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TABLE OF FOREIGN INVESTOR-STATE CASES AND CLAIMS UNDER NAFTA AND OTHER U.S. "TRADE" DEALS

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Investor-State Dispute Settlement (ISDS) empowers multinational corporations to sue our governments before panels of three corporate lawyers. These lawyers can award the corporations unlimited sums to be paid by taxpayers, including for the loss of expected future profits that the attorneys surmise the corporations would have earned if not for the challenged policy. The corporations need only convince the lawyers that a law, safety regulation, court ruling, or other government action violates the investor rights that an agreement enforced by ISDS grants them. The lawyers' decisions are not subject to outside appeal. Only corporations have rights and can initiate ISDS cases. ISDS tribunals often make countries pay for tribunal costs even when dismissing corporate attacks, so the mere threat of a case as a chilling effect. By elevating individual corporations to the same status as sovereign governments, ISDS drastically consolidates and formalizes corporate power. And by effectively providing free "risk insurance," these corporate protections make it less risky and cheaper to outsource jobs.

The North American Free Trade Agreement (NAFTA) was the first U.S. trade pact to include ISDS and established an array of new corporate rights and protections that were unprecedented in scope and power relative to past trade deals. NAFTA also was the first agreement to provide ISDS powers to corporations from a country, Canada, from which there was significant investment in the United States. Most ISDS cases against the United States have come from Canadian corporations. Prior to NAFTA, the United States had signed Bilateral Investment Treaties enforced by ISDS only with various developing countries. But now, NAFTA's extreme rules have been replicated in other U.S. "free trade" agreements (FTAs), including the Central American Free Trade Agreement (DR-CAFTA) and FTAs with Korea, Colombia, Peru, Panama and Oman.

ISDS tribunals have ordered governments to pay corporations more than $989 million in compensation after ISDS attacks launched *just under U.S. agreements*. The corporate payoffs came after attacks on natural resource policies, environmental protections, health and safety measures and more. In fact, of the more than $32.6 billion in the 35 pending ISDS claims under NAFTA and other U.S. FTAs, nearly all relate to environmental, energy, financial, public health, land use and transportation policies – not trade issues or government seizures of property or investments.

ISDS creates a parallel and privileged set of legal rights for multinational corporations to own and control other countries' natural resources and land, establish or acquire local firms, and to operate them under privileged terms relative to domestic enterprises. For instance, corporations have received payouts when new policies undermine their "expectations" of a "stable regulatory environment." The scope of the "investments" covered is vast, including derivatives and other financial instruments, intellectual property rights, government licenses and permits, as well as more traditional forms of investment.

The rigged ISDS enforcement system allows multinational firms to skirt national court systems and privately enforce their extraordinary privileges by directly challenging national governments before extrajudicial tribunals. Cases are litigated outside any domestic legal system in international arbitration bodies that operate under various international arbitration rules that are specified in the texts of ISDS-enforced agreements. The corporation bringing the case can choose which rules it prefers for a case. Many cases proceed under the auspices of the World Bank's International Centre for Settlement of Investment Disputes (ICSID). ISDS cases may also be brought using the United Nations Commission on International Trade Law rules or under international arbitral tribunals governed by different rules or institutions, such as the London Court of International Arbitration (LCIA), the Hong Kong International Arbitration Centre (HKIA), or even the International Chamber of Commerce (ICC). When state laws are challenged, states have no standing in the cases and must rely on the federal government to defend policies that the federal government may not support.

While fewer than 50 cases were filed in the first three decades of the investor-state system, corporations launched at least 50 cases *each* year during this decade, intensifying concerns about the system's threats to democracy, taxpayers and the public interest.[1] Countries as different as South Africa, Ecuador, Bolivia, Indonesia and India have withdrawn from or renegotiated their ISDS-enforced pacts. Others, like Brazil, refused from the beginning to take part of the ISDS rigged system.

Even the United States, once the world's leading proponent of ISDS, has largely eliminated ISDS from the revised NAFTA, which entered into force on July 1, 2020. That pact phases out the original NAFTA ISDS provisions (Chapter 11-B). By July 2023, ISDS will be altogether terminated between the United States and Canada. As shown below, the majority of the claims faced by both countries have come from investors who are nationals of, or firms incorporated in, the other country. All but one of the past NAFTA ISDS payouts that related to environmental issues involved U.S. firms attacking Canadian toxics bans and timber, energy, mining and other policies. Terminating U.S.-Canada ISDS also would eliminate 92% of U.S. ISDS liability under NAFTA and most U.S. ISDS exposure overall.

With respect to Mexico, the revised NAFTA contains a new approach that eliminates the extreme investor rights relied on for almost all ISDS payouts: minimum standard of treatment (MST) and the related fair and equitable treatment (FET) standard, indirect expropriation and performance requirements. No pre-establishment claims are allowed, meaning the "right to invest" is removed. It also addresses some major ISDS procedural problems by banning inherently speculative damages and forbidding lawyers from "judging" cases while suing governments on behalf of corporations. The new process requires investors to first use domestic courts or administrative bodies and exhaust domestic remedies available to resolve their dispute with a government—or try to do so for 30 months. Only then may a review be filed and only for direct expropriation or post-establishment discrimination (national treatment or most favored nation). However, a secondary U.S.-Mexico investment annex is highly problematic, although limited in its practical application. This Annex 14-E preserves full ISDS rights for investors that have certain types of contracts with the federal government in a listed sector. Neither the U.S. nor Mexican federal governments use contracts with respect to most of the listed sectors. The exception is 13 concessions signed by Mexico's Hydrocarbon's Authority that nine U.S. oil and gas firms obtained during Mexico's 2015 partial privatization of that sector. These U.S. firms retain access to the old NAFTA ISDS as long as Mexico provides ISDS rights in agreements with other countries, which it currently does.

The U.S. government has also announced that an FTA it is negotiating with the United Kingdom will not include ISDS. This and the near-elimination of ISDS from the revised NAFTA reflect the reality that the Trans-Pacific Partnership, which had an expanded ISDS regime at its core, could not win a congressional majority in the year after it was signed in 2015. Indeed, the U.S. National Conference of State Legislatures representing the mainly Republican GOP-controlled U.S. state legislative bodies, the U.S. National Association of Attorneys General, the National Association of Counties, the National League of Cities, organized labor (including the AFL-CIO), major environmental groups (including the Sierra Club), hundreds of law and economics professors, faith groups, consumer groups (including Consumers Union and the Consumer Federation of America), over 100 small businesses, over 100 health organizations (including Doctors Without Borders and Oxfam), the AARP, and over 1,000 civil society groups, and Democratic and Republican members of the U.S. Congress alike have called for ISDS to be removed from U.S. trade agreements.[2] Stark criticism of ISDS also has come from voices as disparate as U.S. Supreme Court Chief Justice John Roberts, pro-free trade think tanks such as the Cato Institute and progressive Senator Elizabeth Warren (D-Mass.).

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Key

* Indicates date notice of intent was filed, the first step in the investor-state process, when an investor notifies a government that it intends to bring a claim against that government

** Indicates date notice of arbitration was filed, the second step in the investor-state process, when an investor notifies an arbitration body that it is ready to commence arbitration under an FTA

FTA Cases & Claims Against the United States

Corporation or Investor	Arbitration Rules	Damages Sought (US$)	Status of Case	Issue
Loewen July 29, 1998* October 30, 1998**	ICSID	$725 million	Dismissed[3]	Loewen, a Canadian funeral home conglomerate, challenged a state court ruling in a private contract dispute. In the underlying domestic court case, a Mississippi jury determined Loewen had engaged in anti-competitive and predatory business practices that "violated every contract it ever had" with a local funeral home. After losing the court case and being ordered to pay $85 million, Loewen launched a NAFTA case against the U.S. government for $725 million. The corporation attacked the Mississippi jury verdict and the state's civil procedure rules as violated NAFTA's national treatment, fair and equitable treatment, and expropriation rules. This was the first NAFTA investor-state case challenging a domestic court ruling, and the NAFTA tribunal decided that ISDS tribunals had jurisdiction to review a domestic jury decision in a private contract dispute. The tribunal did not place limits on NAFTA tribunals' powers to review court decisions. The tribunal narrowly dismissed Loewen's claim on procedural grounds. (The tribunal found that Loewen's reorganization under U.S. bankruptcy laws as a U.S. corporation no longer qualified it as a "foreign investor" entitled to NAFTA protection.) However, the tribunal's ruling "criticized the Mississippi proceedings in the strongest terms" and made clear that foreign corporations that lose tort cases in the United States can use NAFTA to attempt to evade liability by shifting the cost of their court damages to U.S. taxpayers. Each party was ordered to pay their own legal costs and split the tribunal and secretariat expenses for the arbitration.

				For more information, see: https://www.citizen.org/wp-content/uploads/loewen-case-brief-final.pdf
Mondev May 6, 1999* September 1, 1999**	ICSID	$50 million	Dismissed	Mondev, a Canadian real estate developer, challenged a Massachusetts Supreme Court ruling regarding local government sovereign immunity and land-use policy. Mondev claimed that the city of Boston had unfairly interfered with an optional second phase of a construction project by planning a road to run through a parcel of land on which it had been operating a garage business. The Massachusetts Supreme Court held that the investor had been unable to demonstrate that it was willing and able to perform its contractual obligations and ruled that the Boston Redevelopment Authority (of the city government) was immune from civil suits. After the U.S. Supreme Court denied Mondev's request for a re-hearing, Mondev launched a NAFTA investor-state claim against the United States. A NAFTA tribunal dismissed the claim on procedural grounds, finding that the majority of Mondev's claims, including its expropriation claim, were time-barred because the dispute on which the claim was based predated NAFTA. Even so, the U.S. government was required to pay half of the tribunal and secretariat's costs as well as its own legal fees.[4] For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Methanex June 15, 1999* December 3, 1999**	UNCITRAL	$970 million	Dismissed	Methanex, a Canadian corporation that produced methanol, a component chemical of the gasoline additive MTBE, challenged California's phase-out of MTBE. Studies linked MTBE with neurotoxic and carcinogenic health impacts and identified environmental risks. The American Water Works Association has estimated that it would cost about $25 billion to clean up U.S. public water systems contaminated with MTBE.[5] California decided to phase out the chemical to halt contamination of drinking water sources. In its NAFTA case, Methanex alleged that the California phase-out of MTBE was discriminatory and violated the company's right to a minimum standard of treatment. The claim was dismissed on procedural grounds. The tribunal ruled that it had no jurisdiction to determine Methanex's claims because California's MTBE ban did not have a sufficient connection to the firm's methanol production to qualify Methanex for protection under NAFTA's investment chapter. The

				tribunal ordered Methanex to pay the U.S. government $4 million in legal and arbitration fees.[6] For more information, see: https://www.citizen.org/news/u-s-dodging-bullet-on-methanex-ruling-does-not-remedy-threats-from-nafta-chapter-11-foreign-investor-protection-mechanism/
ADF Group February 29, 2000* July 19, 2000**	ICSID	$90 million	Dismissed	ADF group, a Canadian steel contractor, challenged the U.S. Buy America law in relation to a Virginia highway construction contract. At issue was a 1980s law developed to recycle taxpayer funds back into the U.S. economy in a sector – steel – that was considered vital for U.S. infrastructure and national defense. A tribunal dismissed the claim, finding that the basis of the claim constituted "government procurement" and therefore was not covered under NAFTA Article 1108. (Even so, the U.S. government was required to pay half of the tribunal's expenses as well as its own legal fees.) Starting with DR-CAFTA, FTA investment chapters have included foreign investor protections for aspects of government procurement activities. The tribunal ordered the ADF Group and the United States to split the arbitration costs evenly. Each party was also ordered to pay its own legal expenses.[7] For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Canfor November 5, 2001* July 9, 2002**	UNCITRAL	$250 million	Consolidated	Canfor, a Canadian softwood lumber company, claimed damages relating to U.S. anti-dumping and countervailing duty measures implemented in a U.S.-Canada softwood lumber dispute. The case was consolidated with the Tembec and Terminal Forest Products claims – see "Softwood Lumber" below. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf

Kenex January 14, 2002* August 2, 2002**	UNCITRAL	$20 million	Arbitration never began	Kenex, a Canadian hemp production company, challenged new U.S. Drug Enforcement Agency regulations criminalizing the importation of hemp foods. Kenex tried to import WTO requirements to use "sound science" into U.S. NAFTA obligations, and argued that the regulation was arbitrary and unfair. In 2004, Kenex won a U.S. federal court case that held the agency overstepped its statutory authority when issuing the rules. The NAFTA investor-state case was abandoned. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
James Russell Baird March 15, 2002*	N/A	$13.58 billion	Arbitration never began	James Baird, a Canadian investor, challenged a U.S. policy of disposing nuclear waste at a Yucca Mountain, Nevada site. The investor held patents for a competing sub-sealed waste disposal method and location. For more information, see:www.citizen.org/documents/NAFTAReport_Final.pdf
Doman May 1, 2002*	N/A	$513 million	Arbitration never began	Doman, a Canadian softwood lumber company, claimed damages related to U.S. anti-dumping and countervailing duties measures implemented in a U.S.-Canada softwood lumber dispute. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Tembec Corp. May 3, 2002* December 3, 2003**	UNCITRAL	$200 million	Consolidated	Tembec, a Canadian softwood lumber company, claimed damages related to U.S. anti-dumping and countervailing duties measures implemented in a U.S.-Canada softwood lumber dispute. The case was consolidated with the Terminal Forest Products and Canfor claims – see "Softwood Lumber" below. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Ontario Limited	N/A	$38 million	Arbitration never began	Ontario Limited, a Canadian company, launched a NAFTA claim seeking return of property after its bingo halls and financial records were seized during an investigation for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) in Florida. Under Florida law, bingo halls may only

September 9, 2002*				be operated by non-profits, including churches and charities. Otherwise, the proceeds must be donated. While the Florida Supreme Court eventually ruled that the RICO Act cannot be used to close or seize bingo halls, they remain illegal for commercial enterprise. For more information, see:www.citizen.org/documents/NAFTAReport_Final.pdf
Terminal Forest Products Ltd. June 12, 2003* March 30, 2004**	UNCITRAL	$90 million	Consolidated	Terminal Forest Products, a Canadian softwood lumber company, claimed damages related to U.S. anti-dumping and countervailing duties measures in a U.S.-Canada softwood lumber dispute. The case was consolidated with the Canfor and Tembec claims – see "Softwood Lumber" below. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Glamis Gold Ltd. July 21, 2003* December 9, 2003**	UNCITRAL	$50 million	Dismissed	Glamis Gold, a Canadian mining company, sought compensation for a California law requiring backfilling and restoration of open-pit mines near Native American sacred sites. Glamis was seeking permits to operate an open-pit cyanide heap-leach mine on federal lands on which it had acquired a Bureau of Land Management mining concession. Many nations (and the U.S. state of Montana) have banned cyanide heap-leach mining altogether given the environmental and health threats posed by the discarded heaps of cyanide-contaminated earth around such mines. Glamis claimed that it has a "right to mine" under federal law. And that California land use rules, including those relating to preservation of Native American cultural sites, that condition permitting on the firm restoring the land post-mining to its original state equated to an expropriation of their investment and violated NAFTA minimum standard of treatment" protections. Instead of proceeding with its application and plan to comply with the state law, Glamis filed a NAFTA claim. The tribunal dismissed Glamis' claims in June 2009. The ruling is often cited as the exception to the typical, highly problematic practice of ISDS tribunals fabricating expansive notions of what obligations the minimum standard of treatment rule requires of governments and then finding for corporations. The tribunal in this case applied the Customary International Law analysis that the

				NAFTA countries have repeatedly stated is the proper standard of review. The tribunal also ordered Glamis to pay 2/3 of the arbitral costs rather than split them evenly. Even so, the U.S. government was required to pay for 1/3 of the costs and for the time of government lawyers for a case that was dismissed. For more information, see: https://www.citizen.org/wp-content/uploads/glamisbackgrounderfinal.pdf
Grand River Enterprises, et al. September 15, 2003* March 12, 2004**	UNCITRAL	$340 million	Dismissed	Grand River Enterprises, a Canadian tobacco manufacturer, (in addition to its two individual owners and one U.S. business associate) sought damages over a 1998 U.S. Tobacco Settlement, known as the Master Settlement Agreement (MSA), which requires tobacco companies to contribute to state escrow funds to help defray medical costs of smokers. The Canadian tobacco company had utilized loopholes in the escrow scheme to expand its U.S. sales – loopholes that the states ultimately closed. This loophole closing was a central basis of the corporation's claim. While finding that no NAFTA violation occurred, a tribunal decided that the United States had to bear its own defense costs, arguing that the United States did not consult with indigenous businesses before implementing the challenged aspects of the MSA. The tribunal also questioned whether these aspects of the tobacco control policy contributed to public health, despite significant drops in teenage smoking rates over the period. The tribunal ordered that the claimants and respondent pay their own costs – which for the United States were more than $2.7 million – and each should pay half of the costs of the arbitration. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Canadian Cattlemen for Fair Trade August 12, 2004*	UNCITRAL	$235 million	Dismissed	A group of Canadian cattlemen and feedlot owners sought compensation for losses incurred when the United States halted imports of live Canadian cattle after the discovery of a case of bovine spongiform encephalopathy (BSE), better known as mad cow disease, in Canada in May 2003. A tribunal dismissed the claim at the jurisdiction phase, ruling that the cattlemen did not have standing to bring the claim because they did not have an

March 16, 2005-June 2, 2005**				investment in the United States, nor did they intend to invest in the United States. Each party was ordered to pay half of the tribunal's arbitration costs in addition their own legal expenses. For more information, see: www.citizen.org/documents/CanadianCattlemen_for_FairTrade.pdf
Softwood Lumber Consolidated Proceeding September 7, 2005	ICSID	$540 million	Discontinued	Canfor, Terminal Forest and Tembec – Canadian softwood lumber companies – challenged U.S. anti-dumping and countervailing duties measures implemented in a U.S.-Canada softwood lumber dispute. The agreement had been signed to avert a trade war over U.S. industry complaints that Canada was unfairly subsidizing logging companies. The companies alleged violations of NAFTA provisions on minimum standard of treatment, national treatment and expropriation, among others. A tribunal approved the U.S. request to consolidate Canfor, Terminal Forest and Tembec cases under ISCID rules. The Tembec case was withdrawn in 2005, but a dispute over litigation costs continued to be adjudicated by the NAFTA tribunal. A final ruling terminated the Canfor and Terminal Forest cases in 2007, and apportioned costs in all three cases. The termination followed a new softwood lumber agreement that the United States and Canada entered into in 2006, which resolved many NAFTA and domestic court cases on the issue. The softwood lumber dispute was also litigated at the WTO and in NAFTA's state-state dispute resolution system before the 2006 agreement was reached. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Domtar Inc. April 16, 2007**	UNCITRAL	$200 million	Arbitration never began	Domtar, a Canadian softwood lumber company, filed a claim after a 2006 U.S.-Canada softwood lumber agreement to try to recover the money it paid out while U.S. countervailing duties were in place. Domtar claimed numerous violations, including minimum standard of treatment, national treatment and transfers of investments violations. (See also "Softwood Lumber" case above.)
Apotex (I)	UNCITRAL	$8 million	Dismissed	Apotex, a Canadian generic drug manufacturer, challenged the decision of U.S. courts not to clarify patent issues relating to its plan to develop a generic version of the Pfizer drug Zoloft (sertraline) when the Pfizer patent expired in

