Investment Treaties and Climate Change

Survey of Climate Policies for Investment Treaties

Overview of responses

October 2023
Introduction

First-ever survey of climate policies for investment treaties

Contributes to placing climate change at core of investment treaty policy discussions for first time – overdue for attention

- Joining up climate and investment communities within governments
- Bilateral discussions with governments and others
A basis for dialogue and accountability

A challenging and demanding survey, similar to business surveys

- Sources: climate reports and surveys for finance, business, public sector (ECAs)

- Attention to climate governance, strategy, covered investment, expected action

- Coverage of additional issues of limited relevance for business climate policies
  - Impact on policy space, market access
  - Joining up with government climate commitments and action in other domains

- New questions, new concepts, new internal discussions

- Appreciate government efforts to respond
Overview of respondents

- **23 responses**: average of 44 investment treaties/respondent

- Some jurisdictions unable to complete responses despite engaging seriously with survey

- **Home and host states** in ISDS in about a 2:1 ratio – approx. 900 ISDS cases

- **Remaining gaps**: 5 of 8 G7 jurisdictions responded; 6 G20 jurisdictions

- Majority of respondents in Europe; also Americas and Indo-Pacific
Climate surveys, stakeholders and the public

- Government commitment at outset to include stakeholders in T1 discussions
- Strong public interest in T1 discussions
- Disclosure of survey questions and general findings to stakeholders and the public
  - Strong public and business interest in climate and climate policies
  - Website
  - Distributed to NGFS and UNFCCC communities
  - Public interest
- Regular climate surveys are a new normal: a tool to evaluate and demonstrate progress
25. What is your government's view about the importance of aligning your existing investment treaties and treaty policies with the Paris Agreement?

- Very important: 65%
- Somewhat important: 22%
- Not important: 0%
- N/A: 13%
31. What is your government’s view about the importance of making finance flows consistent with a low-carbon pathway as set out in Article 2.1 of the Paris Agreement?
43. Have you implemented, or are you considering implementing, policies to exclude support for projects involving substantial coal-related content: [In existing investment treaties] [In future investment treaties]?
Whether ISDS interpretations provide clear parameters on policy space for climate measures

66.4. Please indicate whether you agree or disagree with the following statement: Investment treaties as interpreted in ISDS provide clear parameters on policy space for climate measures.
In rough terms, what proportion of your existing investment treaties include binding international law provisions for market access for new investment flows?

- All: 4%
- Most: 22%
- Some: 9%
- Few: 9%
- None: 35%
- N/A: 22%
Has your investment treaty unit been given a mandate by an oversight minister or body to pursue initiatives based on climate change issues?

- Yes: 57%
- No: 43%
11. Has your government analysed the climate impact of your existing investment treaties?
Principal obstacles to aligning investment treaties and policies with the Paris Agreement

26. What are the principal obstacles to the Paris Agreement alignment of existing investment treaties and treaty policies in your government’s view?

- Hard to know how: 70%
- Other governments have other priorities: 65%
- Difficult to change existing practices: 57%
- Other: 52%
- Lack of climate awareness: 39%
- Scope for treaty shopping: 22%
- My government has other priorities: 13%
- Broad mutual government interest: 13%
- N/A: 9%
- Private sector lobbying: 0%