BITs. For twenty years, until 1981, the inclusion of such language was common albeit not systematic. In treaties concluded from 1981 onwards and until recently, references to ‘fair’ and ‘equitable’ treatment became an almost universal feature.

11. Not all treaties contain ‘fair’ and ‘equitable’ treatment obligations. The share of treaties that follow this approach in annual cohorts has recently grown again. Brazil’s recent series of treaties – *Cooperation and Facilitation Investment Agreements* – concluded since 2015, do not contain language that accords ‘fair’ and ‘equitable’ treatment; some also expressly clarify that the

⁹ References to ‘fair’ and ‘equitable’ treatment had been included in earlier trade and economic cooperation agreements before they appeared in investment treaties. Examples include the [Havana Charter for an International Trade Organization \(1948\)](#) and the [Economic Agreement of Bogotá \(1948\)](#), neither of which entered into force. Some treaties of Friendship, Commerce and Navigation contain clauses on ‘fair’ and ‘equitable’ treatment that very closely resemble language later used in the OECD [Draft Convention on the Protection of Foreign Property](#) and a large number of BITs. Treaties of Friendship, Commerce and Navigation are not included in the sample of this survey.

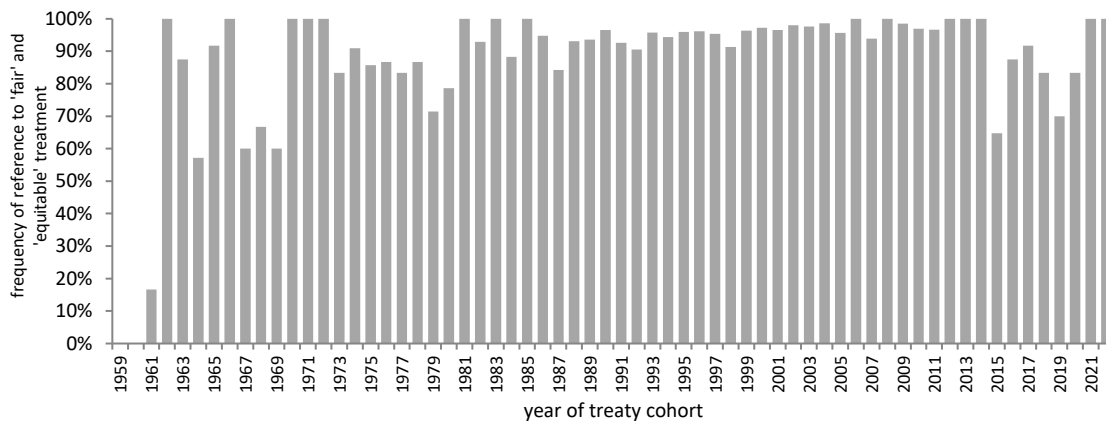
¹⁰ *Switzerland-Tunisia BIT (1961)*. As described in Annex 1, treaty names in *italics* indicate treaties that were not known to be in force or were no longer in force when the assessment was finalised. The status indication may not be accurate in all instances as the in force-status of investment treaties can often not be determined with certainty. The validity of terminated treaties under sunset-clauses is not considered for the indication of the in-force status of a given agreement in this note.

¹¹ The *Draft Convention* was prepared in the early 1960s by the predecessor OECD Committee of today’s Investment Committee, which comprised the then 15 OECD Members, and was [released in 1962](#) (and is *not* identical with the [Resolution of the Council on the Draft Convention on the Protection of Foreign Property](#) of 1967).

possibility of ‘fair’ and ‘equitable’ treatment being raised in dispute settlement procedures under the treaties is excluded.¹² [India’s model treaty](#) of 2016 excludes ‘fair’ and ‘equitable’ treatment provisions.

12. As a result of these factors, the share of treaties in annual cohorts that contain references to ‘fair’ and ‘equitable’ treatment has declined since 2015, albeit not in a steady manner (Figure 1).

Figure 1. Frequency of references to ‘fair’ and ‘equitable’ treatment in cohorts of bi- or plurilateral IIAs concluded between 1959 and 2022



Source: OECD investment treaty database.

13. Altogether across the overall treaty sample, just under 95% of the investment treaties concluded by the 99 jurisdictions invited to participate in the Track 2 of the work on the *Future of Investment Treaties* since 1959 contain an obligation to grant ‘fair’ and ‘equitable’ treatment.

1.2. Earlier designs leave considerable uncertainty about the notion and scope of the obligation to afford ‘fair’ and ‘equitable’ treatment

14. Over the past six decades, references to ‘fair’ and ‘equitable’ treatment have been framed in different fashions. Characteristic of earlier approaches that dominate treaty practice until the early 2000s is the absence of interpretative guidance on the notion and scope of the obligation to provide ‘fair’ and ‘equitable’ treatment.¹³

¹² See, e.g., [Brazil-Guyana BIT \(2018\)](#), Article 4(4): “For greater certainty, the standards of fair and equitable treatment and full protection and security shall not be used or raised by either Party to this Agreement as a ground for any dispute settlement procedure in relation to the application or the interpretation of this Agreement”.

[Brazil-Suriname BIT \(2018\)](#), Article 4(3): “For greater certainty, the standards of ‘fair and equitable treatment’ and ‘full protection and security’ are not covered by this Agreement and shall not be used as interpretative standards in investment dispute settlement procedures”.

¹³ The 1962 version of the OECD [Draft Convention on the Protection of Foreign Property](#)¹³ had specified in “notes and comments” “constituting its interpretation” (cf. preamble of the Resolution of the Council C(67)108 [[OECD-LEGAL-0084](#)], adopted on 12 October 1967) that ‘fair’ and ‘equitable’ treatment in the sense of the treaty “conforms in effect to the ‘minimum standard’ which forms part of customary international law”, (text reproduced in OECD (1962), “[Draft Convention on the Protection of](#)

15. These earlier approaches include the following:

- The standard of ‘fair’ and ‘equitable’ treatment is mentioned **without any interpretative guidance** on the concept. Such unspecified references are by a large margin the most frequently featured approach in the entire treaty population.¹⁴ In the overall sample, almost 80% of treaties concluded between 1959 and 2023 and which contain a reference to ‘fair’ and ‘equitable’ treatment in the body of the treaty feature this approach. The use of the approach declined in the early 2000s, and the decline accelerated sharply after 2009. No treaty in the sample concluded after 2018 features this design.
- ‘Fair’ and ‘equitable’ treatment is **associated with “international law” or “principles of international law”** but the positioning of these bodies of law vis-à-vis ‘fair’ and ‘equitable’ treatment is **not specified beyond the term “in accordance with”**. The association with “*principles of international law*”¹⁵ is observed in 140 occurrences, and with “*international law*”¹⁶ in 115 occurrences.¹⁷
- **“International law” is positioned as the minimum** that treaty parties are required to afford under ‘fair’ and ‘equitable’ treatment without specifying the scope or limitations.¹⁸ While this approach provides some indication for the interpretation of the standard of treatment, it nevertheless leaves uncertainty as to the content of the obligation and its upper limits.¹⁹

Foreign Property”). BITs that took inspiration from this text did not incorporate text similar to the “notes and comments”, thus omitting the interpretative guidance that the Draft Convention had contained.

¹⁴ See, e.g., [Argentina-Switzerland BIT \(1991\)](#), at its Article 3(2) provides that “*Chaque Partie Contractante assurera sur son territoire un traitement juste et équitable aux investissements des investisseurs de l’autre Partie Contractante [...]*”; [Czech Republic -Bahrain BIT \(2007\)](#) at its Article 2(2) provides that “*Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party*”.

¹⁵ E.g., [France-Lebanon BIT \(1996\)](#); [Canada-Egypt BIT \(1996\)](#).

¹⁶ E.g., [Finland-Slovakia BIT \(1990\)](#); [Japan-Myanmar BIT \(2013\)](#); Korea-Croatia BIT (2005).

¹⁷ In the sample of over 2300 agreements, there are a few treaties that approach the issue in slightly different ways that do not lend themselves to statistical description. Not all of these rare variations are described here, and the description should thus not be understood as covering all variations that have been observed.

¹⁸ E.g., [Belgium/Luxembourg-Thailand BIT \(2002\)](#) or [Belgium/Luxembourg-Azerbaijan BIT \(2004\)](#). This latter treaty reads: “*Article 3 – Protection des investissements. 1. Tous les investissements, directs ou indirects, effectués par des investisseurs de l’une des Parties contractantes, jouiront, sur le territoire de l’autre Partie contractante, d’un traitement juste et équitable. 2. [...] 3. Le traitement et la protection définis aux paragraphes 1er et 2 seront au moins égaux à ceux dont jouissent les investisseurs d’un Etat tiers et ne pourront, en aucun cas, être moins favorables que ceux reconnus par le droit international.*”

¹⁹ Some treaties contain an unspecified ‘fair’ and ‘equitable’ treatment clause and, *separately*, state that parties are obliged to afford at least treatment according to international law. The Energy Charter Treaty is a prominent but not the only example of this approach. The ECT states, in the same paragraph as the reference to ‘fair’ and ‘equitable’ treatment, that “[i]n no case shall such Investments be accorded treatment less favourable than that required by international law”. This note does not take a position on the interpretation of the two linguistic elements but for the purpose of the statistical description does not consider this approach as a specification of the notion of ‘fair’ and ‘equitable’ treatment.

- An **open-ended list which mentions elements** that are included in the scope of ‘fair’ and ‘equitable’ treatment but do not define the scope of the obligation otherwise. This approach appears in treaties concluded as early as 1983,²⁰ but its use has been generally rare for several decades and concentrated in treaties concluded by only a few jurisdictions, and most particularly France. In the treaty sample, France accounts for the greatest number of treaties that displays language featuring a list-based approach to specify the contents of ‘fair’ and ‘equitable’ treatment: language in 44 French BITs specifies that the list is illustrative,²¹ and another 5 BITs concluded by France do not state whether the list is illustrative or exhaustive.²²

16. All four of these approaches leave considerable ambiguity as to the scope of obligations under the clause and offer room for an expansive interpretation.

17. A further approach to determining the scope of ‘fair’ and ‘equitable’ treatment consists of a reference to domestic law of the respective treaty parties as a qualifier of the obligation to accord ‘fair’ and ‘equitable’ treatment:²³ Some treaties combine a reference to elements or aspects relating to international law with a reference to domestic law, thus tying the standard to two sets of norms, without expressly clarifying the interaction between these two sets.²⁴ Such treaty wording appeared sporadically between 1962 and 2008 in treaties of certain countries and is still occasionally used.²⁵

²⁰ See, [France-Israel BIT \(1983\)](#).

²¹ E.g., [France-Armenia BIT \(1995\)](#): “Article 3 — Each Contracting Party undertakes to accord in its territory and maritime zone just and equitable treatment, in conformity with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right to just and equitable treatment so granted is not impeded either de jure or de facto. — Specifically, although not exclusively, any restriction on the purchase and transport of raw materials and auxiliary materials, energy and fuels, and on means of production and exploitation of any kind, any impediment to the sale and transport of products within the country and abroad, and any other measures having a similar effect shall be regarded as de jure or de facto impediments to just and equitable treatment. [...]”.

²² E.g., [France-Mongolia BIT \(1991\)](#): “Article 3 — Each Contracting Party shall undertake to accord in its territory and maritime zone just and equitable treatment, in accordance with the principles of international law, to the investments of nationals and companies of the other Party and to ensure that the exercise of the right so granted is not impeded either de jure or de facto. The following shall be considered as de jure or de facto impediments to just and equitable treatment: any restrictions on the purchase of transportation of raw materials and secondary materials, energy and fuel, and of means of production and operation of all kinds, any impediment to the sale or transportation of goods within the country and abroad, and any other measures having similar effect. [...]”.