December 10, 2008**				2006. Due to legal uncertainty surrounding the patent, the firm sought a declaratory judgment in U.S. District Court for the Southern District of New York to clarify the patent issues and give it the "patent certainty" to be eligible for final FDA approval of its product upon the expiration of the Pfizer patent. The court declined to resolve Apotex's claim and dismissed the case in 2004, and this decision was upheld by the federal circuit court in 2005. In 2006, the case was denied a writ of certiorari by the U.S. Supreme Court. Because the courts declined to clarify the patent situation, another generic competitor got a head start in producing the drug. Apotex challenged all three court decisions as misapplications of U.S. law and as violations of NAFTA's expropriation, discrimination and minimum standard of treatment provisions. The tribunal dismissed the claim in 2013, arguing that neither Apotex's drugs nor its related expenditures constituted an "investment" in the United States that was protected under NAFTA. The tribunal ordered that Apotex pay Canada's legal fees, totaling $525,814, in addition to their own legal expenses and the full cost of the tribunal and ICSID's legal fees, charges and expenses, totaling $277,863. This jurisdiction decision also covers the Apotex (II) arbitration and its costs, since the parties agreed to conduct the jurisdiction phase of both cases concurrently.[8]
CANACAR April 2, 2009**	UNCITRAL	$30 billion	Arbitration never began	CANACAR, a group of Mexican truckers, launched a NAFTA claim after a bipartisan coalition in Congress set specific safety and environmental conditions that had to be met before a controversial Bush administration program, allowing 26 Mexican carriers full access to U.S. roadways, could take effect. The Bush pilot program was an effort to comply with a NAFTA obligation to make U.S. highways fully accessible to Mexican trucks. The Clinton administration had resisted implementing that obligation, given U.S. Department of Transportation studies that revealed severe safety and environmental problems with Mexico's truck fleet and drivers' licensing. Such resistance had prompted Mexico to initiate a state-to-state NAFTA dispute, resulting in a 2001 tribunal ruling that the United States had to grant full roadway access to Mexican-domiciled trucks or face $2.4 billion in trade sanctions. CANACAR launched its investor-state case to further pressure the United States to grant access to Mexican trucks after Congress' initiative to place safety and environmental conditions on such access. In its NAFTA claim, CANACAR claimed that such requirements violated the nondiscrimination, most favored nation, and fair and equitable treatment

				investor protections in NAFTA. The claimants created a novel argument that, since they pay certification fees to the Federal Motor Carrier Safety Administration, they have an "investment" in the United States and qualify as "investors" under NAFTA.[9] After the Mexican government levied further threats of trade sanctions against the United States for continued restrictions on Mexican-domiciled trucks, the Obama administration signed a deal in 2011 to allow the trucks into the U.S. interior for three years, despite the unresolved safety and environmental concerns. More than two years after the launch of the pilot program, only 13 Mexican motor carriers were participating – a fraction of the 46 carriers that the U.S. Department of Transportation said would be necessary to provide a statistically valid analysis of program participants' safety performance.[10] To pressure the U.S. government to grant full access to U.S. roadways, CANACAR announced in early 2014 that it now sought $30 billion in U.S. taxpayer compensation, up from $6 billion, in its investor-state case.[11] The ISDS case functioned to add pressure on the U.S. government to change the policy. Despite having a small and non-representative sample, in 2015 the Obama administration declared that the pilot program showed Mexican-domiciled trucks were as safe as U.S. trucks and authorized full access to U.S. roads for carriers in the program. The U.S. Department of Transportation also opened an application process for additional carriers to apply to have access. In the 2020 NAFTA revision, Mexico agreed to new limits and conditions on the access. For more information, see: www.citizen.org/documents/NAFTAs-20-year-legacy.pdf
Apotex (II) June 4, 2009**	UNCITRAL	$8 million	Dismissed	Apotex, a Canadian drug manufacturer, challenged the decision of the FDA not to approve development of a generic version of the Bristol Myers Squibb drug Pravachol (pravastatin sodium). The firm was unable to obtain approval from the FDA. Apotex filed a NAFTA claim, arguing that the United States violated the national treatment, minimum standard of treatment, and expropriation and compensation obligations of NAFTA. The tribunal dismissed both the Apotex (I) and Apotex (II) claims in 2013 during a concurrent jurisdictional process, arguing that neither Apotex's drugs

				nor its related expenditures constituted an "investment" in the United States that was protected under NAFTA. As noted above (see Apotex (I)), Apotex was ordered to pay their own legal expenses in addition to $525,814 for Canada's legal fees, and $277,863.62 for the legal expenses of the tribunal and ICSID.[12]
Cemex September 2009*	N/A	N/A	Arbitration never began	Cemex, a Mexican cement company, filed a notice of intent to bring a NAFTA claim against the U.S. government after the state of Texas launched a lawsuit against Cemex for not paying royalties on metals the company extracted from state-owned land.[13] Cemex sought to use the NAFTA claim to indemnify itself against potential losses in the Texas courts.
Apotex (III) February 29, 2012**	ICSID	$520 million	Dismissed	Apotex, a Canadian drug manufacturer, launched yet another NAFTA ISDS case, this one against FDA-imposed restrictions on imports of Apotex drugs, which followed FDA inspections of Apotex manufacturing facilities. In its claim, Apotex argued that FDA inspections practices were discriminatory and violated a NAFTA-guaranteed minimum standard of treatment for the company.[14] The tribunal dismissed the claim in 2014, with a majority deciding that the ruling still held from the earlier Apotex cases that some of Apotex's claimed "investments" were not covered by NAFTA. For those that were covered, the tribunal did not find a NAFTA violation. Apotex was ordered to pay $1.2 million for the U.S. government's legal costs in addition to the firm's own legal costs and 75% of the tribunal and ICSID's arbitration costs. Canada was ordered to pay the remaining 25% of arbitration costs.[15]
Victims of the Stanford Ponzi Scheme December 28/29, 2012* March 20, 2013**	UNCITRAL	$511 million	Pending	Individual investors from Central America, South America and the Caribbean filed notices of intent in separate claims against the U.S. government under NAFTA, DR-CAFTA, the U.S.-Peru FTA and the U.S.-Chile FTA. The investors stated that they lost money as a result of a Ponzi scheme run by convicted U.S. ex-financier Allen Stanford. They argued that the U.S. Securities and Exchange Commission failed to promptly shut down Stanford's scheme which the investors alleged as a violation of the minimum standard of treatment. Additionally, the claimants argue that the decision to not initiate enforcement proceedings earlier was seemingly motivated by the fact that most

				of Mr. Stanford's victims were not U.S. citizens, in breach of national treatment obligations. The claimants apparently reactivated this case recently, after a dormant period. As of August 2020, three arbitrations using NAFTA, the U.S.-Peru FTA and the DR-CAFTA had been initiated under UNCITRAL rules, although the tribunals have not been fully constituted yet.[16]
TransCanada Corporation & TransCanada Pipelines Limited January 6, 2016*	ICSID	$15 billion	Arbitration never began	In June 2016, the TransCanada Corporation launched an ISDS case under NAFTA demanding $15 billion in compensation because the corporation's bid to build a pipeline was rejected by the U.S. government.[17] The $15 billion claim was five times more than the $3.1 billion that TransCanada said it already had invested in the pipeline project because the compensation demand included the future expected profits that TransCanada claimed it would have earned had the pipeline been allowed. The proposed 875-mile pipeline – called the Keystone XL – would transport to the U.S. Gulf Coast up to 830,000 barrels per day of highly-corrosive crude oil extracted from tar sands in Alberta, Canada. The pipeline would transport one of the dirtiest fossil fuels on the planet[18] across more than a thousand rivers, streams, lakes and wetlands[19] as it traverses six U.S. states. Indigenous leaders, farmers and ranchers in the path of the project stressed that a spill from the pipeline would threaten their lands and livelihoods.[20] Their concerns were bolstered by environmental and health experts who provided evidence during the course of various federal and state reviews of the project about how tar sands oil development in Alberta, Canada already has devastated the land and water of Canadian First Nations communities, released toxic chemicals that poisoned and sickened these communities[21] and threatened local species of fish and wildlife.[22] The pipeline also raises significant concerns with respect to its climate impacts. If the pipeline were completed, it would create new demand for intensified carbon-intensive tar sands extraction and processing, as the purpose of the pipeline was to transport the tar-sands oil to U.S. Gulf Coast refineries for processing so the finished product could be exported into the global market.[23] The November 2015 decision by the U.S. government not to approve the pipeline project came after tens of thousands of citizens in the states that would be affected and environmental activists nationwide had worked for six years to demonstrate that the pipeline was not in the national interest and would pose serious health and environmental risks.

				In January 2016, just two months after the U.S. government's decision to reject the pipeline, TransCanada filed notice of intent to start an ISDS case under NAFTA. It simultaneously filed a U.S. federal court case, claiming that the decision to reject the pipeline was unconstitutional because only Congress, not the president, has authority to make such a decision.[24] In its ISDS notice of arbitration, TransCanada claimed the United States had violated four different investor rights provided by NAFTA. First, it claimed that the U.S. government violated the minimum standard of treatment, arguing that the U.S. government led TransCanada to develop "reasonable expectations" that the Obama administration would approve the pipeline, only to ultimately reject it. The company noted that, while in 2010 the U.S. State Department was "inclined" to approve the project, subsequently "politicians and environmental activists ... continued to assert that the pipeline would have dire environmental consequences," which ultimately led the Obama administration to reject it for "symbolic reasons, not because of the merits."[25] TransCanada also alleged that disapproval of the project violated the NAFTA investor protection against indirect expropriation, arguing that the pipeline "substantially deprived" the company of its investment in the project." TransCanada also claimed violations of NAFTA's national treatment standard, claiming that the United States treated the Canadian firm worse than it treated U.S. firms, and of NAFTA's "most-favored nation" standard, claiming that the United States treated the Canadian firm worse than other international pipeline firms. These latter claims were lodged despite the fact that no other company would be permitted to build the pipeline. In his first week as president in January 2017, Donald Trump signed an executive order inviting TransCanada to submit a new application for the pipeline's construction. ISDS rules permitted TransCanada to continue to pursue compensation via ISDS for lost revenue it claims was caused by the project's delay even after receiving a permit. However, on February 28, 2017, the company suspended its case for 30 days, which coincided precisely with the time period by which the U.S. State Department was to make a final decision on the new permit application.[26] During that 30 day period, on March 4, 2017, the White House clarified that a previous Trump executive order calling for pipelines to be constructed with American-made steel and pipe would not apply to the Keystone XL.[27] Shortly thereafter, the State Department issued the permit.[28] TransCanada then announced that it would discontinue its NAFTA ISDS case.[29] Various news

				outlets reported that close observers suspected that the quick permit approval and the Buy American steel/pipe waiver that blessed TransCanada's use of foreign steel and piping were likely the "settlement" price extracted from the Trump administration by TransCanada for dropping its NAFTA claim.
KTurbo Inc. October 28, 2019*	N/A	$ 10 million	Pending	A South Korean company, KTurbo Inc., has threatened to initiate arbitration proceedings against the United States under the South Korea – United States Free Trade Agreement (KORUS). KTurbo specializes in the production of turbo compressors and turbo blowers. In 2017, a jury in the U.S. District Court for the Northern District of Illinois found KTurbo's CEO, Heon Seok Lee, guilty of multiple fraud and smuggling charges and ordered $180,392 as restitution and the forfeiture of the company's properties. The criminal indictment was based on a federal investigation of KTurbo for wrongly stating that its compressors were assembled in the United States in order to qualify for stimulus funds available under the Buy American provision of the 2009 Recovery Act. Mr. Lee appealed his convictions and the restitution order before the 7th Circuit U.S. Court of Appeals, which upheld the decision, but noted that "there is some logical tension between the District Court's restitution award, and its conclusion that it lacked a sufficient evidentiary basis to determine victims' (sic) 'loss.'"[30] KTurbo is using this to argue that the District Court wrongly ordered restitution and the forfeiture of the company's properties after ruling that the government had failed to prove any loss in Recovery Act funds from two municipalities or wrongly-received gain by KTurbo in Recovery Act funds.[31] Thus, KTurbo claims the court decisions constitute an unlawful expropriation under KORUS Article 11.6.[32]

NAFTA Cases & Claims Against Canada

Signa March 4, 1996*	N/A	$36.7 million	Withdrawn	Signa, a Mexican generic drug manufacturer, launched a claim against a Canadian patent law that prevented the company from manufacturing a generic form of the antibiotic CIPRO. The company claimed that Canadian law allowed Bayer, the owner of the CIPRO patent, to block the generic manufacture of CIPRO without requiring any preliminary judicial consideration

				of the contested patent. Signa alleged this as a violation of NAFTA rules against minimum standard of treatment and expropriation, though arbitration never began. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Ethyl April 14, 1997*	UNCITRAL	$251 million	**Settled; Ethyl win, $13 million**	Ethyl, a U.S. chemical company, launched an investor-state case over a proposed Canadian ban of MMT, a toxic gasoline additive used to improve engine performance. MMT contains manganese – a known human neurotoxin. MMT is not used in most countries and is banned by the U.S. Environmental Protection Agency in reformulated gasoline. Canadian legislators were concerned about the public health and environmental risk of MMT emissions and about MMT's interference with emission-control systems. Before the Canadian parliament even acted, Ethyl filed its ISDS claim, arguing that the proposed law would result in e a NAFTA-forbidden expropriation of its assets. Given Ethyl had no production facility in Canada, its expropriation claim focused on NAFTA's obligations for governments to compensate for actions "tantamount to" expropriation. Canada argued that Ethyl did not have standing under NAFTA to bring the challenge. First, at issue was a ban on cross-border trade of a product made in the United States, not a measure affecting an Ethyl investment in Canada. (Canada noted that Ethyl could try to persuade the U.S. government to bring a state-state case.) Second, the law had not been passed when the challenge was filed, thus Canada argued that there was no "government action" to challenge. But a NAFTA tribunal rejected Canada's objections in a 1998 jurisdictional decision that paved the way for a ruling on the merits. Less than a month later, the government announced that it would settle with Ethyl. The settlement terms required Canada to reverse the ban, post advertising announcing MMT was safe and pay the firm $13 million in damages for the period the ban had been in place and as well as tribunal cost and all legal fees. Today Canada depends largely on voluntary restrictions to reduce the presence of MMT in gasoline.[33] For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf

S.D. Myers July 22, 1998* October 30, 1998**	UNCITRAL	$70.9 million	**S.D. Myers win, $5.5 million** ($3.8 million + $1.7 million interest)	S.D. Myers, a U.S. waste treatment company, challenged a Canadian ban on the export of a hazardous waste called polychlorinated biphenyls (PCB). Canada enacted the ban to comply with its obligations a multilateral environmental treaty, the Basel Convention, encouraging domestic treatment of toxic waste. The U.S. Environmental Protection Agency (EPA) has determined that PCBs are harmful to humans and toxic to the environment. S.D. Myers argued that the ban constituted disguised discrimination in violation of NAFTA's fair and equitable treatment obligation and was "tantamount to an expropriation." A tribunal dismissed S.D. Myers's claim of expropriation, but upheld claims of discrimination and deemed the export ban as a violation of the minimum standard of treatment foreign investors must be provided under NAFTA, because it limited S.D. Myers's plan to treat the waste in Ohio. The panel also stated that a foreign firm's "market share" in another country could be considered a NAFTA-protected investment, which expands ISDS jurisdiction vastly if other panels adopted this interpretation, which the tribunal in the NAFTA Pope & Talbot case did (described below). A Canadian Federal Court dismissed Canada's petition to have the decision overturned, finding that any jurisdictional claims were barred from being raised since they had not been raised in the NAFTA claim, and that upholding the tribunal award would not violate Canadian "public policy" as Canada had argued. Canada was ordered to pay S.D. Myers CAN $500,000 for its legal representation expenses, CAN $350,000 for a portion of the firm's arbitration costs, as well as interest from the date of the final award until the date that payment is completed.[34] For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Sun Belt December 2, 1998* October 12, 1999**	N/A	$33.7 million	Arbitration never began	Sun Belt, a U.S. bulk water importer/exporter, challenged a British Columbia bulk water export moratorium. Public protests had forced the moratorium, as many Canadians were concerned that if Canadian provinces mass-exported water it would begin to be treated as a commodity under NAFTA, making it difficult for Canada to limit water withdrawals from the Great Lakes. In its notice of intent to launch a NAFTA dispute, the U.S. company argued that the popularly-pushed water export moratorium was discriminatory and violated the company's entitlement to a minimum standard of treatment under NAFTA. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Pope & Talbot	UNCITRAL	$507.5 million	**P&T win, $0.5 million**	Pope & Talbot, a U.S. timber company with operations in British Columbia, challenged Canadian implementation of the 1996 U.S.-Canada Softwood Lumber Agreement. Pope & Talbot claimed that quotas on duty-free imports of Canadian timber into the United States

December 24, 1999* March 25, 1999**			($0.46 million + $0.04 million interest)	violated NAFTA national treatment and minimum standard of treatment guarantees, and constituted expropriation. The U.S. and Canadian governments had agreed on the quotas to avert a trade war over U.S. industry complaints that Canada was unfairly subsidizing logging companies. Although the company was treated in the same manner as similar companies in British Columbia, it pointed to logging companies in other provinces not subject to the quota to support its allegation of discrimination. A NAFTA tribunal dismissed the company's claims of expropriation and discrimination, but held that, even though Canada reasonably implemented the lumber agreement, the allegedly rude behavior of Canadian government officials seeking to verify Pope & Talbot's compliance constituted a violation of the minimum standard of treatment required by NAFTA for foreign investors. The panel also stated that a foreign firm's "market access" in another country could be considered a NAFTA-protected investment. Canada was ordered to pay Pope & Talbot $120,000 for a portion of the tribunal's arbitration cost. The total arbitration cost came to $1,474,359.50. The investor paid $617,179.75, while Canada was ordered to pay $857,179.75, which includes the $120,000 paid directly to Pope & Talbot. The tribunal ordered that each party pay its own legal costs.[35] For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
United Parcel Service January 19, 2000* April 19, 1999**	UNCITRAL	$160 million	Dismissed	The United Parcel Service (UPS), the world's largest package delivery company, claimed that the Canadian post office's parcel delivery service was unfairly subsidized by being part of the public postal service – Canada Post. As the first NAFTA case against a public service (and since mail delivery is a publicly-owned service in numerous countries), the case was closely watched and included amici briefs submitted by the Canadian Union of Postal Employees and other citizen groups. UPS's claims were dismissed. A tribunal concluded that key NAFTA rules concerning competition policy could not be invoked because UPS was inappropriately framing Canada Post as a "party" to Chapter 11. In addressing whether Canada's treatment of UPS comported with customary international law, the tribunal found that there was no customary international law prohibiting or regulating anticompetitive behavior. A lengthy dissenting opinion was filed by one tribunalist, indicating that a similar case could generate a very different result. Total arbitration costs were $950,000 and were to be split equally by both parties. Both parties were required to pay their own costs.[36]

				For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Ketcham and Tysa Investments December 22, 2000*	N/A	$30 million	Withdrawn	Several U.S. softwood lumber firms challenged Canadian implementation of a 1996 Softwood Lumber Agreement. The firms claimed that Canada gave higher quotas to domestic firms than to the firms' Canadian subsidiaries, and that this constituted expropriation and a breach of national treatment and minimum standard of treatment provisions.
Trammell Crow September 7, 2001*	N/A	$32 million	Withdrawn	Trammell Crow, a U.S. real estate company, filed notice of its intent to launch a NAFTA claim over alleged discrimination in Canada Post's bidding processes. The company claimed that the Canadian government skirted a competitive bidding process and extended an old contract to manage post facilities after the company had spent time and money preparing a bid for a new contract. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Crompton/ Chemtura Original notice of claim dated November 6, 2001* February 10, 2005**	UNCITRAL	$100 million	Dismissed	Crompton, a U.S. chemical company and producer of pesticide lindane – a hazardous persistent organic pollutant – challenged a voluntary agreement between manufacturers and the Canadian government to restrict production of the pesticide. Beginning in 1998, the Canadian Pesticide Management Regulatory Agency (PMRA) and canola growers represented by the Canadian Canola Council organized companies to voluntarily phase out the production of lindane for canola. The U.S. Environmental Protection Agency (EPA) had been reviewing lindane as a suspected toxin for years before Crompton filed its notice of arbitration. In the year after Crompton launched its NAFTA claim against Canada for voluntary restrictions on lindane, the EPA banned its use as a pesticide in the U.S. In its NAFTA claim, Crompton which later merged with another company to become the Chemtura Corporation, argued that the voluntary phase-out program violated NAFTA provisions against discrimination, performance requirements and expropriation, and failed to provide the company the minimum standard of treatment. In August 2010, the tribunal ruled against the company on all grounds in an unusual award that actually considered Canada's interest in environmental and safety protections. The tribunal found that the review process was neither unfair nor amounted to bad faith behavior and that the firm could fully participate in the review process. It held that the decision to terminate the lindane approval was not arbitrary because the firm had been given the option to agree to a phase-out and had rejected that option. The tribunal ruled against the expropriation claim because the termination did not substantially deprive the investor of its investment. Additionally, the tribunal held that the actions were a valid exercise of Canada's police powers given they were non-discriminatory

				actions taken to protect human health and the environment and thus were not an expropriation. Crompton was ordered to pay the arbitration cost of $688,219 and 50% of the Canadian government's fees and costs in connection with the arbitration, which was CAD $2,889,233.80.[37] For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Albert J. Connolly February 19, 2004*	N/A	N/A	Arbitration never began	Albert J. Connolly, a U.S. investor, claimed that real estate he owned in Canada was expropriated by the province of Ontario for the purpose of building a park as part of Ontario's Living Legacy Program. For more information, see: www.citizen.org/documents/NAFTAReport_Final.pdf
Contractual Obligations June 15, 2004*	N/A	$20 million	Arbitration never began	Contractual Obligations, a U.S. animation production company, challenged as a NAFTA violation Canadian federal tax credits that were only available to Canadian firms employing Canadian citizens and residents.
Peter Pesic July 2005*	N/A	N/A	Withdrawn	Peter Pesic, a U.S. investor, claimed that a Canadian decision not to extend a work visa impaired his investment in Canada.
Great Lake Farms February 28, 2006* June 5, 2006**	UNCITRAL	$78 million	Arbitration never began	A U.S. agribusiness challenged Canadian provincial and federal restrictions on the exportation of milk to the United States. The company alleged violation of NAFTA's most favored nation rule, minimum standard of treatment rule, expropriation prohibition, and rules on monopolies and state enterprises.
Merrill and Ring Forestry September 25, 2006*	UNCITRAL	$51.2 million	Dismissed	Merrill and Ring Forestry, a U.S. forestry firm, challenged Canadian federal and British Columbia provincial regulations restricting the export of raw logs. Numerous labor groups petitioned to submit amici briefs in the case, seeking to maintain and strengthen Canada's raw log export controls at both the provincial and federal levels. They stated that such NAFTA claims could lead to the abandonment of log export controls which they deem essential to the continued employment of tens of thousands of Canadian workers. Merrill and Ring Forestry

