

Unclassified

English - Or. English

21 March 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
INVESTMENT COMMITTEE****Designs of “fair and equitable treatment” provisions in recent investment treaties: an inventory of additional clarifications**

Note by the OECD Secretariat

Track 2 jurisdictions consistently use two ‘main’ sets of specifications in their recent treaties with respect to ‘fair and equitable treatment’ (FET) obligations: they either limit FET to what is required by the customary international law minimum standard of treatment; or identify FET obligations using a closed list of elements. ‘Additional’ clarifications are added alongside these main specifications, to further delineate the contours and identify the content of FET. This note inventories these additional clarifications of FET in recent treaties. It was discussed at the Track 2 meeting held on 12 March 2024.

This note is made public to ensure transparency of government conversations under Track 2. Delegates had an opportunity to comment on this note before its public release. The note does not prejudge the outcomes of discussion under the Track 2 work programme.

The work on the *Future of Investment Treaties* is documented at <https://oe.cd/foit2>.

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JT03562636

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Context and purpose of this note

1. The design of FET provisions in investment treaties has undergone a structural change since the early 2000s. While earlier designs of FET clauses provided little or no clarification on the scope of obligations, newer designs that emerged in 2001 contain language that contours and limits the obligations under the clause. These latter designs are now used almost universally and consistently by a large number of jurisdictions (see [Secretariat research note](#)).
2. Participants in Track 2 of the OECD-hosted work on the *Future of Investment Treaties* have called for an early consideration of practical means that allow interested governments to transition substantive clauses that feature designs that are no longer used to more recent designs. The FET clause was suggested as a test clause to spearhead this reflection with the expectation that the findings could be applied to other substantive provisions that governments may want to transition. Several aspects on practical arrangements were discussed in June and November 2023.¹
3. The present note seeks to advance considerations on the substantive content of the endpoint of possible transitions of FET clauses. It sheds light on the details of newer-generation FET clauses that employ *additional language* to guide the interpretation of the clause. Some of these additional specifications had been identified in a previous [note](#) but without setting out specific details. The present note fills this gap. It offers a detailed inventory of this additional language.
4. The immediate purpose is to support discussions by Track 2 participants at their meeting on 12 March 2024. Ultimately, it seeks to create a common understanding on the purpose and merits of individual linguistic elements to inform interested governments' decisions on the endpoint of a potential effort to transitioning FET clauses of older investment treaties.

¹ Discussions on 27 June 2023 based on a [research note](#) shed light on factors that would need to be considered when deciding on the approach to transitioning clauses from earlier designs to newer designs, and which legal instruments may be available for a given approach, which in turn may depend on the given start- and desired end-point of a transition, among others. A further note issued to support discussions on 7 November 2023 sought to provide a rough estimate of the number of treaties in which a transition of the FET clause to newer designs was likely feasible through a joint interpretation and where an amendment was likely required.

Summary of findings

5. Designs of FET clauses in investment treaties have undergone structural changes since 2001. These changes have been progressively adopted by a large number of jurisdictions for their own treaty practice and are now used consistently for newer treaties.
6. Beginning in 2003, additional language was added to FET clauses to specify the scope of obligations or provide additional interpretative guidance. Several linguistic elements have been found in the treaty sample, each addressing a distinct angle. The present note presents an inventory of these linguistic elements, identifies the jurisdictions that have used this language with some regularity, and identifies the starting point in time of the diffusion of this practice.
7. Some of the additional language is associated with one of the approaches to framing the contours of the FET clause – association with the minimum standard of treatment (MST) under Customary International Law (CIL) or a closed list approach. Other linguistic elements are observed in treaties following either of these approaches.
8. Language found in new treaties following either approach includes:
 - Clarifications on the relevance of the **legality** of a measure for a possible breach of FET, and referencing different groups of norms.
 - Clarifications that relate to the **predictability** of a development: objective changes (e.g., regulatory changes) or subjective changes (e.g., relative to an investor’s expectations) and the relevance for FET.
 - Clarifications on which **effect** the FET clause shall not produce (e.g., that it does not operate as an umbrella or stabilization clause).
9. Language that is specific to the choice of MST or closed list approaches includes:
 - For MST-FET-treaties, clarifications on the determination of the content of CIL and, more rarely, on the burden of proof for these elements.
 - For closed list-approach treaties, secondary interpretive text that provide guidance on specific components of “fair and equitable treatment”, such as “reasonable” expectations, “manifest arbitrariness”, or “denial of justice”.
10. Some additional clarifications and limitations appear more frequently than others. In most cases, the choice of these additional features appears to reflect a preference of individual jurisdictions.

Issues for consideration

- Which scenarios have motivated the inclusion of additional clarifications in FET clauses? How effective have these inclusions been in treaty use?
- Do jurisdictions that do not yet use such elements regularly or at all agree with the interpretations and qualifications that they bring to FET clauses? How do these jurisdictions see the value of these linguistic elements for the intended purpose?
- Would participating jurisdictions that have included additional clarifications in their recent treaties prefer that similar clarifications be present in their earlier treaties that do not contain such features?

1. Additional clarifications and limitations to the scope and effects of FET clauses

11. In addition to the inclusion of a FET clause, some recent investment agreements feature various “negative” descriptions of the scope of the FET obligation. These textual elements clarify that specific elements or scenarios *do not* constitute a breach of “fair and equitable treatment” or that the FET clause shall not have certain described effects. The observed language can be categorised along three categories: Whether it positions FET in relation to different measures of legality (1.1), predictability (1.2), or whether it excludes certain effects of the clause (1.3).

1.1. FET in relation to legalities

12. FET clauses referring to the legality of action of the host state may define this legality with regard to other provisions of the same agreement, obligations in other agreements, or domestic law of the host State.

13. **Breach of another provision or agreement does not amount to a breach of FET.** The most frequently used negative description limiting the scope of FET clauses specifies that “[a] determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach” of FET.² This language is observed in investment treaties that link FET to customary international law³ and that use a closed list.⁴

14. This additional clarification appears in 141 investment treaties scored in the OECD Investment Treaty database. Among participating jurisdictions that include this additional limitation most often in their recent treaties, all Canadian treaties concluded from 2006 onwards contain this feature.⁵

² For instance [CPTPP \(2018\)](#): “A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article”.

³ [Argentina-Qatar BIT \(2016\)](#), Article 3.

⁴ [Canada-Ukraine Modernized FTA \(2023\)](#), Article 17.9.

⁵ This represents 31 investment treaties and preferential trade agreements containing an investment chapter concluded by Canada since 2006: [Canada-Benin BIT \(2013\)](#); [Canada-Burkina Faso BIT \(2015\)](#); [Canada-Cameroon BIT \(2014\)](#); [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#); [Canada-China BIT \(2012\)](#); [Canada-Colombia FTA \(2008\)](#); [Canada-Cote d’Ivoire BIT \(2014\)](#); [Canada-Czechia BIT \(2009\)](#); [Canada-Guinea BIT \(2015\)](#); [Canada-Honduras FTA \(2013\)](#); [Canada-Hong Kong \(China\) BIT \(2016\)](#); [Canada-Jordan BIT \(2009\)](#); [Canada-Korea FTA \(2014\)](#); [Canada-Kosovo* BIT \(2018\)](#); [Canada-Kuwait BIT \(2011\)](#); [Canada-Latvia BIT \(2009\)](#); [Canada-Mali BIT \(2014\)](#); [Canada-Moldova BIT \(2018\)](#); [Canada-Mongolia BIT \(2016\)](#); [Canada-Nigeria BIT \(2014\)](#); [Canada-Panama FTA \(2010\)](#); [Canada-Peru FTA \(2008\)](#); [Canada-Romania BIT \(2009\)](#); [Canada-Senegal BIT \(2014\)](#); [Canada-Serbia BIT \(2014\)](#); [Canada-Slovak Republic BIT \(2010\)](#); [Canada-United Kingdom FTA \(2020\)](#); [Canada-Ukraine Modernized FTA \(2023\)](#); [CETA \(2016\)](#); [CPTPP \(2018\)](#); [USMCA \(2018\)](#).