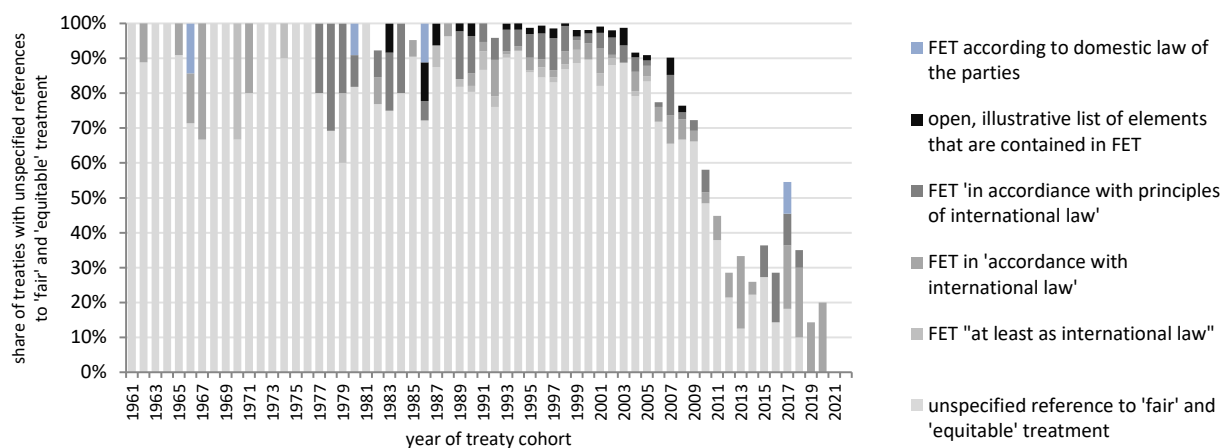
²³ The [Chile-Finland BIT \(1993\)](#), Article 3(1): “*Each Contracting Party shall within its territory in accordance with its laws and regulations ensure fair and equitable treatment of investments by the investors of the other Contracting Party.*” [Emphasis added]

²⁴ E.g., [Finland-Romania BIT \(1992\)](#), Article 3: “*Each Contracting Party shall, subject to its laws and regulations and in conformity with international law, at all times ensure fair and equitable treatment to the investments of investors of the other Contracting Party.*” [Emphasis added]; [Switzerland-Senegal BIT \(1962\)](#), [France-Panama BIT \(1982\)](#) and [United States-Cameroon BIT \(1986\)](#). In all, 44 occurrences of this approach are observed in the sample. The use is concentrated in a few jurisdictions, most notably Finland, which has 18 occurrences in its sample, corresponding to 22% of its sample treaties.

²⁵ E.g., [Colombia-United Arab Emirates BIT \(2017\)](#).

18. Taken together, these approaches are observed in the overwhelming majority of treaties that contain a reference to ‘fair’ and ‘equitable’ treatment from the beginning in 1962 until the early 2000s when different approaches begin to emerge (Figure 1).

Figure 2. Approaches to framing ‘fair’ and ‘equitable’ treatment under earlier designs: share in occurrences



Note: Only treaties that include a reference to a ‘fair’ and ‘equitable’ treatment obligation in the body of the treaty are considered for this figure. Shares are provided for treaties rather than treaty-covered relationships; plurilateral treaties are hence counted once each rather than for the number of relationships that they cover. Source: OECD Investment Treaty Database.

19. Another earlier approach consisted of references to ‘fair’ and ‘equitable’ treatment included *exclusively* in preambles, rather than in the body of the treaty.²⁶ This approach is observed in 34 treaties in the sample, all of which were concluded between 1987 and 2005. Türkiye is almost the only jurisdiction that has pursued this practice: 31 of these 34 treaties were concluded by Türkiye, and almost a third of its treaties in the sample contain this feature.²⁷

²⁶ A greater number of treaties features references to ‘fair’ and ‘equitable’ treatment in preambles and also in the body of the text. This practice was observed in treaties concluded by Denmark, the Netherlands, and Sweden

²⁷ The three other treaties with this feature are [Egypt-Azerbaijan BIT \(2002\)](#); [Estonia-Azerbaijan BIT \(2010\)](#); and [Indonesia-Serbia BIT \(2011\)](#).

2. Newer treaty practice: explicit clarifications of the scope of ‘fair’ and ‘equitable’ treatment obligations or non-inclusion of such clauses

20. Beginning in 2001, new approaches emerge in the context of ‘fair’ and ‘equitable’ treatment. These approaches are characterised by efforts to explicitly clarify the notion of ‘fair’ and ‘equitable’ treatment and to limit treaty obligations in this area.

21. Three primary approaches have since then been observed in treaty designs with regard to ‘fair’ and ‘equitable’ treatment across the sample. These are described in subsection 2.1 and include:

- The substance of the ‘fair’ and ‘equitable’ treatment obligation is explicitly limited to the minimum standard of treatment (MST) under customary international law (CIL);²⁸
- An exhaustive list of elements that qualify the substance of what is due under the ‘fair’ and ‘equitable’ treatment obligation; and
- The treaty does not contain an obligation to provide ‘fair’ and ‘equitable’ treatment at all, an approach that had likewise been observed infrequently and mainly in very early treaties.

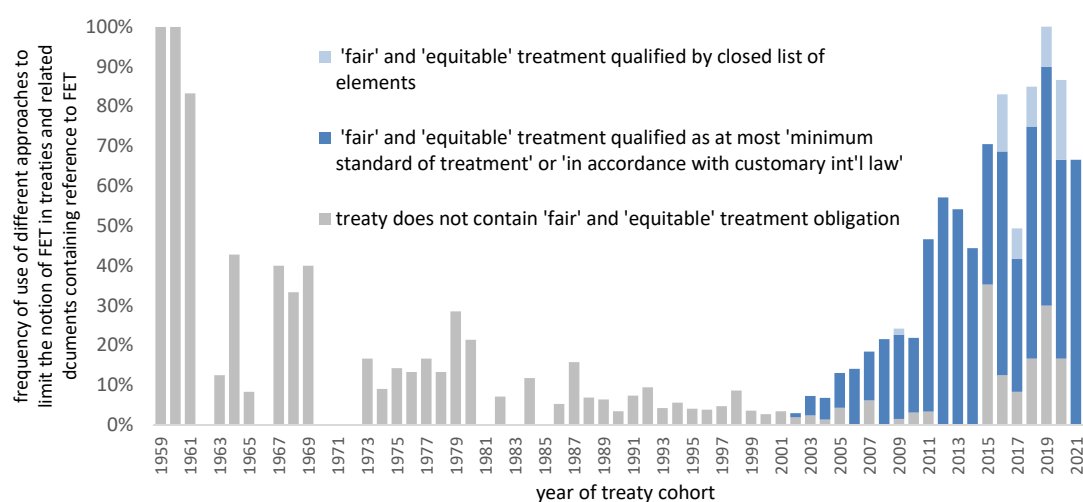
22. Additional elements are occasionally added to further clarify the scope of the ‘fair’ and ‘equitable’ treatment obligation under a given treaty. They appear in some treaties in conjunction with the limitation of ‘fair’ and ‘equitable’ treatment to minimum standard of treatment and the list-approach. These additional elements, described in subsection 2.2, contain lists of elements that do *not* constitute breaches of obligations under the ‘fair’ and ‘equitable’ treatment clause or link these obligations to domestic law of one or both treaty partners.

2.1. Primary approaches to ‘fair’ and ‘equitable’ treatment in recent treaties

23. Recent designs that have begun to dominate the approach to ‘fair’ and ‘equitable’ treatment in investment treaties have developed as of 2001. These different designs have not developed simultaneously, and the relative frequency of their use is very uneven (Figure 3).

²⁸ See on this aspect Gaukrodger, D. (2017), “[*Addressing the balance of interests in investment treaties: The limitation of fair and equitable treatment provisions to the minimum standard of treatment under customary international law*](#)”, OECD Working Papers on International Investment, No. 2017/03.

Figure 3. Frequency of the use of primary approaches to cap obligations under the ‘fair’ and ‘equitable’ treatment provision in IIAs concluded between 1959 and 2022



Source: OECD investment treaty database.

2.1.1. Limiting ‘fair’ and ‘equitable’ treatment obligation to the minimum standard of treatment under customary international law

24. The earliest and by far still most frequently used approach to clarify the scope of ‘fair’ and ‘equitable’ treatment obligations in recent treaties corresponds to an explicit statement that the ‘fair’ and ‘equitable’ treatment obligation corresponds to the minimum standard of treatment under customary international law. It was first featured in the [Joint interpretation related to NAFTA](#) that the NAFTA parties adopted on 31 July 2001, but can be traced back to the 1962 version of the *Draft Convention on the Protection of Foreign Property*.²⁹

25. The limitation of ‘fair’ and ‘equitable’ treatment to the minimum standard of treatment under customary international law is observed in two variations:

- ‘fair’ and ‘equitable’ treatment *does not require treatment beyond* what is required by the “minimum standard of treatment” under customary international law;³⁰ and
- covered investors must be afforded treatment in line with the “minimum standard of treatment” under customary international law, *which includes* “fair and equitable” treatment.³¹

²⁹ See for more details on the *Draft Convention on the Protection of Foreign Property* in paragraph 9 above. On NAFTA government views on whether they form part of customary international law relating to FET, see Gaukrodger, D. (2017), “[Addressing the balance of interests in investment treaties: The limitation of fair and equitable treatment provisions to the minimum standard of treatment under customary international law](#)”, OECD Working Papers on International Investment, No. 2017/03, p.14.

³⁰ E.g., [Canada-Czech Republic BIT \(2009\)](#); [Mexico-Slovakia BIT \(2007\)](#).

³¹ E.g., [United States-Rwanda BIT \(2008\)](#): “1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security. 2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered

26. Since its introduction into the treaty sample in 2001, the use of the approach that limits the obligation under ‘fair’ and ‘equitable’ treatment to the minimum standard of treatment under customary international law has grown steadily. About half of all treaties concluded in the past decade and which include a ‘fair’ and ‘equitable’ treatment obligation have adopted this approach to framing the ‘fair’ and ‘equitable’ treatment obligation. As of March 2023, 155 treaties link ‘fair’ and ‘equitable’ treatment to the minimum standard of treatment under customary international law.³² Given the use of this approach in plurilateral treaties, the design is present in treaties that cover 396 relationships.

27. A subset of treaties that refer to customary international law to circumscribe the scope of obligations under the ‘fair’ and ‘equitable’ treatment clause contain additional interpretative guidance on how the minimum standard of treatment under customary international law is to be determined in the context of the treaties’ ‘fair’ and ‘equitable’ treatment provision.³³ In total, this subset of 51 treaties covers a total of 136 bilateral relationships. The first occurrence of such a specification appeared in the 2001 joint interpretation of the NAFTA ‘fair’ and ‘equitable’ treatment provision by the NAFTA Parties,³⁴ followed by an inclusion in 2003 in United States FTAs with Chile and with Singapore. In substance, the specification on how the customary international law standard is to be determined typically refer to “general and consistent state practice that they follow from a sense of legal obligation”.³⁵ The [Comprehensive and Progressive Agreement for Trans-Pacific Partnership \(CPTPP\)](#) also contains such language and additionally clarifies that the burden of proof for all elements falls on the claimant.³⁶

investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide: (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; [...]

