



# **APEC-UNCTAD REGIONAL TRAINING COURSE ON THE CORE ELEMENTS OF INTERNATIONAL INVESTMENT AGREEMENTS IN THE APEC REGION**

## **Presentations**

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# Pre establishment Chile's Approach

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## PRE ESTABLISHMENT A CRITICAL PHASE

## Pre and Post establishment

- All BITs Protect investment in the post establishment phase this is the investment has been made in the territory of one of the Parties.
- Investment admitted in accordance with the laws and regulations of the Party.
  - Investment made is protected.
  - Future investor will be subject to existing laws (could or not be less favorable)
  - Investor who seeks to invest is not.

## Where and What?

1. **Definition of investor:**  
investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality;
2. National Treatment  
Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
3. Most Favorite Nation  
Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

## Pre establishment

### Protects:

Investor who seeks to investment  
Investment that has not been established (in the process)

### > Why?

Isn't giving the investor **too much protection**?

> Is it a "blank check"? NO

## Requirements and Exceptions

1. Requisite of nationality  
dual national shall be deemed to be exclusively a national of the State of his/her dominant and effective nationality.
2. Reservation of sectors and measures in Annex I and II
3. General Exception in the FTA applicable to all Chapter (GATS and GATT).
4. A party may submit a claim to arbitration if:  
(i) the respondent has breached an obligation under Section A; and  
(ii) the claimant has incurred **loss or damage** by reason of, or arising out of, that breach; and
5. Footnote Chile Colombia and Perú FTA.
  - For greater certainty, the Parties understand that an investor attempts to make an investment when has made the essentials acts necessary to concrete an investment, such as the canalization of resources for the constitution of the capital of an enterprise and the obtainment of permits or licences, among others.



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¡¡Thanks!!

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