15. **Breach of domestic law does not amount to a breach of FET.** A few investment treaties contain a specification that “[t]he fact that a measure breaches domestic law does not establish a breach” of FET.⁶ Such language is observed in several treaties concluded by Canada, starting in 2016 with the [CETA](#).⁷

1.2. FET in relation to predictabilities

16. Several linguistic variants of additional clarifications of FET obligations refer to the interaction of predictability of future developments with FET obligations. These can relate to objective change, e.g., changes of regulation or continuation of administrative practices, or subjective change, such as deviations between an investor’s expectations and developments.

17. **Changes of regulation do not constitute a breach of FET.** Some treaties state that “a change of the regulation of a Contracting Party does not constitute by itself a violation” of FET clauses.⁸ It appears that this treaty practice was initiated by Colombia in 2011.⁹

18. Some treaties limit this rule only to changes that are “*applied to further public policy objectives*”. Among these treaties, some enumerate specific legitimate objectives through a non-exhaustive list,¹⁰ while others do not specify which legitimate interests may

* This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo’s declaration of independence.

⁶ [Canada-Ukraine Modernized FTA \(2023\)](#), Article 17.9.3.

⁷ [CETA](#); [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#); [Canada-United Kingdom FTA \(2020\)](#); [Canada-Ukraine Modernized FTA \(2023\)](#).

⁸ [Colombia-Japan BIT \(2011\)](#): “For greater certainty, a change of the regulation of a Contracting Party does not constitute by itself a violation of paragraph 1”. The same specification appears in the [India-Chinese Taipei BIT \(2018\)](#).

⁹ The first treaty containing investment provisions excluding changes of regulation for the scope of FET is the [Colombia-Japan BIT \(2011\)](#).

¹⁰ For instance, the [Colombia-India BIT \(2009\) - Joint Interpretative Declaration \(2018\)](#) provides: “For further clarification, “fair and equitable treatment” standard under Article 3 does not require compensation for measures designed or applied to further public policy objectives including but not limited to: a. protection or improvement of national resources and the environment; b. human animal or plant life or health; c. human capital conditions of work and human rights; d. protection or improvement of economic conditions and the integrity of the financial system; e. implementation of fiscal policy measures, including taxation”. Likewise, the [Argentina-United Arab Emirates BIT \(2018\)](#) provides that “[n]on-discriminatory and non-arbitrary legislative or regulatory measures adopted by either Party to protect general welfare objectives, such as public order, public health, public security, environmental protection and economic policy, and which give an investor of the other Party the same treatment as that accorded to its own investors or to investors of third States in like circumstances, shall not be deemed to breach the minimum standard of treatment”.

be invoked.¹¹ Most treaties with this feature require however that the measure be non-discriminatory and not arbitrary.¹²

19. **Frustration of an investor’s expectations does not constitute a breach of FET.** Some treaties refer to investors’ expectations rather than objective changes of rules. They state for example that “*the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of [FET], even if there is loss or damage to the covered investment as a result*”.¹³ This type of language was first used in the [Australia-Singapore FTA \(revised version of 2016\)](#). It now appears frequently in Australian investment treaties and investment chapters of preferential trade agreements.¹⁴

20. **Changes of administrative practices or unexpected decisions do not constitute a breach of FET.** Somewhat situated between objective change of rules and frustration of expectations is a third, relatively infrequent, variant of language related to predictability. This variant refers to subsidies and specify that “*the mere fact that a subsidy or a grant has not been issued, renewed or maintained, or has been modified or reduced [...] does not constitute a breach*” of the treaty’s FET clause.¹⁵ This feature is contained as a stand-alone

¹¹ For instance, the [Colombia-Türkiye BIT \(2014\)](#), Article 4.5, provides the following: “*Fair and equitable treatment shall not be construed as to prevent a Contracting Party from exercising its regulatory powers in a transparent and non-discriminatory manner and in accordance with the principle of due process of law*”.

¹² An exception is the [India-Bangladesh BIT \(2009\) - Joint Interpretative Agreement \(2017\)](#) that provides that: “*fair and equitable treatment does not require compensation for measures designed or applied to further policy objectives including but not limited to: protection or improvement of natural resources and the environment, human capital conditions of work and human rights, protection or improvement of economic conditions and the integrity of the financial system and implementation of fiscal policy measures including taxation*”.

¹³ [Australia-Hong Kong \(China\) BIT \(2019\)](#). A slight variation of this feature appears in the [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#), Appendix 1, Article G-01: “*4. For greater certainty, the mere fact that a Party takes or fails to take an action, including through a modification of its laws or regulations, in a manner which negatively affects an investment or interferes with an investor’s expectations, including its expectations on profits, even if there is loss or damage to the covered investment as a result, does not amount to a breach of an obligation under this Chapter*” (emphasis added).

¹⁴ [Australia-Hong Kong \(China\) BIT \(2019\)](#); [Australia-Indonesia CEPA \(2019\)](#); [Australia-Peru FTA \(2018\)](#); [Australia-United Kingdom FTA \(2021\)](#); [Australia-Uruguay BIT \(2019\)](#); [CPTPP](#). Outside of Australian treaty practice, it also appears in the following agreements: [Argentina-Japan BIT \(2018\)](#), [Chile-Hong Kong \(China\) BIT \(2016\)](#); [China-Singapore FTA \(2008\) Upgrade Protocol \(2018\)](#); [Korea-United States FTA \(2007\) as revised in 2018](#); [New Zealand-Singapore CEPA Protocol \(2019\)](#); [USMCA](#). A variation of this feature appears in the [EU-Singapore Investment Protection Agreement](#), Article 2.4.3, footnote 2, that provides: “*For greater certainty, the frustration of legitimate expectations as described in this paragraph does not, by itself, amount to a breach of paragraph 2, and such frustration of legitimate expectations must arise out of the same events or circumstances that give rise to the breach of paragraph 2*”.

¹⁵ [Australia-Peru FTA \(2018\)](#), Article 8.6.5: “*For greater certainty, the mere fact that a subsidy or a grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result*”. A variant appears in the [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#), which states: “*For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party (a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or (b)*

limitation in a few treaties, mainly Australian treaties,¹⁶ from 2016 onwards.¹⁷ However, most frequently it is associated with a specification related to the investor's expectations.¹⁸

1.3. Limitations on the effect of FET clauses

21. Rather than providing clarifications on the conditions of FET breaches as outlined in the previous section, some treaties contain language that seeks to modulate the *effect* of FET clauses. Two variants of this infrequent design are observed.

22. **FET does not have the effect of an umbrella clause.** A few investment treaties specify that FET clauses do not “*elevate alleged representations, contractual promises or other undertakings by the Contracting Party [...] to commitments binding or enforceable under the Agreement*”¹⁹ – a circumscription of the effect produced by ‘umbrella’ clauses.²⁰

23. **FET does not have the effect of a stabilisation clause.** Some investment treaties specify that the FET provision “*does not include a legal stabilization clause and does not prevent each Contracting Party from adapting its legislation in accordance with [fair and equitable treatment]*”.²¹

in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction or maintenance of that subsidy or grant, does not constitute a breach of obligations in this Chapter, even if there is loss or damage to the covered investment as a result” (emphasis added).

¹⁶ Australia's practice appears to begin with [Australia-Singapore FTA \(revised version of 2016\)](#). This limitation appears in the following agreements: [Australia-Peru FTA \(2018\)](#); [Australia-Uruguay BIT \(2019\)](#); [Australia-United Kingdom FTA \(2021\)](#); CPTPP.

¹⁷ See, [Mexico-Hong Kong \(China\) BIT \(2020\)](#).

¹⁸ See, [Australia-Peru FTA \(2018\)](#); [Australia-Singapore FTA \(revised version of 2016\)](#); [Australia-United Kingdom FTA \(2021\)](#); [Australia-Uruguay BIT \(2019\)](#); [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#); CPTPP (2018); [New Zealand-Singapore CEPA Protocol \(2019\)](#).

¹⁹ [Colombia-India BIT \(2009\) - Joint Interpretative Declaration \(2018\)](#): “*The “fair and equitable treatment” requirement does not, alone elevate alleged representations, contractual promises or other undertakings by the Contracting Party where the investment is made to the investor or investment to commitments binding or enforceable under the Agreement*” (emphasis added).

