Białostockie Studia Prawnicze
2020 vol. 25 nr 3

DOI: 10.15290/bsp.2020.25.03.03

Received: 29.07.2020
Accepted: 17.08.2020

Judit Glavanits
Széchenyi István University, Hungary
gjudit@sze.hu
ORCID ID: https://orcid.org/0000–0003-1357–8314

Dispute Resolution That Divides: The EU-USA Conflict on Investment-State Dispute Resolution

Abstract: Investment-state dispute resolution has been a hot topic recently, as we can observe a shift in the international trade agreements – both on the side of politics and economics. The European Union has started to negotiate several new trade agreements – some succeeded, some failed, and among the latter we find the TTIP with the USA. This article focuses on the neuralgic point of ISDS in the trade policy of the EU and the USA and summarizes the arguments for and against the ISDS mechanism reflecting also on the latest scientific literature and statistics.
Keywords: investor-state dispute resolution, ISDS, TTIP, CETA

Introduction

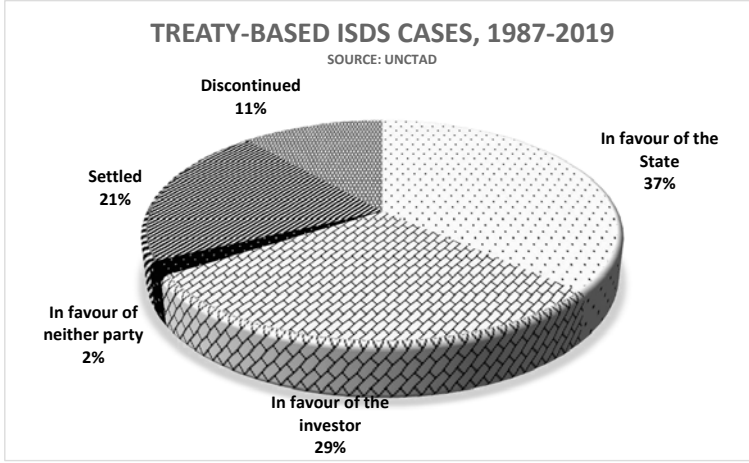
Investment-state dispute resolution (ISDS) is part of most bilateral and multilateral trade agreements. The development of these special arrangements to deal with international produced disputes is one of the most effective as well as one of the most important systems of international dispute settlement[1]. Agreements providing for investment protection may include an investor-to-state dispute settlement mechanism, which allows an investor from a third country to bring a claim against a state in which he has made an investment. Most cases take place at a tribunal operating under the rules of the United Nations Centre for International Trade Related Arbitration Law (under the umbrella of the UNCITRAL) or at the

1 J.G. Merrils, International Dispute Settlement, Cambridge University Press, New York, 2005, p. 211.

International Court for the Settlement of Investment Disputes (ICSID) at the World Bank.

As for the basic principles for international dispute resolution the G20 announced guidelines. "Investment policies should provide legal certainty and strong protection to investors and investments, tangible and intangible, including access to effective mechanisms for the prevention and settlement of disputes, as well as to enforcement procedures. Dispute settlement procedures should be fair, open and transparent, with appropriate safeguards to prevent abuse"[2].

According to the latest data published by UNCTAD from 1987 to 31 December 2019, about 1023 treaty-based ISDS cases have been started, ofwhich 674 cases are concluded with the following results[3]:



The dispute-settlement mechanismsof ISDS treaties have come under considerable criticism[4], as also recognized in UNCITRAL's Working Group III on "Investor-State Dispute Settlement Reform"[5], but in the endsome kind of dispute--settlement regime is needed to settle the conflicts between the parties, especially if

2 G20 Guiding Principles for Global Investment Policymaking,https://www.oecd.org/daf/inv/investment-policy/G20-Guiding-Principles-for-Global-Investment-Policymaking.pdf (access: 22 July 2020).