³² E.g., [Canada-Czech Republic BIT \(2009\)](#); [Mexico-Slovakia BIT \(2007\)](#).

³³ These treaties and related documents are: [Argentina-Chile FTA \(2017\)](#); [Australia-Chile FTA \(2008\)](#); [Australia-Hong Kong \(China\) FTA \(2019\)](#); [Australia-Indonesia CEPA \(2019\)](#); [Australia-Korea FTA \(2014\)](#); [Australia-Peru FTA \(2018\)](#); [Australia-Singapore Amendment \(2016\)](#); [Australia-United States FTA \(2004\)](#); [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#); [Canada-China BIT \(2012\)](#); [Canada-Colombia FTA \(2008\)](#); [Chile-Colombia FTA \(2006\)](#); [Chile-Hong Kong \(China\) BIT \(2016\)](#); [Chile-Japan EPA \(2007\)](#); [Chile-United States FTA \(2003\)](#); [China-Mexico BIT \(2008\)](#); [China-Singapore FTA \(2008\)](#); [Colombia-India BIT \(2009\) - Joint Interpretative Declaration \(2018\)](#); [Colombia-Korea FTA \(2013\)](#); [Colombia-Peru BIT \(2007\)](#); [Colombia-Singapore BIT \(2013\)](#); [Colombia-United States FTA \(2006\)](#); [Costa Rica-Peru FTA \(2011\)](#); [Costa Rica-Singapore FTA \(2010\)](#); [Costa Rica-United Arab Emirates BIT \(2017\)](#); [Japan-Kenya BIT \(2016\)](#); [Japan-Mongolia EPA \(2015\)](#); [Korea-Peru FTA \(2011\)](#); [Korea-United States FTA \(2007\)](#); [Mexico-Hong Kong \(China\) BIT \(2020\)](#); [Mexico-Singapore BIT \(2009\)](#); [Morocco-United States FTA \(2004\)](#); [Peru-Guatemala FTA \(2011\)](#); [Peru-Panama FTA \(2011\)](#); [Peru-Singapore FTA \(2008\)](#); [Peru-United States FTA \(2006\)](#); [Singapore-Sri Lanka FTA \(2018\)](#); [Singapore-Türkiye FTA \(2015\)](#); [Singapore-United States FTA \(2003\)](#); [Türkiye-Ukraine BIT \(2017\)](#); [United States-Oman FTA \(2006\)](#); [United States-Rwanda BIT \(2008\)](#); [United States-Uruguay BIT \(2005\)](#); [CAFTA-DR](#); [Mexico-Central America FTA](#); [Pacific Alliance FTA](#); and [CPTPP](#).

³⁴ NAFTA Free Trade Commission, [Notes of Interpretation of Certain Chapter 11 Provisions](#) (31 July 2001).

³⁵ [Chile-United States FTA \(2003\)](#) for instance states, in [Annex 10-A](#): Customary international law “results from a general and consistent practice of States that they follow from a sense of legal obligation.”

³⁶ [CPTPP \(2018\)](#), Article 9.23.7 provides: “For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 9.6 (Minimum Standard

2.1.2. Treaty language that specifies the scope of the ‘fair’ and ‘equitable’ treatment obligation through a closed list

28. A second approach to defining the contours of ‘fair’ and ‘equitable’ treatment obligation relies on an exhaustive list of elements covered by the scope of the obligation. The approach was first observed in 2009 in the [ASEAN-China Investment Agreement \(2009\)](#)³⁷ and emerged in additional treaties beginning in 2016. As of March 2023, it was observed in 8 IIAs. The approach is observed in some treaties concluded by the European Union, China,³⁸ and Slovakia³⁹ and due to its occurrence in several plurilateral treaties, it is present in IIAs that cover 98 treaty relationships.

29. The lists have different length and the items in the list are framed differently. The [ASEAN Comprehensive Investment Agreement \(ACIA\)](#) and the [ASEAN-China Investment Agreement \(2009\)](#) specifically define ‘fair’ and ‘equitable’ treatment as the obligation of each Party not to deny justice in any legal or administrative proceedings.⁴⁰ Recent treaties concluded or negotiated by the EU and Slovakia contain longer lists. These include “denial of justice in criminal, civil or administrative proceedings”; “fundamental breach of due process including a fundamental breach of transparency, in judicial and administrative proceedings”; “manifest arbitrariness”; “targeted discrimination based on manifestly wrongful grounds, such as gender, race or religious belief”; and “abusive treatment of investors such as coercion, duress and harassment”.⁴¹ These lists are exhaustive but can be extended by agreement of the treaty Parties.

of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law application to international arbitration.” [Emphasis added]

³⁷ The sole item in the “list” describing the scope of ‘fair’ and ‘equitable’ treatment in “the obligation of each Party not to deny justice in any legal or administrative proceedings”, [ASEAN-China Investment Agreement](#), Article 7(2)(a).

³⁸ See, [ASEAN-China Investment Agreement \(2009\)](#), Article 7.

³⁹ See, [Slovakia-Iran BIT \(2016\)](#).

⁴⁰ [ASEAN-China Investment Agreement \(2009\)](#): Article 7 “1. Each Party shall accord to investments of investors of another Party fair and equitable treatment and full protection and security. 2. For greater certainty: (a) fair and equitable treatment refers to the obligation of each Party not to deny justice in any legal or administrative proceedings; and (b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the investment of investors of another Party.” See also [ACIA](#), Article 11 (which contains substantially similar wording).

⁴¹ [Comprehensive Economic and Trade Agreement \(CETA, concluded between the EU, its Member States and Canada\), Article 8.10](#); [Slovakia-Iran BIT \(2016\)](#). The [EU-Viet Nam Investment Protection Agreement](#) also contains a similar list approach. Recent treaties concluded by the EU and Slovakia are the first ones in the sample that refer to an investor’s “legitimate expectations”. Legitimate expectations are not a listed element of the ‘fair’ and ‘equitable’ treatment provisions in those treaties. Neither the [EU-Singapore Investment Protection Agreement](#), [EU-Viet Nam Investment Protection Agreement](#) nor [CETA](#) or the [Colombia-France BIT \(2014\)](#), taking into account the [Joint Interpretative Declaration \(2020\)](#), for instance frame the frustration of “legitimate expectations” as a breach of ‘fair’ and ‘equitable’ treatment in its own right. Rather, they provide that certain legitimate expectations arising from certain specific representations may be taken into account in connection with consideration of whether there has been a breach of the listed elements of the ‘fair’ and ‘equitable’ treatment obligation (see e.g., [CETA, Article 8.10\(4\)](#); [EU-Singapore Investment Protection Agreement](#), Article 2.4(3)).

2.1.3. Non-inclusion of ‘fair’ and ‘equitable’ treatment obligations in recent treaties

30. Over many years, investment treaties almost systematically included ‘fair’ and ‘equitable’ treatment clauses among the substantive clauses of the treaty. However, there were exceptions, and thirty-nine bilateral treaties in the sample do not contain references to ‘fair’ and ‘equitable’ treatment. The approach saw increased popularity beginning in 2015 in treaties concluded by Brazil that did not contain ‘fair’ and ‘equitable’ treatment clauses.⁴² Some of these recent treaties explicitly state that the obligation to afford ‘fair’ and ‘equitable’ treatment is not provided for under the treaty.⁴³

2.2. Additional limitations and clarifications

31. Further clarifications have emerged in the context of clauses that either limit the scope of ‘fair’ and ‘equitable’ treatment obligations to the minimum standard of treatment under customary international law or list the items that fall under the ‘fair’ and ‘equitable’ treatment obligations exhaustively. These clarifications state that certain actions are *not* covered by the ‘fair’ and ‘equitable’ clause or that certain circumstances do not constitute a breach of the obligation. As of March 2023, such additional clarifications were observed rarely.

- Starting with the [Australia-Singapore FTA as revised in 2016](#), and followed by the [CPTPP](#) signed in March 2018 and the [KORUS](#) as revised in 2018, several treaties include clarifications stating that “[f]or greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of [the minimum standard of treatment, which incorporates fair and equitable treatment], even if there is loss or damage to the covered investment as a result”.⁴⁴ Another example appears in several recent Australian treaties, among others, which state that: “[f]or greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.”⁴⁵

Treaties that incorporate a list approach occasionally contain similar clarifications. The [EU-Singapore Investment Protection Agreement](#) for example clarifies that it excludes liability for mere regulation that interferes with an investor’s

⁴² By March 2023, 15 bilateral treaties concluded by Brazil had this feature. Also, the [MERCOSUR Protocol on Investment Cooperation and Facilitation](#) does not include a ‘fair’ and ‘equitable’ treatment obligation.

⁴³ E.g. [Brazil-Suriname CIFA \(2018\)](#), [Brazil-United Arab Emirates CIFA \(2019\)](#) and [MERCOSUR Protocol on Investment Cooperation and Facilitation](#).

⁴⁴ E.g., [Argentina-Japan BIT \(2018\)](#); [Australia-Peru FTA \(2018\)](#); [Australia-Hong Kong \(China\) Investment Agreement \(2019\)](#); [Australia-Indonesia CEPA \(2019\)](#); [Hong Kong \(China\)-Mexico Investment Agreement \(2020\)](#). Recent EU treaties such as the [EU-Singapore Investment Protection Agreement](#) and the [EU-Viet Nam Investment Protection Agreement](#) also contain clarifications relating to investor expectations. However, they clarify certain exclusions of liability generally rather than referring specifically to the ‘fair’ and ‘equitable’ treatment provision. They are addressed below.

⁴⁵ [Australia-Singapore FTA \(2003\), as amended in 2016](#), Article 6(5); [Australia-Peru FTA \(2018\)](#), Article 8.6(5); [Australia-Uruguay BIT \(2019\)](#), Article 4(5); [Australia-Indonesia CEPA \(2019\)](#), Article 14.2(3). See also [CETA \(2016\)](#), Article 8.9(3); [CPTPP \(2018\)](#), Article 9.6(5).

expectations.⁴⁶ The [EU-Viet Nam Investment Protection Agreement](#) clarifies that “[f]or greater certainty, this Chapter shall not be interpreted as a commitment from a Party that it will not change its legal and regulatory framework, including in a manner that may negatively affect the operation of investments or the investor’s expectations of profits.”

- The [ASEAN-China Investment Agreement \(2009\)](#) states that “a breach of another provision of this Agreement, or of a separate international agreement, shall not establish that there has been a breach of this Article.” A similar rule is established, for example, in the [Hungary-United Arab Emirates BIT \(2021\)](#),⁴⁷ in [China-Türkiye BIT \(2015\)](#),⁴⁸ in the [Colombia-France BIT \(2014\)](#),⁴⁹ and in the [modernised Canada-Chile Free Trade Agreement \(2019\)](#).⁵⁰
- The [Hungary-United Arab Emirates BIT \(2021\)](#) further provides that “the fact that a measure violates a provision of national law does not in itself constitute a violation of this article” and assigns the decision on “whether one of the Contracting Parties has acted inconsistently with the obligations contained in [the article containing the clause on ‘fair’ and ‘equitable’ treatment]” to a court. A similar provision is found in the [modernised Canada-Chile Free Trade Agreement \(2019\)](#).⁵¹

32. Newer treaty practice with regards to ‘fair’ and ‘equitable’ treatment obligations can be summarised as shown in Figure 4.

⁴⁶ It states that “[f]or greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor’s expectations, including its expectations of profits, does not amount to a breach of an obligation under this Chapter.”

⁴⁷ The agreement states “5. A claim for breach of this Article may not be based on a breach of any other provision of this Agreement or any other international agreement.”