²⁰ The ‘umbrella’ clause, or “observation of undertakings” clause, is contained in most investment treaties and provides an additional protection to investors by elevating any undertaking taken by a host country with regard to foreign investors to an obligation enforceable under the investment agreement. For more information, see Yannaca-Small, K. (2006), “[Interpretation of the Umbrella Clause in Investment Agreements](#)”, OECD Working Papers on International Investment, 2006/03, OECD Publishing, No. 2006/03.

²¹ [Colombia-France BIT \(2014\)](#), Article 4.1. The (French) original provides: “*Il est entendu que l’obligation d’assurer un traitement juste et équitable aux investisseurs et à leurs investissements n’inclut pas de clause de stabilisation juridique et n’empêche pas chacune des Parties contractantes d’adapter sa législation conformément aux dispositions de ce paragraphe.*”

2. Clarifications associated with specific designs of FET clauses

24. Some additional language associated with FET clauses is specific to the scoping of the FET clause. The content of this language depends on the design choice: Investment treaties that link FET to customary international law (CIL) frequently specify the content of CIL (2.1). Treaties that describe the scope of FET obligations through a closed list offer interpretive guidance on the elements in this list (2.2).

2.1. Clarifications on the content of CIL

25. Recent investment treaties that link FET to CIL frequently specify what constitutes CIL (2.1.1). A few treaties also allocate the burden of proof to establish the existence of a binding obligation under CIL in addition to the breach of such obligation on the claimant (2.1.2).

2.1.1. The notions of CIL and the minimum standard of treatment

26. Starting in 2003, a growing number of treaties that contain an FET clause linked to CIL include a specification on what constitutes CIL. This specification is often composed of two elements: It describes the notion of “**customary international law**”, often in the terms “*a general and consistent practice of States that they follow from a sense of legal obligation*”, and of the “**minimum standard of treatment**”, often framed as “*all customary international law principles that protect the investment of aliens*”.²² While these two elements frequently appear in conjunction, one or the other also appear in isolation.²³

27. Different wordings for these specifications are observed:

- “**Customary international law**” is either linked to the “*principles that protect the investment of aliens*”²⁴ or described by reference to “*international custom, as*

²² [Australia-United Kingdom FTA \(2021\)](#), Annex 13A “Customary International Law”: “*The Parties confirm their shared understanding that “customary international law” [...] results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investment of aliens*” (emphasis added). A variation of this wording appears in the [Australia-Hong Kong \(China\) FTA \(2019\)](#), that provides the following: “*For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens, as resulting from a general and consistent practice of States that they follow from a sense of legal obligation, as the standard of treatment to be afforded to covered investments*”.

²³ For instance, the [Costa Rica-United Arab Emirates BIT \(2017\)](#) only refers to “customary international law” without any mention of the minimum standard of treatment: “*El “derecho internacional consuetudinario” resulta de una practica general y consistente de los Estados seguida por ellos en el sentido de una obligacion legal*”. On the contrary, the [Korea-Singapore FTA \(2005\)](#) only contains a specification on the minimum standard of treatment of aliens: “*The “customary international law minimum standard of treatment of aliens” refers to all customary international law principles that protect the economic rights and interests of aliens*”.

²⁴ [Australia-Indonesia CEPA \(2019\)](#), Article 14.7, footnote 14: “*This Article refers to relevant customary international law principles that protect the investment of aliens*”.

evidence of a general practice accepted by law”, the latter referring to the wording of Article 38.1(b) of the Statute of the International Court of Justice.²⁵

- The “**minimum standard of treatment**” is occasionally described by reference to the “*economic rights of aliens*”²⁶ or “*general State practice*” without specification of the content of such practice.²⁷

2.1.2. The burden of proof

28. A few treaties state that “[t]he burden to establish the existence and applicability of a binding obligation under customary international law that meets the requirement of State practice and opinio juris is always on the claimant”. The burden of proof that the standard was violated is likewise on the claimant, as some treaties explicitly state.²⁸

29. NAFTA Parties have repeatedly submitted such language as part of non-disputing party submissions,²⁹ but appear to have not yet included such language in any of their treaties.

²⁵ For instance, the [Canada-Colombia FTA \(2008\)](#) provides: “It is understood that the term “customary international law” refers to international custom, as evidence of a general practice accepted as law, in accordance with subparagraph 1(b) of Article 38 of the Statute of the International Court of Justice”. The same wording appears in the [Colombia-Panama FTA \(2013\)](#): “Se entiende que el término “derecho internacional consuetudinario” hace referencia a la costumbre internacional como evidencia de una práctica generalmente aceptada como Ley de conformidad con el Artículo 38 (1) (b) del Estatuto de la Corte Internacional de Justicia”.

²⁶ For instance, the [Chile-Hong Kong \(China\) BIT \(2016\)](#) provides: “The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens” (emphasis added).

²⁷ As such, the [Canada-China BIT \(2012\)](#) provides: “The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidenced by general State practice accepted as law” (emphasis added). Likewise, the [China-Mexico BIT \(2008\)](#) provides: “[t]he concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidence of State practice and opinio juris”.

²⁸ For instance, the [Colombia-India BIT \(2009\) - Joint Interpretative Declaration \(2018\)](#) provides: “The burden to establish the existence and applicability of a binding obligation under customary international law that meets the requirement of State practice and opinio juris is always on the claimant. Once a rule of customary international law has been established, a claimant must show that the Contracting Party has engaged in conduct that violated that binding obligation” (emphasis added). The same wording appears in the [India-Bangladesh BIT \(2009\)-Joint Interpretive Agreement \(2017\)](#), footnote 3.

²⁹ Gaukrodger D. (2017), “[Addressing the Balance of Interests in Investment Treaties – The Limitation of Fair and Equitable Treatment Provisions to the Minimum Standard of Treatment under Customary International Law](#)”, OECD Working Papers on International Investment, 2017/03, OECD Publishing No.2017/3, pp.34-35.

2.2. Definitions of specific components of closed-list FET clauses

30. Some investment treaties that clarify the scope of FET by means of a closed list contain secondary specifications of some or all items in the list.³⁰
31. The first approach is found in relation to the following items:
- “**reasonable expectations**” is specified as depending “*on factors such as whether the government provided the investor binding written guarantees and the nature and extension of the governmental regulation or the potential governmental regulation in the respective sector*”.³¹
 - “**manifest arbitrariness**”, in the [Canada-Ukraine Modernized FTA \(2023\)](#) is further contoured thus: “[a] measure is manifestly arbitrary when it is evident that the measure is not rationally connected to a legitimate policy objective, such as when a measure is based on prejudice or bias rather than on reason or fact.”³²
 - “**denial of justice**”, in the [EU-Singapore Investment Protection Agreement \(2018\)](#) is specified as follows: “*the sole fact that the covered investor’s claim has been rejected, dismissed or unsuccessful does not in itself constitute a denial of justice*”.³³
32. For one treaty, CETA, the parties have recently published a [draft interpretative statement](#) that seeks to clarify every single item in the closed list of protections contained in CETA’s FET provision.³⁴ The draft specifies each component of the FET provision thus:
- “**denial of justice**” or a “**fundamental breach of due process**” require “*improper and egregious procedural conduct in judicial or administrative proceedings, which does not meet the basic internationally accepted standards of administration of justice and due process, and which shocks or surprises a sense of judicial propriety such as the unfounded refusal of access to courts or legal representation, failure to provide an opportunity to be heard, discriminatory treatment by the courts, clearly*

³⁰ The [Colombia-France BIT \(2014\)](#) contains an open list on FET, which has later been complemented by a clarification in [Colombia-France BIT \(2014\) - Joint Interpretative Declaration \(2020\)](#). The original in French provides as follows: “*Les attentes légitimes pouvant être prises en compte au titre de l’article 4 ou 6 de l’Accord désignent les déclarations spécifiques qu’une Partie contractante formule à un investisseur en vue d’encourager un investissement, qui ont créé une attente raisonnable ayant motivé la décision de l’investisseur d’effectuer ou de maintenir son investissement, mais auxquelles la Partie contractante concernée n’a pas donné suite.*”

³¹ [Colombia-Israel FTA \(2013\)](#) Joint interpretation: “*The assessment of the reasonable nature of an expectation depends on factors such as whether the government provided the investor binding written guarantees and the nature and extension of the governmental regulation or the potential governmental regulation in the respective sector*” (emphasis added). Extracts of the text available online: [Are interpretative declarations appropriate instruments to avoid uncertainty? The cases of the Colombia–France BIT and the Colombia–Israel FTA – Investment Treaty News \(iisd.org\)](#).