December 27, 2006**				argued that the export regulations violated NAFTA national treatment and minimum standard of treatment provisions. A tribunal ruled against Merrill and Ring Forestry but ordered Canada to pay half of arbitration costs, amounting to about $500,000.
V. G. Gallo October 12, 2006* March 30, 2007**	UNCITRAL	$355.1 million	Dismissed	Gallo, a U.S. citizen, owned a company that bought a decommissioned open-pit iron ore mine in Northern Ontario. He challenged a 2004 decision by the newly-elected Ontario government to block a proposed landfill on the site. Gallo claimed this decision was "tantamount to an expropriation" and deprived Gallo of a minimum standard of treatment under NAFTA. A tribunal ruling on jurisdiction decided that Gallo did not have ownership of the mine at the time of the alleged infraction, but ruled that Canada still had to cover its own legal fees.[38]
(Exxon) Mobil Investments and Murphy Oil August 2, 2007* November 1, 2007**	ICSID	$59.1 million	**Mobil and Murphy win, $13.9 million**	U.S. firms Mobil and Murphy Oil challenged the Canada-Newfoundland and Labrador (NL) Offshore Petroleum Board's "Guidelines for Research and Development Expenditures" as NAFTA-forbidden performance requirements. When NAFTA was negotiated, Canada had taken a reservation for imposition of performance requirements on investors in its oil sector. The reservation specifically listed several provincial-federal boards, including the Canada-NL board, and the laws under which the boards and conditions for investment are established. The Canada-NL board requires firms involved in the offshore oilfields to submit "benefits" plans to comply with a requirement that firms invest in research and development as well as worker training. A series of guidelines specifying the amount and types of R&D and worker training required of firms had been issued starting in the late 1980s. In their ISDS claim, Mobil and Murphy claim that the 2004 version of the guidelines constituted NAFTA-forbidden performance requirements because relative to past guidelines, they would result in the firms spending more money and were more specific about the forms of R&D and training that would meet the firms' obligations. Canada countered that R&D and worker training requirements were not even on the list of NAFTA-prohibited performance requirements, but that had they been, Canada had taken a broad reservation to exclude application of the relevant NAFTA obligation to the relevant government board's activities. The majority of the panel rejected Canada's arguments and in 2012 issued a ruling in favor of Mobil and Murphy Oil. One tribunalist dissented, noting that Canada had negotiated for a reservation allowing the very policies being challenged. However, ISDS rulings require only a majority of the tribunal, and the ISDS regime provided Canada no right to appeal the merit.

				The majority then ordered Canada to pay the oil corporations more than $13 million, plus interest. The parties were ordered to pay their own legal costs and split the cost of arbitration, which amounted to $525,000 each.[39]
Marvin Gottlieb, el al. October 30, 2007*	N/A	$6.5 million	Arbitration never began	Marvin Gottlieb and other foreign investors challenged an increase in Canadian taxation of income trusts –legal structures commonly used by energy companies to reduce taxation. Concerned about a declining corporate tax base, Canada changed the manner in which income trusts were taxed in 2006. Investors alleged that this change effectively eliminated the income trust model as an investment option and caused "massive destruction" to their holdings. An exchange of letters between the U.S. and Canadian tax agencies confirmed that the investors' claim of NAFTA-prohibited expropriation could not proceed. However, this determination did not affect the investors' claims that the new tax policy violated NAFTA's national treatment, most favored nation and fair and equitable treatment obligations.
Clayton/Bilcon February 5, 2008* May 26, 2008**	UNCITRAL	$443 million	**Clayton/Bilc win, $7 million**	Members of the U.S.-based Clayton family and a corporation they control, Bilcon, challenged environmental requirements affecting their plans to open a large, open-pit blasting gravel quarry to operate for 50 years on a pristine Nova Scotia bay that is a tourist hub, salmon fishery and endangered whale breeding ground and to build a marine terminal to ship out the gravel. Federal and provincial law required an environmental review. The panel of experts conducting the review recommended the permits be denied. The local commercial fishing and tourism industries, Indian tribes and residents raised human and marine environment concerns during the review process. Bilcon argued the review did not comply with Canadian law, in part by giving too much weight to community concerns. Rather than challenging it in Canadian court, Bilcon launched an ISDS challenge. The firm argued that the review was arbitrary, discriminatory and unfair, and thus a breach of NAFTA's minimum standard of treatment, national treatment and most favored nation obligations.[40] In a March 2015 ruling, two of three tribunalists ignored decades of clarifications by the three NAFTA governments that ISDS tribunals may not substitute their views for those of domestic administrative or judicial bodies and decided the review violated Canadian law. The tribunal majority created a broad interpretation of the minimum standard of treatment, invented obligations to which no NAFTA signatory had agreed — including not to disappoint investors' expectations — and ruled against Canada.[41] The third tribunalist issued a dissent warning about the impropriety of an ISDS tribunal substituting its judgement for that of a Canadian federal court and ordering damages that would not have been available had a Canadian court found the law was violated. He called the decision a serious "intrusion" into

				the "public policy of the state" and warned: "Once again, a chill will be imposed on environmental review panels which will be concerned not to give too much weight to socio-economic considerations or other considerations of the human environment in case the result is a claim for damages under NAFTA Chapter 11. In this respect, the decision of the majority will be seen as a remarkable step backwards in environmental protection."[42] Cost submissions were deferred in 2019 because the investor filed a lawsuit in Canada to set aside the award. The tribunal decided to defer the decision on costs until the Canadian court rules on the application to set aside the award.[43]
Georgia Basin February 5, 2008*	N/A	$5 million	Arbitration never began	Georgia Basin is a limited partnership based in Washington State that owns timber lands in British Columbia. It alleged that Canada's export controls on logs harvested from land in British Columbia under federal jurisdiction violated Canada's NAFTA obligations regarding expropriation, minimum standard of treatment, discrimination, most favored nation treatment and performance requirements. A tribunal decided on January 31, 2008 to not allow Georgia Basin to participate in the Merrill and Ring Forestry hearings described above.
Centurion Health July 11, 2008* January 5, 2009**	UNCITRAL	$160 million	Discontinued	A U.S. citizen and his firm, Centurion Health Corporation, challenged aspects of Canada's national healthcare system and "serious inconsistencies" between provinces regarding private-sector provision of health-care service. Howard and his firm sought to take advantage of an "increasing openness" to private involvement in the Canadian healthcare system in order to build a large, private surgical center in British Columbia. He claimed his project was thwarted by discriminatory and "politically motivated" roadblocks. He alleged violations of NAFTA's national treatment and minimum standard of treatment obligations, among others. A tribunal terminated the claim because the investor had not made a deposit to cover the costs of arbitration.
Dow Chemical August 25, 2008* March 31, 2009**	UNCITRAL	$2 million	**Settled**	Dow AgroSciences LLC, a subsidiary of the U.S. Dow Chemical Company, filed a NAFTA Chapter 11 claim for losses it alleged were caused by a Quebec provincial ban on the sale and certain uses of lawn pesticides containing the active ingredient 2,4-D. Quebec and other provinces banned the ingredient as an environmental precaution, and responses to public comments suggested about 90% popular support for the pesticide bans.[44] When Dow filed the NAFTA claim, other provinces were still considering the ban, and there was speculation that the claim was intended to deter them.[45] But after five provinces followed Quebec's lead and banned the pesticide, Dow decided to settle with Canada in a deal that left the bans intact and required no taxpayer compensation to the corporation.[46] However, the settlement required Quebec to state, "products containing 2,4-D do not pose an unacceptable risk to human health or the environment provided that the instructions on their label are

				followed." Dow portrayed the statement as acknowledgement that the contested pesticides were safe.[47] The negotiated settlement involved no form of monetary compensation.
Malbaie River Outfitters Inc. September 10, 2008* December 2, 2010**	N/A	$7.8 million	Withdrawn	U.S. citizen William Jay Greiner owned a business called Malbaie River Outfitters Inc., which provided fishing, hunting and lodging for mostly U.S. clients in the province of Quebec. Greiner claimed that by changing the lottery system for obtaining salmon fishing licenses in 2005, the provincial government of Quebec "severely damaged the investor's business." He also challenged Quebec's decision to revoke his outfitter's license for three rivers, which he contended effectively destroyed his business.
David Bishop October 8, 2008*	N/A	$1 million	Arbitration never began	U.S. citizen David Bishop claimed that his outfitting business, Destinations Saumon Gaspésie Inc., was harmed by Quebec's 2005 changes to the lottery system for obtaining salmon fishing licenses in a manner similar to the Malbaie River Outfitters case above.
Shiell Family October 8, 2008*	N/A	$21.3 million	Arbitration never began	The Shiell family has dual U.S. and Canadian citizenship and owned companies in both nations. They claimed that one of their companies, Brokerwood Products International, was forced into a fraudulent bankruptcy by the Bank of Montreal. The family claimed that it was not protected by the Canadian courts and various Canadian regulators, in violation of Canada's NAFTA investor protection obligations.
Christopher and Nancy Lacich Apr. 2, 2009*	N/A	$1,059	Withdrawn	This case is very similar to the Gottlieb et.al case above. Christopher and Nancy Lacich were U.S.-based investors involved in Canadian energy trusts when the government changed the tax structure of the trusts to counteract a declining tax base. Christopher and Nancy claimed that this taxation rule change constituted expropriation.
Abitibi-Bowater Inc. Apr. 23, 2009* February 25, 2010**	UNCITRAL	$467.5 million	**Settled, Abitibi-Bowater gets $123 million**	Abitibi, a Canadian paper corporation, merged with U.S. firm Bowater to form Abitibi-Bowater. The addition of the U.S. partner established NAFTA ISDS standing to challenge the decision of Canadian province Newfoundland and Labrador to terminate various timber and water rights on government-owned land and seize an abandoned newsprint papermill after Abitibi-Bowater shut the facility in Newfoundland, putting 800 employees out of work. The government of the province argued that by the terms of the concession contract, the "Crown land" water and timber rights were contingent on the firm's continued operation of the paper mill. The government argued that seizure of the plant was the only way to cover costs when Abitibi-Bowater went bankrupt and closed owing workers back wages, with unfunded pension obligations and several significant incomplete and unfunded toxics cleanups outstanding. The provincial government established a process for determining what share of the assets were owed to the company after account for the outstanding expenses. Instead of

				engaging in that process or litigating the legitimacy of the provincial law or contract in Canadian court, Abitibi-Bowater initiated a NAFTA ISDS claim that Newfoundland's action constituted expropriation under NAFTA. In August 2010, the conservative Harper government in Canada announced that it would pay Abitibi-Bowater $123 million to settle the case. This caused considerable public ire, as effectively the government was offering compensation for a private firm's claims over government-owned land's timber and water resources after the firm defaulted on its obligations under the concession.
Detroit International Bridge Company January 25, 2010* April 29, 2011**	UNCITRAL	$3.5 billion	Dismissed	Detroit International Bridge Company, a U.S.-based corporation, challenged a Canadian law on safety and security measures for international bridges. In February 2007, Canada enacted the International Bridges and Tunnels Act, which gave the government the power to mandate safety and security measures at international bridges, require approval before the transfer of ownership of international bridges or substantial structural changes to the bridge and regulate toll fees, among other reforms. The Detroit International Bridge Company claimed that this law constituted expropriation of its investment (the Ambassador Bridge) and violated its NAFTA-protected right to a minimum standard of treatment. Protesting the government's plans to build a second bridge to absorb increased traffic flow (rather than expand the company's own bridge), the company alleged that it had an "exclusive" right, enforceable under NAFTA, to operate a bridge across the Detroit River.[48] In an April 2015 decision, the tribunal majority dismissed the case on procedural grounds before examining the merits of the company's arguments. The tribunal majority determined that it lacked jurisdiction over the claim since the company had a simultaneous case against Canada in a U.S. court that concerned the same bridge-related conflicts. NAFTA does not allow a foreign investor to pursue damages claims in a domestic court *at the same time* as an ISDS claim against the same government policy. However, it does permit foreign investors to launch cases against government policies in domestic courts, lose there and then re-litigate the same claims before ISDS tribunals. Detroit International Bridge Company was ordered to pay 2/3 of Canada's reasonable legal costs, which were CAD $1,340,247.72, and all of the arbitration costs, which totaled USD $300,672.[49]
John R. Andre March 19, 2010*	N/A	$8.3 million	Arbitration never began	Andre, a Montana investor who operated a caribou hunting lodge in Canada's Northwest Territories, complained that the territorial government expropriated his investment through its caribou conservation measures. He claimed that cuts in the number of caribou-hunting licenses resulted in a regulatory taking, and that the closure of the area to hunting by the

				provincial government was a full expropriation, driven by animus toward U.S. businesspersons.
St. Mary's VCNA, LLC May 13, 2011*	N/A	$275 million	**Settled, St. Mary's gets $12 million**	A Brazilian company with a U.S. subsidiary that in turn owns a Canadian company sought to engage in rock quarrying activities in Canada. The investor complained that various sub-federal government actions slowed the permitting process, resulting in a "substantial deprivation of its interest in the Quarry Site." Though the company's claim to be able to access NAFTA as a U.S.-based company was under dispute (given an apparent lack of substantial business activities in the U.S.), Canadian officials announced in 2013 that the government would settle with the company, paying it $12 million.[50]
Mesa Power Group July 6, 2011* October 4, 2011**	N/A	$738.6 million	Dismissed	Mesa Power Group, a U.S.-based corporation owned by Texas oil magnate T. Boone Pickens, challenged a green jobs program of the government of Ontario. The provincial government's green jobs program incentivizes clean energy production by paying preferential rates to solar and wind power generators that source their equipment locally. In its first two years, the program created 20,000 jobs, attracted $27 billion in private investment, and contracted 4,600 megawatts of renewable energy.[51] Mesa Power Group claimed that the successful program had prohibitive rules, taking particular issue with the buy local stipulations. The corporation alleged that such requirements violate its NAFTA-enshrined rights to most favored nation treatment, national treatment and fair and equitable treatment.[52] In a March 2016 decision, the tribunal majority ruled that Canada had not breached its NAFTA obligations. First, it determined that Canada's program was considered procurement and therefore not subject to most favored nation treatment or national treatment, and that Canada had not violated fair and equitable treatment. Despite dismissing all claims, the majority ruled that Mesa Group had to reimburse Canada for just 30% of its legal costs.[53] In July 2017, the U.S. District Court for the District of Columbia dismissed Mesa's petition to set-aside the tribunal award but did not require the company to reimburse Canada's additional legal fees.[54]
Mercer January 26, 2012* April 30, 2012**	ICSID	$231.6 million	Dismissed	Mercer International, a U.S.-based wood pulp company, challenged Canadian energy sector regulations.[55] At issue was the treatment that Mercer's subsidiary, the Celgar Pulp Mill, received from the provincial government of British Columbia and BC Hydro, a public provincial power company. Mercer alleged that the public entities unfairly discriminated against Celgar by offering lower input electricity rates to its British Columbia-based competitors. Celgar, like other mills, both purchases and generates electricity. Mercer claimed that while domestic mills were permitted to sell more of their electricity to BC Hydro at high rates and buy at low rates, BC Hydro purchased comparatively less energy from

				Celgar. The company alleged violations of national treatment, most favored nation treatment and the minimum standard of treatment.[56] The tribunal determined that it did not have jurisdiction over the energy purchasing agreement between Celgar and BC Hydro because it involved "government procurement" and thus under NAFTA Article 1108 was excluded from national treatment and most favored nation rules.[57] With respect to the sale of energy to Celgar, the tribunal found that public utilities consistently applied the same methodology among different mills, so the discrimination claims had no merit.[58] The minimum standard of treatment claim was dismissed given that NAFTA Articles 1116 and 1117 establish that investors may not make claims three years after the moment they acquired knowledge of the alleged breach. Since a minimum standard of treatment breach does not require a comparison with the treatment granted to others – it is non-contingent – Celgar could have alleged that the treatment granted by BC Hydro was in breach of NAFTA obligations since the energy purchasing agreement was signed and it did not do so. Each party was ordered to pay an equal share of the arbitration cost, USD $381,499.46 each. In addition to paying their own legal costs of USD $11,483,376.64 and CAD $1,254,961, Mercer was ordered to pay Canada CAD $9,000,000 of the CAD $9,154,166.56 that made up their legal costs.[59]
Windstream Energy, LLC October 15, 2012* November 5, 2013**	UNCITRAL	$522.1 million	**Windstream win, $19.1 million**	Windstream Energy, a U.S.-based energy corporation, challenged Canada over the company's inability to participate in Ontario's green energy program – the same program targeted by Mesa Power Group (above). The corporation had contracted with Ontario's provincial government to provide energy generated by an offshore wind farm located in Lake Ontario. But in February 2011, the provincial government declared a moratorium on offshore wind production, stating that time was needed to study the environmental impacts of the relatively new energy source (currently there are only a few freshwater offshore wind farms in the world). Windstream's notice alleged that the moratorium "effectively annulled the existing regulatory framework" and thus contravened Canada's NAFTA obligations concerning fair and equitable treatment, expropriation, and discrimination. In September 2016, the NAFTA tribunal ruled that Canada had violated Windstream's right to fair and equitable treatment even though it found that the moratorium seemed genuine, and so ordered Canada to pay $19.1 million. For more information, see: https://citizen.typepad.com/eyesontrade/2012/12/us-corporations-launch-wave-of-nafta-attacks-on-canadas-energy-fracking-and-medicines-policies.html