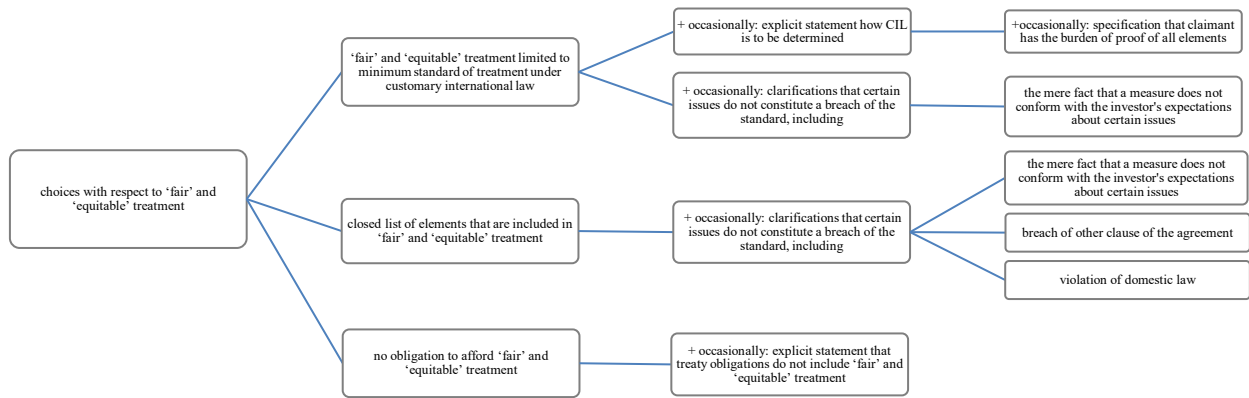
⁴⁸ The agreement states, in article 2 (5): “A determination that there has been a breach of other Articles of this Agreement, or articles of other agreements, does not establish that there has been a breach of this Article.”

⁴⁹ Colombia-France BIT (2014), Article 4(1), which states: “La constatation d’une violation d’une autre disposition du présent Accord ou d’un autre accord international n’implique pas une violation de ce standard.”

⁵⁰ The [modernised Canada-Chile Free Trade Agreement \(2019\)](#), Article G-05 [minimum standard of treatment] (4.) states: “A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.”

⁵¹ The [modernised Canada-Chile Free Trade Agreement \(2019\)](#), Article G-05 (5.) states: “For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. [...]”

Figure 4. Simplified structure of design choices with respect to ‘fair’ and ‘equitable’ treatment in recent investment treaties



Source: OECD.

3. The new treaty practice remains marginal in the overall treaty population despite its near-consistent use in more recent treaties

33. Individual jurisdictions have adopted the more recent designs of ‘fair’ and ‘equitable’ treatment clauses that delimit the scope of obligations or of non-inclusion of ‘fair’ and ‘equitable’ treatment clauses to different degrees of consistency and at different points in time; plurilateral agreements that contain the newer designs play a sizable role in their dissemination (section 3.1). Collectively, the adoption of the approach that began over two decades ago has not yet significantly changed the state of affairs in the overall treaty population and about 80% of the treaties in force feature designs that are no longer pursued (section 3.2).

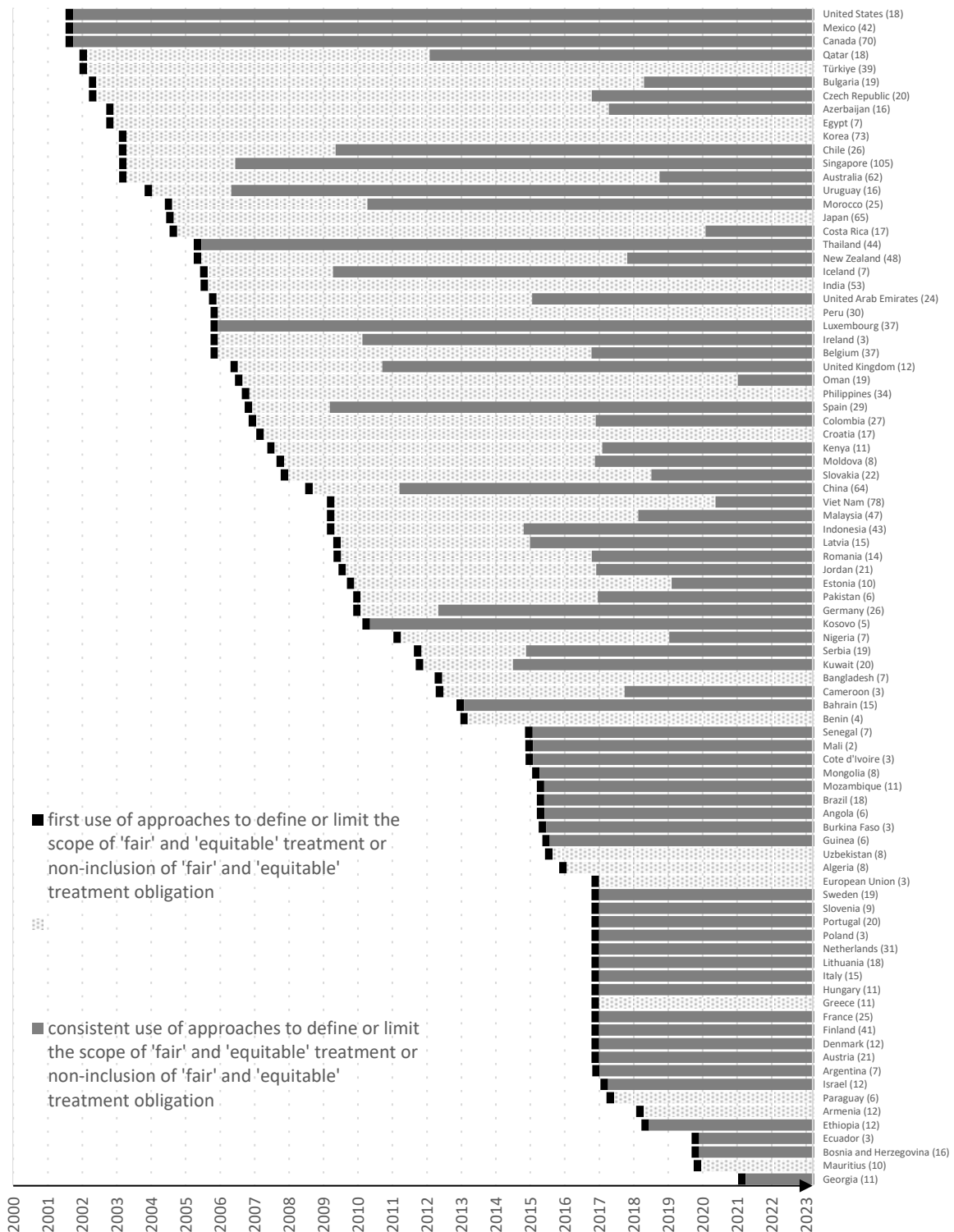
3.1. Adoption of newer designs by individual jurisdictions and in the context of plurilateral treaties

34. Between the first adoption of the more recent approaches to ‘fair’ and ‘equitable’ treatment in investment treaties in 2001 and early 2023, all jurisdictions that participate in the Track 2 work have concluded new bilateral or plurilateral investment agreements, and 87 of these jurisdictions have either applied a limiting clarification on the scope of ‘fair’ and ‘equitable’ treatment obligations or have omitted including a ‘fair’ and ‘equitable’ treatment obligation from at least one of their respective treaties.

35. Plurilateral treaties play a major role in the dissemination of the feature. The presence of newer designs to ‘fair’ and ‘equitable’ treatment obligations – explicit limitations or absence of ‘fair’ and ‘equitable’ treatment obligations – in some countries’ samples is shaped predominantly by participation in plurilateral arrangements. Of the 23 plurilateral arrangements in the sample, 19 contain newer designs to ‘fair’ and ‘equitable’ treatment and introduce this feature into 353 bilateral relationships – well over twice as many as the 150 bilateral arrangements that contain the feature. Plurilateral arrangements contain recent designs of ‘fair’ and ‘equitable’ treatment clauses much more frequently than bilateral treaties: only 18% of bilateral treaties concluded since July 2001 contain a recent design with respect to ‘fair’ and ‘equitable’ treatment, while just under 80% of plurilateral arrangements have this feature.

36. Individual jurisdictions have begun to pursue this course of action at different times and have applied it with different degrees of regularity. Figure 5 shows at what time individual jurisdictions have adopted one of the three current approaches to ‘fair’ and ‘equitable’ treatment for the first time, and when this practice became consistent, i.e., it was used in all of that jurisdiction’s subsequent agreements.

Figure 5. Adoption and consistent use of approaches to limit the scope of ‘fair’ and ‘equitable’ treatment obligations or non-inclusion of such obligations

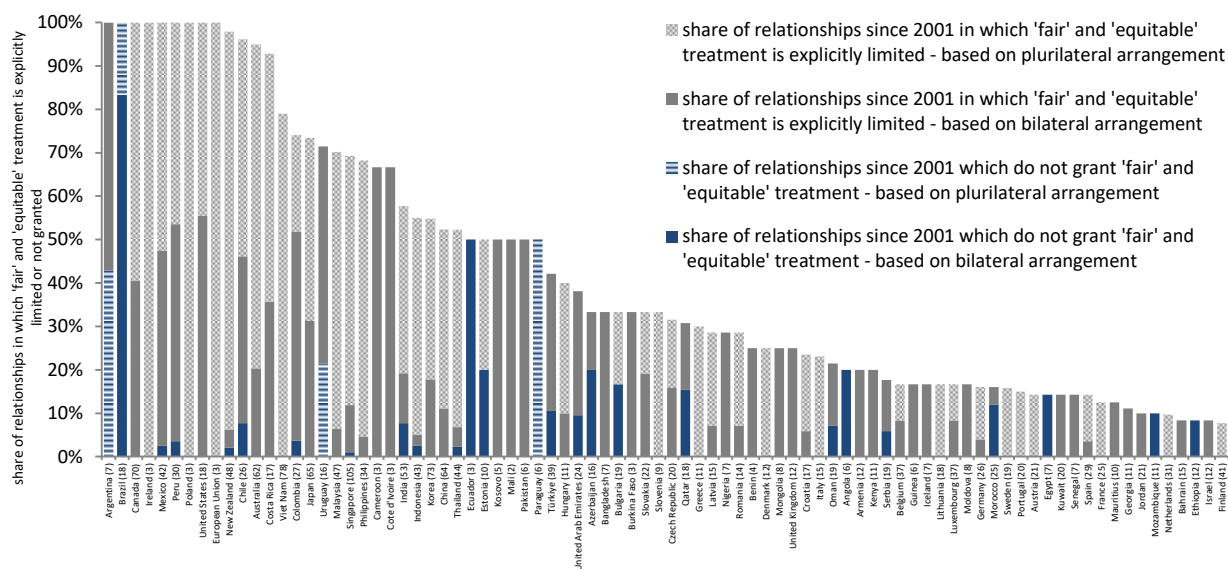


Note: Only jurisdictions which have the feature at least once are shown. Numbers in brackets for each country show how many treaty relationships were created or amended between 31 July 2001 and March 2023, irrespective of whether they contain the feature.

Source: OECD Investment Treaty Database.