³² Article 17.9, footnote 3.

³³ Article 2.4.2, footnote 2.

³⁴ [Draft Interpretation of the CETA Joint Committee regarding Article 8.10, Annex 8-A, Article 8.9 and Article 8.39 of the Comprehensive Economic and Trade Agreement \(CETA\)](#), 9 February 2024. The Draft interpretation also covers other provisions of CETA that are not discussed here.

biased and corrupt adjudicators, or a complete or unjustifiable lack of transparency in the proceedings, such as a failure to provide notice of the proceedings or reasons for the decision.”

- **“manifest arbitrariness”** can be found *“when it is evident that the measure is not rationally connected to a legitimate policy objective, such as where a measure is based on prejudice or bias rather than on reason or fact”*.
- **“targeted discrimination on manifestly wrongful grounds such as gender, race or religious belief”** refers to a *“measure or series of measures [that] single out the investor in providing differential treatment based on illegitimate grounds such as gender, race or religious belief”*. The interpretative statement further provides that this provision *“shall not be construed as preventing the Parties from granting preferential treatment to promote gender or racial equality or to otherwise address under-representation of socio-economically disadvantaged groups”*.
- **“abusive treatment of investors, such as coercion, duress and harassment”** requires *“a finding of serious misconduct by a Party”*. The declaration further specifies that *“[i]n making such a determination, relevant considerations may include the harm or threatened harm to the investor such as whether the episodes of alleged harassment or coercion were repeated and sustained, and the rationale for the Party’s actions, such as whether there was an abuse of power”*.
- **“legitimate expectations”** *“cannot arise from representations if a prudent and informed investor would not have reasonably relied upon the representations in making the investment, notably because the representations were not sufficiently specific and unambiguous and did not have the requisite degree of formality for example because they were not made in writing by the competent authority of a Party”*.

Annex A. Treaty sample and language found in these treaties

33. Table 1 lists treaties in which language relevant to sections 1 and 2.2 of this note has been found. It contains extracts of treaty text that is likely of interest for the purpose of this note. Emphasis was occasionally added to highlight rare features.

Table 1. Additional language related to FET clauses

treaty	observed text excerpt (emphasis added where applicable)
Argentina-Qatar BIT (2016)	A determination that there has been a breach of another provision of this treaty, or of a separate international agreement, does not in itself establish that there has been a breach of the fair and equitable treatment”
Argentina-Japan BIT (2018)	3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article. 4. For greater certainty, the mere fact that a Contracting Party takes or fails to take an action that may be inconsistent with an investor 's expectations does not constitute a breach of the fair and equitable treatment or the full protection and security standards referred to in this Article, even if there is a loss or damage to the investment of investors of the other Contracting Party as a result.
Argentina-United Arab Emirates BIT (2018)	2. Para mayor certeza, los conceptos "trato justo y equitativo" y "protección y seguridad plenas" del párrafo 1 no requerirán un trato adicional o más allá del exigido por el estándar mínimo de trato a los extranjeros del derecho internacional consuetudinario [...] 3. La determinación de que se ha violado otra disposición de este Acuerdo no implica que se haya violado el presente Artículo. 4. No se considerará que violan el estándar mínimo de trato los actos legislativos o regulatorios no discriminatorios y no arbitrarios que adopte cualquiera de las Partes con el propósito de proteger objetivos de bienestar general tales como los de orden público, salud pública, seguridad pública, protección del medio ambiente y política económica o que confieran a un inversor de la otra Parte el mismo tratamiento que el conferido en circunstancias similares a sus propios inversores o a inversores de terceros Estados.
AANZFTA (ASEAN-Australia-New Zealand Free trade agreement) (2009)	The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
ACIA (ASEAN Comprehensive Investment Agreement) (2009)	A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
ASEAN-China Investment Agreement (2009)	A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, shall not establish that there has been a breach of this Article.
ASEAN-Hong Kong (China) Investment Agreement (2017)	the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article
Agreement on Investment under the ASEAN-India CECA (2014)	For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article
First Protocol to amend the ASEAN-Japan CEPA (2019)	For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required under the customary international law referred to in paragraph 1, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Chapter, or of a separate international agreement, does not establish that there has been a breach of this Article.

treaty	observed text excerpt (emphasis added where applicable)
ASEAN-Korea FTA (2007)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is provided under the customary international law and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Agreement on Investment under the ASEAN-India CECA (2014)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
ASEAN-Hong Kong (China) Investment Agreement (2017)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Australia-Chile FTA (2008)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Australia-Hong Kong (China) BIT (2019)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate bilateral or multilateral agreement or arrangement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, whether or not there is loss or damage to the covered investment as a result.</p>
Australia-Indonesia CEPA (2019)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under the customary international law minimum standard of treatment, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Australia-Japan EPA (2014)	<p>Note 1: The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>Note 2: A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Australia-Korea FTA (2014)	<p>The concepts of "fair and equitable treatment" and "full protection and security" shall not require treatment in addition to or beyond that which is required by that standard, and shall not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, shall not establish that there has been a breach of this Article.</p>
Australia-Malaysia FTA (2012)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article</p>
Australia-Mexico BIT (2005)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law standard of treatment of aliens.</p>

treaty	observed text excerpt (emphasis added where applicable)
Australia-New Zealand ANZCERTA Investment Protocol (2011)	<p>For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Protocol, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Australia-Peru FTA (2018)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights</p> <p>3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p> <p>5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Australia-Singapore FTA (revised version of 2016)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p> <p>For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Australia-United Kingdom FTA (2021)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p> <p>For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Australia-United States FTA (2004)	<p>For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Australia-Uruguay BIT (2019)	<p>2. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the investment as a result.</p> <p>5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the investment as a result.</p>
CAFTA-DR (2004)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>

treaty	observed text excerpt (emphasis added where applicable)
Canada-Benin BIT (2013)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Burkina Faso BIT (2015)	<p>2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Cameroon BIT (2014)	<p>2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Chile FTA (1996) - Amendment (2017)	<p>3. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create any additional rights.</p> <p>4. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>5. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action, including through a modification to its laws or regulations, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, even if there is loss or damage to the covered investment as a result, does not amount to a breach of an obligation under this Chapter</p> <p>For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party (a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction or maintenance of that subsidy or grant, does not constitute a breach of obligations in this Chapter, even if there is loss or damage to the covered investment as a result. (Art G-01).</p>
Canada-China BIT (2012)	<p>2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidenced by general State practice accepted as law.</p> <p>3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Colombia FTA (2008)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Cote d'Ivoire BIT (2014)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Czechia BIT (2009)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in subparagraph (a) do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.</p>
Canada-Guinea BIT (2015)	<p>2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>

treaty	observed text excerpt (emphasis added where applicable)
Canada-Honduras FTA (2013)	<p>2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.</p>
Canada-Hong Kong (China) BIT (2016)	<p>2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.</p>
Canada-Jordan BIT (2009)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Korea FTA (2014)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of alien.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.</p>
Canada-Kosovo BIT (2018)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of aliens.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Kuwait BIT (2011)	<p>2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Latvia BIT (2009)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph (a) do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.</p>
Canada-Mali BIT (2014)	<p>Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Moldova BIT (2018)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Mongolia BIT (2016)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Nigeria BIT (2014)	<p>2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Panama FTA (2010)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>

