

# Investment Treaties: The Quest for Balance

## Summary

**14 March 2016**

OECD Conference Centre  
Paris, France

A conference hosted by the Freedom of Investment Roundtable

Governments, business, academia and civil society explored the quest for balance between investor protection and governments' right to regulate at the OECD Conference on Investment Treaties on 14 March 2016, which gathered over 200 participants.

Efforts to improve balance have driven many recent investment treaty developments as governments both engage in high-profile treaty negotiations and actively review and revise their treaty policies. The opening panel discussion confirmed that policy-makers, treaty-negotiators and stakeholders from around the world take the quest for balance seriously. The balance sought by a range of governments appears to be comparable as a general matter although governments typically face conflicting demands from different constituencies. Governments are pursuing a variety of strategies to achieve the balance that reflects their policy goals - growing convergence in some areas is accompanied by innovation in others.

Conference participants considered in detail critical legal issues relating to the quest for balance in treaties, such as approaches to inclusion of a fair and equitable treatment (FET) provision and mechanisms for dispute settlement. The FET provision has leapt to prominence in the last 15 years as the principal ground for government liability under treaties, and is now subject to widely diverging interpretations and treaty approaches, as the discussion made clear.

In light of the recent publication of European Union agreements with Canada and Viet Nam that both include an Investment Court System (ICS), the Conference offered a timely platform to discuss the search for balance through new institutions and improved rules for dispute settlement. Panellists and participants from governments, arbitration institutions, civil society, business and academia engaged in a vigorous discussion of dispute settlement under the ICS proposal, investor-State arbitration, state-to-state dispute settlement and domestic law. The discussion focused in particular on the perceived incentives of adjudicators and those who select them under different systems, and the possible impact on outcomes in disputes.

A closing panel focused on the future of investment policies and treaty policies. Panellists underlined that the OECD has an important role to play in providing analysis and a broad forum for dialogue to help governments improve their investment treaty and investment policies.