Eli Lilly and Company November 7, 2012* (for Strattera) June 13, 2013* (amended to include Zyprexa) September 12, 2013**	UNCITRAL	$483.4 million	Dismissed	Indiana-based Eli Lilly, the major global pharmaceutical corporation, challenged Canada's patent standards after Canadian courts invalidated the company's patents for Strattera and Zyprexa. (These drugs are used to treat attention deficit hyperactivity disorder (ADHD), schizophrenia and bipolar disorder.) Canadian federal courts applied Canada's promise utility doctrine to rule that Eli Lilly had failed to demonstrate or soundly predict that the drugs would provide the benefits that the company promised when applying for the patents' monopoly protection rights. The resulting patent invalidations paved the way to producing less expensive, generic versions of the drugs. Eli Lilly's notice argued that Canada's entire legal basis for determining a patent's validity – that a pharmaceutical corporation should be required to verify its promises of a drug's utility in order to obtain a patent – is "arbitrary, unfair, unjust and discriminatory." The company alleged that Canada's legal standard violated the NAFTA guarantee of a minimum standard of treatment for foreign investors and resulted in a NAFTA-prohibited expropriation. On March 16, 2017, after years of high-profile campaigning from access-to-medicines advocates, the tribunal dismissed the claim. However, the grounds on which it based its dismissal allowed the tribunal to refrain from commenting on many of the substantive issues raised in the case, meaning it avoided ruling on the merits of using the specific ISDS claims alleged in this case to attack a country's patent regime. Instead, the tribunal focused on procedural matters unique to this filing. Namely, the tribunal noted that under NAFTA, cases must be filed within three years of an alleged "government action" that an investor claims violated its NAFTA rights. Thus, the "alleged breach" in this case was not the previous change in Canadian patent law itself, but the Canadian courts' enforcement of the law that resulted in Eli Lilly's patents being invalidated. The tribunal then concluded that such court enforcement did not constitute a "dramatic change" of the law. This fancy legal footwork allowed the tribunal to avoid having to weigh in on whether Canada's patent law violated its intellectual property obligations and whether that would have constituted a violation of the NAFTA-guaranteed minimum standard of treatment for investors or also whether the law change would constitute an expropriation of Eli Lilly's investment. The tribunal ordered Eli Lilly to bear the USD $750,000 cost of the arbitration (the hourly fees of the three tribunalists, venue, travel costs, etc.) as well as 75% of Canada's legal fees. This means that this case that it "won" will cost Canada USD $1.2 million in tax dollars to pay its lawyers as well as the opportunity costs of those lawyers not being able to do other work for almost four years.[60] For more information, see:

				https://www.citizen.org/article/isds-case-study-eli-lilly-pharmaceutical-corporation-uses-nafta-foreign-investor-privileges-regime-to-attack-canadas-patent-policy-demand-100-million-for-invalidation-of-a-patent/
Lone Pine Resources Inc. November 8, 2012* September 6, 2013**	UNCITRAL	$118.9 million	Pending	Lone Pine Resources, a U.S.-based corporation, challenged Quebec's decision revoking exploration licenses located in the St. Lawrence River. The provincial government declared a moratorium on the controversial practice of hydraulic fracturing, or fracking, for natural gas in 2011 so as to conduct an environmental impact assessment of the extraction method widely accused of leaching chemicals and gases into groundwater and the air. Lone Pine Resources, a Delaware-headquartered gas and oil exploration and production company, signed a farmout agreement with a Canadian company, Junex Inc., over five contiguous exploration licenses around the St. Lawrence River, one of them, directly beneath the river. This last license was revoked after the 2011 enactment of the Quebec law revoking exploration licenses located in the St. Lawrence River and limits the area of those that cross the water's edge to their land portion. The act was passed in response to the findings of a strategic environmental study, which concluded that the St. Lawrence River area is not conducive to hydrocarbon development activities. In addition to that study, since February 2011, reports from Quebec's Bureau d'audiences publiques sur l'environnement ("BAPE") identified the existence of risks to the biophysical and human environment tied to shale gas development activities involving hydraulic fracturing.[61] Lone Pine argued that Quebec's determination violated NAFTA's minimum standard of treatment since it was arbitrary, capricious and illegal. And, since the revocation of the licenses did not involve any form of compensation and it allegedly did not have a cognizable public purpose, it breached NAFTA's expropriation rules.[62] Canada maintains that the measure does not affect the claimant since it does not hold the license, but rather Canadian firm Junex does. Furthermore, Canada argues that the act is a legitimate public interest measure that applies indiscriminately to all holders of exploration licenses in the area and was enacted through an open process by a democratic institution and was supported by numerous studies supporting the measure to protect the St. Lawrence River. Thus, Canada argues, the Provincial decision can neither be considered an arbitrary, unfair or inequitable measure nor an expropriation.[63] The United States, Mexico and several non-governmental organizations have submitted documents supporting Canada's case.[64] A final judgement is pending.

				For more information, see: https://citizen.typepad.com/eyesontrade/2012/12/us-corporations-launch-wave-of-nafta-attacks-on-canadas-energy-fracking-and-medicines-policies.html
JML Heirs LLC and J.M. Longyear LLC February 14, 2014*	N/A	$12 million	Withdrawn	U.S. investors who owned a logging company in Canada notified Canada that they intend to launch a NAFTA case against the government for not extending to their company an Ontario tax break reserved for Canadian firms that practice sustainable harvesting. The U.S. investors argued that their exclusion from the tax break is not because they are logging unsustainably, but because their company does not meet the criteria under Ontario's law that more than half of the shareholders must be Canadian to qualify for the tax break. The investors alleged that this condition violated the national treatment and minimum standard of treatment protections that NAFTA provided their company. In June 2015, the investors withdrew their claim.
Mobil Investments Canada, Inc. October 16, 2014* January 16, 2015**	ICSID	$18.1 million	**Settled, ExxonMobil gets $35 CAD million ($ 26 million USD)**	U.S. oil corporation ExxonMobil's subsidiary Mobil Investments Canada, Inc. ("Mobil") launched another NAFTA challenge against the Canada-Newfoundland and Labrador Offshore Petroleum Board's Guidelines for Research and Development Expenditures, which require oil extraction firms to commit a small percentage of their earnings to support R&D on environmental safeguards for offshore extraction and alternative energy. Even though Canada had explicitly negotiated an exception from NAFTA for the policies of this provincial board, two of three tribunalists awarded the corporations $13 million in ruling against Canada in an earlier NAFTA case that Mobil and Murphy Oil launched against the same policy (see above). The tribunal majority in that case also decided that the corporations could continue bringing cases against Canada for the province's continued requirement that firms with offshore oil and gas concessions must support R&D. With this case, Mobil took advantage of the allowance to demand ongoing compensation. The fact pattern in this case is largely the same as that of the 2007 Mobil/Murphy Oil case.[65] In February 2020, the parties settled their dispute,[66] with Canada agreeing to cap the R&D investment requirement. The settlement does not clarify whether this undertaking applies only to ExxonMobil or to other oil and gas firms as well. The settlement explicitly grants ExxonMobil a CAD $35 million credit to apply against the corporation's future R&D obligations.[67]
Bahige Bassem Chaaban, Jeffrey Thomas, Mohahud Saddedin and Cen Biotech Inc	N/A	$4.8 billion	Arbitration never began	Cen Biotech, a Canadian-based company, was unable to build a facility to cultivate and grow medical marijuana because it failed to obtain production and sale licenses from Health Canada[68] – a federal department tasked with improving the health of Canadians. Since early 2013, Cen Biotech's parent company Creative Energy informed investors that it would soon obtain a license to build a facility that would earn $5 billion in revenue, which led to a significant uptick in the company's stock value. Once it emerged that Health Canada actually

August 30, 2015*				refused to provide the license, the company's stock quickly reversed and dropped substantially.[69] Cen Biotech asserted that Health Canada did not properly assess its license request and was seeking $4.8 billion in compensation. The company claimed violations of international law standards of treatment, national treatment and most favored nation treatment.[70] NAFTA's three-year time-bar provision would prevent claimants to pursue ISDS arbitration based on these facts, thus it is safe to assume that the arbitration never began.
Resolute Forest Products September 30, 2015* December 30, 2015**	UNCITRAL	$70 million	Pending	Resolute Forest Products ("RFP"), a Montreal-based forest products company incorporated in Delaware, claimed that it had to shut down a paper mill in Quebec due to the rise of a competing paper mill in Nova Scotia that had received a provincial funding package to restart operations in 2012.[71] RFP has asserted that a decline in demand for specialty paper combined with increased competition was responsible for its declining revenues. However, RFP also admitted that there were other reasons for closing including that the price of fiber — an important input in paper — was abnormally high in Quebec and their mill was 126 years old.[72] The Canadian government argued that RFP's claim was a spurious attempt to pin financial liability on the federal government of Canada and the provincial government of Nova Scotia for RFP's own strategic business decisions.[73] RFP has a history of using ISDS. In 2010, the company – then known as Abitibi-Bowater – filed a request for arbitration in response to what it asserted was an expropriation by the provincial government of Newfoundland and Labrador.[74] The government of Canada paid Abitibi-Bowater $122 million to settle the case. Canadian press reports suggest that RFP is using the ISDS claim to raise its profile among struggling Quebec-based companies seeking financial assistance from a federal government now led by a Prime Minister from Quebec.[75]
Tennant Energy March 2, 2017* June 1, 2017**	UNCITRAL	$86.1 million	Pending	Tennant Energy LLC ("Tennant"), a U.S. investor that sought to establish a windfarm electricity project, challenged Ontario's 2009 Feed-In Tariff Program initiative. The Ontario Feed-In Tariffs Program provided terms for payment from electricity distributors to both larger-scale generators of renewable solar, wind or other forms of energy and to customers for the renewable electricity they generate from home solar panels. The Ontario program was designed to encourage investment in and the greater use of renewable energy sources.[76] Tennant Energy claimed that the program was non-transparent, that the company was treated unfairly, and thus NAFTA's minimum standard of treatment was violated[77]. Tennant is seeking $86.1 million from Canada.[78]

				The government of Canada argues that Tennant's claim is time-barred because all the actions at issue took place more than three years prior to the submission of the notice of arbitration.[79]
Westmoreland Mining LLC August 20, 2018* November 19, 2018** Resubmitted: May 13, 2019* August 12, 2019**	UNCITRAL	CAD $470 million (USD $357.3 million)	Pending	Westmoreland Mining LLC ("Westmoreland"), a U.S. coal mining corporation, bought five coal mines in the province of Alberta in 2003. It claims that implementation of Alberta's Climate Leadership Plan, which phases out all coal-fired power plants by 2030, discriminates against the firm in violation of NAFTA's investor protections. Westmoreland claims that comparable Albertan companies received compensation for damages caused by the coal phase-out, while Westmoreland received no such funds and should be compensated as well.[80] (Alberta agreed to provide "transition payments" of nearly $1.4 billion to three power generation companies, TransAlta, Capital Power and ATCO, which own six coal-fired electricity plants.) In addition, it claims a violation of the guaranteed minimum standard of treatment because Alberta's decision to pay compensation to the three power generation companies and not to Westmoreland is arbitrary and unfair given that the latter depends entirely on having the electricity utilities as its consumers. Moreover, it claims that the new energy policy framework deprives Westmoreland of the reasonable expectations of its investments in Canada, which were made based on Canadian federal regulations. It claims the discrimination, change in policy framework and early closure of its mine, set for 2030, will reduce the firm's future revenue by around CAD $441 million.[81] With respect to the discrimination claim, Canada counters that the coal-fired power plants that received compensation to facilitate a switch to gas and renewable energy are fundamentally unlike a coal mining company, thus there is no there is no discrimination. Canada also underscores that NAFTA's national treatment provision does not apply to subsidies and argues that the "transition payments" are subsidies to support power plants' transition away from coal. Finally, with respect to the minimum standard of treatment claim, Canada argues that Westmoreland could not have expected that Canadian federal regulations would provide "a predictable future," as an informed investor would have known that the province of Alberta was contemplating further emissions regulations.[82]
Jonathan Levy February 16, 2019*	N/A	$2 million	Notice of intent filed	A U.S. investor and attorney, Jonathan Levy, claims the Alberta Securities Commission (ASC) ignored his rights as a cross-border legal service provider and treated him as a layperson to allegedly circumvent the attorney–client privilege in the context of a case involving one of his clients, Kilimanjaro Capital Limited, which the ASC was prosecuting.[83] Kilimanjaro Capitol was accused of market manipulation, but Levy claimed that the ASC's investigation into his client equated to harassment and was "vexatious."[84] The notice of intent is not available, but it appears that Levy also challenged the Canadian government for discriminatory treatment by the Alberta Court of Appeals, which stayed a petition before it at the request of the ASC.

				Levy is invoking various NAFTA provisions, including minimum standard of treatment. Additional information regarding the claimant's arguments is not currently public.
Theodore Einarsson, Harold Einarsson, and Russel Einarsson October 10, 2018* April 18, 2019**	UNCITRAL	$2.529 billion	Pending	U.S. citizens Theodore Einarsson, Harold Einarsson and Russel Einarsson are investors in Geophysical Service Incorporated (GSI), a company incorporated in Canada. They launched an ISDS case against Canada alleging that the Canadian government confiscated and effectively destroyed marine seismic data, which was proprietary information of GSI. According to the claimants, for decades GSI created, licensed, stored and processed seismic data mainly for offshore oil and gas extraction. GSI is statutorily required to submit to the Canadian government this data and has done so over time. The claimants allege that the government has been disclosing this data to third parties without their consent and more recently, not even keeping a record regarding the disclosure and trying to conceal it. GSI challenged this practice before Canadian courts, which sided with the government and determined that seismic data is transferable and disclosable after the expiration of a "privilege" period, which has a minimum of five years. Claimants assert that this interpretation is contrary to copyright and trade secrets protections under Canadian and international law. Additionally, they maintain that Canada's disclosure of seismic data has triggered lack of compliance by the companies to whom GSI licenses the data, which obstructs its ability to collect significant revenues. The claimants argue that Canada has violated its NAFTA obligations with respect to the minimum standard of treatment, the ban on performance requirements and expropriation.[85] Canada has not yet presented its defense.
Koch Industries, Inc. and Koch Supply & Trading, LP December 17, 2020**	ICSID	$30 million	Pending	Koch Industries and Koch Supply & Trading, part of the Koch Brothers' U.S.-based conglomerate, initiated ISDS arbitration against Canada under NAFTA using Annex 14-C of the revised NAFTA. The revised deal, which entered into force on July 1, 2020, eliminated ISDS between Canada and the United States. However, Annex 14-C allows for submission of claims between the two parties under the old NAFTA investment rules with respect to a "legacy investment" until July 1, 2023. Koch Supply & Trading purchased $30 million worth of emission allowances under Ontario's 2016 cap-and-trade emissions program. The system established an annual limit on overall emissions, distributing and selling allowances and allowing for the trade of these allowances. After a change of government in Ontario, the system was revoked in 2018 under an act that provided no compensation to market participants. The claimants launched the NAFTA case arguing that the reversal of the cap-and-trade system and the lack of compensation for market participants with ownership of emission allowances amounted to an unlawful expropriation and violated NAFTA's minimum standard of treatment.[86]

				ICSID registered this claim in December 2020. Canada is expected to unveil its defense during 2021.

NAFTA Cases & Claims Against Mexico

Amtrade International April 21, 1995*	N/A	$20 million	Arbitration never began	Amtrade International, a U.S. company, claimed it was discriminated against by a Mexican government-owned oil firm (Petroleos Mexicanos) while attempting to bid for pieces of the firm's property. The U.S. corporation accused Petroleos Mexicanos of violating a pre-existing settlement agreement by failing to auction government-owned items. Amtrade argued that this inaction amounted to a violation of numerous NAFTA provisions, including restrictions on the powers of government monopolies and state enterprises. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Halchette August 1995*	N/A	N/A	Arbitration never began	No documents regarding this case were made public. Halchette Distribution Services seems to have submitted a notice of intent to the Mexican government regarding an airport concessions dispute. The dispute was apparently settled.[87]
Metalclad December 30, 1996* January 2, 1997**	ICSID Additional Facility	$90 million	**Metalclad win, $16.2 million** ($15.6 million + $0.6 million interest)	Metalclad, a U.S. waste management corporation, challenged the decision of Guadalcazar, a Mexican municipality, not to grant a construction permit for a toxic waste facility unless the firm cleaned up existing toxic waste problems. The permit had been denied and conditions set for the Mexican firm from which Metalclad acquired the facility. Metalclad argued that the continuing decision to deny a permit to a U.S. investor with NAFTA rights violated NAFTA's ban on expropriation without compensation and NAFTA's guaranteed minimum standard of treatment for foreign investors. The tribunal ruled that denial of the permit constituted an "indirect" expropriation and that the process leading up to the decision violated NAFTA's minimum standard of treatment because the firm was not granted a "clear and predictable" regulatory environment. A factor the tribunal relied on was that Mexican federal officials encouraged the firm to invest and advised that obtaining the local permit would not be a problem, despite the previous Mexican operator of the facility having been denied the same permissions. The tribunal effectively imposed an obligation on Mexico that is not found in NAFTA: to ensure that all officials at all levels provided the same advice to foreign investors. The tribunal also defined expropriation in extremely broad terms, imposing its assumptions about what an investor's

				reasonable expectations of gain would be, and then concluded that regulation that interfered with the investor's intended use and thus undermined the expected benefit was an indirect expropriation. When the Mexican government challenged the NAFTA ruling in Canadian court, alleging arbitral error, a Canadian judge ruled that the tribunal erred in part by importing transparency requirements from NAFTA Chapter 18 into NAFTA Chapter 11 and reduced the award by $1 million. The Mexican federal government's effort to make the state and local governments pay the $16.2 million failed in the Mexican Supreme Court. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Azinian, et al. December 10, 1996* March 10, 1997**	ICSID Additional Facility	$19.2 million	Dismissed	Investors purportedly representing a U.S. firm challenged a Mexican federal court decision revoking a waste management contract for a suburb of Mexico City. The decision came after the court found 27 irregularities in the multimillion-dollar contract. It was later revealed that the investors had lied about their business experience (e.g., claiming 40 years when they had just over one year, which ended in bankruptcy) and were in no position to deliver on the promises they made in the contract. The investors launched their NAFTA claim with the argument that the contract cancellation violated their right to fair and equitable treatment. A tribunal ruled that the firm had made fraudulent misrepresentations regarding the contract and dismissed their claims of expropriation and unfair treatment. In an uncharacteristic move, the tribunal stated that the NAFTA dispute settlement system should not be seen as a place to litigate any governmental contract breach, or as a court of appeal for any disliked domestic court ruling. Just the same, the tribunal required Mexico to pay half of the tribunal's expenses as well as its own legal fees. For more information, see: https://www.citizen.org/wp-content/uploads/acf186.pdf
Feldman Karpa February 16, 1998* Apr. 7, 1999**	ICSID Additional Facility	$30.3 million	**Feldman Karpa win, $1.7 million** ($0.7 million + $1 million interest)	Feldman, the owner of a U.S. cigarette exporter, challenged the Mexican government's decision to deny the firm an export tax rebate. Feldman called this a "creeping expropriation" and claimed that Mexico had failed to give the same treatment it gave to Mexican investors in like circumstances. The tribunal rejected the expropriation claim but upheld a claim of discrimination after the Mexican government did not provide evidence that the firm was being treated similarly to Mexican firms in "like circumstances." Mexico, citing the need to protect confidential business information, had not provided evidence on the national treatment claim.

				The tribunal ordered each party to pay its own legal fees and expenses and split the ICSID arbitration cost equally.[88] For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Waste Management I June 30, 1998* September 29, 1998** Resubmitted: September 18, 2000**	ICSID Additional Facility	$36 million	Dismissed	Waste Management, a U.S. waste disposal giant, challenged the Mexican City of Acapulco, alleging that the city failed to honor a contract with the company for the provision of waste services. The corporation accused the city of failing to make contractual payments, while accusing Mexico's courts, public banks, and central government of violating the company's NAFTA-protected right to a minimum standard of treatment. A tribunal dismissed the claim, finding that the investor's business plan was based on unsustainable assumptions and that none of the government bodies named in the complaint failed to accord the minimum standard of treatment, nor did the city's actions amount to an expropriation. Further, the tribunal stated that NAFTA was not intended to place the onus on government entities to assume all risks in business deals or to compensate for business failures. Nonetheless, Mexico was required to pay half of the tribunal's expenses as well as its own legal fees. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Scott Ashton Blair May 21, 1999*	N/A	N/A	Arbitration never began	Scott Ashton Blair, a U.S. citizen who had purchased land in Mexico to build a residence and restaurant, claimed he was victimized by Mexican government officials because he was a U.S. citizen. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Fireman's Fund November 15, 1999* January 15, 2002**	ICSID Additional Facility	$50 million	Dismissed	Fireman's Fund, a U.S. insurance corporation, alleged that Mexico's handling of financial crises discriminated against foreign investors. The U.S. corporation claimed that when financial difficulties, such as the 1997-peso crisis, struck, Mexican officials bailed out domestic investors, but not foreign investors like Fireman's Fund. In 2003 during the jurisdictional phase, a tribunal dismissed most claims, including claims of discrimination, but allowed an expropriation claim to proceed. In 2007 the tribunal ruled on the merits that, although there is a "clear case of discriminatory treatment," the only question before them was the question of expropriation and that the actions of the Mexican government did not rise to the level of expropriation.