treaty	observed text excerpt (emphasis added where applicable)
Canada-Peru FTA (2008)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Romania BIT (2009)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in subparagraph (a) do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.</p>
Canada-Senegal BIT (2014)	<p>Each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Serbia BIT (2014)	<p>2. The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Canada-Slovak Republic BIT (2010)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in subparagraph (a) do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.</p>
Canada-United Kingdom FTA (2020)	<p>Incorporation of CETA: For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement does not establish a breach of this Article.</p> <p>For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.</p>
Canada-Ukraine Modernized FTA (2023)	<p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>The fact that a measure breaches domestic law does not establish a breach of this Article.</p>
CETA (2016)	<p>For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement does not establish a breach of this Article.</p> <p>For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.</p>
Chile-Colombia FTA (2006)	<p>Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un tratamiento adicional o más allá de aquél exigido por ese nivel, y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha violado otra disposición de este Acuerdo, o de otro acuerdo internacional, no establece que se ha violado este Artículo</p>
Chile-Hong Kong (China) BIT (2016)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights.</p> <p>A breach of another provision of this Agreement, or of a separate bilateral or multilateral agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Chile-Japan EPA (2007)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of Article 75.</p>

treaty	observed text excerpt (emphasis added where applicable)
Chile-Korea FTA (2003)	<p>The concepts of "fair and equitable treatment" and "full protection and security" in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Chile-Peru FTA (2006)	<p>Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un tratamiento adicional o más allá de aquél exigido por ese nivel y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha violado otra disposición del presente Acuerdo, o de otro acuerdo internacional, no establece que se ha violado este artículo.</p>
Chile-United States FTA (2003)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Chile-Uruguay BIT (2010)	<p>Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un tratamiento adicional o más allá de aquel exigido por ese nivel, y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha violado otra disposición de este Acuerdo, o de otro acuerdo internacional, no establece que se ha violado este Artículo.</p>
China-Japan-Korea trilateral investment agreement (2012)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond any reasonable and appropriate standard of treatment accorded in accordance with generally accepted rules of international law.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not ipso facto establish that there has been a breach of this paragraph.</p>
China-Korea FTA (2015)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p>
China-Mexico BIT (2008)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidence of State practice and opinion juris.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
China-New Zealand FTA (2008) - Upgrade (2021)	<p>A violation of any other article of this Chapter does not establish that there has been a violation of this Article.</p>
China-Peru FTA (2009)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require additional treatment to that required under the minimum standard of treatment of aliens in accordance with the standard of customary international law.</p> <p>A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.</p>
China-Singapore FTA (2008) Upgrade Protocol (2018)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment and do not create substantive rights in addition to or beyond that which is required by that standard.</p> <p>A determination that there has been a breach of another provision of this Chapter, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Colombia-Costa Rica FTA (2013)	<p>Para mayor certeza, el párrafo 1 prescribe que el nivel mínimo de trato a los extranjeros, según el derecho internacional consuetudinario, es el nivel mínimo de trato que pueda ser proporcionado a las inversiones cubiertas.</p> <p>Los conceptos de trato justo y equitativo y protección y seguridad plenas no requieren un trato adicional o más allá del requerido por ese estándar y no crean derechos adicionales significativos</p>

treaty	observed text excerpt (emphasis added where applicable)
Colombia-France BIT (2014)	<p>La determinación de que se ha infringido otra disposición del presente Acuerdo, o de otro acuerdo internacional, no implicara que se haya infringido este estándar.</p> <p>Se entiende que la obligación de otorgar un trato justo y equitativo no incluye una cláusula de estabilización jurídica ni impide a una Parte Contratante adaptar su legislación de conformidad con los términos de este párrafo.</p>
Colombia-France BIT (2014) - Joint Interpretative Declaration (2020)	<p>Les attentes légitimes pouvant être prises en compte au titre de l'article 4 ou 6 de l'Accord désignent les déclarations spécifiques qu'une Partie contractante formule à un investisseur en vue d'encourager un investissement, qui ont créé une attente raisonnable ayant motivé la décision de l'investisseur d'effectuer ou de maintenir son investissement, mais auxquelles la Partie contractante concernée n'a pas donné suite.</p>
Colombia-India BIT (2009) Colombia-India BIT (2009) - Joint Interpretative Declaration (2018)	<p>BIT: A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.</p> <p>JID: For further clarification, the "fair and equitable treatment" [...] does not require compensation for measures designed or applied to further public policy objectives including but not limited to: a. protection or improvement of natural resources and the environment; b. human animal or plant life or health; c. human capital conditions of work, and human rights, d. protection or improvement of economic conditions and the integrity of the financial system; e. implementation of fiscal policy measures including taxation</p> <p>The "fair and equitable treatment" requirement does not, alone elevate alleged representations, contractual promises or other undertakings by the Contracting Party where the investment is made to the investor or investment to commitments binding or enforceable under the Agreement.</p>
Colombia-Israel FTA (2013)	<p>"Fair and equitable treatment" shall not be construed as to prevent a Party from exercising its regulatory powers in a transparent and non-discriminatory manner.</p> <p>"Fair and equitable treatment" shall not be construed as to prevent a Party from exercising its regulatory powers in a transparent and non-discriminatory manner</p>
Colombia-Japan BIT (2011)	<p>For greater certainty, a change of the regulation of a Contracting Party does not constitute by itself a violation of paragraph 1.</p> <p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of paragraphs 1 and 2.</p>
Colombia-Korea FTA (2013)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Colombia-Northern Triangle FTA (2013)	<p>Para mayor certeza, (a) el concepto de "trato justo y equitativo", no requiere un tratamiento adicional a aquel exigido por el nivel mínimo de trato de extranjeros de acuerdo al derecho internacional consuetudinario, ni crea derechos sustantivos adicionales;</p> <p>La determinación que se ha infringido otra disposición del presente Capítulo o de otro acuerdo internacional, no implicará que se haya violado el trato justo y equitativo ni la protección y seguridad plenas.</p>
Colombia-Panama FTA (2013)	<p>Para mayor certeza, el párrafo 1 prescribe que el nivel mínimo de trato a los extranjeros según el derecho internacional consuetudinario es el nivel mínimo de trato que se le otorgará a las inversiones cubiertas. Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional o más allá de aquel exigido por el nivel mínimo de trato de extranjeros del derecho internacional consuetudinario y no crean derechos sustantivos adicionales.</p>
Colombia-Peru BIT (2007)	<p>Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional o más allá del requerido por el nivel mínimo de trato y no crean derechos adicionales significativos.</p> <p>La determinación de que se ha violado otra disposición de este Acuerdo o de otro acuerdo internacional separado, no establece que se haya violado este Artículo.</p>

treaty	observed text excerpt (emphasis added where applicable)
Colombia-Singapore BIT (2013)	<p>Los conceptos de 'trato justo y equitativo' y de 'protección y seguridad plenas' enunciados en el párrafo 1 no requieren un tratamiento adicional o más allá de aquel exigido por el nivel mínimo de trato de extranjeros de conformidad con el derecho internacional consuetudinario, y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha infringido otra disposición del presente Acuerdo o de otro acuerdo internacional separado, no implica que se haya infringido el presente Artículo.</p>
Colombia-Türkiye BIT (2014)	<p>The concepts of "fair and equitable treatment" and "FPS" do not require treatment in addition to or beyond that which is required by the international law.</p> <p>A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.</p> <p>"Fair and equitable treatment" shall not be construed as to prevent a Contracting Party from exercising its regulatory powers in a transparent and non-discriminatory manner and in accordance with the principle of due process of law.</p>
Colombia-United Arab Emirates BIT (2017)	<p>A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the obligation to accord fair and equitable treatment has been breached.</p>
Colombia-United Kingdom BIT (2010)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require additional treatment to that required in accordance with international law.</p> <p>A determination that there has been a breach of another provision of this Agreement or another international agreement does not establish that the obligation to accord fair and equitable treatment has been breached;</p>
Colombia-United States FTA (2006)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Costa Rica-Peru FTA (2011)	<p>Para mayor certeza, el párrafo 1 prescribe que el nivel mínimo de trato a los extranjeros, según el derecho internacional consuetudinario, es el nivel mínimo de trato que pueda ser proporcionado a las inversiones cubiertas. Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional o más allá del requerido por ese estándar y no crean derechos adicionales significativos.</p> <p>La determinación de que se ha violado otra disposición de este Tratado o de otro acuerdo internacional distinto, no establece que se haya violado este Artículo.</p>
Costa Rica-Singapore FTA (2010)	<p>Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" en el párrafo 1, no requieren un trato adicional o más allá del requerido por el nivel mínimo de trato de extranjeros del derecho internacional consuetudinario y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha violado otra disposición de este Tratado, o de otro acuerdo internacional, no establece que se haya violado este Artículo.</p>
Costa Rica-United Arab Emirates BIT (2017)	<p>El concepto de "trato justo y equitativo" no requiere un trato adicional o más allá del requerido por tal estándar en el derecho internacional consuetudinario, y no crea derechos sustantivos adicionales.</p> <p>Una determinación que se ha violado otra disposición del presente Acuerdo o de un acuerdo internacional distinto, no establece que se ha violado el presente artículo.</p>
CPTPP (2018)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p> <p>For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Czechia-Iran BIT (2017)	<p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>

