



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

Presentations

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Coherence in IIAs

An Impossible Dream?

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I. How inconsistencies arise

- Ignorance (photo-ops)
- Negotiating power
- Temporal (c.f., USA, China)

II. Japan's experience

- Temporal
(photo-op BITs → FTA era → strategic BITs)
- Negotiating power (vs. Latin America)
 - FET / MST
 - Note on indirect expropriation
 - Characteristics of investment
 - PR / SMBD
 - Treatment of Mode 3
 - Length of ISDS article

III. Dealing with inconsistencies

(1) Coping with inconsistencies

- We're screwed anyways.
 - Investor can choose disciplines and forums
 - * NT reservations vs. FET
 - * ICSID vs. UNCITRAL
 - Treaty shopping
 - * Investors will set up offshore companies and use your "best" BIT
- Work with a checklist.
 - Have a handy version, extensive version

(2) Avoiding inconsistencies

- Have a smart MFN clause.
- Create "trademarks" --- Earn respect!
 - Philippines (ICSID)
 - Thailand (positive list)
 - Canada, France (cultural exceptions)
 - Japan (corruption prevention)
 - China (pre-NT, "duty of investors"?)
- ✓ Reservations should be trademarks, too.
- Choose your negotiating partners.
 - Macchiavellian style
 - Establish regional standards
(ACIA → vs. China, Korea, Aus-NZ Japan?)