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Canada's Withdrawal from Investor-State Arbitration in the USMCA: Implications and Alternative Dispute Reslution Mechanisms for Investors

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CANADA'S WITHDRAWAL FROM INVESTOR-STATE ARBITRATION IN THE USMCA: IMPLICATIONS AND ALTERNATIVE DISPUTE RESOLUTION MECHANISMS FOR INVESTORS

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ABSTRACT: This article examines Canada's strategic withdrawal from investor-state dispute settlement (ISDS) under the United States-Mexico-Canada Agreement (USMCA), contrasting it with the North American Free Trade Agreement (NAFTA) framework. It discusses the implications of this withdrawal for investors and the broader shifts it signals in international investment dispute resolution. Under NAFTA, ISDS was readily available to investors without requiring recourse to domestic courts, a provision heavily utilized against Canada, leading to significant financial losses. This experience, coupled with a general critique of ISDS on public policy grounds, motivated Canada to opt out of ISDS in the USMCA, reflecting a move towards more state-controlled dispute mechanisms and away from private arbitration. The article explores alternative dispute resolution mechanisms under the USMCA, emphasizing reliance on domestic courts and state-to-state settlements, and considers other avenues like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and political risk insurance as alternatives to an ISDS framework.

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I. INTRODUCTION

On 1 July 2020, the United States-Mexico-Canada Agreement ("USMCA")[1] succeeded the North American Free Trade Agreement ("NAFTA")[2] as the new foundation for tripartite economic relations between the United States, Mexico, and Canada. Whilst both agreements share numerous similarities, a prominent distinguishing feature is Canada's withdrawal from investor-state arbitration under the USMCA. The consequence of the withdrawal is that investment arbitration is no longer available for (i) Canadian investors with investments in Mexico and the United States, and (ii) United States and Mexican investors with investments in Canada ("Affected Investors"). However, the United States and Mexico have retained investor-state arbitration under the USMCA, albeit with a number of restrictions, signifying that investors from both countries may continue to bring claims against their counterpart host states.

This article begins with an overview of the investor-state dispute settlement ("ISDS") regime under NAFTA, and the transition to the USMCA, whilst examining the motivations behind Canada's withdrawal from ISDS. Thereafter, it examines the alternative dispute settlement mechanisms under the USMCA and options available to affected investors.

II. ISDS UNDER NAFTA

NAFTA Chapter 11

Articles 1116 and 1117 of NAFTA Chapter 11 provided investors with broad access to investor-state arbitration without recourse from local courts in the host State. Article 1116 permitted an investor to bring a claim on its own behalf for losses or damages suffered, with monetary awards directly payable to the investor. On the other hand, Article 1117 permitted an investor to bring a claim on behalf of an enterprise of another Party, provided that enterprise was both a juridical person that the investor owned or controlled, directly or indirectly, and had suffered losses or damages as a result of a breach by the host state of investment protections or obligations. An award under Article 1117 was payable to the enterprise.[3] Under Article 1119, a claimant was required to file a notice of intent to submit a claim to arbitration at least 90 days before submitting the claim. The Article did not stipulate how long a claimant had to file the actual claim. Therefore,

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[1] United States-Mexico-Canada Agreement, Nov. 30, 2018, available at https://www.international.gc.ca/tradecommerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng.

[2] North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M 289 (1993).

[3] MEG KINNEAR ET AL., INVESTMENT DISPUTES UNDER NAFTA: AN ANNOTATED GUIDE TO NAFTA CHAPTER 11 1116-5 (2006).

it was common for investors to submit their claims to arbitration considerably more than 90 days after filing the notice of intent to claim.[4]

Article 1118 required disputing parties to attempt to settle their differences through consultation or negotiation before initiating arbitral proceedings under Chapter 11 but it provided no rules governing such consultation. The provision only required a good faith effort and there were no sanctions for failure to consult.[5] Arbitral case law further suggested that consultation or negotiation required no specific formalities and need not result in a settlement.[6] NAFTA also did not require any investor to pursue or exhaust remedies in the local court system before bringing the arbitration claim. Instead, the investor needed only to waive its rights to proceed in any other administrative tribunal or court.[7] These loose requirements provided leeway for investors to automatically institute claims against host states.