treaty	observed text excerpt (emphasis added where applicable)
EU-Singapore Investment Protection Agreement (2018)	<p>For greater certainty, the sole fact that the covered investor's claim has been rejected, dismissed or unsuccessful does not in itself constitute a denial of justice.</p> <p>For greater certainty, the frustration of legitimate expectations as described in this paragraph does not, by itself, amount to a breach of paragraph 2, and such frustration of legitimate expectations must arise out of the same events or circumstances that give rise to the breach of paragraph 2.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
EU-Vietnam Investment Protection Agreement (2019)	<p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
India-Bangladesh BIT (2009) - Joint Interpretive Agreement (2017)	<p>"The concept of "fair and equitable treatment" under Article 3 (2) does not require a treatment in addition or beyond that which is required by the customary international law minimum standard of aliens, and does not create additional substantive rights'.</p> <p>"For further clarification, the "fair and equitable treatment" under Article 3(2) does not require compensation for measures designed or applied to further public policy objectives including but not limited to: a) protection or improvement of natural resources and the environment; b) human animal or plan life or health; c) protection or improvement of human capital, conditions of work and human rights; d) protection or improvement of economic conditions and the integrity of the financial system; e) implementation of fiscal policy measures, including taxation".</p>
India-Belarus BIT (2018)	<p>A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
India-Chinese Taipei BIT (2018)	<p>For greater certainty, a change of the regulation of a Contracting Party does not constitute by itself a violation of paragraph 1.</p>
India-Japan EPA (2011)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.</p>
India-Korea CEPA (2009)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
India-Mexico BIT (2007)	<p>the obligations set forth in paragraphs 1 and 2 above do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens;</p> <p>a determination that there has been a breach of another provision of this Agreement, or of a separate international Agreement, does not establish that there has been a breach of this Article.</p>
Japan-Kenya BIT (2016)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this paragraph.</p>
Japan-Lao PDR BIT (2008)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not ipso facto establish that there has been a breach of this Article.</p>
Japan-Mexico EPA (2004)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Japan-Mongolia EPA (2015)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>

treaty	observed text excerpt (emphasis added where applicable)
Japan-Morocco BIT (2020)	For greater certainty, a change of the regulation of a Contracting Party does not constitute by itself a violation of paragraph 1.
Japan-Peru BIT (2008)	For the purpose of paragraph 1, the concept of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Japan-Philippines EPA (2006)	The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not ipso facto establish that there has been a breach of this Article.
Japan-Thailand EPA (2007)	The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Japan-Uruguay BIT (2015)	The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement; or of a separate international agreement, does not establish that there has been a breach of this Article.
Japan-United Arab Emirates BIT (2018)	For greater certainty, the concept of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by customary international law minimum standard of treatment of aliens.
Korea-Armenia BIT (2018)	The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Korea-Central America FTA (2018)	The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Korea-Peru FTA (2011)	For greater certainty, paragraph 2 of this Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of an investor of the other Contracting Party. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Korea-Rwanda BIT (2009)	For greater certainty, paragraph 2 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of an investor of the other Contracting Party. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Korea-Singapore FTA (2005)	The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

treaty	observed text excerpt (emphasis added where applicable)
Korea-United States FTA (2007)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor’s expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>
Korea-Uruguay BIT (2009)	<p>Para mayor certeza, el párrafo 2 establece un nivel mínimo de trato conforme al derecho consuetudinario internacional a ser otorgado a los extranjeros así como un nivel mínimo de trato a ser otorgado a las inversiones de un inversor de la otra Parte Contratante. Los conceptos de “trato justo y equitativo” y “total protección y seguridad” no requieren un trato adicional o superior al requerido para dicho nivel, y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha violado otra disposición del presente Acuerdo, o de un convenio internacional, no significa que se ha violado el presente Artículo.</p>
Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) (2011)	<p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Malaysia-New Zealand FTA (2009)	<p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Malaysia-San Marino BIT (2012)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the Customary International Law minimum standard of treatment of aliens, and do not create additional substantive rights.</p> <p>A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Mexico-Bahrain BIT (2012)	<p>Para mayor certeza, (a) los conceptos de “trato justo y equitativo” y “protección y seguridad plenas” no requieren un trato adicional, o más allá del requerido nivel mínimo de trato a los extranjeros en el derecho internacional consuetudinario, y</p> <p>(b) una resolución en el sentido de que se ha violado otra disposición del presente Acuerdo, o de un acuerdo internacional distinto, no establece que se ha violado este Artículo.</p>
Mexico-Belarus BIT (2008)	<p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article</p>
Mexico-Central America FTA (2011)	<p>Los conceptos de “trato justo y equitativo” y “protección y seguridad plenas” no requieren un tratamiento adicional o más allá de aquel exigido por ese nivel, y no crean derechos sustantivos adicionales.</p> <p>La determinación que se ha violado otra disposición de este Tratado o de otro acuerdo internacional, no establece que se ha violado este Artículo</p>
Mexico-Hong Kong (China) BIT (2020)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens¹ (as evidenced by general and consistent State practice and <i>opinio juris</i>) as the standard of treatment to be afforded to investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed, or maintained, or has been modified or reduced, by a Contracting Party, even if there is loss or damage to the investment as a result, does not constitute a breach of this Article.</p>
Mexico-Kuwait BIT (2013)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of foreigners</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Mexico-Panama BIT (2005)	<p>Los conceptos de “trato justo y equitativo” y “protección y seguridad plenas” no requieren un trato adicional al requerido por el nivel mínimo de trato a los extranjeros propio del derecho internacional consuetudinario, o que vaya más allá de éste.</p> <p>Una resolución en el sentido de que se ha violado otra disposición de este Acuerdo o de un acuerdo internacional distinto no establece que se ha violado el presente Artículo.</p>

treaty	observed text excerpt (emphasis added where applicable)
Mexico-Peru FTA (2011)	<p>Para mayor certeza, los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional al requerido por el nivel mínimo de trato a los extranjeros propio del derecho internacional consuetudinario, o que vaya más allá de éste.</p> <p>Una resolución en el sentido de que se ha violado otra disposición de este Capítulo o de un acuerdo internacional distinto, no establece que se ha violado este Artículo.</p>
Mexico-Singapore BIT (2009)	<p>Los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional al requerido por dicho nivel mínimo de trato, o que vaya más allá de éste, y no crea derechos sustantivos adicionales.</p> <p>Una resolución en el sentido de que se ha violado otra disposición del presente Acuerdo, o de un acuerdo internacional distinto, no establece que se ha violado el presente Artículo.</p>
Mexico-Slovak Republic BIT (2007)	<p>For greater certainty: (a) the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens; and (b) a determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Mexico-Spain BIT (2006)	<p>Una resolución en el sentido de que se ha violado otra disposición de este Acuerdo o de un acuerdo internacional distinto, no establece que se ha violado este Artículo.</p>
Mexico-Trinidad and Tobago BIT (2006)	<p>Para mayor certeza: (a) los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional al requerido por el nivel mínimo de trato a los extranjeros propio del derecho internacional consuetudinario, o que vaya más allá de éste; y (b) una resolución en el sentido de que se ha violado otra disposición de este Acuerdo, o de un Acuerdo internacional distinto, no establece que se ha violado el presente Artículo.</p>
Mexico-Türkiye BIT (2013)	<p>Para mayor certeza: (a) los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional al requerido por el nivel mínimo de trato a los extranjeros propio del derecho internacional consuetudinario, o que vaya más allá de éste, y (b) una resolución en el sentido de que se ha violado otra disposición de este Acuerdo, o de un acuerdo internacional distinto, no establece que se ha violado el presente Artículo.</p>
Mexico-United Arab Emirates BIT (2016)	<p>Para mayor certeza: (a) los conceptos de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional al requerido por el nivel mínimo de trato a los extranjeros propio del derecho internacional consuetudinario, ni que vaya más allá de éste, y (b) una resolución en el sentido de que se ha violado alguna otra disposición del presente Acuerdo o de un acuerdo internacional distinto, no establece que se ha violado el presente Artículo.</p>
Mexico-United Kingdom BIT (2006)	<p>2. Las Partes Contratantes entienden que las obligaciones del párrafo 1 anterior respecto de "trato justo y equitativo" y "protección y seguridad plenas" no requieren un trato adicional al requerido por el nivel mínimo de trato a los extranjeros propio del derecho internacional consuetudinario, o que vaya más allá de éste. Una resolución en el sentido de que se ha violado otra disposición de este Acuerdo o de un acuerdo internacional distinto, no establece en sí mismo que se han violado las disposiciones de este Artículo.</p>
Morocco-United States FTA (2004)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
New Zealand-Singapore CEPA Protocol (2019)	<p>The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens referred to in paragraph 1 and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p> <p>For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p> <p>For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p>