				The tribunal decided that each party would pay its own legal costs and split the arbitration costs.[89] For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Adams, et al. November 10, 2000* April 9, 2002**	N/A	$75 million	Arbitration never began	A group of U.S. citizens who claimed to own properties in Mexico challenged a Mexican federal court ruling that the developer who sold them the properties had not owned the land and thus could not legally sell it. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Lomas Santa Fe August 28, 2001*	N/A	$210 million	Arbitration never began	Lomas Santa Fe, a U.S.-based real estate development company, challenged the Mexican government's refusal to allow commercial development on property that the company owned in Mexico. The company claimed discriminatory treatment and also alleged that the government later expropriated the land. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
GAMI Investments October 1, 2001* April 9, 2002**	UNCITRAL	$27.8 million	Dismissed	U.S. minority shareholder investors in a Mexican sugar company (GAMI) challenged a government policy to support sugar farmers' income and alleged inadequate enforcement of policies to support the profitability of GAMI. The Mexican government required sugar mills (such as those owned by GAMI) to pay a fixed amount to Mexican sugar farmers, who faced downward income pressure due to a NAFTA-enabled influx of U.S. highly subsidized high fructose corn syrup. In addition to challenging this policy, the U.S. investors, with a 14% stake in GAMI, alleged that the Mexican government insufficiently and discriminatorily enforced policies to support sugar companies. The investors also challenged Mexico's expropriation of several of GAMI's debt-ridden sugar mills, while GAMI itself challenged the expropriations in a court case in Mexico. A NAFTA tribunal allowed the U.S. investors' claim to proceed even though they were a minority shareholder, and even though there was no allegation that the Mexican government had directly interfered with their shares (only that government regulations had indirectly affected the value of those shares). The tribunal also allowed the claim to proceed even though GAMI sought resolution via domestic courts and NAFTA prohibits claims from being simultaneously pursued in domestic courts and under NAFTA's investor-state regime.

				The tribunal ultimately dismissed all claims, ruling the discrimination allegations to be without validity and throwing out the expropriation claim after a ruling in GAMI's domestic case reversed the challenged expropriations. Each party was ordered to pay its own costs and split the tribunal's arbitration costs equally. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Francis Kenneth Haas December 12, 2001*	N/A	$17 million	Arbitration never began	Haas, a U.S. citizen, claimed he was cheated out of his investment in a business he had co-owned with Mexican business partners, and that the state of Chihuahua, via alleged incompetence and procedural irregularities, violated its NAFTA obligation to ensure fair and equitable treatment. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Calmark January 11, 2002*	N/A	$0.4 million	Arbitration never began	Calmark, a U.S. company, challenged Mexican domestic courts for allegedly failing to assist the company in recouping compensation in a business deal that went awry. Calmark claimed that its business partners cheated the company out of a property in Mexico, and that its own lawyer then betrayed the company by settling the resulting domestic case in a way that left Calmark without compensation. Calmark alleged that the Mexican judiciary violated NAFTA by not assisting the company in securing the money it was owed. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Robert J. Frank February 12, 2002* August 5, 2002**	UNCITRAL	$1.5 million	Arbitration never began	Frank, a U.S. citizen, challenged government confiscation of property alleged to be his in Baja California, Mexico. His claim made no mention of an attempt to first pursue the case in the Mexican legal system. For more information, see: https://www.citizen.org/wp-content/uploads/chapter-11-report-final.pdf
Thunderbird Gaming March 21, 2002* August 1, 2002**	UNCITRAL	$100 million	Dismissed	Thunderbird Gaming, a Canadian company operating video gaming facilities in three Mexican cities, challenged the government's closure of the facilities. Gambling has been illegal in Mexico since 1947, banned for its connection to crime and poverty. Thunderbird had installed what it called "skill machines" that were hard to distinguish from slot machines. It gained government authorization on the condition that the machines were truly based on skill and were not a form of gambling. In a later inspection of the facilities, government authorities determined that the games were not based on skill, that they constituted illegal gambling, and that they had to be shut down. Thunderbird claimed violations of national treatment and fair and equitable treatment.

				A tribunal dismissed all claims, ruling that the company had failed to demonstrate that it was treated in a discriminatory or unfair manner. The cost of arbitration totaled $505,252 and was split on a 3/4-1/4 basis, with Thunderbird paying 3/4 of the cost and Mexico paying 1/4 of the cost. The tribunal also determined that Thunderbird should pay Mexico $1.1 million for their legal costs and an additional $126,313.02 to reimburse Mexico for a deposit made to the tribunal.[90] For more information, see: https://www.citizen.org/wp-content/uploads/chapter-11-report-final.pdf
Corn Products International January 28, 2003* October 21, 2003**	ICSID Additional Facility	$325 million	**Corn Products win, $58.4 million**	Corn Products International (CPI), a U.S. agribusiness producing high fructose corn syrup (HFCS) – a derived sweetener linked to obesity – challenged a government tax levied on beverages sweetened with HFCS (i.e., soft drinks) but not those sweetened with cane sugar. Mexico argued that the tax, which impeded U.S. exports of HFCS to Mexico, was legitimate as a counter to the U.S. refusal to open its market to Mexican cane sugar as stipulated by NAFTA. The tax also helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of U.S.-subsidized HFCS that threatened those jobs. CPI asserted that Mexico's HFCS tax violated its NAFTA obligation to provide foreign investors with national treatment. A tribunal ruled that Mexico's HFCS tax violated the national treatment rule by "fail[ing] to accord CPI, and its investment, treatment no less favorable than that it accorded to its own investors in like circumstances, namely the Mexican sugar producers who were competing for the market in sweeteners for soft drinks." It rejected Mexico's defense that the tax was a countermeasure to a U.S. NAFTA breach by ruling that countermeasure defenses, while allowed by international law in state-to-state cases, are not applicable in investor-state cases under the same treaties. The costs for each party were not made public. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
ADM/Tate & Lyle October 14, 2003*	ICSID Additional Facility	$100 million	**ADM win, $37 million** ($33.5 million + $3.5 million interest)	Archer Daniels Midland (ADM), one of the largest U.S. agribusiness corporations and a producer of high fructose corn syrup (HFCS), and AE Staley, a U.S. subsidiary wholly owned by the British corporation Tate & Lyle, challenged the same Mexican tax on HCFS described in the Corn Products International (CPI) case above. The tax was levied on beverages sweetened with HFCS, but not those sweetened with cane sugar. As in the CPI case, Mexico argued that the tax, which impeded U.S. exports of HFCS to Mexico, was legitimate as a counter to the U.S. refusal to open its market to Mexican cane sugar as stipulated by NAFTA.

August 4, 2004**				The tax also helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of U.S.-subsidized HFCS that threatened those jobs. ADM and AE Staley asserted that Mexico's HFCS tax violated its NAFTA obligation to provide foreign investors with national treatment and constituted a NAFTA-illegal performance requirement and an expropriation. A tribunal ruled that Mexico's HFSC tax violated NAFTA's national treatment and performance requirement rules (but did not find it was an expropriation). It decided that Mexican sugar producers and U.S. and British HFSC producers were "in like circumstances" and that the HFSC-only tax thus discriminated against the foreign HFCS producers, even though it also applied to Mexican HFCS producers. The tribunal further declared that the tax amounted to a NAFTA-banned performance requirement. Each party was ordered to bear its own costs and those of the tribunal equally. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Bayview Irrigation August 27, 2004* January 19, 2005**	ICSID Additional Facility	$667 million	Dismissed	A group of 17 U.S. irrigation districts claimed that Mexico diverted water from the Rio Grande, which forms the U.S.-Mexico border, to help irrigate Mexican farmland at the cost of U.S. farms, in violation of a 1944 U.S.-Mexico water-sharing treaty. Water shortage is a major concern both the southwestern United States and in Mexico, where many consider the enduring shortage to be a national security issue. A tribunal dismissed the case on procedural grounds, determining that the claimants, who were in the United States, and whose "investment" was in the United States, did not qualify as "foreign investors" in Mexico. Even so, the tribunal required Mexico to pay half of the tribunal's costs as well as its own legal fees. For more information, see: https://www.citizen.org/wp-content/uploads/naftareport_final.pdf
Cargill September 30, 2004* December 29, 2004**	ICSID Additional Facility	$123.8 million	**Cargill win, $90.7 million** ($77.3 million + $13.4 million interest)	Cargill, the largest privately held corporation in the United States and a producer of high fructose corn syrup (HFCS), challenged the same Mexican tax on HCFS described in the Corn Products International (CPI) and Archer Daniels Midland (ADM) cases above. The tax was levied on beverages sweetened with HFCS, but not those sweetened with cane sugar. As in the CPI and ADM cases, Mexico argued that the tax, which impeded U.S. exports of HFCS to Mexico, was legitimate as a counter to the U.S. refusal to open its market to Mexican cane sugar as stipulated by NAFTA. The tax also helped safeguard the Mexican cane sugar industry, consisting of hundreds of thousands of jobs, from the post-NAFTA influx of U.S.-subsidized HFCS that threatened those jobs. Cargill asserted that Mexico's HFCS tax violated

				NAFTA's obligations concerning national treatment, most favored nation treatment, expropriation, fair and equitable treatment and performance standards. A tribunal ruled in favor of Cargill, awarding $77.3 million, the largest award to date in an investor-state dispute brought under a U.S. FTA. In addition, the tribunal ordered Mexico to pay for the tribunal's costs and half of Cargill's own legal fees. The tribunal decided that U.S. agribusiness giant Cargill and Mexican sugar producers were "in like circumstances" and that the HFSC-only tax thus discriminated against Cargill, even though it also applied to Mexican HFCS producers. The tribunal further declared that the tax amounted to a NAFTA-banned performance requirement and a violation of Cargill's right to fair and equitable treatment. For more information, see: https://citizen.typepad.com/eyesontrade/2011/03/cola-wars-beat-drug-wars.html
Internacional Visión (INVISA), et al. February 15, 2011*	N/A	$9.7 million	Arbitration never began	A group of U.S. investors challenged a Mexican government decision not to grant an extension of a ten-year agreement that had allowed them to place billboards on Mexican federal land near a U.S.-Mexico border crossing. The investors argue that the decision to not continue renting out federal land, in addition to the resulting removal of the billboards, constituted an expropriation and violated their NAFTA-enshrined rights to national treatment and fair and equitable treatment.
KBR, Inc. February 19, 2013* August 30, 2013**	UNCITRAL	$110 million	**Settled, KBR gets $435 million**	KBR, a large U.S. defense and energy contractor, challenged Mexican court rulings that annulled a commercial arbitration ruling in a contractual dispute between KBR and Pemex, Mexico's state-owned oil company. The ruling, issued by an International Chamber of Commerce (ICC) tribunal, ordered Pemex to pay more than $300 million to KBR. KBR tried to enforce the ICC ruling in U.S. courts, while Pemex challenged it in Mexican courts. After Mexican courts annulled the ICC ruling, KBR launched a NAFTA case arguing that the annulment violated Mexico's national treatment, most favored nation, minimum standard of treatment and expropriation obligations. While pursuing the NAFTA claim, KBR was simultaneously pursuing full enforcement of the ICC ruling in U.S. courts, and reportedly initiated a third case in Luxembourg. The claim was reportedly dismissed in an unpublished April 2015 consent award after a settlement was reached.[91] Press reports indicate that Pemex entered into a $435 million settlement with KBR Inc., which ends the firm's efforts to collect the money that the ICC ordered Pemex to pay in 2009.[92] The settlement ends all litigation between the two parties.[93]

B-Mex, LLC and others May 23, 2014* June 15, 2016**	ICSID Additional Facility	$100 million	Pending	A group of U.S. investors allege that Mexican officials have interfered with their business by forcing the closure of Mexican casinos in which they have investments, following an act of arson in one of the casinos. The investors acknowledge that their own business partner in Mexico is pursuing a case in Mexican courts to invalidate their permit to operate. They suggest that they may seek to also challenge the outcome of that case in their NAFTA claim. The investors claim violation of NAFTA's national treatment, minimum standard of treatment, most-favored-nation treatment and expropriation obligations.[94] Mexico claimed that the tribunal lacked jurisdiction for two procedural reasons. First, Mexico argued that the claimants lacked standing as an "investor of a Party" under NAFTA Article 1119 because the claimants failed to name all 39 claimants in the notice of intent in advance of arbitration, which is required by Article 1119 of NAFTA, and instead only named eight claimants to bring claims on behalf of "several enterprises." Second, Mexico also claimed that the investors lack standing because a number of them failed to submit consents and waivers on time, as required by Article 1121.[95] In July 2019, the tribunal ruled on jurisdiction, with a majority of two arbitrators dismissing most of Mexico's jurisdictional objections and deciding that the case could proceed to a decision on the merits. The tribunal majority also ordered the Mexican government to pay the claimants $1.4 million in legal costs because the tribunal had dismissed most of the Mexico's jurisdictional objections. One of the arbitrators wrote a dissenting opinion, concluding that the tribunal lacked jurisdiction over the additional claimants that were not identified in the notice of intent, but later included in the request for arbitration[96] In 2020, both parties filed memorials on the merits.
Lion México Consolidated L.P. August 6, 2015* December 11, 2015**	ICSID Additional Facility	$200 million	Pending	Lion Mexico Consolidated ("LMC"), a Canadian affiliate of the U.S.-based real estate fund Clarion Partners, loaned a total of $32.8 million to a Mexican firm to develop two real estate projects in the Mexican states of Nayarit and Jalisco. The loans were secured by promissory notes and the land's mortgage. After the Mexican firm missed a loan payment in 2012, LMC attempted to collect its collateral, but it discovered that a Mexican court cancelled the Canadian firm's claim on the land several months prior when it received a loan restructuring agreement. LMC claims the loan restructuring agreement was forged and is now seeking more than $200 million in damages, a value worth more than 500% of the original loan of $32.8 million. The complainant asserts that this has been a violation of NAFTA provisions regarding expropriation and fair and equitable treatment.[97] On the matter of jurisdiction, the Tribunal held in July of 2018 that the notes in question do not qualify as investments and thereby do not fall within the jurisdiction of the Tribunal while

				the mortgages in question do qualify as investments and do fall within the Tribunal's jurisdiction.[98]
Primero Mining Corp. June 2, 2016* **First Majestic Silver Corp.** May 13, 2020*	N/A	N/A	Pending	Primero Mining Corp, a Canadian mining company that owns San Dimas gold and silver mine, located in the state of Durango, filed a notice of intent against Mexico under NAFTA. Few details of the claim are known, but the company claims that it is related to the Mexican tax authority allegedly "revoked legal rights previously granted to the company." Earlier in 2016, the company revealed that the Mexican tax authority had filed a legal claim against its Mexican subsidiary related to an agreement on how the company would pay tax on realized silver prices.[99] In 2018, Canadian First Majestic Silver Corp. acquired Primero Mining Corp. and, in 2020, filed a new notice of intent against Mexico, apparently based on the same facts.[100]
Joshua Dean Nelson (Tele Fácil) April 21, 2016* September 26, 2016**	UNCITRAL	$500 million	Dismissed	Tele Fácil México and a U.S. investor who owns shares of the firm sought $500 million in compensation, claiming that the conduct of Mexico's communications regulatory agency violated its NAFTA investor rights and destroyed its business.[101] Tele Fácil provides fixed and mobile phone, cable and internet services. The firm was granted a concession to operate as a telecommunications provider and then negotiated with Telmex, Mexico's main provider, for interconnection services. Mexico's telecommunications law requires Telmex, which owns 70% of phone lines in Mexico, to provide such services. Telmex offered Tele Fácil reciprocal interconnection rates of USD 0.00975. Tele Fácil sat on the offer for 11 months. Then, when Telmex was declared a predominant agent and required to charge a lower interconnection rate (USD 0.00172), Tele Fácil suddenly raised a dispute regarding two issues regarding the proposal — indirect interconnection and portability charges — with Mexico's Federal Institute of Telecommunications (IFT), the communications regulatory agency, without disputing the rates proposed by Telmex. Apparently, Tele Fácil wanted to profit from the possibility of charging Telmex the higher interconnection for its services, while paying it the reduced mandatory rate when the latter provided the service.[102] The IFT clarified the issues regarding indirect interconnection and portability charges and ordered Telmex to provide interconnection within ten days. Telmex did not do it, arguing that an agreement on rates was still to be reached. Tele Fácil disagreed and requested the IFT to force Telmex to provide interconnection based on the initial higher-rate proposal. The claimant maintained that the IFT did not respond to Tele Fácil's requests for enforcement and, moreover, four months later, it issued decisions invalidating the allegedly agreed interconnection rates. Tele Fácil's notice of intent alleged that IFT violated Mexican law so as to ensure Tele Fácil could not provide competing services, after Telmex, which is owned by Mexico's wealthiest person, Carlos Slim, meddled in the IFT process. Tele Fácil claimed

				that the IFT's actions violated NAFTA's fair and equitable standard and rules against expropriation.[103] Mexico submitted that Tele Fácil exercised its legal remedies before the IFT and Mexican courts and was not denied justice. Furthermore, Mexico refuted that there was an expropriation because, among other reasons, Tele Fácil did not have the contractual rights that it alleged had been expropriated.[104] The Tribunal sided with Mexico and determined that Tele Fácil did not have rights, of contractual or statutory nature, to charge the elevated interconnection rates and, hence, there could not be an expropriation of such rights or a destruction of an investment based on said rights. The arbitrators found that Tele Fácil was betting on a business opportunity relying on wrong interpretations and speculations to try to enforce rights it never had.[105] Tele Fácil was ordered to pay for all of the arbitration costs and ICSID's administrative fees and direct expenses, totaling $948,375, as well as 80% of Mexico's legal costs and Tele Fácil's own legal costs ($5,831,160.63). In total Tele Fácil had to pay Mexico $2,054,199.[106]
Vento Motorcycles Inc. February 20, 2017* September 25, 2017**	ICSID Additional Facility	$2,748 million	Dismissed	Vento Motorcycles, a U.S. motorcycle assembler, claimed that the Mexican government violated its investor rights by denying to confer NAFTA's preferential tariff treatment with respect to Vento motor bikes sold in Mexico after Mexico's Ministry of Tax Administration (SAT) conducted an origin verification and concluded that the vehicles did not comply with NAFTA's rules of origin.[107] Vento challenged these decisions before the Mexican judiciary, which confirmed the determinations made by SAT. Vento then launched an ISDS case, arguing that Mexico violated its national treatment, most favored nation and minimum standard of treatment obligations. The discrimination claims were based on the fact that some entities incorporated in Mexico were allowed to import Chinese components, assemble them and sell motorbikes without paying import duties for their inputs. (Some of these companies had foreign owners, which gave rise to the most favored nation claim.) As for the minimum standard of treatment, Vento argued that Mexico gave "marching orders" to SAT officials to find a reason to stop Vento's activities, which they argued was arbitrary and lacked due process. The claims were based on the assumption that a joint venture with a Mexican company to commercialize its motorcycles within Mexican territory qualified as an investment in Mexico, covered by NAFTA´s investment chapter. The Mexican government defended its actions and argued that the tariffs were properly imposed because the motorcycles in question are manufactured in China and do not comply

				with NAFTA rules of origin. Moreover, it contended that the joint venture could not qualify as a covered investment. In July 2020, an ICSID tribunal ruled on the merits, favoring Mexico. The tribunal dismissed the national treatment and most-favored-nation claims because the investor's business model of assembling motorcycles in the United States from parts from China was not the same as any of Vento's competitors, which assembled the motorcycles directly in Mexico and thus were not subject to NAFTA rules of origin or origin verification procedures. The tribunal also ruled that the denial of preferential tariff treatment was based on a valid interpretation of the law and that claimant could not prove lack of due process, arbitrariness or discriminatory treatment, hence, it dismissed the minimum standard of treatment claim. However, the tribunal did find that the joint venture to commercialize vehicles ensembled in the United States in Mexico could be interpreted as an investment in Mexico. The tribunal ordered the investor to pay Mexico's legal costs.[108] Vento was ordered to pay Mexico $188,334 for Mexico's advances to ICSID, as well at $793,790 for Mexico's legal fees. Vento's payment to Mexico accounts for 50% of Mexico's legal fees and expenses and 60% of arbitration costs.[109]
Dal-Tile February 1, 2018*	N/A	N/A	Notice of intent filed	Dal-Tile, a U.S. tile manufacturer operating in Mexico, is challenging a Mexican court's ruling related to commercial arbitration in which it was engaged with a Mexican firm. The dispute began in 2006 when Dal-Tile offered to buy out the majority stake of a joint-venture project with Interceramic, a Mexican firm. When Interceramic refused, Dal-Tile initiated commercial arbitration between the two companies in Houston, Texas, under the auspices of the International Chamber of Commerce. The Mexican firm initiated a case in Mexican courts challenging the Houston-based process. Based on an invocation of the "Calvo Doctrine," a foreign policy doctrine originating in Latin America that holds that jurisdiction in international investment disputes lies with the country in which the investment is located, the judge stopped the arbitration from proceeding. (The Calvo Doctrine implies that a foreign government should not intervene on an investor's behalf before local resources are exhausted.) Dal-Tile then filed an ISDS notice of intent under NAFTA, claiming that the Mexican court's actions were a denial of justice and thus a violation of NAFTA's minimum standard of treatment.[110]
Alicia Grace and others March 14, 2018* June 19, 2018**	UNCITRAL	$700 million	Pending	A group of U.S. individuals and entities that own 43% of Integradora Oro Negro ("Oro Negro"), a Mexican holding company that owns offshore drilling platforms, are challenging the actions of the state-owned Mexican petroleum company, Petroleos Mexicanos ("Pemex"). The dispute relates to the terms of a set of Pemex leasing contracts with Oro Negro in which Oro Negro leased its jack-up rigs to Pemex for a daily fee. Two years into the agreement, Pemex and Oro Negro amended the contracts at Pemex's request, reducing the daily rates paid by Pemex for the rigs. Oro Negro alleges that these amendments were coerced because

