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**DIRECTION DES AFFAIRES FINANCIÈRES ET DES ENTREPRISES
COMITÉ DE L'INVESTISSEMENT****Conceptions de clauses de « traitement juste et équitable » dans les traités
d'investissement récents : inventaire des clarifications supplémentaires**

Note du Secrétariat de l'OCDE

Les juridictions participant à l'Axe 2 utilisent systématiquement deux séries de spécifications « primaires » dans leurs traités récents en ce qui concerne les obligations de « traitement juste et équitable » (TJE) : soit elles limitent le TJE à ce qui est requis par la norme minimale de traitement en vertu du droit international coutumier, soit elles identifient les obligations de TJE à l'aide d'une liste exhaustive. Des clarifications « supplémentaires » sont ajoutées à ces spécifications primaires, afin de délimiter davantage les contours et d'identifier le contenu du TJE. La présente note recense ces clarifications supplémentaires en matière de TJE dans les traités récents. Elle a été discutée lors de la réunion de l'Axe 2 qui s'est tenue le 12 mars 2024.

Cette note est rendue publique afin d'assurer la transparence des discussions gouvernementales dans le cadre de l'Axe 2. Les délégués ont eu l'occasion de commenter son contenu avant sa publication. Cette note ne préjuge pas des résultats des discussions dans le cadre du programme de travail de l'Axe 2.

Les travaux sur l'*Avenir des traités d'investissement* sont documentés sur <https://oe.cd/lati2>

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Contexte et objet de la présente note

1. La conception des clauses de « traitement juste et équitable » (TJE) dans les traités d'investissement a subi un changement structurel depuis le début des années 2000. Alors que les premiers modèles de clauses relatives au TJE n'apportaient que peu ou pas de précisions sur la portée des obligations, les nouveaux modèles apparus en 2001 contiennent des termes qui définissent et limitent les obligations découlant de la clause. Ces nouveaux modèles sont désormais utilisés de manière quasi universelle et cohérente par un grand nombre de juridictions (voir [note de recherche du Secrétariat](#)).
2. Les participants à l'Axe 2 des travaux menés sous l'égide de l'OCDE sur *l'Avenir des traités d'investissement* ont souhaité une réflexion préliminaire sur les moyens pratiques permettant aux gouvernements intéressés d'assurer la transition des clauses substantielles dont la conception n'est plus utilisée vers des conceptions plus récentes. La clause de TJE a été proposée comme clause test pour lancer cette réflexion, dans la perspective que les résultats puissent être appliqués à d'autres dispositions de fond que les gouvernements pourraient vouloir effectuer une transition. Plusieurs aspects de ces moyens pratiques ont été discutés en juin et en novembre 2023.¹
3. La présente note vise à faire avancer les considérations sur le contenu substantiel du résultat des transitions possibles des clauses de TJE. Elle met en lumière les détails des clauses de TJE de nouvelle génération qui emploient des *éléments linguistiques supplémentaires* afin de guider l'interprétation de la clause. Certaines de ces clarifications supplémentaires avaient été identifiées dans une [note précédente](#), mais sans en préciser les détails. La présente note comble cette lacune. Elle offre un inventaire détaillé de ces éléments linguistiques additionnels.
4. L'objectif immédiat est d'appuyer les discussions des participants de l'Axe 2 lors de leur réunion du 12 mars 2024. À terme, le but est de créer une compréhension commune de l'objectif et des avantages des différents éléments linguistiques afin d'éclairer les décisions des gouvernements intéressés sur l'aboutissement d'un effort potentiel de transition des clauses de TJE des traités plus anciens vers des modèles récents.

¹ Les discussions du 27 juin 2023 basées sur un [document de recherche du Secrétariat](#) ont permis de mettre en lumière les facteurs qui devraient être pris en compte au moment de décider de l'approche de la transition des clauses correspondant à des modèles antérieurs vers des conceptions plus récentes, et quels instruments juridiques peuvent être disponibles pour une approche donnée, qui à son tour peut dépendre du point de départ donné et du résultat souhaité d'une transition, entre autres.

Synthèse des observations

5. La conception des clauses de TJE dans les traités d'investissement ont subi des changements structurels depuis 2001. Ces changements ont été progressivement adoptés par un grand nombre de juridictions dans le cadre de leur pratique conventionnelle et sont désormais utilisés de manière cohérente dans les nouveaux traités.