37. Different degrees of recent treaty making activity, early adoption and early consistent adoption have led to varying degrees in which the newer designs are reflected in individual countries' recent treaty samples. Figure 6 documents the share of relationships in which treaty arrangements were established since 31 July 2001 – when what is identified as recent approaches to 'fair' and 'equitable' treatment began – and 31 December 2022. Figure 6 also documents the significant role that plurilateral arrangements have had in the dissemination of the feature in the treaty sample. Absence of 'fair' and 'equitable' treatment clauses or presence of language that explicitly clarifies the scope of the notion of 'fair' and 'equitable' treatment appears relatively more frequently in plurilateral arrangements and in comprehensive preferential trade agreements than in bilateral or stand-alone investment treaties.

Figure 6. Share of treaty relationships concluded since 2001 in which 'fair' and 'equitable' treatment obligations are explicitly limited or in which 'fair' and 'equitable' treatment is not granted



Note: Considers only arrangements made since 31 July 2001, regardless of in-force status of the underlying arrangement. Numbers in brackets next to country names show the number of overall relationships in the sample that were concluded, amended, or complemented by the country through a bilateral or plurilateral instrument between 31 July 2001 and 31 December 2022, irrespective of the choice with regard to 'fair' and 'equitable' treatment.

Source: OECD Investment Treaty Database.

3.2. Despite frequent use of these three approaches in newly concluded treaties, a large stock of treaties with old designs with respect to 'fair' and 'equitable' treatment remains in force

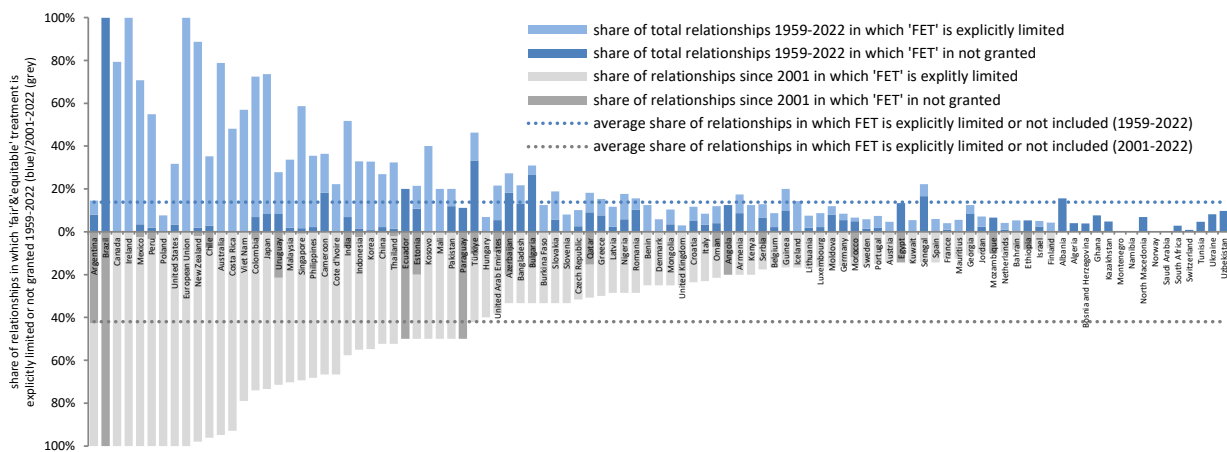
38. Despite the frequent use of recent design features with respect to 'fair' and 'equitable' treatment – explicit language that limits the scope of obligations or non-inclusion of 'fair' and 'equitable' treatment obligations – unspecified or ambiguously scoped 'fair' and 'equitable' treatment clauses are in force in over 1,800 treaty relationships as of March 2023.

39. The slow change results from the sizable stock of treaties that contain unspecified references to 'fair' and 'equitable' treatment obligations and the relatively small number of replacements, amendments, or terminations of existing treaties with unspecified 'fair' and

‘equitable’ treatment clauses.⁵² In fact, most relationships that were treaties that feature recent designs with regards to ‘fair’ and ‘equitable’ treatment cover relationships that were not previously covered by treaties, thus leaving treaties with older designs in place. In all, the newer design was established in 230 relationships where no treaty coverage existed beforehand; in contrast, in only 70 occurrences, the feature was introduced in the context of a wholesale replacement of an existing treaty. The spread of the feature in recent treaties makes thus only a very limited contribution to addressing the issue of unspecified ‘fair’ and ‘equitable’ treatment clauses in treaties with older designs.

40. As a result of the large stock of treaties that remain in force and which display unspecified ‘fair’ and ‘equitable’ treatment clauses, the proportion of these older treaties is typically considerably higher in individual jurisdictions’ treaty stocks than in their subsets of recent treaties. Figure 7 below documents that even those jurisdictions whose recent treaties contain predominantly or exclusively more recent designs still have a higher number of treaties that feature old designs in their samples.

Figure 7. Share of individual countries’ relationships that contain explicit caps on ‘fair’ and ‘equitable’ treatment or do not grant such treatment: jurisdictions entire treaty sets versus post-2001 treaty sets



Note: Only relationships based on treaties in force or those that could be expected to come into the force in the future are considered for both the period 1959-2022 and 2001-2022. Assessment of treaty content is made of the rules that govern the treaty-relationship as of 31 December 2022, that is, later amendments of other side-agreements are taken into account for the assessment of the content of the treaty.

Source: OECD Investment Treaty Database.

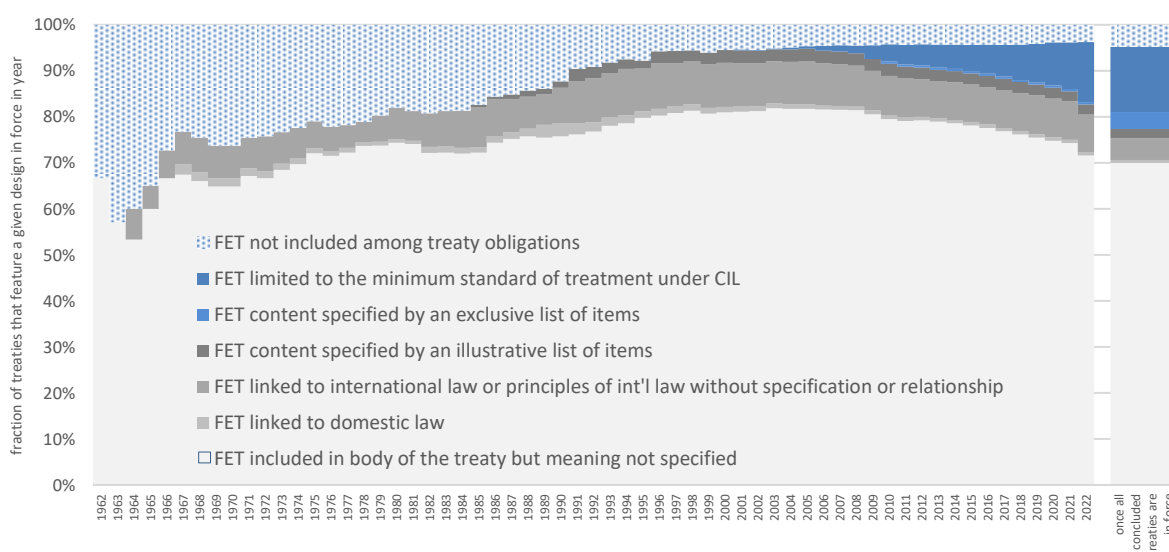
41. A similar observation applies to the collective treaty population of the 99 jurisdictions that are invited to participate in Track 2 work. Unspecified or ambiguous designs of ‘fair’ and ‘equitable’ treatment obligations continue to dominate the collective treaty population.

42. Unless jurisdictions adopt a structurally different approach to incorporate the designs that they are now almost consistently using with regard to ‘fair’ and ‘equitable’ treatment clauses into the stock of their existing treaties, the outlook in the medium term suggests relative stasis. Even if all agreements concluded as of March 2023 were to come into effect, and if all treaties that are

⁵² The termination of intra-EU BITs temporarily increases the number of terminations without replacements, and a few jurisdictions have terminated a sizable number of their treaties in recent years.

planned or scheduled to be terminated exit the treaty population, and all negotiated treaty replacements come into force, the share of treaties that explicitly specify ‘fair’ and ‘equitable’ treatment clauses would still be relatively low and apply in around 18% of the entire population of treaty-covered relationships. Further, treaties that do not provide for ‘fair’ and ‘equitable’ treatment at all would govern 5% of relationships under this scenario. An unspecified reference to ‘fair’ and ‘equitable’ treatment would still stand in over two thirds of treaty-covered relationships (Figure 8).

Figure 8. Diffusion of designs that explicitly specify ‘fair’ and ‘equitable’ treatment through the overall treaty population and prospects for future developments



Note: Graph shows relationships in force on 31 December of the indicated year. No deduction has been made for existing treaties that would likely be replaced by concluded treaties that had not come into force at by end-February 2021. The number of these treaties that may be replaced is low and for some treaties transitional arrangements are not yet set.

Source: OECD Investment Treaty Database.

Annex A. Survey sample and methodology

Sample composition

43. The sample for this survey consists of 2,617 investment treaties and related documents that the 99 jurisdiction that are invited to participate in the Track 2 Project⁵³ have concluded with any other jurisdiction between 1959 and 17 March 2023.⁵⁴

44. The concept of “investment treaty” is increasingly fluid as traditionally assumed defining features – foremost the presence of post-establishment protection content – are no longer present in some treaties. For the purpose of this survey, “investment treaties” are nonetheless understood as treaties that contain post-establishment protection content, given that rules on ‘fair’ and ‘equitable’ treatment are part of that subset of rules. Treaties with investment content that do not include any post-establishment protection provisions are not included in the sample.

45. The vast majority of the documents in the sample are bilateral investment treaties. Investment chapters in bilateral preferential trade agreements with investment provisions as well as 25 plurilateral agreements with investment provisions – signed by at least one jurisdiction that participates in the Track 2 Project – are also included in the sample. For plurilateral arrangements, only relationships that involve at least one participant in the Track 2 Project are considered.

46. Three plurilateral treaties are excluded from the statistical assessment in this study: the Energy Charter Treaty, the Agreement for Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference, and the Unified Agreement for the Investment of Arab Capital in the Arab States. Several different reasons motivate this choice: The signature and in-force status of the Unified Agreement for the Investment of Arab Capital in the Arab States for individual economies cannot be determined with any degree of certainty from authoritative, publicly accessible sources. All three agreements cover a very

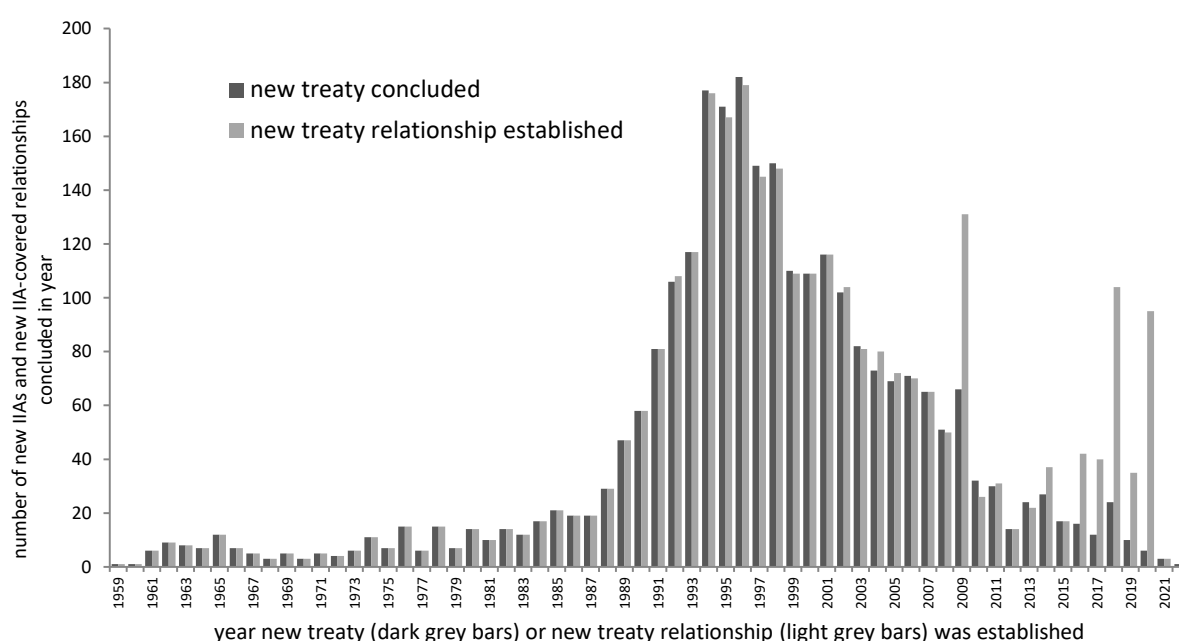
⁵³ The invited jurisdictions are Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guinea, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kosovo, Kuwait, Latvia, Lithuania, Luxembourg, Malaysia, Mali, Mauritius, Mexico, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Netherlands, New Zealand, Nigeria, North Macedonia, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Uzbekistan, Viet Nam, European Union.