Canada's Experience as a Host State

Canada was the principal target of foreign investor claims under NAFTA Chapter 11.[8] According to a report prepared by the Canadian Centre for Policy Alternatives, Canada defended at least 44 claims whilst the United States, despite its size and economic might, defended just 22 claims. Even Mexico, a country whose economy is significantly smaller than the United States, defended at least 33 claims. Of all the claims filed against it, Canada lost or settled (with compensation) 10 claims, paying more than $263 million in damages and settlements. Additionally, Canada incurred more than $113 million in unrecoverable legal costs (to March 2020). These figures do not include added interest on payments to investors, which typically accrue from the date the alleged NAFTA violation occurred.

It has been suggested that Canada's refusal to accept ISDS under the USMCA goes beyond its pecuniary losses as a host State under NAFTA but was more importantly attributable to the concern that NAFTA unjustifiably empowered foreign-owned corporations to use a private justice system to challenge vital and legitimate public policy measures, and ultimately, Canada's right to regulate as a host State. It has been suggested that environmental protections and natural resource management measures were a favored target, accounting for more than 60 per cent of the claims against Canada under NAFTA Chapter 11.[9]

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[4] *Id.* at 1119-6.

[5] *Id.* at 1118-2.

[6] *See* Ethyl Corp. v. Canada, UNCITRAL, Award on Jurisdiction, ¶¶ 76–78 (June 24, 1998); Mondev Int'l Ltd. v. U.S., ICSID (W. Bank) ARB(AF)/99/2, Award, ¶ 11 (Oct. 11 2002).

[7] North American Free Trade Agreement, *supra* note 2, at art. 1121; DANIEL GARCIA-BARRAGAN ET AL., *The New NAFTA: Scaled-Back Arbitration in the USMCA*, 36 J. OF INT'L ARB. 739, 741 (2019).

[8] *Investment Dispute Settlement Navigator*, UN CONF. ON TRADE AND DEV., https://investmentpolicy.unctad.org/investment-dispute-settlement (last updated Jul. 31, 2023).

[9] SCOTT SINCLAIR, THE RISE AND DEMISE OF NAFTA CHAPTER 11, 4-5 (2021), https://policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2021/04/The_Rise_and_Demise_of_NAFTA_Chapter_11.pdf.

III. THE TRANSITION FROM NAFTA TO USMCA

Renegotiation of NAFTA

During the conception of NAFTA American and Canadian trade negotiators expected that its ISDS mechanism in Chapter 11 would protect their investors from risks posed by Mexico's legal system. They did not expect their own respective governments would become subjects of ISDS claims concerning everything from environmental legislation to national judicial processes. Subsequent experience presumably contextualized Donald Trump's presidential campaign focus on renegotiating NAFTA and his swift actions to implement changes to NAFTA upon assumption of office.[10]

The Trump Administration commenced negotiations with Canada and Mexico on 16 August 2017 to remodel NAFTA.[11] Initially, the United States proposed an 'opt-in' approach to ISDS, under which the United States, Canada, and Mexico could each decide for themselves on a rolling basis whether to allow ISDS cases to be brought by investors of other Parties.[12] However, this approach was later abandoned. Eventually, the country-parties agreed to the following changes: no ISDS with Canada; limited ISDS between the United States and Mexico; and a three-year transition period during which investors from all three jurisdictions could continue to use NAFTA ISDS rules and procedures to bring claims in relation to 'legacy investments' established or acquired in the territory of another Party during the lifetime of NAFTA.[13]

Canada's Withdrawal from ISDS

Of all changes agreed, the elimination of ISDS between the United States and Canada was the most consequential. Article 14.2(4) of the USMCA provides that an investor may only submit a claim to arbitration under Chapter 14 in accordance with the provisions of the USMCA's annexes. Annex 14-D, titled "Mexico-United States Investment Disputes", expectedly covers investment disputes only between the United States and Mexico. The Annex makes no mention of Canada.[14]

Canada's withdrawal from ISDS was indubitably a welcoming development for Canadian critics of ISDS, who had for long been urging the Canadian Government to abandon investor-state arbitration. In their opinion, investor-state

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[10] KIRAN N. GORE & CHARLES H. CAMP, CHAPTER 6: THE RISE OF NAFTA 2.0: A CASE STUDY IN EFFECTIVE ISDS REFORM, (forthcoming in *The Investor-State Dispute Settlement System: Reform, Replace or Status Quo?,* Alan M. Anderson & Ben Beaumont (eds.)) https://rb.gy/r2lgc9.