3 ISDS Navigator. Data available here: https://investmentpolicy.unctad.org/investment-dispute-settlement?status=6 (access: 22 July 2020).

4 We should mention here the Achmea-case (C-284/16) of the European Court of Justice whose enormous effect on intra-EU bilateral trading agreements ended with a termination of several agreements in May 2020. See details here: Agreement for the termination of Bilateral Investment Treaties between the Member States of the European Union OJ L 169, 29.5.2020, p. 1–41.

5 The latest document from the Working Group is: UNCITRAL, Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-seventh session (New York, 1–5 April 2019), Document A/CN.9/970, https://undocs.org/A/CN.9/970 (access: 28 July 2020).

investors do not trust local courts, and governments of host States do not want to use – or cannot use – the courts of investors' home countries.

1. EU reform on ISDS

The EU has started the reform of the dispute settlement institution based on the Lisbon Treaty that widened the EU's jurisdiction on trade related dispute settlements, as foreign direct investment is included in the list of matters falling under the common commercial policy. According to the Regulation No. 1219/2012 on establishing transitional arrangements for bilateral investment agreements between Member States and third countries[6] – which regulation we can see as the first major step towards the EU regulation towards the new regime on ISDS – the Member States shall seek the agreement of the Commission before activating any relevant mechanisms for dispute settlement against a third country included in the bilateral investment agreement and shall, where requested by the Commission, activate such mechanisms. According to the Article 13, section c) the Member State and the Commission shall fully cooperate in the conduct of procedures within the relevant ISDS mechanisms, which may include, where appropriate, the participation in the relevant procedures by the Commission.

On 23 July 2014, the European Parliament and Council adopted a regulation[7] to establish a legal and financial framework for investor-to-state dispute settlement. But beyond principles there is still no result for the concrete form of ISDS. Following protests against the inclusion of ISDS provisions in the CETA[8] and TTIP[9] agreements, the European Commission engaged in state-level multilateral talks to reform the existing ISDS environment, working together with the UNCITRAL, as the Council of the European Union has authorized the European Commission to represent the EU and its Member States at the intergovernmental talks at UNCITRAL.

6 Regulation No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries (OJL 351. 20.12.2012. pp. 40–46).

7 Regulation (EU) No 912/2014 of the European Parliament and of the Council of 23 July 2014 established a framework for managing financial responsibility linked to investor-to-state dispute settlement tribunals established by international agreements to which the European Union is party, (OJ L 257, 28.8.2014, pp. 121–134).

8 Comprehensive Economic and Trade Agreement – between EU and Canada, entered into force provisionally on 21 September 2017.

9 Trasatlantic Trade and Investment Partnership – between the EU and the USA, launched in 2013 and ended without conclusion at the end of 2016. See some details here: B. Horváthy, Potential Impacts of Transatlantic Trade Negotiations on the EU Environmental Policy, „Hungarian Journal of Legal Studies", 2016, vol. 57. No. 4, pp. 401–415, doi: https://doi.org/10.1556%2F2052.2016.57.4.1.

The EU is committed to creating a fully-fledged multilateral investment court (MIC) of a two-court system (first instance and appeal) including a mechanism with full-time adjudicators (and not party-appointed arbitrators)[10]. The adjudicators can ensure the credibility of the system supported bythe fact that the position is full--time, long term and non-renewable without the possibility of outside activities. As a technical solution, an opt-in convention is proposed that could work as a general framework for all the treaties (bilateral or multilateral) for the signing countries[11].

An important step in the reform process is the CETA-agreement which already contains a next-level ISDS mechanism. CETA established a permanent Tribunal of fifteen members which will be responsibleto hear claims for violation of the investment protection standards established in the agreement. The final text of the agreement also established an Appellate Tribunal. For the future both parties share the objective of establishing a permanent multilateral investment court as discussed earlier. The text of agreement recognizes that such a multilateral mechanism will come to replace the bilateral mechanism established in CETA[12].