⁵⁴ Where the term “jurisdiction” is used in this report, it does not imply any judgement by the OECD as to the legal or other status of any territorial entity. Belgium and Luxembourg have concluded many treaties jointly as the “Belgium-Luxembourg Economic Union”; while they constitute a joint treaty partner, this report counts the Belgium-Luxembourg Economic Union as *two* jurisdictions and produces data separately for the two jurisdictions, but counts treaties concluded by the Belgium Luxembourg Economic Union only once.

significant number of relationships that would make remaining data unreadable: the Energy Charter Treaty and the Agreement for Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference cover potentially over 3,300 relationships and would eclipse data documenting developments by their sheer number. Treaty relationships established by the three treaties also coexist in many relationships with other investment treaty arrangements with uncertain results for the obligations with respect to ‘fair’ and ‘equitable’ treatment obligations in relationships that are covered by several treaties with often diverging framings of obligations.

47. Overall, the treaties or related texts in the sample cover 3,341 bilateral relationships. Figure A A.1 shows the distribution of new treaties and treaty relationships included in the sample in annual cohorts.

Figure A A.1. Sample composition: treaties and treaty-covered relationships 1959-2022



Source: OECD Investment Treaty Database.

48. The primary considerations for the inclusion of a document into the treaty sample were reliability and authenticity of the document texts. The sample includes thus only documents that were available from government websites of jurisdiction that participate in the Track 2 Project or, rarely, websites of the governments of their treaty partners, as well as websites maintained by international or regional organisations.⁵⁵ Agreements were only included if an authentic text was available in a language accessible to the Secretariat (English, French, German, Italian, Spanish, Portuguese, Arabic). The assessment of the treaty content was made for one authentic language only, which may not have been the language in which the treaty has been negotiated or which is

⁵⁵ These include the [United Nations Treaties series](#), the [website of the Organisation of American States](#) and the [EFTA website](#). UNCTAD’s treaty collection was not used for concerns about unsigned or invalid versions, other than to fill gaps and only if the document file made available on the database showed a scan of a signed and dated original text.

the determining language in cases of deviations. Translations towards the authentic language that has been used for the assessment of a given treaty may have contributed to linguistic variance.

49. Given the limitations to availability of treaty texts, the sample may not in all cases be representative and may be biased for a number of reasons. Some treaties, especially those signed just before the finalisation of the survey may not be accessible on publicly available databases used for this survey. The full list of treaties and related arrangements included in the sample is available in Annex B.

50. Treaties and amendments have been included in the sample regardless of whether they are in force. Treaties that are not known to be in force or that are known to no longer be in force are shown in *italics* in this document.⁵⁶ For certain assessments as indicated in the text or notes to figures, only future-oriented treaties were considered; future-oriented treaties are those arrangements that were known to be in force in October 2022 or were expected to enter into force in the future. Treaties that are “expected to come into force” are those that have been signed but have not yet entered into effect. Some treaties that have been signed but for which at least one signatory has declared it will not bring into effect, are not counted in this group. Treaties that have been superseded or terminated are also excluded from the group of future-oriented treaties; treaties that are suspended are likewise treated as belonging to this group even though they may theoretically return to force in the future.

Treatment of amendments and side-agreements

51. Many treaties in the sample have been amended after their initial conclusion or complemented by side agreements such as joint interpretations. These documents were likewise assessed for this study. For purposes of the presentation, in particular for the description of developments over time, such joint interpretations and amendments are treated as if a new treaty with the features had replaced an existing treaty. The signature date of the amendment or side-agreement determines the inclusion of the arrangement in a cohort.

Treatment of coexisting treaty arrangements in a given bilateral relationship

52. In many instances, bilateral relationships are simultaneously covered by more than one treaty. In individual cases, up to five investment treaties exist simultaneously in a bilateral relationship. The interaction of the provisions of these arrangements with each other is rarely clarified in treaties themselves and is uncertain overall. Simultaneous coexistence is not to be confounded with treaty replacements, where only one of the treaties – the old *or* the new treaty – is in force at a given point in time.

53. For the purpose of this study, simultaneous co-existence is not resolved. Rather, treaty relationships established by a given bilateral relationship are accounted for independently as if they were established in different bilateral relationships.

54. “Suspended” treaties are treated, for the purpose of this study, as if there were no longer in force. Suspension of a treaty is used by some jurisdictions in cases of replacements, often of a

⁵⁶ This does not apply systematically to plurilateral arrangements that can be in force for some of its signatories but not for others. Only when the agreement is not in force for any of its signatories is the treaty name shown in *italics*.

BIT that is being replaced by a PTA, where the termination of the newer treaty would lead to a revival of the suspended earlier treaty.⁵⁷ No practical occurrences of such revival are known.

⁵⁷ For further details see Pohl, J. (2013), “Temporal Validity of International Investment Agreements: A Large Sample Survey of Treaty Provisions”, OECD Working Papers on International Investment, No.2013/04, OECD Publishing, Paris, <https://doi.org/10.1787/5k3tsj5f5fvh-en>, p.15.

Annex B. List of treaties and related documents in the sample

55. This Annex contains the list of treaties and related documents that are included in the sample of this study. Treaties and documents in *italics* were, according to publicly available information accessed by the Secretariat, not yet or no longer in force at the time the survey was concluded on 17 March 2023. The treaties are listed in alphabetical order for each country, resulting in a double listing of individual treaties concluded between participants in the Track 2 Project, under both economies. Plurilateral agreements included in the sample are shown at the end of the list. The electronic version of the present document provides – some rare exceptions aside – access to the full text of the treaty through a hyperlink under the treaty name; some documents may no longer be available at the electronic address as time passes.

Albania-Austria BIT (1993)
 Albania-Belgium/Luxembourg BIT (1999)
 Albania-Bulgaria BIT (1994)
 Albania-China BIT (1993)
 Albania-Croatia BIT (1993)
 Albania-Croatia BIT (1993) - Protocol (2009)
 Albania-Cyprus BIT (2010)*
 Albania-Czech Republic BIT (1994)
 Albania-Denmark BIT (1995)
 Albania-Egypt BIT (1993)
 Albania-Finland BIT (1997)
 Albania-France BIT (1995)
 Albania-Germany BIT (1991)
 Albania-Greece BIT (1991)
 Albania-Hungary BIT (1996)

Albania-Israel BIT (1996)
 Albania-Italy BIT (1991)
 Albania-Korea BIT (2003)
Albania-Kosovo BIT (2016)
 Albania-Lithuania BIT (2007)
 Albania-Malaysia BIT (1994)
 Albania-Malta BIT (2011)
 Albania-Netherlands BIT (1994)
 Albania-Poland BIT (1993)
 Albania-Portugal BIT (1998)
 Albania-Romania BIT (1994)
 Albania-Russian Federation BIT (1995)
 Albania-Slovenia BIT (1997)
 Albania-Spain BIT (2003)
 Albania-Sweden BIT (1995)
 Albania-Switzerland BIT (1992)
Albania-Tunisia BIT (1993)
 Albania-Türkiye BIT (1992)
 Albania-Ukraine BIT (2002)
 Albania-United Kingdom BIT (1994)
 Albania-United States BIT (1995)
 Algeria-Argentina BIT (2000)
 Algeria-Austria BIT (2003)
 Algeria-Belgium/Luxembourg BIT (1991)
 Algeria-Bulgaria BIT (1998)
 Algeria-China BIT (1996)
Algeria-Czech Republic BIT (2000)
 Algeria-Denmark BIT (1999)
Algeria-Egypt BIT (1997)
 Algeria-Finland BIT (2005)
 Algeria-France BIT (1993)
 Algeria-Germany BIT (1996)
 Algeria-Greece BIT (2000)
Algeria-Indonesia BIT (2000)
 Algeria-Jordan BIT (1996)
 Algeria-Korea BIT (1999)
 Algeria-Malaysia BIT (2000)
 Algeria-Netherlands BIT (2007)
 Algeria-Portugal BIT (2004)
 Algeria-Romania BIT (1994)
Algeria-Russian Federation BIT (2006)
Algeria-South Africa BIT (2000)
 Algeria-Spain BIT (1994)
 Algeria-Sweden BIT (2003)
 Algeria-Switzerland BIT (2004)
Algeria-Tunisia BIT (2006)
Algeria-Türkiye BIT (1998)
Angola-Brazil CIFA (2015)
Angola-France BIT (2008)
 Angola-Germany BIT (2003)
 Angola-Italy BIT (1997)
Angola-Portugal BIT (1997)
Angola-South Africa BIT (2005)
Angola-United Kingdom BIT (2000)
 Argentina-Algeria BIT (2000)
 Argentina-Armenia BIT (1993)
 Argentina-Australia BIT (1995)
 Argentina-Austria BIT (1992)
 Argentina-Belgium/Luxembourg BIT (1990)

* Note by the Republic of Türkiye: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Türkiye recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Türkiye shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Türkiye. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.]