[11] *Trilateral Statement on the Conclusion of NAFTA Round One*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, (Aug. 20, 2017), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/august/trilateral-statement-conclusion.

[12] *U.S. Trade Policy Agenda: Hearing Before the H. Comm. on Ways and Means*, 115th Cong. 13 (2018).

[13] LAUREN MANDELL, *The Trump Administration's Impact on US Investment Policy*, 35 Foreign Inv. L.J. 345, 351 (2020).

[14] GARCIA-BARRAGAN, supra note 7, at 754.

arbitration is "a fundamentally flawed system of investment protection."[15] Critics have now described Canada's withdrawal from ISDS under USMCA as "a critical victory for democratic sovereignty over investor power" and "a cause for celebration."[16]

The broader global clamor to reform ISDS and the 2016 decisions made between Canada, the EU, and its member states regarding the Comprehensive Economic and Trade Agreement ("CETA") did not contribute to Canada's decision to withdraw from ISDS. For instance, the most significant reform made in the CETA was the implementation of a new adjudication system. Unlike most treaties where ISDS claims are generally heard by an arbitral tribunal, the CETA reforms this process. CETA creates a standing investment court with more stringent qualification requirements for tribunal members than found in most treaties. CETA tribunal members must possess certain qualifications for appointment to judicial office and have demonstrated expertise in public international law. During the negotiation of the USMCA Canada proposed that the ISDS framework in CETA should be used as a starting point. However, Canadian negotiators were unable to advance this approach and decision-makers likely concluded the costs of Annex 14-D outweighed the benefits.[17] Afterwards, Canada completely withdrew from ISDS.

IV. ISDS UNDER USMCA

Chapter 14

The USMCA's ISDS provisions are mostly identical with those of NAFTA's. However, there are certain notable differences. Apart from excluding Canada from investor-state arbitration,[18] the agreement significantly circumscribes Mexican and American investors' access to ISDS by introducing new conditions. An investor may only submit a claim to arbitration if they first initiated proceedings in the respondent's domestic courts alleging breach of the agreement. The domestic court proceedings must either conclude with a final decision from the highest court or at least 30 months must have elapsed since the claims were first initiated – whichever occurs earlier.[19] Additionally, no more than four years must have passed between the time the investor first knew, or should have known, that there was an alleged breach and that led to damage (under NAFTA, by comparison, this period was three years).[20] An investor may commence arbitration only after taking these steps.

The exhaustion period, in combination with a new four-year statute of limitations for claims, effectively creates a 1.5-year statute of limitations. An

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[15] ARMAND DE MESTRAL, INVESTOR-STATE ARBITRATION AND ITS DISCONTENTS: OPTIONS FOR THE GOVERNMENT OF CANADA, Centre for Int'l Gov. Innovation Inv. State Arb. Series, Paper NO. 14 (2016).

[16] SINCLAIR, *supra* note 9, at 4-5.

[17] GARCIA-BARRAGAN, *supra* note 7, at 742.

[18] United States-Mexico-Canada Agreement, *supra* note 1, at art. 14.D.

[19] *Id.* at art. 14.D.5(b).

[20] *Id.* at art. 14.D.5.1(c).

investor must initiate a claim before local courts within eighteen months of when it knew or should have known about the claim. Otherwise, the four-year limitations period will expire before the claimant can exhaust the thirty-month local remedy requirement before the courts of the host State.[21] In a significant departure from NAFTA, the USMCA provides an 'asymmetrical' fork-in-the-road provision. For instance, during local court proceedings, if an American investor alleges a breach of the USMCA itself (as opposed to a breach of Mexican law), this will bar any right to arbitration under the USMCA.[22]