2. US policy changing on ISDS and its effect on TTIP

During the Obama administration an important regulation had been adopted to govern the negotiations on international investment agreements. The Trade Promoting Authority (TPA)refers to a process Congress (who has the right of regulation of foreign trade) made available for the President (who has the right to negotiate treaties) for limited periodsto enable legislation to approve and implement certain international trade agreements to be considered under expedited legislative procedures.The TPA was first enacted on January 1, 1975 and has been used for 14 times so far. The current authorization is due to July 1, 2021.

This regulation states that trade agreements should:

- provide meaningful procedures for resolving investment disputes;
- seek to improve mechanisms used to resolve disputes between an investor and a government through mechanisms to eliminate frivolous claims and to deter the filing of frivolous claims;
- provide procedures to ensure the efficient selection of arbitrators and the expeditious disposition of claims;

10 H. Yang, The EU's Investment Court System and Prospects for a New Multilateral Investment Dispute Settlement System (October 12, 2017), KIEP Research Paper No. Policy References 17–06, http://dx.doi.org/10.2139/ssrn.3063843 (access: 29 July 2020).

11 Forthe proposal and standpoint of the European Commission see: I. Hallak, Multilateral Investment Court – Overview of the reform proposals and prospects, European Parliament Research Service, PE 646.147, January 2020,https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646147/EPRS_BRI(2020)646147_EN.pdf (access: 29 July 2020).

12 CETA Agreement Article 8.29.

– provide procedures to enhance opportunities for public input into the formulation of government positions; and
– seek to provide for an appellate body or similar mechanism to provide coherence to interpretations of investment provisions in trade agreements[13].

Between 2010 and 2017 the USA did not bring a single complaint against the EU butwas subject to just two EU complaints – one explanations was that Washington and Brussels had come to see the drawbacks of playing tit-for-tat with each one responding to any new filing with another case against the other. The parties' decision to launch the TTIP negotiations in 2013 implied that they preferred negotiation over litigation[14]. One critical point of the TTIP negotiations was the investor protection and the dispute resolution mechanism. Adopting an ISDS mechanism between the two largest economies of the world would have been game-changing in the evolution of ISDS[15]. However, during the negotiations it became clear (even during the Obama--administration) that the ISDS clause is a weak point[16]. The argument against an ISDS clause in TTIP was based upon two assumptions: (1) investment arbitration systems favour large corporation and (2) US companies make active use of ISDS and will thus do so in TTIP in order to stifle public policy[17]. Civil pressure on the side of the EU was one clear obstacle for the agreement, but the election of Donald Trump was the last strawthat put an end to the negotiations of TTIP. According to the Trump administration, trade policy should focus more on the national interests of the United States and for this reason must be harmonious with the country's national security strategy ("America First" initiative). This policy resulted in renegotiating the NAFTA agreement, obstructing the work of WTO,implementing an aggressive amount of tariffs and starting an overall trade war with China. This new trade policy is certainly not fertile groundfor new free trade agreement with the EU. We should note, however,

13 Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114–26) Sec. 102(b)(4)(F)-(H).

14 C. Van Grasstek, The Trade Policy of the United States under the Trump Administration, EUI Working Paper RSCAS 2019/11, https://cadmus.eui.eu/bitstream/handle/1814/60889/RSCAS_2019_11.pdf (access: 28 July 2020).

15 F. De Ville, G. Siles-Brügge, Why TTIP is a game-changer and its critics have a point, "Journal of European Public Policy", 2016, p. 5.

16 The American point of view is quite clear in this article: J. Caytas, From Shield to Sword: TTIP's Lessons on Democratic Legitimacy for International Investment Arbitration,Columbia Journal of Law and Social Problems: Common Law" (Apr. 23, 2015), available at SSRN: https://ssrn.com/abstract=2685501 (access: 29 July 2020).

17 P. Garcia-Duran, L.J. Eliasson, The Public Debate over Transatlantic Trade and Investment Partnership and Its Underlying Assumptions "Journal of World Trade", 2017, Vol 51, No. 1, pp. 23–42.

that in 2020 the USA elects a new president, and changes in the administration may result in changes of the attitude of trade negotiations[18].