				Pemex was Oro Negro's only customer in Mexico and that they were in retaliation for Oro Negro's refusal to pay bribes to certain Pemex executives and Mexican government officials. According to Mexico, the reduction of the rates was necessary given the drop of global oil prices. Then, four years into the agreement, in October 2017, Pemex unilaterally terminated Oro Negro's leases without compensation, after a failed renegotiation and Oro Negro's filing for bankruptcy-related restructuring proceedings [111] Oro Negro alleges that Pemex ignored a court order issued by the judge presiding over the restructuring proceedings that enjoined Pemex from terminating the lease agreements and to pay past due fees. The claimants further allege that they have proof that Pemex received bribes from Oro Negro's competitor, whose lease with Pemex had not been modified or terminated, and that Pemex colluded with Oro Negro's bondholders to drive Oro Negro out of business.[112] The claimants argue that the lack of transparency during Pemex's reduction of rates and subsequent termination of lease agreements with Oro Negro is tantamount to a violation of the minimum standard of treatment. The investors also claim that Mexico indirectly expropriated their shares in Oro Negro. Mexico's defense is based on the legality of Pemex actions under the contracts and Mexican laws. It justifies the contractual modifications by pointing out the deterioration of the oil market between 2014 and 2017 and the fact that Oro Negro accepted the contractual modifications.[113] As of the end of 2020, the arbitration was in the probatory phase.
Legacy Vulcan LLC September 3, 2018* January 3, 2019**	ICSID	$500 million	Pending	Legacy Vulcan ("Vulcan"), a U.S. producer of stone construction materials, challenged the actions of several Mexican government entities for allegedly treating domestic companies more favorably than Vulcan and its subsidiary Calica, for being arbitrary and unfair and for indirectly expropriating its investments. The main grievances raised by Vulcan are related to its limestone mining activities in two areas known as El Corchalito and La Adelita. In May 2017, government inspectors from the Mexican Environmental Protection Agency visited Vulcan's limestone mines in the Yucatan peninsula to determine the quantity of limestone that had been extracted, to verify if the mines were in compliance with the Federal Environmental Impact Authorization of 2000, which allowed for mining below the phratic mantel in both El Corchalito and La Adelita. Vulcan disagreed with the methodology used in this first inspection, and the government officials agreed, so the government conducted a second inspection. Vulcan claims that the second inspection was also defective and challenged its outcome before Mexican federal courts. Vulcan claimed that in retaliation for Vulcan's legal complaints about the second inspection, the Mexican Environmental Protection Agency indefinitely closed its El Corchalito mine and ordered Vulcan to send a burdensome amount of new information to the agency to avoid the permanent shutdown of the mine. Vulcan said that this request came just a few days after a warning from government officials that they would do anything to hinder Vulcan's activity in the area. Vulcan did

				comply with the request made by the environmental agency and was still barred from activity at El Corchalito. The environmental agency claimed that Vulcan was extracting more than the amount of limestone from the area permitted in the Federal Environmental Impact Authorization of 2000. In addition to the controversy surrounding the 2017 inspections, Vulcan claims that Mexican entities have unilaterally and arbitrarily modified its rights related to a port concession to export to the United States the extracted limestone and charged discriminatory taxes. Vulcan alleges that Mexico violated its NAFTA national treatment (Article 1102), most favored nation (Article 1103), minimum standard of treatment, including fair and equitable treatment, and full protection and security (Article 1105) obligations. In addition, the claimant asserts that Mexico indirectly expropriated its investment (Article 1110).[114] Mexico has not yet presented its defense.
Odyssey Marine Exploration January 4, 2019* April 5, 2019**	UNCITRAL	$3.54 billion	Pending	Odyssey Marine Exploration, Inc. ("Odyssey"), a U.S. marine exploration and surveying company with a Mexican subsidiary, challenged a Mexican government action to block underseas mining of phosphorite ore off the coast of Mexico. In 2012, ExO, Odyssey's subsidiary in Mexico, was granted a 50-year mining concession by the General Directorate of Mines (DGM) in the main area of the suspected phosphate deposit. Two years later, the DGM granted another concession to ExO that expanded the concession area. In 2012, Odyssey also obtained permission for the prospecting of the area from the Ministry of the Environment and Natural Resources (SEMARNAT). Over the next year and half, Odyssey conducted 30-40 prospecting trips, that included the extraction of mineral samples, which led to the discovery that the area contained 588.3 million tonnes of phosphate ore. Odyssey claims that the extraction of that quantity of ore would be environmentally safe, based on scientific evidence it presented to SEMARNAT in order to obtain the environmental approval to extract this resource.[115] On April 7, 2016, SEMARNAT rejected the project, stating that the project might have negative consequences on wildlife habitats, including the habitat of loggerhead turtles. Odyssey claims that this decision was based on political rather than actual scientific grounds. The investor challenged this decision before Mexican courts, which ruled in its favor, ordering SEMARNAT to remand its determination. However, SEMARNAT denied the project once again due to concerns over its potential impact on wildlife.[116] Odyssey claims discriminatory treatment by Mexico because other more "environmentally sensitive" projects, many which they claim are in more ecologically sensitive areas and utilize inferior technology and are all owned or controlled by Mexican nationals, have been granted approvals. In particular, it claims that Mexico violated NAFTA's national treatment, minimum standard of treatment, including fair and equitable treatment and full protection and security, and expropriation rules.[117]

				Mexico has not yet presented its defense.
Carlos Sastre and others January 17, 2019* June 14, 2019**	UNCITRAL	$70 million	Pending	A group of French, Canadian, Portuguese and Argentine investors seek $70 million in compensation for claims that Mexican law enforcement unlawfully expelled the investors and hotel guests from their Mexican resorts and seized their properties. The investors own beachfront properties in Tulum, Mexico. The investors claim that, in 2016, several dozen armed men wearing black shirts labeled "security" and facemasks arrived at the hotels along with a court representative, who was allegedly implementing orders from a local court related to a private dispute regarding the breach of a lease agreement. According to the claimants, despite their efforts to work with Mexican authorities, they have not been able to access their investments since being run out.[118] Investors claim that Mexico violated the fair and equitable treatment, expropriation, most favored nation and denial of justice rules of the different international investment agreements that support this dispute, including NAFTA. Mexico requested the bifurcation of the proceedings so that the tribunal could decide first on its jurisdictional objections – mainly related to whether the claimants are protected investors under NAFTA and dual nationality issues – before going into the merits of the case. In September 2020, the tribunal agreed with Mexico's proposal and a ruling on jurisdiction is expected in 2021.[119]

Espiritu Santo Holdings, LP May 30, 2019* May 11, 2020**	ICSID	NA	Pending	Espiritu Santo Holdings, LP (Espiritu Santo) is a Canadian corporation that created a subsidiary in Mexico, Servicios Digitales Lusad, S. de R.L. de C.V. (Lusad), to handle a 2016 concession agreement granted by Mexico City's government to replace all analog taximeters used by taxis operating within the city and to develop an app for users to remotely request a taxi. In May 2018, Mexico City's government suspended the replacement program to avoid the project from being a subject of political campaigns during municipal elections that were taking place in July 2018. The suspension was not reversed after the election occurred. According to the investor, before and after the election the newly elected mayor repeatedly affirmed that she would revoke the concession. Additionally, the investor has accused the government of failing to comply with the concession by not creating a website for taxi drivers to have the technology installed, and the investor alleges that at a November 2018 meeting they were asked to sign a document with updates to the concession that, without Lusad's knowledge or consent, was backdated, and thus was an attempt to create a fraudulent version of the active concession agreement. The investor claims a *de facto* termination and expropriation of the concession agreement and violations of NAFTA's Articles 1102 (national treatment), 1103 (most favored nation), 1105 (minimum standard of treatment) and 1110 (expropriation and compensation).[120] Mexico has not presented its defense yet.
Coeur Mining, Inc. **March 5, 2020***	N/A	$45 million	Notice of intent filed	Coeur Mining Inc. ("Coeur"), which operates a gold and silver mine in Palmarejo, Chihuahua, Mexico, and plans to begin mining at a second site in Durango, is disputing a decision made by the Mexican tax authorities (SAT) relating to value-added tax (VAT) refunds. Coeur and Mexico disagree about a VAT refund that Coeur claims to be owed under a royalty agreement. Coeur is claiming violations of NAFTA's national treatment, most-favored nation, minimum standard of treatment and expropriation protections.[121]

Australia FTA Cases & Claims Against Australia

APR Energy LLC April 14, 2017**	UNCITRAL	$260 million	Pending	APR Energy Holdings Ltd, a U.S.-based energy company, has initiated an ISDS claim against Australia under the U.S.-Australia Free Trade Agreement – despite the fact that the FTA *does not include investor-state dispute settlement*. The firm is basing its claim on the FTA's most favored nation provision, arguing that because Australia consented to ISDS arbitration under its investment treaty with Hong Kong, which includes ISDS, the government must provide that same consent to arbitration under its U.S. FTA that does not provide for ISDS

				enforcement. The company is seeking $260 million, including more than $200 million in "lost enterprise value."[122] The underlying issue triggering this claim relates to what entity rightly owns four electricity-generating gas turbines worth approximately $60 million now operating in Western Australia. APR acquired a division of General Electric (GE) that had leased the turbines to an Australian company called Forge that had been contracted by utility Horizon Power in Western Australian. Forge went bankrupt. In its liquidation proceedings, it argued that ownership of the turbines had vested in Forge because neither GE nor APR had complied with Australian legal requirements that lessors for terms of more than one year must register a security interest in the leased property. APR appealed an initial lower court determination in Forge's favor and lost. While APR appealed to the Australian High Court, it filed its ISDS claim arguing that the Australian courts' decisions violated the FTA's rules against expropriation and the minimum standard of treatment. The Australian government issued two curt letters in response to the notice stating that the FTA in question does not provide for ISDS and "…if your clients [APR] persist in submitting a notice of arbitration, the Australian Government will vigorously contest jurisdiction and will seek a full award of its costs." In fall 2017, APR filed a $100 million malpractice suit in U.S. court against the law firm, Baker McKenzie, that represented its interests in Australia relating to its dealing with Forge. Press reports cite the firm's lack of action towards actually initiating arbitration after filing its notice of intent as the reason why Australian officials do not believe that the case will proceed.[123]

DR-CAFTA Cases & Claims Against Costa Rica

Aaron C. Berkowitz, et al. October 9, 2012* June 10, 2013**	UNCITRAL	$33.6 million	Discontinued	A group of U.S. investors claimed that the Costa Rican government has not sufficiently or promptly paid them for beachfront property that the government plans to convert into a nature reserve. Just before DR-CAFTA took effect, Costa Rica's Supreme Court ordered government authorities to begin the process of purchasing the investors' beachfront property to convert it into a national park. The investors argued that subsequent delays and inadequate payment for the land violated Costa Rica's DR-CAFTA obligations concerning national treatment, most favored nation treatment, expropriation and a minimum standard of treatment. On October 25, 2016, the tribunal declined jurisdiction over a large part of the claims based on DR-CAFTA's time-bar rules. The tribunal also instructed the investors and

				Costa Rica to each bear their own legal costs and tribunal fees and expenses.[124] Some claimants relinquished their claims, and the arbitration was discontinued on May 30, 2017. Yet others filed an action to set aside the award before the U.S. District Court for the District of Columbia. On January 20, 2018, a U.S. federal court declined to set aside the jurisdiction decision.[125]
David R. Aven, et al. September 17, 2013* January 24, 2014**	UNCITRAL	$102.4 million	Dismissed	A group of U.S. investors claimed that they were treated unfairly by the Costa Rican government when the authorities halted construction of a beachfront development project and brought criminal charges against the investors, citing damage to protected wetlands and forest. The investors claimed that the authorities' actions violated Costa Rica's DR-CAFTA obligations concerning fair and equitable treatment, expropriation, national treatment and most favored nation treatment, as well as being an abuse of rights under customary international law.[126] The Costa Rican government, which claimed that the area has been an environmental treasure with rich biodiversity, submitted that all of its actions were entirely supported under applicable local laws. The government also relied on the ISDS provisions of DR-CAFTA (Articles 10.15 and 10.16) which, according to Costa Rica, are completely neutral as to the identity of the claimant or respondent in an investment dispute, allowing a state party to sue an investor in relation to a dispute concerning an investment in that country, to file a counterclaim against the investors, requesting monetary damages for the restoration of wetlands and forests, which the country estimated would cost at least $500,000 to $1 million.[127] When deciding the dispute, the arbitrators found that the works undertaken by the foreign investors did have a negative impact on wetlands and forests and that the investors did not have the necessary permits to carry them out, thus breaching domestic environmental protection law.[128] Consequently, the tribunal dismissed all charges filed by the claimants. The tribunal also partially admitted Costa Rica's counterclaim because it found that investors have implicit obligations to respect the domestic laws of the host country, particularly related to the environment, under DR-CAFTA. The arbitrators premised this conclusion on DR-CAFTA Articles 10.9.3.c and 10.11 and noted that admission of counterclaims has practical advantages with respect to procedural economy and efficiency, following the Urbaser v. Argentina's award rationale.[129] However, it denied Costa Rica's counterclaim because the Central American country did not comply with UNCITRAL's arbitration rules requirements of specifying the facts that support the counterclaim and providing a credible damage valuation that supports the relief sought. [130]

DR-CAFTA Cases & Claims Against the Dominican Republic

TCW Group, et al. March 15, 2007* June 17, 2008**	UNCITRAL	$500 million	**Settled, TCW gets $26.5 million**	TCW Group, a U.S. investment management corporation that jointly owned with the Dominican Republic's government one of the nation's three electricity distribution firms, claimed that the government violated DR-CAFTA by failing to raise electricity rates and failing to prevent electricity theft by poor residents. The French multinational Société Générale (SG), which owned the TCW Group, filed a parallel claim under the France-Dominican Republic Bilateral Investment Treaty.[131] The claim, initiated two weeks after DR-CAFTA's enactment, related to decisions taken before the agreement's implementation including the government's unwillingness to raise electricity rates, which was a decision undertaken in response to a nationwide energy crisis.[132] TCW also protested the government's failure to subsidize electricity rates, which it argues would have diminished electricity theft by poor residents, while the nation's resources were depleted after spending large sums to rectify a banking crisis.[133] TCW alleged expropriation and violation of DR-CAFTA's guarantee of fair and equitable treatment. TCW demanded $500 million from the government despite having spent just $2 to purchase the business from another U.S. investor.[134] The company also admitted to having "not independently committed additional capital" to the electricity distribution firm after its $2 purchase in 2004.[135] After a tribunal constituted under the France-Dominican Republic Bilateral Investment Treaty issued a jurisdictional ruling in favor of SG, allowing the case to move forward, the government decided to settle with SG and TCW. The government paid the foreign firms $26.5 million to drop both the DR-CAFTA and BIT cases, reasoning that it was cheaper than continuing to pay legal fees.[136] That is to say that the country concluded that even if both cases were eventually dismissed, and no damages ordered, merely to escape the liability of having to pay tribunal costs and legal expenses of two ISDS cases made it worth paying more than $25 million up front.
Corona Materials LLC March 15, 2012* June 10, 2014**	ICSID	$100 million	Dismissed	Corona Materials, a U.S. mining company, claimed that the Dominican Republic violated DR-CAFTA by delaying and then denying environmental approval for an aggregate materials mine. In deeming the mine "not environmentally feasible," the government cited concern for the prospective impact on nearby water sources. Corona argue that the denial of environmental approval for the mine violated the company's DR-CAFTA-protected rights to a minimum standard of treatment and national treatment and constituted a DR-CAFTA-prohibited expropriation of its investment. In a May 2016 decision, a tribunal dismissed Corona's claims due to a procedural issue. Because Corona had not submitted its claim within three years of having acquired knowledge of the alleged DR-CAFTA breaches, the tribunal determined that it did not have jurisdiction to rule on the merits. Despite dismissing the claims, the tribunal did not deem

				them frivolous and thus ruled that both parties had to equally share the cost of the arbitration and cover their own legal fees.[137]
Michael, Lisa and Rachel Ballantine June 12, 2014* September 11, 2014**	UNCITRAL	$20 million	Dismissed	Three individuals of dual U.S.-Dominican Republic nationality launched a DR-CAFTA claim against the Dominican Republic for denying environmental approval for their plans to expand a gated resort. In its decision to not authorize the development expansion, the Ministry of Environment explained that the land in question fell within the bounds of a protected national park. The developers alleged that the government drew the park's boundaries in a discriminatory manner. They claimed violations of DR-CAFTA's national treatment, most favored nation, minimum standard of treatment and expropriation obligations.[138] The Dominican government claimed that its denial of the investors' environmental permit was valid because the proposed expansion was located in a mountainous area prone to landslides and the proposed expansion was within the bounds of a protected national park.[139] The tribunal declined jurisdiction over the dispute because it found that the claimants' dominant and effective nationality at the time of the alleged breach was Dominican, and thus they could not initiate international arbitration against their own government.[140]

DR-CAFTA Cases & Claims Against El Salvador

Pac Rim Cayman LLC December 9, 2008* April 30, 2009**	ICSID	$314 million	Dismissed	Pacific Rim Mining Corp., a Canadian-based corporation that sought to establish a massive gold mine using water-intensive cyanide ore processing in El Salvador, claimed that the government violated DR-CAFTA by not issuing a permit for the mine. This proposed project, to be located in the basin of El Salvador's largest river, as well as applications filed by various companies for 28 other gold and silver mines, generated a major national debate about the health and environmental implications of mining in El Salvador, a densely populated country with limited water resources.[141] Leaders of El Salvador's major political parties, the Catholic Church and a large civil society network expressed concerns.[142] In April 2008, one month after El Salvador's president announced that he would not grant mining permits until the legislature undertook an in-depth environmental study of the proposed mining projects, a new U.S.-based Pacific Rim subsidiary sent a letter to the Salvadoran government to threaten a DR-CAFTA claim.[143] The corporation had

				incorporated the subsidiary – Pac Rim Cayman LLC – just five months earlier.[144] Pacific Rim never completed the feasibility study necessary to obtain an exploitation permit for its mine and in July 2008 ceased exploratory drilling.[145] Later that year, the company launched its DR-CAFTA challenge, claiming that the Salvadoran government's decision to not grant the mining permit violated DR-CAFTA's rules on expropriation and national treatment, among others.[146] In a DR-CAFTA tribunal's 2012 jurisdictional ruling, El Salvador lost on three out of four counts. The tribunal allowed Pac Rim to continue pursuing its claims at the World Bank's International Centre for Settlement of Investment Disputes (ICSID) under a domestic investment law with provisions similar to DR-CAFTA. In October 2016, ICSID announced its unanimous decision that Pac Rim's lawsuit was without merit, as the corporation had failed to meet the legal requirements to receive a mining permit.[147] While El Salvador will not be required to pay compensation, it only received $8 million to cover its more than $12 million in legal fees.[148]
Commerce Group Corp. March 16, 2009* July 2, 2009**	ICSID	$100 million	Dismissed	The Commerce Group Corporation, a mining corporation based in Wisconsin,[149] challenged El Salvador's revocation of its environmental permits for a gold mine after the company failed its environmental audit.[150] In April 2010, the Salvadoran Supreme Court ruled that the company had been accorded due process during and after the audit.[151] But Commerce Group had launched a parallel DR-CAFTA challenge related to its environmental permits in March 2009, claiming expropriation and denial of fair and equitable treatment. In March 2011 a tribunal dismissed the case on a technicality. If Commerce Group had simply written a letter to the Salvadoran judiciary to state that it was waiving its right to challenge revocation of its environmental permits in Salvadoran courts, then its claim would likely be permitted to move forward under DR-CAFTA. When El Salvador attempted to recoup its estimated $800,000 in legal costs, the tribunal denied the request, siding with Commerce Group that its case was not frivolous.[152] After the corporation launched an ill-fated attempt to annul the award, El Salvador spent another two years and an additional $600,000 to defend its environmental policies.[153] For more information, see: www.citizen.org/documents/CAFTA-investor-rights-undermining-democracy.pdf