Another interesting development is the restrictive definition of "claimant" in Annex 14-D. The provision defines a "claimant" as an investor from one of the Annex Parties (United States or Mexico) involved in a qualifying investment dispute. However, the provision excludes investors owned or controlled by individuals from a non-Annex Party. This definition is a broader exclusion of claimants than under NAFTA. That agreement only denied benefits to claimants if they were owned or controlled by investors of a non-Party and had "no substantial business activities in the territory of the Party under whose law it is constituted."[23] Therefore, the USMCA excludes claimants owned or controlled by a non-Party investor, even when a company from the United States or Mexico engages in substantial business activities in its state of incorporation. This restriction seems directed at Chinese-owned or controlled investments in the United States and Mexico.[24]

The USMCA further introduces measures to limit claims. In one breath, it provides treaty protections including national treatment, most-favored nation (MFN) treatment, and protection against expropriation, to investors. In another breath, it limits the extent to which investors can bring claims on the basis of those protections. Investors are not allowed to institute a claim for national treatment or MFN if it relates to "the establishment or acquisition of an investment."[25] Investors are therefore limited to discrimination claims relating to the "expansion, management, conduct, operation, and sale or other disposition of investments."[26] Investors are also prevented from bringing claims for indirect expropriation.[27] While the USMCA establishes that host States must accord investors the "minimum standard of treatment" ("MST"), it cautiously makes no mention of MST claims in Annex 14-D, a consequence that appears to make such claims unarbitrable.[28]

With regard to MFN protection, the footnote to Art. 14. D.3(1)(a)(i)(A) clarifies that the "treatment" referred to in Article 14.5 (Most-Favored-Nation Treatment) "(i) excludes provisions in other international trade or investment

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[21] Brian Jacobi & Sara McBrearty, *The New NAFTA: Fulfilling Guillermo's Dream?*, *in* ARBITRATION BEYOND BORDERS: ESSAYS IN MEMORY OF GUILLERMO AGUILAR ÁLVAREZ 161, 174-76 (Nigel Blackaby & W. Michael Reisman eds., 2023).

[22] GORE, *supra* note 10.

[23] North American Free Trade Agreement, *supra* note 2, at art. 1113(2).

[24] JACOBI, *supra* note 22, at 174.

[25] United States-Mexico-Canada Agreement, *supra* note 1, at art. 14.D.3(1)(a)(i)(A).

[26] JACOBI, *supra* note 22, at 174.

[27] United States-Mexico-Canada Agreement, *supra* note 1, at art. 14.D.3(1)(a)(i)(B).

[28] *Id*.

agreements that establish international dispute resolution procedures or impose substantive obligations; and (ii) only encompasses measures adopted or maintained by the other Annex Party". The USMCA also restricts the scope and implication of the MFN clause to avoid unfavorable situations where investors would, through its instrumentality, avoid the requirement of exhausting local remedies prior to instituting a claim before an international investment tribunal. Indeed, tribunals have ruled that investors may circumvent such requirements by utilizing an MFN clause, effectively relying on other treaties between the host state and other states lacking such requirement.[29]

V. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS UNDER THE USMCA

The exclusion of Canada from investor-state arbitration implies that there are now fewer challenge options available to affected investors. The USMCA makes provision for alternative methods for resolving disputes, which would be particularly useful for Affected Investors who can no longer arbitrate their disputes before an international investment tribunal. These alternative methods are (a) domestic courts (or administrative tribunals), and (b) State-to-State dispute settlement. The USMCA's approach towards ISDS can be considered a drafting technique that makes recourse to domestic law and courts and State-to-State dispute settlement (as provided in Chapter 31 of the USMCA) hierarchically superior to ISDS.[30]

Domestic Courts (or Administrative Tribunals)

Litigation is often perceived as a suitable alternative to arbitration, and this is no different under the USMCA given the unavailability of investor-state arbitration to Affected Investors.

The USMCA assigns a central role to domestic courts, emphasizing their crucial role as impartial adjudicators in investment disputes.[31] In important ways the USMCA brings investment protection under the purview of the domestic legal

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[29] Telefónica S.A. v. The Argentine Republic, ICSID Case No. ARB/03/20, Objections to Jurisdiction, ¶ 114 (May 25, 2006), 17 ICSID Rep. 3-40 (2006); Maffezini v. Kingdom of Spain, ICSID Case No. ARB/97/7, Decision on Jurisdiction ¶ 54-56, (Jan. 25, 2000), 5 ICSID Rep. 387-442 (2002).