3. Pros and cons of ISDS in relations of EU-USA (and international) trade

In 2015 Lise Johnson, Lisa Sachs and Jeffrey Sachs published an article[19] summarizing the possible negative effects of ISDS mechanisms. In the following section I will argue in line with their findings – not necessarily agreeing with their statements, and also citecriticalopinions from the international literature. I find this useful in particular of the EU-USA relations, as the mentioned article collects most of the neuralgic points the US government (especially the Trumpadministration) used to have as arguments against ISDS clauses.

According to the previouslymentioned authors[20], ISDS has the following shortcomings:

– Argument: "Foreign investors alone (including their subsidiaries and shareholders) are able to initiate claims against the government; the government cannot initiate an ISDS proceeding".
  Reasoning against: the host country has the full armament of domestic law to complicatethe business life of the foreign investors. From this point of view, the host country has the advantage of legal power which should be balanced with the investors' right to start an action against the host country in case of unlawful measures. When deciding on its policies, the government usually takes into account the effects on domestic investor profits, whereas the same is not necessarily true for foreign investor's profit. While host country governments typically have an interest in foreign investment, due to some positive spill over, they will ignore the impact of a more stringent regulation on foreign investors' profits once the investment is made[21]. The governments have other forums to apply when they presume that another country is

18 The rival candidateof Donald Trump for the presidency is Joe Biden, who has an entirely different policy plan for international trade, which contains "more friendships, more cooperation, more alliances, more democracy". See in details: Caporal, Jack: What Is Former Vice President Biden's Policy on Trade? Center for Strategic & International Studies, 12 February, 2020. Available: https://www.csis.org/analysis/what-former-vice-president-bidens-policy-trade (Access: 17 August 2020)

19 L. Johnson, L. Sachs, J. Sachs, Investor-State Dispute Settlement, Public Interest and U.S. Domestic Law, Columbia Center of Sustainable Development, CCSI Policy Paper, May 2015, https://academiccommons.columbia.edu/doi/10.7916/D82N52TP (access: 22 July 2020).

20 *Ibidem*, p. 2.

21 See in details: W. Kohler, F. Stähler, The economics of investor protection: ISDS versus national treatment "Journal of International Economics", 2019, Vol. 121.

infringing the regulations of international trade law, like the GATT/WTO dispute settlement system[22] or the ICSID[23], even ICC[24].

– Argument: "The decisionmakers in theISDS proceedings are private arbitrators appointed on a case-by-case basis to decide the investors' claims against the host government".
  Reasoning against: as shown earlier, the EU – working together with the UNCITAL – has proposed a stable and permanent body for ISDS. However, if we analyse the success of the International Chamber of Commerce (ICC) and the International Court of Arbitration, we can see that in international trade conflicts the companies' choices are private arbitrators[25].
– Argument: "When deciding the case, the substantive law the arbitrators apply is not the domestic law of the host state that normally governs the investment. Rather, it is the law of the treaty, as interpreted by the arbitrators".
  Reasoning against: in most of the cases the conflict of the state and the private investor is based on a governmental action or regulation of the host country, so if the conflict is to be managed on the basis of the domestic law, every governmental action would be justified, even if it is opponent to the general principles of the international trade or to the treaty or contract between the host country and the investor based on the principle of *lex posterior derogar priori*. Arbitration is controlled by a combination of public law and private law; the latter is composed of the legally binding agreements between the parties and any applicable rules based on the *iuscogens* of the host country – or based on the procedural code of the arbitration tribunal. All of these legal

22 See in details: Ch.P. Bown, On the Economic Success of GATT/WTO Dispute Settlement "The Review of Economics and Statistics", 2004, Vol. 86, No. 3, pp. 811–823, http://www.jstor.com/stable/3211799 (access: 24 July 2020) or A.D. Mitchell, Legal Principles in WTO Disputes, Cambridge University Press, Cambridge, 2008. We should highlight here that the WTO Appellate Body is not able to function at the time of finishingthis paper (July 2020) because of the lack of appointed members. The calvary of the WTO is not over yet, but the author is optimistic about a future reform of this important institution of the international trade. For the WTO reform, see in details: D. McRae, What is the future of WTO Dispute Settlement "Journal of International Economic Law", 2004, Vol. 7. No.1, pp. 3–21.