treaty	observed text excerpt (emphasis added where applicable)
PACER plus (2017)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” shall not require treatment in addition to or beyond that which is required by that standard, and shall not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Pacific Alliance FTA (2012)	<p>Los conceptos de “trato justo y equitativo”, y “protección y seguridad plenas” no requieren un tratamiento adicional o más allá de aquél exigido por ese nivel y no crean derechos sustantivos adicionales.</p> <p>La determinación de que se ha violado otra disposición del presente Protocolo Adicional o de otro acuerdo internacional, no establece que se haya violado el presente Artículo.</p>
Peru-Guatemala FTA (2011)	<p>Para mayor certeza, el párrafo 1 prescribe que el nivel mínimo de trato a los extranjeros, según el derecho internacional consuetudinario, es el nivel mínimo de trato que pueda ser proporcionado a las inversiones cubiertas. Los conceptos de “trato justo y equitativo” y “protección y seguridad plenas” no requieren un trato adicional o más allá del requerido por ese estándar y no crean derechos adicionales significativos.</p> <p>La determinación de que se ha violado otra disposición de este Tratado o de otro acuerdo internacional distinto, no establece que se haya violado este Artículo.</p>
Peru-Panama FTA (2011)	<p>Los conceptos de “trato justo y equitativo” y “protección y seguridad plenas” no requieren un trato adicional o más allá del requerido por ese estándar y no crean derechos adicionales significativos.</p> <p>La determinación de que se ha violado otra disposición de este Tratado o de otro acuerdo internacional distinto, no establece que se haya violado este Artículo.</p>
Peru-Singapore FTA (2008)	<p>The concepts of fair and equitable treatment and full protection and security in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Peru-United States FTA (2006)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
RCEP (2020)	<p>the concepts of fair and equitable treatment and full protection and security do not require treatment to be accorded to covered investments in addition to or beyond that which is required under the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Singapore-Myanmar BIT (2019)	<p>The obligation to provide “fair and equitable treatment” and “full protection and security” as described below does not require treatment in addition to or beyond that which is required by this standard, and does not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Singapore-Panama FTA (2006)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Singapore-Rwanda BIT (2018)	<p>The obligation to provide “fair and equitable treatment” and “full protection and security” as described below do not require treatment in addition to or beyond that which is required by the customary international law minimum standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>
Singapore-Türkiye FTA (2015)	<p>The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.</p> <p>A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.</p>

treaty	observed text excerpt (emphasis added where applicable)
Singapore-United States FTA (2003)	The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
Slovak Republic-Iran BIT (2016)	A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
United States-Oman FTA (2006)	The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
United States-Panama FTA (2007)	For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
United States-Rwanda BIT (2008)	The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.
United States-Uruguay BIT (2005)	The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.
Uruguay-United Arab Emirates BIT (2018)	Los conceptos de "trato justo y equitativo" y "total protección y seguridad" no requieren de tratamiento. además de ni más allá del requerido por dicha norma y no crean derechos sustantivos adicionales. La determinación de que ha habido una violación de otra disposición del presente artículo o de otro acuerdo internacional no establece que haya habido una violación en el presente artículo.
USMCA (2018)	The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result

Source: OECD Investment Treaty database.

34. Table 2 lists treaties in which language relevant to section 2.1 of this note has been found. It contains extracts of treaty text that is likely of interest for the purpose of this note. Emphasis was occasionally added to highlight rare features.

Table 2. Clarifications to the content of CIL and allocation of the burden of proof

treaty	observed text excerpt (emphasis added where applicable)
Argentina-Chile FTA (2017)	Las Partes confirman su común entendimiento de que el "derecho internacional consuetudinario" resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal. El nivel mínimo de trato a los extranjeros de acuerdo con el derecho internacional consuetudinario se refiere, con respecto a este Capítulo, a todos los principios del derecho internacional consuetudinario que protegen a los derechos económicos de los extranjeros

treaty	observed text excerpt (emphasis added where applicable)
Australia-Chile FTA (2008)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>The customary international law minimum standard of treatment of aliens refers, for the purposes of this Agreement, to all customary international law principles that protect the economic rights and interests of aliens.</p>
Australia-Hong Kong (China) FTA (2019)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens, as resulting from a general and consistent practice of States that they follow from a sense of legal obligation, as the standard of treatment to be afforded to covered investments.</p>
Australia-Indonesia CEPA (2019)	<p>This Article refers to customary international law principles that protect the investments of aliens.</p>
Australia-Korea FTA (2014)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 11.5 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Australia-Peru FTA (2018)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 8.6 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.</p>
Australia-Singapore Amendment (2016)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.</p>
Australia-United Kingdom FTA (2021)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 13.7 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.</p>
Australia-United States FTA (2004)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 11.5 and Annex 11-B results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Canada-Chile FTA (1996) - Amendment (2017)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article G-05 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens. (Annex G-05)</p>
Canada-China BIT (2012)	<p>The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidenced by general State practice accepted as law.”</p>
Canada-Colombia FTA (2008)	<p>It is understood that the term “customary international law” refers to international custom, as evidence of a general practice accepted as law, in accordance with subparagraph 1(b) of Article 38 of the Statute of the International Court of Justice.</p>
Chile-Colombia FTA (2006)	<p>“Las Partes confirman su común entendimiento que el “derecho internacional consuetudinario” referido en el Artículo 9.4, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>Con respecto al Artículo 9.4, el nivel mínimo de trato otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen a los derechos e intereses económicos de los extranjeros.”</p>
Chile-Hong Kong (China) BIT (2016)	<p>“The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens”</p>
Chile-Japan EPA (2007)	<p>“The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens”</p>