CAFTA Cases & Claims Against Guatemala

Railroad Development Corporation June 14, 2007**	ICSID	$64 million	**RDC win, $16.4 million** ($11.3 million + $5.1 million interest)	Railroad Development Corporation (RDC), a U.S.-based company, claimed that the Guatemalan government violated DR-CAFTA by initiating a legal process to weigh revocation of the company's disputed railroad contract. Guatemala privatized its railroad system in 1997. A subsidiary of RDC won a concession to operate the railroad on the basis of a plan to rehabilitate the entire network in five phases. In its first eight years of operation, RDC only completed the first phase.[154] Unsatisfied with the slow progress, in 2006 Guatemala declared parts of the RDC scheme "injurious to the interests of the state" (*lesivo*), the first step in an administrative legal process to determine whether a contract should be revoked.[155] While no decision had been reached, RDC initiated a DR-CAFTA claim the following year, alleging the *lesivo* declaration itself to be an indirect expropriation and a violation of DR-CAFTA's national treatment and fair and equitable treatment rules. The majority of the $64 million claim was for the alleged loss of future anticipated profits.[156] In 2012 a tribunal produced a judgment in favor of RDC and against Guatemala. While the tribunal determined the national treatment and indirect expropriation accusations to be baseless, it upheld the allegation that Guatemala's non-binding *lesivo* declaration had failed to afford RDC a minimum standard of fair and equitable treatment. In doing so, the tribunal ignored the definition of that standard found in DR-CAFTA and reiterated by other governments, instead borrowing a broad interpretation from another investor-state tribunal (the one in the NAFTA Waste Management case above).[157] The tribunal ordered Guatemala to cover the administrative expenses of ICSID and the fees and expenses of the tribunal during the jurisdictional phases, which amounted to $384,854. The remainder of the ICSID expenses and tribunal fees were split equally by both parties. Each party was ordered to cover its own legal fees and expenses.[158] For more information, see: https://www.citizen.org/article/railroad-development-corporation-v-guatemala/
Tampa Electric Company (TECO) Guatemala Holdings LLC January 13, 2009*	ICSID	$243.6 million	**TECO win, $87.8 million** ($21.1 million + $3.9 million interest + $12.8 million legal fees + $27.6 million	Tampa Electric Company (TECO), a U.S.-based energy company, challenged Guatemala's decision to lower the electricity rates that a private utility could charge. Guatemala privatized its electricity distribution system in 1998. In August 2008, it lowered the electricity rates that the privatized utility could charge. TECO indirectly owned a small stake in the electric utility: its Guatemalan subsidiary indirectly held a 24% share in Deca II, a holding company with a majority stake in the Guatemalan utility company (EEGSA). TECO began threatening a DR-CAFTA claim in response to the lowering of electricity rates as early as one month after the new rates were announced. The corporation alleged a violation

October 20, 2010** **Resubmission proceedings:** October 3, 2016**			in resubmission proceedings)	of DR-CAFTA's minimum standard of treatment. The next day, TECO sold its indirect stake in Deca II, leaving it with no investment in the electricity utility.[159] A tribunal ruled in favor of TECO in December 2013, ordering Guatemala to pay the company $25 million (including interest), plus $7.5 million to cover the company's legal expenses. The tribunal decided that Guatemala's electricity regulatory agency had set electricity rates without granting sufficient consideration to the non-binding advice of an "Expert Commission" and that doing so violated the DR-CAFTA obligation to grant TECO a minimum standard of treatment. Like the tribunal in the RDC v. Guatemala case (above), the tribunal ignored the narrower definition of the minimum standard obligation found in DR-CAFTA, instead borrowing a broad interpretation of the obligation from another investor-state tribunal (the one in the NAFTA *Waste Management* case described above). The tribunal ruled in favor of TECO in spite of the fact that the company only had an indirect, minority stake in a holding company that was the majority owner of Guatemala's electric utility. This decision conveyed an expansive interpretation of how significant an "investment" has to be for an "investor" to be allowed to launch a DR-CAFTA claim. The decision also contradicted one reached by a tribunal in a separate investor-state claim concerning the same actions of the Guatemalan government. In that claim, the Spanish company Iberdrola, which had a larger stake than TECO in the Guatemalan electric utility, failed to convince the tribunal that it had jurisdiction to pursue the claim.[160] TECO and Guatemala both sought to annul some or all of the award. Guatemala asked for the annulment of the entirety of the award and for TECO to pay the cost of the annulment proceedings including Guatemala's legal fees. TECO asked for a partial annulment of the damages section because the Guatemalan government was not ordered to compensate TECO for losses caused by the sale of its shares on EEGSA at an alleged subpar value and did not confer pre-award interests. TECO also asked that all legal fees and costs from the annulment proceedings be covered by Guatemala. In April 2016, an ad-hoc annulment committee decided in favor of TECO, annulling the requested portions of the damages section and opening a path for TECO to seek additional damages under DR-CAFTA.[161] After TECO resubmitted its claims, on May 13, 2020, a new tribunal awarded the investor approximately $27.6 million in additional damages based on lost cash flow between October 2010 and July 2013, pre-award interest and 75% of TECO's costs, including those related to the previous arbitration.[162] On a parallel track in U.S. domestic court, in early 2017 TECO sought recognition and enforcement of the non-annulled portion of the 2013 award. In September 2018, the U.S. District Court for the District of Columbia denied Guatemala's motion to dismiss.[163]

				Guatemala appealed to the U.S. Court of Appeals, also requesting that the enforcement of the award be stayed pending the appeal. In this filing, Guatemala raised, among other arguments, difficulties for the government in pursuing its legal defense generated by the ongoing COVID-19 pandemic. On May 21, 2020, the U.S. Court of Appeals denied Guatemala's motion for a stay.[164]
Kappes, Cassiday and Associates May 16, 2018* November 9, 2018**	ICSID	$350.5 million	Pending	Kappes, Cassiday and Associates ("KCA"), a U.S. mining company, filed a notice of intent under DR-CAFTA over its dispute with the Guatemalan government regarding a controversial gold and silver mining project. In 2011, Exmingua, a KCA subsidiary, had received the Guatemalan Ministry of Energy and Mines' (MEM) approval of an environmental impact assessment and a 25-year exploitation permit. Construction was begun on a gold and silver mine called El Tambor in the community of La Puya in 2012. From the beginning, local communities mounted strong opposition to the project, based on environmental and health concerns. Guatemalan law requires consultations with local communities before such projects are authorized. A Guatemalan environmental organization filed an *amparo,* a remedy for the protection of rights available in the Civil Law system in many Latin American countries, against the Guatemalan government mining authority. The *amparo* claim was that MEM granted Exmingua the exploitation permit, despite the fact that the firm failed to abide by Guatemalan law in adequately consulting with the local community. Despite having made earlier claims that it had consulted with the local community, Exmingua changed tactics in the domestic court proceedings that ensued, arguing that community consultations were not required under Guatemalan law. The environmental and community organizations prevailed in Guatemalan courts against the mining authority, including at the nation's Supreme Court, which ordered the suspension of all mining activities at El Tambor. Although in June 2016 Exmingua filed an appeal at the Guatemalan Constitutional Court, to which Supreme Court decisions can be appealed, the U.S. investor KCA, the parent company of Exmingua, moved forward in filing the DR-CAFTA notice of intent. It claims that Guatemala has breached several of its treaty obligations, including national treatment, minimum standard of treatment and full protection and security. The company is seeking $300 million in compensation.[165]

CAFTA Cases & Claims Against Nicaragua

Bailey, David A. Barish,	ICSID	N/A	Pending	A group of U.S. investors in a Nicaraguan company Industria Oklahoma Nicaragua S.A., claimed that the Nicaraguan government violated its DR-CAFTA obligations when it

Walter John Bilger and others July 2017* November 30, 2017**				terminated a 2004 oil concession. The initial oil concession specified an exploration phase for six years followed by a 30-year exploitation phase. The Nicaraguan government, claiming that the required exploration had not been carried out, began the process of terminating the concession in 2014 and completed termination in 2016. The U.S. investors in the company submitted their notice of intent in July 2017, claiming expropriation of their concession. The investors claim that they invested more than $70 million into the exploration activities, and that they found oil that would yield more than $1 billion in revenue over the lifetime of the concession.[166] In June 2019, the tribunal was appointed. Later, in August of the same year, the tribunal rendered its first procedural order, clarifying that all future decisions made would be public.

Morocco FTA Cases & Claims Against Morocco

The Carlyle Group Jan. 30, 2018* Jul. 31, 2018**	ICSID	$400 million	Pending	The U.S. private equity corporation, Carlyle Group, filed a notice of intent[167] under the U.S.-Morocco FTA, claiming that the stockpiles of oil it had bought and entrusted to the custody of the Samir Group refinery, through the incorporation of two special purpose vehicles (SPVs) in the Cayman Islands, had disappeared when the company went bankrupt and that some of the oil had been seized by the Moroccan government during SAMIR's insolvency proceedings. Carlyle group is demanding $400 million in compensation for this alleged expropriation and a breach of the U.S.-Morocco FTA's minimum standard of treatment provision. In January of 2020, the tribunal bifurcated the majority of the jurisdictional objections raised by Morocco, suspending the proceedings on the merits. The hearing on Jurisdiction is set for January 2021. Morocco's core jurisdictional objections are that the claimants never had an active investment in the territory of Morocco since the claimant never took ownership over the oil and never contributed any money to the Cayman SPVs, as well as alleged not having control over the Cayman entities.[168]

Peru FTA Cases & Claims Against Peru

Renco Group, Inc. /	UNCITRAL	$800 million	Dismissed	Renco Group, a corporation owned by one of the wealthiest people in the United States, Ira Rennert, demanded $800 million from the government of Peru. The corporation claimed

Doe Run Peru December 29, 2010* August 9, 2011** **Resubmission proceedings:** August 12, 2016* October 23, 2018**			New case pending	that the Peruvian government violated the U.S.-Peru FTA by not granting an extension on the firm's overdue commitment to clean up environmental contamination. Doe Run Peru, Renco's Peruvian subsidiary, failed to meet its environmental clean-up commitments under the terms of a 1997 privatization of a metal smelting operation in La Oroya, Peru - one of the world's most polluted sites. The Peruvian government granted two extensions past the 2007 date by which Doe Run was to have built a sulfur oxide treatment facility – a commitment that the corporation repeatedly failed to fulfill. In 2007 and 2008, Doe Run was challenged in class action lawsuits filed in Missouri courts, the firm's state of incorporation. The suits demanded compensation and medical assistance for La Oroyan children that had been injured by toxic emissions from the smelter since its acquisition by Renco.[169] In 2010, the company launched an $800 million investor-state claim against Peru under the FTA. The company claimed a violation of fair and equitable treatment, blamed Peru for not granting a *third* extension to comply with its unfulfilled 1997 environmental commitments, and demanded that Peru, not Renco, should have assumed liability for the Missouri cases. Some analysts believed that Renco used the investor-state claim to derail the Missouri-based lawsuit seeking compensation for La Oroya's children. Renco previously had tried three times to move the case to federal court from the Missouri courts, where the jury pool was likely to be skeptical of the company after highly publicized incidents of pollution in Missouri. Renco had failed each time. But one week after launching its investor-state claim, Renco tried a fourth time to move the case to federal courts and succeeded. The same judge that had denied the previous requests now granted it, citing the ISDS claim under the Peru FTA as the reason, given federal legislation on arbitration would newly apply because of the ISDS claim. In July 2016, after six years of costly litigation with the three ISDS tribunalists charging hundreds of dollars per hour in addition to Peru paying for its defense lawyers, the tribunal dismissed Renco's claim. Oddly, it did so based on a jurisdictional issue it could have decided years earlier. The tribunal determined that it did not have jurisdiction over the case because the company had failed to comply fully with an FTA requirement that it had to waive certain domestic litigation rights to proceed with an ISDS claim.[170] However, the tribunal ordered the Peruvian government and the corporation to split the costs of arbitration and bear their own legal costs. This means a $8.39 million bill for Peru, despite the case being dismissed and the grounds for dismissal being that the corporation failed to meet the technical rules for pursuing an ISDS claim.[171]

				At the time of the decision, Renco stated that "the Tribunal's decision is an insignificant victory for Peru," immediately threatening to refile the same claims after resolving the technicality upon which the case was dismissed.[172] In August 2016, Renco made good on its threat and filed a new notice of intent to restart an ISDS case on the same matters.[173] In October 2018, the U.S. corporate group filed a notice of arbitration. The proceedings are taking place at the Permanent Court of Arbitration.[174] In June 2020, the new tribunal dismissed Peru's expedited jurisdictional objection that was premised on an argument that the dispute was time-barred. The tribunal majority concluded that the first arbitration initiated by the claimant had suspended the U.S.-Peru FTA's limitation period and, consequently, the tribunal could proceed to consider Peru's remaining jurisdictional objections and liability. The parties filing deadlines start in January 2021.[175] For more information, see: www.citizen.org/documents/renco-la-oroya-memo.pdf
Gramercy Funds Management LLC February 1, 2016* June 2, 2016**	UNCITRAL	$1.6 billion	Pending	In 2006, Gramercy Funds Management, a U.S.-based hedge fund, began buying Peruvian land bonds, which had been issued in the 1960s and 1970s as compensation to landholders as part of agrarian reform undertaken by the military government at the time. Peru defaulted on this debt during its economic crisis in the early 1980s. After a 2013 Constitutional Tribunal decision, the Peruvian government launched a process to pay bondholders, which apparently favors original bondholders over those that acquire the land bonds for speculative purposes.[176] Gramercy refused to participate in the process and claimed that the Peruvian government is violating its investor rights under the Peru FTA by not paying $1.6 billion, which it claimed is the contemporary equivalent of the value the land bonds had at the time of issue. The hedge fund claimed Peru FTA violations of the standards of expropriation, fair and equitable treatment, national treatment and most favored nation.[177] The Peruvian government countered that Gramercy purchased this public debt at "deeply discounted" rates, has refused to participate with other creditors in debt restructuring and is violating the terms of the FTA by simultaneously pursuing a claim on the same issues in Peruvian courts. The Peruvian government also argued that the U.S.-Peru FTA was not in force until 2009, three years after Gramercy began purchasing the land bonds and thus the matter is not subject to the agreement's jurisdiction.[178] The hearing on jurisdiction and the merits of this case was held in February 2020 and the post-hearing was held over Zoom in November 2020. A decision is pending.[179]

Latam Hydro and Mamacocha May 28, 2019* July 30, 2019**	ICSID	$47 million	Pending	A U.S. renewable energy company, Latam Hydro, and its local subsidiary CH Mamacocha initiated an ICSID arbitration against Peru over a failed hydroelectric power plant project. Latam Hydro and CH Mamacocha concluded a twenty-year power purchase agreement (PPA) with Peru's Ministry of Energy and Mines (MEM), pursuant to which they would build and operate a 20 Megawatt run-of-the-river hydro power project in southern Peru. According to the PPA, the claimants planned to begin construction in 2015, and the plant was supposed to be commissioned in 2017.[180] The project faced opposition from local communities concerned with its environmental impact to the Mamacocha lagoon. According to claimants' request for arbitration, the project was hindered from the start due to widespread government inefficiencies, mismanagement and interference by the regional government of Arequipa and other local agencies. The claimants argue that these sub-federal government entities attempted to nullify permits that had already been granted, that MEM rejected an extension of the construction time for the project and sought commercial arbitration to overturn previous extensions. Combined, the claimants allege these actions destroyed the project and the entire value of the investment.[181] Latam Hydro claims that Peru, besides violating the PPA, breached the fair and equitable treatment, full protection and security, most favored nation and expropriation standards of the U.S.-Peru FTA.[182] Peru has not yet presented its defense.
Freeport-McMoRan Inc. February 28, 2020**	ICSID	N/A	Pending	Freeport-McMoRan, an Arizona-based mining company, filed a notice of intent to launch an ISDS case against Peru under the U.S.-Peru FTA. The U.S. investor owns a majority of shares in Sociedad Minera Cerro Verde S.A.A., which operates a copper mine in southern Peru. Local press reports suggest that the dispute is related to Cerro Verde S.A.A.'s refusal to pay around $330 million in royalties to Peru's tax agency between 2006 and 2011, arguing that the royalties were inapplicable due to a stabilization clause.[183] Freeport argues that it has no obligation to pay the royalties because Cerro Verde's tax contract dates back to 1998, predating the 2004 passage of the mining royalties law. Nonetheless, by the end of 2019, Cerro Verde paid, under protest, $214.4 million in royalties to the government.[184]
Bacilio Amorrortu February 13, 2020**	UNCITRAL	$90 million	Pending	Bacilio Amorrortu, a U.S. citizen but native from Peru, filed a notice of arbitration against Peru alleging that corruption on the part of Peruvian officials denied him the opportunity to exploit an oil field. Amorrortu incorporated a company in Peru in 2012 and approached PeruPetro, the state-owned oil major, with a view of operating Block III in Peru's Talara Basin. According to the claimant, PeruPetro awarded this block to the Peruvian consortium Grana y Montero instead of him, because the former had frequently bribed the Peruvian government to obtain important contracts. The claimant alleges that Peru breached its

				legitimate expectations and violated the U.S.-Peru FTA minimum standard of treatment. Mr. Amorrortu claims approximately $90 million in damages[185] Peru has stated that Mr. Amorrortu's case is "frivolous" and it is based on a "wildly inaccurate portrayal of the facts". According to Peru's counsel, Mr. Amorrortu did not get the contract simply because his company did not meet the requirements of the applicable laws and regulations.[186]
Worth Capital Holdings 27 LLC December 15, 2020**	ICSID	N/A	Pending	U.S. firm Worth Capital Holdings 27 is an investor in the Peruvian company Maple Gas. Maple Gas was entrusted with the management of the state-owned Pucallpa refinery in 1994 for 20 years. In 2014, the contract was extended for a further 10 years. According to Maple Gas, following the contract extension, the refinery started to be insufficiently supplied in raw materials and Peru's former President, Pedro Kuczyinski, initiated a campaign against the company. Peru rejected the allegations and claimed that Maple Gas had failed to make required royalty payments. The refinery halted its operations in January 2018. Maple Gas initiated commercial arbitrations against PetroPeru (the official owner of the refinery), but now Worth Capital Holdings 27 has decided to launch an ISDS case against Peru based on the same dispute.[187]

Oman FTA Cases & Claims Against Oman

Adel a Hamadi al Tamimi April 19, 2011* December 5, 2011**	ICSID	$5.6 million	Dismissed	Adel A Hamadi Al Tamimi, a naturalized U.S. citizen whose companies partnered with the Oman Mining Company (OMCO, a state-owned enterprise) on a limestone quarry investment, claimed that the government violated the U.S.-Oman FTA by terminating the project on environmental grounds. In 2007, al Tamimi commenced the limestone operation after being informed by OMCO that necessary environmental permits had been obtained. Within weeks, officials from the Commerce and Environmental Ministries told al Tamimi that the final permits had actually not been obtained, and various stop-work orders were issued.[188] As al Tamimi stated, "OMCO now had to make a choice: it could fulfill its obligations under the Lease Agreements [with al Tamimi], which would mean disobeying or confronting the Environmental and Commerce Ministries, or it could use whatever leverage it had over [al Tamimi's] companies and exert every effort to get them to suspend their operations until a solution could be found to the permitting issues. It chose the latter."