- Argentina-Bolivia BIT (1994)*
Argentina-Bulgaria BIT (1993)
Argentina-Canada BIT (1991)
Argentina-Chile BIT (1991)
Argentina-Chile FTA (2017)
Argentina-China BIT (1992)
Argentina-Chinese Taipei BIT (1993)
Argentina-Costa Rica BIT (1997)
Argentina-Croatia BIT (1994)
Argentina-Cuba BIT (1995)
Argentina-Czech Republic BIT (1996)
Argentina-Denmark BIT (1992)
Argentina-Dominican Republic BIT (2001)
Argentina-Ecuador BIT (1994)
Argentina-Egypt BIT (1992)
Argentina-El Salvador BIT (1996)
Argentina-Finland BIT (1993)
Argentina-France BIT (1991)
Argentina-Germany BIT (1991)
Argentina-Greece BIT (1999)
Argentina-Guatemala BIT (1998)
Argentina-Hungary BIT (1993)
Argentina-India BIT (1999)
Argentina-Indonesia BIT (1995)
Argentina-Israel BIT (1995)
Argentina-Italy BIT (1990)
Argentina-Jamaica BIT (1994)
Argentina-Japan BIT (2018)
Argentina-Korea BIT (1994)
Argentina-Lithuania BIT (1996)
Argentina-Malaysia BIT (1994)
Argentina-Mexico BIT (1996)
Argentina-Morocco BIT (1996)
Argentina-Netherlands BIT (1992)
Argentina-New Zealand BIT (1999)
Argentina-Nicaragua BIT (1998)
Argentina-Panama BIT (1996)
Argentina-Peru BIT (1994)
Argentina-Philippines BIT (1999)
Argentina-Poland BIT (1991)
Argentina-Portugal BIT (1994)
Argentina-Qatar BIT (2016)
Argentina-Romania BIT (1993)
Argentina-Russian Federation BIT (1998)
Argentina-Senegal BIT (1993)
Argentina-South Africa BIT (1998)
Argentina-Spain BIT (1991)
Argentina-Sweden BIT (1991)
Argentina-Switzerland BIT (1991)
Argentina-Thailand BIT (2000)
Argentina-Tunisia BIT (1992)
Argentina-Türkiye BIT (1992)
Argentina-Ukraine BIT (1995)
Argentina-United Arab Emirates BIT (2018)
Argentina-United Kingdom BIT (1990)
Argentina-United States BIT (1991)
Argentina-United States BIT (1991) - Exchange of Notes (1992)
Argentina-Venezuela BIT (1993)
Argentina-Viet Nam BIT (1996)
Armenia-Argentina BIT (1993)
Armenia-Austria BIT (2001)
Armenia-Belgium/Luxembourg BIT (2001)
Armenia-Bulgaria BIT (1995)
Armenia-Canada BIT (1997)
Armenia-Egypt BIT (1996)
Armenia-Finland BIT (2004)
Armenia-France BIT (1995)
Armenia-Germany BIT (1995)
Armenia-India BIT (2003)
Armenia-Israel BIT (2000)
Armenia-Italy BIT (1998)
Armenia-Japan BIT (2018)
Armenia-Kazakhstan BIT (2006)
Armenia-Korea BIT (2018)
Armenia-Latvia BIT (2005)
Armenia-Lithuania BIT (2006)
Armenia-Netherlands BIT (2005)
Armenia-Qatar BIT (2002)
Armenia-Romania BIT (1994)
Armenia-Sweden BIT (2006)
Armenia-Switzerland BIT (1998)
Armenia-Ukraine BIT (1994)
Armenia-United Kingdom BIT (1993)
Armenia-United States BIT (1992)
Armenia-Uruguay BIT (2002)
Australia-Argentina BIT (1995)
Australia-Chile BIT (1996)
Australia-Chile FTA (2008)
Australia-China BIT (1988)
Australia-Czech Republic BIT (1993)
Australia-Egypt BIT (2001)
Australia-Hong Kong (China) BIT (1993)
Australia-Hong Kong (China) FTA (2019)
Australia-Hungary BIT (1991)
Australia-India BIT (1999)
Australia-Indonesia BIT (1992)
Australia-Indonesia CEPA (2019)
Australia-Japan EPA (2014)
Australia-Korea FTA (2014)
Australia-Lao PDR BIT (1994)
Australia-Lithuania BIT (1998)
Australia-Malaysia FTA (2012)
Australia-Mexico BIT (2005)
Australia-New Zealand ANZCERTA Investment Protocol (2011)
Australia-Pakistan BIT (1998)
Australia-Papua New Guinea BIT (1990)
Australia-Peru BIT (1995)
Australia-Peru FTA (2018)
Australia-Philippines BIT (1995)
Australia-Poland BIT (1991)
Australia-Romania BIT (1993)
Australia-Singapore Amendment (2016)
Australia-Singapore FTA (2003)
Australia-Sri Lanka BIT (2002)
Australia-Thailand FTA (2004)
Australia-Türkiye BIT (2005)
Australia-United Kingdom FTA (2021)
Australia-United States FTA (2004)
Australia-Uruguay BIT (2001)
Australia-Uruguay BIT (2019)
Australia-Viet Nam BIT (1991)
Austria-Albania BIT (1993)
Austria-Algeria BIT (2003)
Austria-Argentina BIT (1992)
Austria-Armenia BIT (2001)
Austria-Azerbaijan BIT (2000)
Austria-Bangladesh BIT (2000)
Austria-Belarus BIT (2001)
Austria-Belize BIT (2001)
Austria-Bosnia and Herzegovina BIT (2000)
Austria-Bulgaria BIT (1997)
Austria-Cambodia BIT (2004)
Austria-Chile BIT (1997)
Austria-China BIT (1985)
Austria-Croatia BIT (1997)
Austria-Cuba BIT (2000)
Austria-Czech Republic BIT (1990)
Austria-Egypt BIT (2001)
Austria-Estonia BIT (1994)
Austria-Ethiopia BIT (2004)
Austria-Georgia BIT (2001)
Austria-Guatemala BIT (2006)
Austria-Hong Kong (China) BIT (1996)
Austria-Hungary BIT (1988)
Austria-India BIT (1999)
Austria-Iran BIT (2001)
Austria-Jordan BIT (2001)
Austria-Kazakhstan BIT (2010)
Austria-Korea BIT (1991)
Austria-Kosovo BIT (2010)
Austria-Kuwait BIT (1996)
Austria-Kyrgyzstan BIT (2016)
Austria-Latvia BIT (1994)
Austria-Lebanon BIT (2001)
Austria-Libya BIT (2002)
Austria-Lithuania BIT (1996)
Austria-Malaysia BIT (1985)
Austria-Malta BIT (2002)
Austria-Mexico BIT (1998)
Austria-Moldova BIT (2001)
Austria-Mongolia BIT (2001)
Austria-Montenegro BIT (2001)
Austria-Morocco BIT (1992)
Austria-Namibia BIT (2003)
Austria-Nigeria BIT (2013)
Austria-North Macedonia BIT (2001)
Austria-Oman BIT (2001)
Austria-Paraguay BIT (1993)
Austria-Philippines BIT (2002)
Austria-Poland BIT (1988)
Austria-Romania BIT (1976)
Austria-Romania BIT (1996)
Austria-Russian Federation BIT (1990)
Austria-Saudi Arabia BIT (2001)
Austria-Serbia BIT (1989)
Austria-Serbia BIT (2001)
Austria-Slovakia BIT (1990)
Austria-Slovenia BIT (2001)
Austria-South Africa BIT (1996)
Austria-Tajikistan BIT (2011)
Austria-Tunisia BIT (1995)
Austria-Türkiye BIT (1988)
Austria-Ukraine BIT (1996)
Austria-United Arab Emirates BIT (2001)
Austria-Uzbekistan BIT (2000)
Austria-Viet Nam BIT (1995)
Austria-Yemen BIT (2003)
Austria-Zimbabwe BIT (2000)
Azerbaijan-Austria BIT (2000)
Azerbaijan-Belgium/Luxembourg BIT (2004)
Azerbaijan-Bulgaria BIT (2004)
Azerbaijan-Croatia BIT (2007)