[30] Dilini L. Pathirana & James T. Gathii, *Termination, Amendment, Modernization and Reform of Investment Treaties: Which way Forward?*, *in* THE VIENNA CONVENTION ON THE LAW OF TREATIES IN INVESTOR-STATE DISPUTES: HISTORY, EVOLUTION AND FUTURE 271, 291(Esmé Shirlow & Kiran Nasir Gore eds., 2022).

[31] Graham Coop & Gunjan Sharma, *Chapter IV, Investment Arbitration: Procedural Innovations to ISDS in Recent Trade and Investment Treaties: A Comparison of the USMCA and CETA*, *in* AUSTRIAN YEARBOOK ON INTERNATIONAL ARBITRATION 2019 467, 484 (Christian Klausegger et al. eds., 2019).

system by making domestic recourse the exclusive remedy for investment disputes between Canadian investors in the United States and Mexico and *vice versa*.[32]

For American and Mexican investors in Mexico and the United States, the requirement of domestic litigation is now a condition precedent to investor-state arbitration. In effect, they have the option to jettison litigation where the 30-month litigation timeline has elapsed.[33] However, Canadian investors in the United States and Mexico and *vice versa* do not have that choice. The non-availability of ISDS implies that Canadian investors will have to resort to full-blown litigation to resolve their investment-related disputes. Sadly, for Affected Investors, even this option has its limitations. First, the Canadian legislation that implements the USMCA into Canada's domestic legal framework expressly precludes investors from instituting treaty claims before the country's domestic courts.[34] Second, the United States adopts a dualistic approach toward international law, which would prevent investors from Canada from asserting their treaty rights before American courts.[35] It follows, therefore, that investors would not, under the guise of bringing a commercial claim, be able to institute a treaty claim. It suffices to say that both the United States and Canada have, to a large extent, curtailed the practice of investors conflating contract claims with treaty claims.

State-to-State Dispute Settlement

State-State dispute settlement clauses that allow states to initiate claims against their treaty partners with respect to harm to investors already exist in many investment treaties, sometimes alone, but more commonly alongside ISDS.[36] Chapter 31 of the USMCA outlines the framework for state-state dispute settlement. The chapter begins by emphasizing cooperation and consultation to resolve disputes amicably. It delineates the scope of dispute settlement provisions, covering issues related to the interpretation and application of the agreement, inconsistency with obligations, and nullification or impairment of expected benefits. The choice of forum allows the complaining party to select the venue for dispute resolution. Consultations are a crucial initial step, with specific timeframes defined for different types of matters. The chapter introduces the option of alternative dispute resolution methods, such as good offices, conciliation, and mediation. If consultations fail to resolve a dispute, the establishment of a panel is the next step. The composition, qualifications, and procedures for panels are detailed, emphasizing impartiality, expertise, and adherence to a Code of Conduct.

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[32] Pathirana, *supra* note 31, at 290-291.

[33] United States-Mexico-Canada Agreement, *supra* note 1, at art. 14.D.3(1)(a)(i)(B).

[34] Statutes of Canada, Bill C-4, 43rd Parliament, *An Act to implement the Agreement between Canada, the United States of America and the United Mexican States* (2020), https://www.parl.ca/DocumentViewer/en/43-1/bill/C-4/royal-assent#ID0E0VH0FA.

[35] Pathirana, *supra* note 31, at 291.

[36] Lise Johnson, Jesse Coleman, Brooke Güven & Lisa E. Sachs, *Alternatives to Investor-State Dispute Settlement*, 8 (Columbia Ctr. on Sustainable Inv., Working Paper, 2019) https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1152&context=sustainable_investment_staffpubs.

The panel's role includes making findings, determinations, and recommendations, while interpreting the Agreement within the framework of international law. Transparency is maintained through public hearings, submissions, and reports. Third-party participation is allowed, and panels can seek advice from experts.

The chapter also addresses the implementation of panel reports, the resolution of disputes, and the possibility of benefits suspension if resolutions are not reached. It includes provisions for referrals from domestic proceedings and underscores the encouragement of alternative dispute resolution methods in private commercial disputes.