23 See in details: Ch.H. Schreuer, et. al., The ISCID Convention: A Commentary, Cambridge University Press, 2009.

24 Since 1996 ICC has registered 42 cases based on BITs.

25 In 2019, the ICC celebrated its centenary and the ICC International Court of Arbitration registered its 25,000 case. 2019 also saw the highest number of cities hosting ICC Arbitrations (116 cities spread over 62 countries) and a record number of new cases involving a state or state entities (20%). See more details on ICC arbitration here: ICC, Dispute Resolution 2019 Statistics, Paris, 2020, www.iccwbo.org/dr-stat2019 (access: 24 July 2020). In contrast,the WTO, ICC is a non-political body, so the current trade war of USA does not affect the Chamber as muchas the formal, policy-backed institutions.

standpoints are known by the parties when they sign the contract (investment treaty) governing their relation[26].

– Argument: "Treaty standards are typically drafted in very vague, broad terms, giving arbitrators in each case substantial latitude to determine what the standards mean in practice; because there is no appellate mechanism, and there are strong rules on enforcement of awards, there are only very limited checks on tribunals' powers of interpretation".
  Reasoning against: An international investment treaty or contract – in most of the cases – is not definitive similar to a standard construction contract. That is a fact. But the aim of these treaties is also different from a civil law contract: the treaties and FDI (foreign direct investment) contracts set up the principles that govern the partnership of the state and the investor company, not necessarily dealing with everyday issues. This way – as a natural consequence – there is more room for interpretation and abstraction of the high-level defined rules. A decision based on common principles however can be in favour of the hosting state as well (see the case: InceysaVallisoletana S.L. v. Republic of El Salvador[27]).
– Argument: "If the arbitrators find that the government violated the treaty, they can order the government to pay the investor substantial damages. Cases to date have included awards of millions or even billions of dollars for breaching the treaty. Arbitrators can and have also ordered "injunctive relief", often in the form of interim measures, effectively mandating governments to take, or not take, certain actions"[28].
  Admitting that the amount of remedies and compensations are rising, we should highlight that the awards are based on facts and numbers (data)

26 For the arbitral awards see in details: M.L. Moses, The Principles and Practice of International Commercial Arbitration, Cambridge University Press, 2017. For the details of the legal basis of arbitral awards see: D.W. Rivkin, Enforceability of Arbitral Awards Based on Lex Mercatoria "Arbitration International" 1993, Vol. 9, No 1, pp. 67–84.

27 ICSID Case No. ARB/03/26, awarded on 2 August, 2006. In this case the ICSID analysed the violation of principle of good faith, the principle of nemo auditurpropriamturpitudinemallegans, and principle that prohibits unlawful enrichment, and concluded that in the case the investor behaved improperly in a bidding process, hiding facts from the hosting state and even from the arbitral tribunal.

28 The record-holder case to date is the Yukos vs. Russian Federation (PCA Case No. AA 227), in which about 2.5% of the Russian GDP has been awarded after an unlawfulexpropriation. The award is dated 2014, but the case is still evolving: in February 2020 the Hague Court of Appeal found the arbitral award, but the Russian Federation appealed further in May 2020 to the Dutch Supreme Court. The Russian Federation should pay about 57 billion USD to the investor in compensation for alleged damages – according to the latest decision. See the details of the original award here: https://www.italaw.com/sites/default/files/case-documents/italaw3279.pdf (access: 28 July 2020).

that the claimant can prove to be true and justified. The amounts of public money at stake, in damages claims, awards and arbitration costs may be likely to attract public attention[29]. According to a recent study the compensation amount is rising along with arbitration fees and procedural costs[30], but with the European Union's proposal for MIC this problem can also be solved.