- Azerbaijan-Czech Republic BIT (2011)
Azerbaijan-Egypt BIT (2002)
Azerbaijan-Estonia BIT (2010)
 Azerbaijan-Finland BIT (2003)
 Azerbaijan-France BIT (1998)
 Azerbaijan-Georgia BIT (1996)
 Azerbaijan-Germany BIT (1995)
 Azerbaijan-Greece BIT (2004)
 Azerbaijan-Israel BIT (2007)
Azerbaijan-Italy BIT (1997)
 Azerbaijan-Kazakhstan BIT (1996)
 Azerbaijan-Korea BIT (2007)
 Azerbaijan-Latvia BIT (2005)
Azerbaijan-Lithuania BIT (2006)
 Azerbaijan-Romania BIT (2002)
Azerbaijan-Russian Federation BIT (2014)
 Azerbaijan-Switzerland BIT (2006)
 Azerbaijan-Türkiye BIT (2011)
 Azerbaijan-Ukraine BIT (1997)
 Azerbaijan-United Kingdom BIT (1996)
 Azerbaijan-United States BIT (1997)
Bahrain-Belgium/Luxembourg BIT (2006)
 Bahrain-Bulgaria BIT (2009)
 Bahrain-China BIT (1999)
 Bahrain-Czech Republic BIT (2007)
Bahrain-Egypt BIT (1997)
 Bahrain-France BIT (2004)
 Bahrain-Germany BIT (2007)
Bahrain-India BIT (2004)
 Bahrain-Italy BIT (2006)
 Bahrain-Jordan BIT (2000)
 Bahrain-Malaysia BIT (1999)
 Bahrain-Mexico BIT (2012)
Bahrain-Morocco BIT (2000)
 Bahrain-Netherlands BIT (2007)
 Bahrain-Philippines BIT (2001)
Bahrain-Russian Federation BIT (2014)
 Bahrain-Singapore BIT (2003)
Bahrain-Spain BIT (2008)
 Bahrain-Thailand BIT (2002)
 Bahrain-Türkiye BIT (2006)
 Bahrain-United Kingdom BIT (1991)
 Bahrain-United States BIT (1999)
 Bangladesh-Austria BIT (2000)
 Bangladesh-Belgium/Luxembourg BIT (1981)
Bangladesh-Cambodia BIT (2014)
 Bangladesh-China BIT (1996)
Bangladesh-Denmark BIT (2009)
 Bangladesh-France BIT (1985)
 Bangladesh-Germany BIT (1981)
 Bangladesh-India BIT (2009)
 Bangladesh-India BIT (2009) - Joint Interpretive Agreement (2017)
 Bangladesh-Indonesia BIT (1998)
 Bangladesh-Italy BIT (1990)
 Bangladesh-Japan BIT (1998)
 Bangladesh-Korea BIT (1986)
 Bangladesh-Malaysia BIT (1994)
 Bangladesh-Netherlands BIT (1994)
 Bangladesh-Philippines BIT (1997)
 Bangladesh-Poland BIT (1997)
 Bangladesh-Romania BIT (1987)
 Bangladesh-Singapore BIT (2004)
 Bangladesh-Switzerland BIT (2000)
 Bangladesh-Thailand BIT (2002)
 Bangladesh-Türkiye BIT (1987)
Bangladesh-Türkiye BIT (2012)
 Bangladesh-United Kingdom BIT (1980)
 Bangladesh-United States BIT (1986)
 Belgium/Luxembourg-Albania BIT (1999)
 Belgium/Luxembourg-Algeria BIT (1991)
 Belgium/Luxembourg-Argentina BIT (1990)
 Belgium/Luxembourg-Armenia BIT (2001)
 Belgium/Luxembourg-Azerbaijan BIT (2004)
Belgium/Luxembourg-Bahrain BIT (2006)
 Belgium/Luxembourg-Bangladesh BIT (1981)
Belgium/Luxembourg-Barbados BIT (2009)
Belgium/Luxembourg-Belarus BIT (2002)
 Belgium/Luxembourg-Benin BIT (2001)
 Belgium/Luxembourg-Bolivia BIT (1990)
 Belgium/Luxembourg-Bosnia and Herzegovina BIT (2004)
Belgium/Luxembourg-Botswana BIT (2006)
Belgium/Luxembourg-Brazil BIT (1999)
Belgium/Luxembourg-Bulgaria BIT (1988)
 Belgium/Luxembourg-Burkina Faso BIT (2001)
 Belgium/Luxembourg-Burundi BIT (1989)
 Belgium/Luxembourg-Cameroon BIT (1980)
 Belgium/Luxembourg-Chile BIT (1992)
Belgium/Luxembourg-China BIT (1984)
 Belgium/Luxembourg-China BIT (2005)
Belgium/Luxembourg-Colombia BIT (2009)
Belgium/Luxembourg-Comoros BIT (2001)
Belgium/Luxembourg-Congo (Democratic Republic) BIT (2005)
Belgium/Luxembourg-Costa Rica BIT (2002)
Belgium/Luxembourg-Cote d'Ivoire BIT (1999)
Belgium/Luxembourg-Croatia BIT (2001)
Belgium/Luxembourg-Cuba BIT (1998)
Belgium/Luxembourg-Cyprus BIT (1991)
Belgium/Luxembourg-Czech Republic BIT (1989)
Belgium/Luxembourg-Egypt BIT (1977)
 Belgium/Luxembourg-Egypt BIT (1999)
 Belgium/Luxembourg-El Salvador BIT (1999)
Belgium/Luxembourg-Estonia BIT (1996)
Belgium/Luxembourg-Ethiopia BIT (2006)
 Belgium/Luxembourg-Gabon BIT (1998)
 Belgium/Luxembourg-Georgia BIT (1993)
Belgium/Luxembourg-Guatemala BIT (2005)
 Belgium/Luxembourg-Hong Kong (China) BIT (1996)
Belgium/Luxembourg-Hungary BIT (1986)
Belgium/Luxembourg-India BIT (1997)
 Belgium/Luxembourg-Kazakhstan BIT (1998)
Belgium/Luxembourg-Korea BIT (1974)
 Belgium/Luxembourg-Korea BIT (2006)
Belgium/Luxembourg-Kosovo BIT (2010)
 Belgium/Luxembourg-Kuwait BIT (2000)
Belgium/Luxembourg-Latvia BIT (1996)
 Belgium/Luxembourg-Lebanon BIT (1999)
 Belgium/Luxembourg-Libya BIT (2004)
Belgium/Luxembourg-Lithuania BIT (1997)
 Belgium/Luxembourg-Madagascar BIT (2005)
 Belgium/Luxembourg-Malaysia BIT (1979)
Belgium/Luxembourg-Malta BIT (1987)
 Belgium/Luxembourg-Mauritius BIT (2005)
 Belgium/Luxembourg-Mexico BIT (1998)
 Belgium/Luxembourg-Moldova BIT (1996)
 Belgium/Luxembourg-Mongolia BIT (1992)
 Belgium/Luxembourg-Montenegro BIT (2004)
Belgium/Luxembourg-Montenegro BIT (2010)
Belgium/Luxembourg-Morocco BIT (1965)
 Belgium/Luxembourg-Morocco BIT (1999)
 Belgium/Luxembourg-Mozambique BIT (2006)
Belgium/Luxembourg-Nicaragua BIT (2005)
 Belgium/Luxembourg-North Macedonia BIT (1999)
Belgium/Luxembourg-Oman BIT (2008)
Belgium/Luxembourg-Pakistan BIT (1998)
Belgium/Luxembourg-Panama BIT (2009)
 Belgium/Luxembourg-Paraguay BIT (1992)
 Belgium/Luxembourg-Peru BIT (2005)
 Belgium/Luxembourg-Philippines BIT (1998)
Belgium/Luxembourg-Poland BIT (1987)
Belgium/Luxembourg-Qatar BIT (2007)
Belgium/Luxembourg-Romania BIT (1978)
Belgium/Luxembourg-Romania BIT (1996)
 Belgium/Luxembourg-Russian Federation BIT (1989)
 Belgium/Luxembourg-Rwanda BIT (1983)
Belgium/Luxembourg-Rwanda BIT (2007)
 Belgium/Luxembourg-Saudi Arabia BIT (2001)
 Belgium/Luxembourg-Serbia BIT (2004)
 Belgium/Luxembourg-Singapore BIT (1978)
Belgium/Luxembourg-Slovakia BIT (1989)
Belgium/Luxembourg-Slovenia BIT (1999)
 Belgium/Luxembourg-South Africa BIT (1998)
 Belgium/Luxembourg-Sri Lanka BIT (1982)
Belgium/Luxembourg-Sudan BIT (2005)
Belgium/Luxembourg-Tajikistan BIT (2009)
 Belgium/Luxembourg-Thailand BIT (2002)
Belgium/Luxembourg-Togo BIT (2009)
Belgium/Luxembourg-Tunisia BIT (1964)
 Belgium/Luxembourg-Tunisia BIT (1997)
 Belgium/Luxembourg-Türkiye BIT (1986)
Belgium/Luxembourg-Uganda BIT (2005)
 Belgium/Luxembourg-Ukraine BIT (1996)
 Belgium/Luxembourg-United Arab Emirates BIT (2004)
 Belgium/Luxembourg-Uruguay BIT (1991)
 Belgium/Luxembourg-Uzbekistan BIT (1998)
 Belgium/Luxembourg-Venezuela BIT (1998)
 Belgium/Luxembourg-Viet Nam BIT (1991)
 Belgium/Luxembourg-Yemen BIT (2000)
Belgium/Luxembourg-Zambia BIT (2001)
Belgium-Indonesia BIT (1970)
 Benin-Belgium/Luxembourg BIT (2001)
 Benin-Canada BIT (2013)
Benin-China BIT (2004)
 Benin-Germany BIT (1978)
Benin-Morocco BIT (2004)
 Benin-Netherlands BIT (2001)
 Benin-Switzerland BIT (1966)
 Benin-United Kingdom BIT (1987)
 Bosnia and Herzegovina-Austria BIT (2000)
 Bosnia and Herzegovina-Belgium/Luxembourg BIT (2004)
 Bosnia and Herzegovina-China BIT (2002)
 Bosnia and Herzegovina-Croatia BIT (1996)
 Bosnia and Herzegovina-Czech Republic BIT (2002)
 Bosnia and Herzegovina-Denmark BIT (2004)
 Bosnia and Herzegovina-Egypt BIT (1998)
 Bosnia and Herzegovina-Finland BIT (2000)
Bosnia and Herzegovina-France BIT (2003)
Bosnia and Herzegovina-Germany BIT (1989)
 Bosnia and Herzegovina-Germany BIT (2001)
 Bosnia and Herzegovina-Greece BIT (2000)
 Bosnia and Herzegovina-Hungary BIT (2002)
Bosnia and Herzegovina-India BIT (2006)
Bosnia and Herzegovina-Italy BIT (2000)

Bosnia and Herzegovina-Kuwait BIT (2001)
 Bosnia and Herzegovina-Lithuania BIT (2007)
 Bosnia and Herzegovina-Malaysia BIT (1994)
 Bosnia and Herzegovina-Moldova BIT (2003)
Bosnia and Herzegovina-Netherlands BIT (1976)
 Bosnia and Herzegovina-Netherlands BIT (1998)
 Bosnia and Herzegovina-Portugal BIT (2002)
 Bosnia and Herzegovina-Romania BIT (2001)
 Bosnia and Herzegovina-Slovakia BIT (2008)
 Bosnia and Herzegovina-Slovenia BIT (2001)
 Bosnia and Herzegovina-Spain BIT (2002)
 Bosnia and Herzegovina-Sweden BIT (2000)
 Bosnia and Herzegovina-Switzerland BIT (2003)
 Bosnia and Herzegovina-Türkiye BIT (1998)
 Bosnia and Herzegovina-Ukraine BIT (2002)
 Bosnia and Herzegovina-United Kingdom BIT (2002)
Brazil-Angola CIFA (2015)
Brazil-Belgium/Luxembourg BIT (1999)
Brazil-Chile BIT (1994)
Brazil-Chile CIFA (2015)
 Brazil-Chile FTA (2018)
Brazil-Colombia CIFA (2015)
Brazil-Cuba CIFA (1997)
Brazil-Denmark BIT (1995)
Brazil-Ecuador CIFA (2019)
Brazil-Ethiopia CIFA (2018)
Brazil-Finland BIT (1995)
Brazil-Germany BIT (1995)
Brazil-Guyana CIFA (2018)
Brazil-India BIT (2020)
Brazil-Korea BIT (1995)
Brazil-Malawi CIFA (2015)
Brazil-Mexico CIFA (2015)
Brazil-Morocco CIFA (2019)
Brazil-Mozambique CIFA (2015)
Brazil-Netherlands BIT (1998)
Brazil-Peru ETEA (2016)
Brazil-Portugal BIT (1994)
Brazil-Suriname CIFA (2018)
Brazil-United Arab Emirates CIFA (2019)
Brazil-Venezuela BIT (1995)
 Bulgaria-Albania BIT (1994)
 Bulgaria-Algeria BIT (1998)
 Bulgaria-Argentina BIT (1993)
Bulgaria-Armenia BIT (1995)
 Bulgaria-Austria BIT (1997)
Bulgaria-Azerbaijan BIT (2004)
 Bulgaria-Bahrain BIT (2009)
 Bulgaria-Belarus BIT (1996)
Bulgaria-Belgium/Luxembourg BIT (1988)
 Bulgaria-China BIT (1989)
Bulgaria-Croatia BIT (1996)
 Bulgaria-Cuba BIT (1998)
Bulgaria-Cyprus BIT (1987)
Bulgaria-Czech Republic BIT (1999)
Bulgaria-Denmark BIT (1993)
 Bulgaria-Egypt BIT (1998)
Bulgaria-Finland BIT (1984)
 Bulgaria-Finland BIT (1997)
Bulgaria-France BIT (1989)
 Bulgaria-Georgia BIT (1995)
Bulgaria-Germany BIT (1986)
Bulgaria-Ghana BIT (1989)
Bulgaria-Greece BIT (1993)
Bulgaria-Hungary BIT (1994)
Bulgaria-India BIT (1998)
 Bulgaria-India BIT (1998) - Protocol (2007)
Bulgaria-Indonesia BIT (2003)
 Bulgaria-Iran BIT (1998)
 Bulgaria-Israel BIT (1993)
Bulgaria-Italy BIT (1988)
 Bulgaria-Jordan BIT (2002)
 Bulgaria-Kazakhstan BIT (1999)
 Bulgaria-Korea BIT (2006)
 Bulgaria-Kuwait BIT (1997)
Bulgaria-Latvia BIT (2003)
 Bulgaria-Lebanon BIT (1999)
 Bulgaria-Libya BIT (1999)
Bulgaria-Lithuania BIT (2005)
Bulgaria-Malta BIT (1984)
Bulgaria-Moldova BIT (1996)
Bulgaria-Mongolia BIT (2000)
 Bulgaria-Morocco BIT (1996)
Bulgaria-Netherlands BIT (1988)
Bulgaria-Netherlands BIT (1999)
Bulgaria-Nigeria BIT (1998)
Bulgaria-North Korea BIT (1999)
 Bulgaria-North Macedonia BIT (1999)
 Bulgaria-Oman BIT (2007)
Bulgaria-Pakistan BIT (2002)
 Bulgaria-Poland BIT (1994)
Bulgaria-Portugal BIT (1993)
Bulgaria-Portugal BIT (1993) - Protocol (1999)
Bulgaria-Qatar BIT (2007)
Bulgaria-Romania BIT (1994)
 Bulgaria-Russian Federation BIT (1993)
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ASEAN-China Investment Agreement
ASEAN-Korea FTA
CAFTA-DR
CETA
China-Japan-Korea trilateral investment agreement
Colombia-Northern Triangle FTA
CPTPP

EFTA-Korea Investment Agreement
EFTA-Singapore FTA
EU-Singapore Investment Protection Agreement
EU-Viet Nam Investment Protection Agreement
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Korea-Central America FTA
MERCOSUR Protocol on Investment Cooperation and Facilitation
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Mexico-Northern Triangle FTA
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NAFTA - Joint interpretation
PACER plus
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RCEP
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USMCA