It is likely that turning to the home state under Chapter 31 would be more attractive to prospective claimants than litigating before domestic courts of the host State to vindicate their rights under the USMCA or domestic law of the host State. Moreover, from a policy perspective, employing State-to-State dispute settlement alters the conventionally limited mandate of States, as the mandate of States parties under international investment agreements primarily concerns the application and interpretation of investment treaties. Instead, it brings the State-level relationship to the fore, signaling the gradual increase of home States' role in settling investment disputes. On the other hand, it marks the decline of investors' control over the ISDS process and limits the "privileged position" traditionally afforded to them by investment treaties premised on the orthodox protection model.[37]

VI. ALTERNATIVE MECHANISMS OUTSIDE THE USMCA

Investors affected by Canada's withdrawal from ISDS have a few options they may explore outside the USMCA. These are examined below.

ISDS Provisions under other Investment Treaties

One option that is conterminously available to Canadian and Mexican investors is the opportunity to arbitrate their disputes against Canada under other treaties or free trade agreements, particularly the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).[38] The CPTPP is a free trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. Chapter 9 of the CPTPP specifically addresses investment-related matters, and it allows investors to seek arbitration for disputes arising under the agreement.

Political Risk Insurance

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[37] Pathirana, *supra* note 31, at 271-304.

[38] David Gantz, *Investor-State Dispute Settlement in Canada's Recent Trade Agreements: Explaining the Differing Approaches in CETA, USMCA, CPTPP and the Canada-China FIPA*, *in International Arbitration in Times of Economic Nationalism* 59, 69 (Bjorn Arp & Rodrigo Polanco eds., 2022).

Political risk insurance provides coverage for various political events and the direct or indirect actions of host governments. This includes protection against expropriation, currency inconvertibility, transfers restrictions, political violence (such as war, terrorism, civil disturbances), breach of contract, and default on arbitration awards. Some providers also extend coverage to regulatory risks, encompassing material changes to feed-in-tariff schemes, significant alterations to taxation or other regulations impacting project operations, and the revocation of necessary licenses or permits. Investors may also secure insurance for losses related to government penalties and fines, exposure due to mistaken and overly aggressive tax positions, critical changes to taxation, and liability to private parties for environmental or other torts.

It is noteworthy that each of these risk categories has been the subject of successful ISDS claims.[39] Given that the risk insurance market—comprising both political risk insurance and other commercial risk insurance from private sector providers—may offer similar protections as investment treaties and ISDS, it is crucial to evaluate how the costs and benefits of risk insurance for these risks compare with ISDS.

VII. CONCLUSION

Canada's withdrawal from ISDS under the USMCA signifies a significant departure from NAFTA and a deliberate shift in policy. Motivated by concerns over the empowerment of foreign-owned corporations and the potential challenge to public policy measures, Canada's move reflects a broader global trend favoring reforms in ISDS mechanisms. The transition from NAFTA to the USMCA introduces alterations in ISDS provisions, limiting access for Canadian investors and imposing stricter conditions on American and Mexican investors. The exclusion of Canada from ISDS under the USMCA leaves resort to alternative dispute resolution mechanisms, emphasizing the reliance on domestic courts and State-to-State dispute settlement. Affected Investors may explore options under other investment treaties and free trade agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Additionally, political risk insurance emerges as a viable alternative, covering a spectrum of risks akin to those addressed by ISDS. Evaluating the costs and benefits of these alternatives becomes imperative in ensuring effective dispute resolution and investor protection in the evolving landscape of international trade agreements.

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[39] *Novenergia II – Energy & Environment v. Kingdom of Spain*, SCC Case No 2015/063, Final Arbitral Award (Feb. 15, 2018); Perenco Ecuador Limited v. Republic of Ecuador, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and on Liability, (Sep. 12, 2014), https://www.italaw.com/sites/default/files/case-documents/italaw4003.pdf; Bear Creek Mining Corp. v. Republic of Perú, ICSID Case No. ARB/14/2, Award, (Nov. 30, 2017), https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C3745/DS10808_En.pdf; Occidental Petroleum Corporation v. Republic of Ecuador, ICSID Case No. ARB/06/11, Award, (Oct. 5, 2012).