treaty	observed text excerpt (emphasis added where applicable)
Chile-United States FTA (2003)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Articles 10.4 and 10.9 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 10.4, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Chile-Uruguay BIT (2010)	<p>Las Partes confirman su común entendimiento de que el “derecho internacional consuetudinario” resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>El nivel mínimo de trato a los extranjeros de acuerdo al derecho internacional consuetudinario se refiere, con respecto a este Acuerdo, a todos los principios del derecho internacional consuetudinario que protegen a los derechos económicos de los extranjeros.</p>
China-Korea FTA (2015)	<p>Annex 12-A: The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 12.5 results from a general and consistent practice of states that they follow from a sense of legal obligation.</p> <p>With regard to Article 12.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.”</p>
China-Mauritius FTA (2019)	<p>Chapter 8 Annex A: The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 8.5 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 8.5 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.”</p>
China-Mexico BIT (2008)	<p>“The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidence of State practice and <i>opinio juris</i>”</p>
China-Singapore FTA (2008) - Protocol (2011)	<p>The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 5 (Minimum Standard of Treatment) and Annex 10-B (Expropriation) results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 5 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens</p>
Colombia-Costa Rica FTA (2013)	<p>“Las Partes confirman su común entendimiento que el derecho internacional consuetudinario, de manera general y tal como está específicamente referido en el Artículo 12.4, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>Con respecto al Artículo 12.4, el nivel mínimo de trato otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos económicos e intereses de los extranjeros”</p>
Colombia-India BIT (2009) - Joint Interpretative Declaration (2018)	<p>Customary international law “is law that results from evidence of general and consistent practice of States when acting out of a sense of legal Obligation. The burden to establish the existence and applicability of a binding obligation under customary international law that meets the requirements of State practice and opinion juris is always on the claimant.</p> <p>Once a rule of customary international law has been established, a claimant must show that the Contracting Party has engaged in conduct that violated that binding obligation.</p>
Colombia-Korea BIT (2010)	<p>Annex 8-A: “Las Partes confirman su común entendimiento que el “derecho internacional consuetudinario”, de manera general y tal como está específicamente referido en el Artículo 8.5, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>Con respecto al Artículo 8.5, el trato mínimo otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos económicos e intereses de los extranjeros”.</p>
Colombia-Korea FTA (2013)	<p>The Parties confirm their shared understanding that “customary international law”, generally and as specifically referenced in Article 8.5, results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 8.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>

treaty	observed text excerpt (emphasis added where applicable)
Colombia-Panama FTA (2013)	Footnote: "Se entiende que el término "derecho internacional consuetudinario" hace referencia a la costumbre internacional como evidencia de una práctica generalmente aceptada como Ley de conformidad con el Artículo 38 (1) (b) del Estatuto de la Corte Internacional de Justicia."
Colombia-Peru BIT (2007)	"Las Partes confirman su común entendimiento que el "derecho internacional consuetudinario", de manera general y tal como está específicamente referido en el Artículo 45 (Nivel Mínimo de Trato), resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal. Con el respeto al Artículo 4 (Nivel Mínimo de Trato), el trato mínimo otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos económicos e intereses de los extranjeros"
Colombia-Singapore BIT (2013)	El derecho internacional consuetudinario es el resultado de la practica general y consistente, que siguen los Estados como si esta tuviera obligatoriedad jurídica. Con respecto a este artículo, el nivel mínimo de trato a los extranjeros se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos e intereses económicos de los extranjeros.
Colombia-United States FTA (2006)	The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens
Costa Rica-Peru FTA (2011)	"Las partes confirman su común entendimiento que el derecho internacional consuetudinario, de manera general y tal como está específicamente referido en el Artículo 12.4, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal. Con respecto al artículo 12.4, el nivel mínimo de trato otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos económicos e intereses de los extranjeros"
Costa Rica-Singapore FTA (2010)	"Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. With regards to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."
Costa Rica-United Arab Emirates BIT (2017)	"El "derecho internacional consuetudinario" resulta de una practiva general y consistente de los Estados seguida por ellos en el sentido de una obligacion legal."
Japan-Kenya BIT (2016)	This paragraph prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Contracting Party.
Japan-Mongolia EPA (2015)	This paragraph prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party.
Japan-Morocco BIT (2020)	The Contracting Parties confirm their shared understanding that "customary international law" generally and as specifically referred to in this Article results from a general and consistent practice of States that they follow from a sense of legal obligation. The Contracting Parties also confirm that the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.
Korea-Peru FTA (2011)	"Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation. Regarding Article 9.5, customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."
Korea-Singapore FTA (2005)	The "customary international law minimum standard of treatment of aliens" refers to all customary international law principles that protect the economic rights and interests of aliens.
Korea-United States FTA (2007)	"The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 11.5 and Annex 11-B results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."

treaty	observed text excerpt (emphasis added where applicable)
Korea-United States FTA (2007) - Protocol (2018)	<p>"The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 11.5 and Annex 11-B results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 11.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
Mexico-Hong Kong (China) BIT (2020)	<p>For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens¹ (as evidenced by general and consistent State practice and <i>opinio juris</i>) as the standard of treatment to be afforded to investments.</p> <p>The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens.</p>
Mexico-Singapore BIT (2009)	<p>"Con respecto a este artículo, el nivel mínimo de trato para extranjeros del derecho internacional consuetudinario se refiere a todos los principios consuetudinarios de derecho internacional que protegen los derechos económicos e intereses de los extranjeros"</p>
Morocco-United States FTA (2004)	<p>"The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 and Annex 10-B results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
PACER Plus	<p>The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 9 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 9, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Peru-Guatemala FTA (2011)	<p>Annex 12.4: Las Partes confirman su común entendimiento que el derecho internacional consuetudinario, de manera general y tal como está específicamente referido en el Artículo 12.4, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>Con respecto al Artículo 12.4, el nivel mínimo de trato otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos económicos e interés de los extranjeros."</p>
Peru-Panama FTA (2011)	<p>Las Partes confirman su común entendimiento que el derecho internacional consuetudinario, de manera general y tal como está específicamente referido en el Artículo 12.4, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>Con respecto al Artículo 12.4, el nivel mínimo de trato otorgado a los extranjeros por el derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos económicos e intereses de los extranjeros."</p>
Peru-Singapore FTA (2008)	<p>The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regards to this Article, customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Peru-United States FTA (2006)	<p>"The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
RCEP	<p>Annex 10A (Customary International Law): "The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 (Treatment of Investment), including in relation to the customary international law minimum standard of treatment of aliens, results from a general and consistent practice of States that they follow from a sense of legal obligation"</p>

treaty	observed text excerpt (emphasis added where applicable)
Singapore-Myanmar BIT (2019)	<p>Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Singapore-New Zealand CEPA Protocol (2019)	<p>The Parties s confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 7.6 results from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens</p>
Singapore-Panama FTA (2006)	<p>Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regards to this article, the customary international law minimum standard of treatment of aliens refers to al customary international law principles that protect the economic rights and interests of aliens.</p>
Singapore-Rwanda BIT (2018)	<p>“Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.</p>
Singapore-Sri Lanka FTA (2018)	<p>"Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
Singapore-Türkiye FTA (2015)	<p>"Customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to this Article, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
Singapore-United States FTA (2003) - Exchange of letters (2003)	<p>"customary international law results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 15.5 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
Türkiye-Ukraine BIT (2017)	<p>Investments of investors of the State of each Contracting Party shall at all times be accorded treatment in accordance with international law minim11m standard of treatment, including fair and equitable treatment and full protection and security in the territory of the other Contracting Party.</p>
United States-Oman FTA (2006)	<p>"The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 10.5 and Annex 10-B results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens."</p>
United States-Rwanda BIT (2008)	<p>"The Parties confirm their shared understanding that 'customary international law' generally and as specifically referenced in Article 5 and Annex B results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
United States-Uruguay BIT (2005)	<p>"The Parties confirm their shared understanding that 'customary international law' generally and as specifically referenced in Article 5 and Annex B results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>

treaty	observed text excerpt (emphasis added where applicable)
CAFTA-DR	<p>"The parties confirm their shared understanding that 'customary international law' generally and as specifically referenced in Article 10.5, 10.6, and Annex 10-C, results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."</p>
Mexico-Central America FTA	<p>Con respecto a este Artículo, el nivel mínimo de trato a los extranjeros del derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen los derechos e intereses económicos de los extranjeros.</p>
Pacific Alliance FTA	<p>"Las Partes confirman su común entendimiento de que el 'derecho internacional consuetudinario' referido en el Artículo 10.6, resulta de una práctica general y consistente de los Estados, seguida por ellos en el sentido de una obligación legal.</p> <p>Con respecto al Artículo 10.6, el nivel mínimo de trato a los extranjeros del derecho internacional consuetudinario se refiere a todos los principios del derecho internacional consuetudinario que protegen a los derechos económicos de los extranjeros."</p>
CPTPP	<p>"The Parties confirm their shared understanding that 'customary international law' generally and as specifically referenced in Article 9.6 (Minimum Standard of Treatment) results from a general and consistent practice of States that they follow from a sense of legal obligation.</p> <p>The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens."</p>

Source: OECD Investment Treaty database.

Acknowledgements

This note was authored by Anne-Charlotte Cervello and Joachim Pohl of the OECD Secretariat (Investment Division).