– Argument: "There are limited avenues to challenge arbitral awards; errors of law or fact are typically not grounds for overturning the decisions. If a tribunal issues an award against the government, courts of most countries are required to enforce it".

  It is quite common in the international literature that if there is a sphere where the international investment arbitration can improve it is the problem of the appeal mechanism[31]. If we look at the proposal of the UNCITRAL and the EU Commission on MIC or the CETA agreement, both suggest a two--level system of dispute resolution.

  Reasoning against: if we consider that one of the advantages of the arbitration procedure is the timing (i.e. it can be much faster than the 3 or sometimes 4 staged national courts), setting up an appellate forum can diminish this advantage.

Concluding remarks

The change of policy in the international trade relations of the Trump administration has challenged the EU-USA trade agreements and the dispute resolution mechanism as part of the negotiations. The EU however is moving forward in the direction of new forms of investment dispute resolution focusing on multilateral resolutions instead of bilateral agreements. Under the umbrella of a multilateral agreement that is under construction by the UNCITRAL, the possible negative effects of international trade arbitration can be eliminated or at least minimized. We should see however that the trend of investment protection and international investment negotiations are not in favour of this subject. The USA's

29 D. Gaukrodger, Adjudicator Compensation Systems and Investor-State Dispute Settlement, OECD Working Papers on International Investment, 2017/05, OECD Publishing, Paris, http://dx.doi.org/10.1787/c2890bd5-en (access: 28th July 2020).

30 M. Hodgson, A. Campbell, Damages and costs in investment treaty arbitration revisited "Global Arbitration Review", 14 December 2017, http://www.itd.or.th/wp-content/uploads/2019/09/Annex-2-Allen-and-Overy-Damages-and-costs-in-investment-treaty-arbitration-revisited--December-2017.pdf (access: 28 July 2020).

31 See in details: G. Bottini, Reform of the Investor-State Arbitration Regime: The Appeal Proposal, (in:) J.E. Kalicki, A. Joubin-Bret (eds.), Reshaping the Investor-State Dispute Settlement System, BRILL, 2015, pp. 455–473.

current administration has a protectionist (and rather aggressive) trade policy that has direct and indirect effects on the world trade as well[32].

While the USA is turning to domesticgoals, the EU always has bigger plans for the common market. I believe that the UNCITRAL Working Group III would be able to create the framework for a multilateral agreement which can assure both investors and hosts states that the international investments can be fulfilled with mutual benefits – even when it comes to time for disputes.

BIBLIOGRAPHY

Bottini G., Reform of the Investor-State Arbitration Regime: The Appeal Proposal, (in:) J.E. Kalicki, A. Joubin-Bret (eds.), Reshaping the Investor-State Dispute Settlement System, BRILL, 2015, pp. 455–473, doi: https://doi.org/10.1163/9789004291102_021.

Bown Ch.P., On the Economic Success of GATT/WTO Dispute Settlement, "The Review of Economics and Statistics", 2004, Vol. 86, No. 3, pp. 811–823.

Bussière M., Pérez-Barreiro E., Straub R., Taglioni D., Protectionist responses to the crisis – global trends and implications, ECB Occasional Paper, No. 110 (2010), European Central Bank (ECB), Frankfurt a. M.

Caporal, Jack: What Is Former Vice President Biden's Policy on Trade? Center for Strategic s Policy on Trade? Center for Strategic & International Studies, 12 February, 2020.

Caytas J.,: From Shield to Sword: TTIP's Lessons on Democratic Legitimacy for International Investment Arbitration,„Columbia Journal of Law and Social Problems: Common Law" (Apr. 23, 2015),https://ssrn.com/abstract=2685501.