				Al Tamimi did not cease operations until April 2008.[189] He had racked up various environmental fees, which he apparently did not pay.[190] In 2009 he was arrested and convicted for violation of environmental laws,[191] though his conviction was later overturned by an appeals court.[192] In his claim, Al Tamimi alleged that Oman expropriated his property rights by terminating the limestone operation leases,[193] discriminated against him[194] and violated the FTA obligation to afford fair and equitable treatment by undermining his "legitimate expectations." After more than four years of litigation, the tribunal dismissed Al Tamimi's claims under the FTA in November 2015 and ruled that the claimant should pay 75% of Oman's legal costs.[195] In June 2018, Oman brought an action in the U.S. District Court for the District of Massachusetts to enforce the tribunal's award. Oman claims that Al Tamimi has not paid any of the funds ordered by the tribunal, including Oman's legal costs.[196]

Panama FTA Cases & Claims Against Panama

James Falgout, Barbara Falgout, Clarence Johnson and Retire in Chiriqui, S.A. December 31, 2012*	N/A	$98.5 million	Arbitration never began	A group of U.S. investors claimed that the government of Panama violated the FTA by not allowing them to purchase contested beachfront property and by not halting acts of harassment against the investors. The government denied the investors' bid for the beachfront property on the basis that the property was too close to the Costa Rican border to be sold to foreigners under Panamanian law – a claim that the investors refuted. The investors alleged that an "illegal" road was then constructed on other property that they had purchased, and that local authorities were complicit in subsequent acts of intimidation against the investors. They asserted violations of Panama FTA provisions regarding national treatment, expropriation, fair and equitable treatment and protection and security. U.S.-Peru FTA's three-year time-bar provision would prevent claimants from pursuing ISDS arbitration based on these facts, thus it is safe to assume that this arbitration never began.
Bridgestone Americas, Inc. & Bridgestone Licensing Services, Inc.	ICSID	$16 million	Dismissed	Bridgestone, the Japanese tire firm, directed its U.S. subsidiaries, Bridgestone Americas, Inc (BSAM) and Bridgestone Licensing Services Inc. (BSLS), to challenge a Panamanian Supreme Court final decision using the ISDS protections granted to U.S. investors by the U.S.-Panama FTA. Bridgestone had sued a Panamanian firm, Muresa, over its attempt to register the trademark "Riverstone," which Bridgestone alleged was causing confusion with its brand. The Panamanian Supreme Court reversed the decisions of two lower courts

October 28, 2016				to rule in Muresa's favor and ordered Bridgestone to pay $5 million in damages for its alleged "bad faith" challenge. The ISDS case effectively was an attempt to reverse the ruling of Panama's highest court and obtain the demanded compensation through a "second bite at the apple" using the U.S. subsidiaries to gain access to ISDS. Bridgestone's U.S. subsidiaries claimed that Panama violated their fair and equitable treatment obligation under the FTA's minimum standard of treatment clause as well as the FTA's national treatment, most favored nation and indirect expropriation provisions.[197] (Later in the process the claimants dropped their expropriation, national treatment and most favored nation claims, relying exclusively on a denial of justice arising from the minimum standard of treatment clause.) Panama tried to knock one of the companies, BSLS, out of the case based on the U.S.-Panama FTA's "denial of benefits" provision, which states: "a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party, and persons of a non-Party, or of the denying Party, own or control the enterprise." Panama pointed out that BSLS shared its address with BSAM, did not have employees on its own and did not try to be profitable. (BSLS licensed the use of the trademarks that it managed with no imposed royalties.) Concerning the other claimant, BSAM, Panama claimed that it did not have an investment in Panama, since it was only licensed to use the trademark "Firestone" and having a trademark license does not constitute an investment. On December 13, 2017, the Tribunal dismissed Panama's jurisdictional arguments. The arbitrators were unconvinced by the facts underlying Panama's denial of benefits claim regarding BSLS and were swayed by the U.S. government submission, which argued that treaty benefits should not be denied to firms that have a real and continuous link with the country where they are established. Additionally, they deemed that while the mere registration of a trademark does not have the characteristic of an investment, actively exploiting it through activities such as promotion and sale of goods would raise the asset to the level of a protected investment.[198] In August 2020, the tribunal dismissed Bridgestone's denial of justice claim and ordered the claimants to pay the government of Panama a total of $6,941,085.73, which includes both Panama's advances to ICSID as well as a "reasonable portion" of Panama's legal fees and expenses. The claimants also are responsible for covering their own half of the ICSID arbitration costs at $441,085.72. The tribunal, despite noting disagreement with some of the Panamanian Supreme Court's assessments, deemed that the claimants did not meet the standards for a denial of justice claim.

Omega Engineering LLC and Mr. Oscar Rivera December 30, 2016	ICSID	$100 million	Pending	Omega Engineering LLC, a Puerto Rican company, and U.S. citizen Oscar Rivera have initiated an ISDS case under the U.S.-Panama FTA and a U.S.-Panama Bilateral Investment Treaty. The claimants allege that various Panamanian government entities breached eight contracts in violation of the FTA and BIT protections regarding expropriation, fair and equitable treatment, full protection and security and unreasonable or arbitrary measures. The dispute involves contracts granted in 2010-2013 to Omega by the 2009-2014 Panamanian administration of President Ricardo Martinelli for the construction of three hospitals, a school, a municipal hall, a courthouse and other facilities. Omega and Omega's president, Rivera, claim that in 2014, shortly after its inauguration, the new Panamanian government violated the FTA and BIT failing to pay for the construction of public buildings and launching allegedly unfounded criminal proceedings against Rivera in the context of anti-corruption investigations relating to the previous Panamanian administration.[199] In 2017, the Panamanian Justice Department issued an arrest warrant for Rivera relating to an alleged money-laundering scheme organized by former Panamanian President Martinelli. Notably, Martinelli was extradited from Miami to Panama in June 2018 to face charges of corruption and illegal wiretapping and the outcome of this case is still uncertain.[200] In October 2020, the tribunal held a hearing on merits, jurisdiction and potential amount of an award. The tribunal's decision is pending.

Colombia FTA Cases & Claims Against Colombia

Cosigo Resources Ltd., Cosigo Resources Sucursal Colombia, Tobie Mining	UNICTRAL	$16.5 billion	Pending	U.S. corporation Tobie Mining and Energy and Canadian investors Cosigo and Cosigo Resources claimed that the Colombian government violated the FTA when it decided to create a nature reserve to protect Amazon rainforest land and prohibit mining within its borders. In 2008, the companies were granted interests in a gold mining concession by the Alvaro Uribe administration in the Taraira region of Colombia, near the Brazilian border,

and Energy, Inc. August 5, 2015* February 19, 2016**				but before a final agreement could be reached, a national park was created, blocking the mine.[201] The investors claim that the establishment of the national park was "fraudulent," and thus the denial of their concession constitutes an expropriation of their investment. The investors are seeking an order for Colombia either to return their concession and allow them to mine in the Amazon or to pay $16.5 billion, which would be more than 25% of Colombia's national budget, to the corporation. Despite admitting having spent only $11 million in mining-related preparations, the claimants justify the $16.5 billion demand on the basis that the corporation hypothetically could have earned that amount if allowed to extract all the gold and iron believed to lie beneath the rainforest land.[202] This case, although theoretically pending, has been inactive for the last four years and a tribunal has not been established.[203]
Carrizosa Gelzis January 24, 2018**	UNCITRAL	$ 323.4 million	Pending	Alberto Carrizosa Gelzis, Enrique Carrizosa Gelzis, and Felipe Carrizosa Gelzis (collectively, "the Carrizosa Gelzis"), U.S. citizens who also have Colombia citizenship, challenged decisions by the Colombian Constitutional Court, which nullified a ruling by the Council of State (the highest administrative court) that awarded *Corporación Grancolombiana de Ahorro y Vivienda's* (GRANAHORRAR) shareholders a substantial compensation for the intervention of the central bank and banking regulators in the midst of a financial crisis in the late 1990s. According to the claimants, the Colombian government abused its regulatory authority by treating GRANAHORRAR in a discriminatory manner. The Carrizosa Gelzis were investors in GRANAHORRAR, a leading Colombian bank. The Carrizosa Gelzis alleged that Colombia's Central Bank and other Colombian financial regulators caused Granahorrar's value to plummet by deliberately reducing GRANAHORRAR's solvency status, reducing the bank's share value, denying shareholders due process notice, unilaterally terminating GRANAHORRAR's CEO without notice to shareholders, and unilaterally replacing GRANAHORRAR's Board of Directors.[204] In 2007, the Council of State ordered substantial compensation to the former owners of GRANAHORRAR. The Colombian government challenged that compensation decision before the Constitutional Court, a different jurisdiction of the Colombian judicial branch, which annulled the Council of State's ruling.[205]

				Notably, the U.S.-Colombia FTA carves out of ISDS proceedings policies that are covered by the financial services chapter of the agreement (Article 10.2.3). The Carrizosa Gelzis tried to circumvent this provision, using the most favored nation clause included in the financial services chapter to "read in" consent to investor-state arbitration for financial services matters found in other investment arbitration agreements (particularly the Switzerland-Colombia Bilateral Investment Treaty (BIT)). The claimants use the same provision to "import" the fair and equitable standard and expropriation rules from the India-Colombia BIT.[206] The government of Colombia has opposed the use of the MFN provision to circumvent the preconditions to investor-State arbitration. In addition, it argued that the claimants' dominant and effective nationality is Colombian, preventing them from suing their own country, and that the claimants failed to abide by the time-bar provisions of the U.S.-Colombia FTA. Finally, the State responded that GRANAHORRAR was insolvent and that the actions taken at issue were done to safeguard the integrity of the Colombian financial system and protect depositors.[207] Due to the seriousness of the jurisdictional objections raised by Colombia, the tribunal bifurcated the jurisdiction assessment from the merits and a hearing on jurisdiction took place in December 2020.[208]
Astrida Benita Carrizosa March 9, 2018**	ICSID	$ 40 million	Pending	Astrida Benita Carrizosa is another member of the Carrizosa family who is seeking compensation in relation to the decision of the Colombian Constitutional Court that annulled the compensation granted by the Council of State to investors in a bank, with respect to actions taken by Colombia's Central Bank during a temporary liquidity crisis in the late 1990s (see case above). Unlike the Carrizosa Gelzis arbitration, Astrida Carrizosa only holds U.S. citizenship. Therefore, Colombia has not raised the dual-nationality issues of the previous case. In all other matters, the parties' submissions are very similar in both arbitrations.[209] Due to the seriousness of the jurisdictional hurdles explained above, the tribunal bifurcated jurisdiction in this case too and held the hearings on this matter in September 2020 and November 2020.
Seda and others	ICSID	$ 309.2 million	Pending	A group of U.S. investors in a luxury real estate project in the city of Medellín demand compensation after the Colombian government seized the property. The seizure was related to an asset forfeiture action based on a complaint about the kidnapping of the son of one of the former owners of the lot, Ivan López Vanegas, who had been convicted for drug trafficking crimes in the United States. Seda claims that the asset forfeiture

January 25, 2019**				proceedings were carried out by corrupt government officials in retaliation for Seda's refusal to pay money to López Vanegas, who claimed to be the former owner of the land and was allegedly blackmailing Seda.[210] The claimants argue that the allegedly illegal asset forfeiture amounted to an unlawful expropriation of their investments and breached the FTA's fair and equitable treatment, national treatment and full protection and security standards.[211] Colombia maintains that the seizure was conducted following the laws and regulations of asset forfeiture set out in its legal system. Additionally, it argues that the claimants not only were aware of the legal framework underlying their investment, which includes asset forfeiture as a tool to fight drug dealing and money laundering, but also that the claimants were aware of the fact that López Vanegas claimed ownership over the property.[212] The arbitration is ongoing, and a hearing is scheduled for October 2021.
Amec Foster Wheeler and others December 26, 2018* December 31, 2019**	ICSID	$ 2.4 billion	Pending	A joint venture constituted by U.S. investors is suing Colombia in relation to a $2.4 billion fine imposed by Colombia's fiscal authorities, which found the investor to be grossly negligent. In 2009, Joint Venture Foster Wheeler and Process Consultants concluded a service contract with the Colombian state-owned company Reficar of Cartagena S.A. for the management of a project related to the renovation and expansion of Reficar's refinery, one of the biggest oil refineries in South America. The project, which involved 2,460 subcontracts, was finally concluded in 2016 after major delays and cost overruns. After investigating the situation, Colombia's fiscal authority (*Contraloría General de la República de Colombia*) issued a report revealing more than $8 billion had been embezzled in relation to the project, which made it the largest corruption scandal in the country's history.[213] Consequently, the same authorities initiated administrative proceedings against several contractors involved in the project, including Joint Venture Foster Wheeler and Process Consultants. In 2018, the authorities issued a decision finding that the claimants had committed gross negligence in performing their contract and were liable for $2.4 billion in damages. In their ISDS case, the U.S. investors deny any negligence and claim that Colombia violated the FTA's fair and equitable treatment standard by considering them as a "fiscal

				manager." Under Colombian law, provided that certain conditions are met, state contractors can be liable for the unproper management of public resources and hence have fiscal liability. In these cases, state contractors are deemed fiscal managers. The claimants also raise a national treatment violation, arguing that they were treated less favorably by the fiscal authorities than the state-owned Reficar. In addition, the claimants are trying to import an "umbrella clause" through the U.S. FTA's most favored nation obligation from the Colombia-Switzerland BIT. That term states: "Each Party shall observe any obligation deriving from a written agreement concluded between its central government or agencies thereof and an investor of the other Party with regard to a specific investment, which the investor could rely on in good faith when establishing, acquiring or expanding the investment." The purpose of such a clause is to elevate contractual claims to treaty claims.[214] (Effectively an umbrella clause allows investors to transform contractual obligations into treaty obligations so that a breach of a contract could become subject to ISDS enforcement.) An ICSID tribunal is already in place for this case, and it held its first videoconference in September 2020. Colombia has not presented its defense yet.
Neustar September 2019* March 9, 2020*	ICSID	$ 350 million	Pending	U.S. technology company, Neustar, has launched an ISDS claim over a dispute related to its management of the .CO internet address. From 2009 to 2020, Neustar operated the .CO internet domain under a 10-year concession agreement with the Colombian government, which, according to the company, was renewable for another 10-year term. The U.S. investor claims that Colombia breached the FTA when, in early 2019, the Ministry of Technology, Information and Communication declined to renew the concession and decided to hold a public bidding process instead.[215] This case is moving slowly, and the tribunal is not fully constituted yet. There is also no specific information about the claims as of December 2020. The Ministry has stated that it is conducting an open and transparent public tender and that Neustar, instead of submitting a bid for the contract, decided to try to grab it by launching an international dispute.[216]
Uber February 3, 2020 *	N/A	N/A	Notice of intent filed	On December 20, 2019, the Superintendency of Industry and Commerce (SIC), exercising its jurisdictional functions over disputes regarding unfair competition, issued a decision that effectively bans the use of the Uber ride-sharing app in Colombia. The action occurred in the context of a lawsuit filed against Uber by a company that operates a remote request taxi app. Soon after the decision was made public, Uber announced that it

				was going to bring an ISDS claim against Colombia under the U.S.-Colombia FTA. In February 2020 it submitted a notice of intent to start the process.[217] At the end of February, Uber resumed operations in the country with a new business model, based on vehicle lease contracts.[218] In order to avoid the SIC ruling that ordered the company to cease its operations in the company for illegally supplying individual public transportation services, the company returned to Colombia with a driver contract that states that Uber is a technology services provider and not a transportation provider, so technically the passenger is renting a car with a driver, they are not paying for individual transportation service. In June 2020 an appeal tribunal struck down the SIC decision that had removed Uber From Colombia. (In Colombia, the SIC has jurisdictional functions, as a first instance court, for cases related to unfair competition legislation. Its rulings can be appealed before circuit tribunals.) As of December 2020, Uber had not withdrawn its notice of intent although ultimately its business was suspended for only 20 days.[219]

Korea FTA Cases & Claims Against Korea

Elliott Associates April 13, 2018* July 12, 2018**	UNCITRAL	$770 million	Pending	Elliott Associates ("Elliott"), a U.S. investment management firm, challenged the government of South Korea's role in facilitating a merger between Samsung C&T Corporation ("SC&T") and Cheil Industries, Inc. ("Cheil"). The South Korean government's National Pension Service ("NPS") was a shareholder of SC&T and decisively voted to approve the merger between SC&T and Cheil. Elliott also owned shares in SC&T at the time of the merger. The firm claims that NPS's decisive vote resulted in a merger that was disadvantageous to Elliott and other investors and that NPS's vote was a result of political pressure to ensure that the Lee family, which already owned a significant interest in SC&T, other Samsung companies, and Cheil, could further consolidate its power. [220] At issue in this case is whether NPS's vote constituted discriminatory behavior by the South Korean government in favoring some investors (the Lee family) over other investors and whether this decision violated the minimum standard of treatment. The Korean government claims that the merger was supported by valid commercial motivations and that the share swap ratio for the deal was not "manifestly unfair" as Elliott Associates had claimed.[221] (For a case with a similar fact pattern, see Mason Capital L.P. v. South Korea.)

Mason Capital L.P. June 7, 2018* September 13, 2018**	UNCITRAL	$200 million	Pending	Mason, a group of U.S. and Cayman Hedge Fund entities, like Elliot Associates in the previous case, was a shareholder of Samsung C&T Corporation ("SC&T") when this firm merged with and Cheil Industries, Inc. ("Cheil"). Mason, in a claim similar to Elliot's ISDS case above, challenged the government of South Korea's role in facilitating the merger. The South Korean government's National Pension Service ("NPS") was a shareholder of SC&T and decisively voted to approve the merger between SC&T and Cheil. Mason claims that the deal was disadvantageous to its interest and other investors and that NPS's vote was a result of political pressure to ensure that the Lee family, which already owned a significant interest in SC&T, other Samsung companies, and Cheil, could further consolidate its power.[222] At issue in this case is whether NPS's vote constituted discriminatory behavior by the South Korean government in favoring some investors (the Lee family) over other investors. The Korean government claims that the suit lacks jurisdiction and standing because the majority of Mason's investments in question are held by a Mason entity with Cayman nationality, thereby falling outside of Korea-U.S. Free Trade Agreement jurisdiction.[223] (For a case with a similar fact pattern, see Elliott Associates v. South Korea.)
Jin Hae Seo July 12, 2018**	UNCITRAL	$ 3 million	Dismissed	Jin Hae Seo ("Seo"), a U.S. citizen, is seeking greater compensation for her property in Seoul, South Korea, which she owns along with her husband, a Korean citizen. The property was zoned for redevelopment as part of a municipal program. A municipal committee offered to compensate Seo $641,516 and her husband $201,859 (proportionate to their ownership interest), but Seo did not accept the compensation on the ground that it was far below the fair market value of her investment. Additionally, Seo claims emotional and mental distress after municipal authorities hired a locksmith and entered her home to confront her.[224] The Korean government responds that the compensation amount offered was fair and based on the average appraised value by three appraisal companies. The Korean government further argues that the case ought to be dismissed and the government should be compensated for all costs associated with arbitration.[225] The tribunal agreed with the Korean government and denied jurisdiction. It concluded that the claimant did not prove that she had made a covered investment under the terms of the Korea-US FTA, since the contribution of capital was not substantial, and the property was mainly use as a private dwelling without an expectation of profit or the assumption of risk.[226]

				Each party was ordered to pay its own legal fees and expenses and half of the fees and expenses of the tribunal.[227]

Summary

Total Claims Filed under NAFTA-style U.S. Free Trade Agreements:	**134 Claims**		
Cases Dismissed (Won by gov'ts):	**35 Cases**[228]		Loewen, Mondev, Methanex, Glamis Gold Ltd., Canadian Cattlemen for Fair Trade, Grand River, United Parcel Service, Merrill and Ring Forestry, Chemtura, Azinian, et al, Waste Management I, Fireman's Fund, GAMI Investments, Thunderbird Gaming, Bayview Irrigation, V.G. Gallo, ADF Group, Apotex (3 cases), Commerce Group, Detroit International Bridge Company, Mesa Power Group LLC, Corona Materials, Abdel A Hamadi al Tamimi, Renco Group, Eli Lilly, Pac Rim, Mercer, Tele Fácil, Vento, Aven, Ballentine, Bridgestone, Seo.
Cases Won by Investors (or resulting in payments to investors):	**18 Cases**	**$989.7 million paid to foreign investors**	Ethyl, S.D. Myers, Pope & Talbot, AbitibiBowater, Metalclad, Feldman Karpa, Corn Products International, ADM/Tate & Lyle, Cargill, TCW Group, Mobil Investments, KBR, St. Mary's VCNA, LLC, TECO, Clayton/Bilcon, Windstream Energy, Railroad Development Corporation, Mobil.

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