De Ville F., Siles-Brügge G., Why TTIP is a game-changer and its critics have a point, „Journal of European Public Policy", 2016, http://dx.doi.org/10.1080/13501763.2016.1254273.

Garcia-Duran P., Eliasson L.J., The Public Debate over Transatlantic Trade and Investment Partnership and Its Underlying Assumptions,„Journal of World Trade", 2017, Vol 51 No. 1, pp. 23–42.

Gaukrodger D., Adjudicator Compensation Systems and Investor-State Dispute Settlement, OECD Working Papers on International Investment, 2017/05, OECD Publishing, Paris,http://dx.doi.org/10.1787/c2890bd5-en.

Hallak I., Multilateral Investment Court – Overview of the reform proposals and prospects, European Parliament Research Service, PE 646.147, January 2020,https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/646147/EPRS_BRI(2020)646147_EN.pdf.

Hodgson M., Campbell A., Damages and costs in investment treaty arbitration revisited, "Global Arbitration Review", 14 December 2017,http://www.itd.or.th/wp-content/uploads/2019/09/Annex-2-Allen-and-Overy-Damages-and-costs-in-investment-treaty-arbitration-revisited--December-2017.pdf.

32 On protectionist trade policies as trends, see in detail: M. Bussière, E. Pérez-Barreiro, R. Straub, D. Taglioni, Protectionist responses to the crisis – global trends and implications, ECB Occasional Paper, No. 110 (2010), European Central Bank (ECB), Frankfurt a. M.

Horváthy B., Potential Impacts of Transatlantic Trade Negotiations on the EU Environmental Policy, "Hungarian Journal of Legal Studies", 2016, Vol. 57. No. 4, pp. 401–415, doi: https://doi.org/10.1556%2F2052.2016.57.4.1.

ICC, Dispute Resolution 2019 Statistics, Paris, 2020.

Johnson L., Sachs L., Sach J., Investor-State Dispute Settlement, Public Interest and U.S. Domestic Law, Columbia Center of Sustainable Developement, CCSI Policy Paper, May 2015,https://academiccommons.columbia.edu/doi/10.7916/D82N52TP.

Jugmittag, Andre, Welfens, Paul J.J.: EU-US trade post-trump perspectives: TTIP aspects related to foreign direct investment and innovation. International Economics and Economic Policy, 2020/17. pp. 259–294.

Kohler W., Stähler F., The economics of investor protection: ISDS versus national treatment, "Journal of International Economics", 2019, Volume 121, https://doi.org/10.1016/j.jinteco.2019.103254.

Wallach L., The US Drops ISDS, "The Globalist", 24 January, 2020, https://www.theglobalist.com/united-states-european-union-trade-isds-usmca-uncitral-mic/.

McRae D., What is the future of WTO Dispute Settlement, "Journal of International Economic Law", 2004, Vol. 7, No. 1, pp. 3–21.

Merrils J.G., International Dispute Settlement, Cambridge University Press, New York, 2005.

Mitchell A.D., Legal Principles in WTO Disputes, Cambridge University Press, Cambridge, 2008.

Moses M.L., The Principles and Practice of International Commercial Arbitration, Cambridge University Press, 2017.

Rivkin, D.W., Enforceability of Arbitral Awards Based on Lex Mercatoria, "Arbitration International", 1993, Vol. 9, No. 1, pp. 67–84.

Schreuer Ch.H. et al, The ISCID Convention: A Commentary, Cambridge University Press, 2009.

VanGrasstek C., The Trade Policy of the United States under the Trump Administration, EUI Working Paper RSCAS 2019/11, https://cadmus.eui.eu/bitstream/handle/1814/60889/RSCAS_2019_11.pdf.

Yang H., The EU's Investment Court System and Prospects for a New Multilateral Investment Dispute Settlement System (October 12, 2017), "KIEP Research Paper", No. Policy References 17–06, http://dx.doi.org/10.2139/ssrn.3063843.