6. À partir de 2003, des éléments linguistiques supplémentaires ont été ajoutés aux clauses de TJE afin de préciser la portée des obligations ou de fournir des consignes d'interprétation additionnelles. Plusieurs éléments linguistiques ont été trouvés dans l'échantillon de traités, chacun abordant un angle distinct. La présente note dresse un inventaire de ces éléments linguistiques, identifie les juridictions qui ont utilisé ce langage avec une certaine régularité, et identifie le point de départ chronologique dans la diffusion de cette pratique.

7. Certains éléments linguistiques supplémentaires sont associés à l'une des approches visant à définir les contours de la clause de TJE – association avec le standard minimum de traitement (SMT) en vertu du droit international coutumier (DIC) ou approche par liste exhaustive. D'autres éléments linguistiques sont observés dans les traités qui suivent l'une ou l'autre de ces approches.

8. Les éléments trouvés dans les nouveaux traités suivant l'une des deux approches comprennent :

- Des clarifications sur la pertinence de la **légalité** d'une mesure pour l'établissement d'une violation du TJE, et la référence à différents groupes de normes.
- Des clarifications relatives à la **prévisibilité** d'une évolution : changements objectifs (par exemple, changements réglementaires) ou subjectifs (par exemple, par rapport aux attentes de l'investisseur) et pertinence pour l'établissement d'une violation du TJE.
- Des clarifications sur **l'effet** que la clause de TJE ne produit pas (par exemple, qu'elle ne produit pas les effets d'une clause parapluie ou de stabilisation).

9. Les éléments spécifiques au choix du SMT ou de l'approche par liste exhaustive comprennent :

- Pour les traités SMT-TJE, des clarifications sur la détermination du contenu du DIC et, plus rarement, sur la charge de la preuve de ces éléments.
- Pour les traités contenant une liste exhaustive, des textes interprétatifs secondaires qui fournissent des orientations sur des éléments spécifiques du « traitement juste et équitable », tels que les « attentes raisonnables », l'« arbitraire manifeste » ou le « déni de justice ».

10. Certaines clarifications et limitations supplémentaires apparaissent plus fréquemment que d'autres. Dans la plupart des cas, le choix de ces éléments supplémentaires semble refléter une préférence des juridictions individuelles.

Questions à considérer

- Quels scénarios ont motivé l'inclusion des différentes clarifications supplémentaires dans les clauses de TJE ? Ces éléments ont-ils été efficaces en pratique pour le but recherché ?
- Les juridictions qui n'utilisent pas encore ces éléments régulièrement ou pas du tout sont-elles d'accord avec les interprétations et les précisions qu'ils apportent aux clauses de TJE ? Comment ces juridictions perçoivent-elles la valeur de ces éléments linguistiques au regard de l'objectif visé ?
- Les juridictions participantes ayant inclus des clarifications supplémentaires dans leurs traités récents préféreraient-elles que des clarifications similaires soient présentes dans leurs traités antérieurs qui ne contiennent pas de telles caractéristiques ?

1. Clarifications et limitations supplémentaires vis-à-vis du champ et des effets des clauses de TJE

11. Outre l'inclusion d'une clause de TJE, certains traités d'investissement récents comportent diverses descriptions « négatives » du champ de la clause de TJE. Ces éléments textuels précisent que certains éléments ou scénarios spécifiques ne constituent *pas* une violation du « traitement juste et équitable », ou que la clause de TJE ne peut pas produire certains effets décrits. Les formulations observées peuvent être classées en trois catégories : Positionnement de la clause de TJE par rapport à différentes mesures de légalité (1.1), prévisibilité (1.2), ou exclusion de certains effets de la clause (1.3).

1.1. TJE et légalité de l'action de l'État d'accueil

12. Les clauses de TJE faisant référence à la légalité de l'action de l'État d'accueil peuvent définir cette légalité par rapport à d'autres dispositions du même accord, à des obligations découlant d'autres accords ou au droit interne de l'État d'accueil.

13. **La violation d'une autre disposition ou d'un autre accord n'équivaut pas à une violation du TJE.** La description négative la plus fréquemment utilisée pour limiter le champ d'application des clauses de TJE précise que « *[l]a constatation d'un manquement à une autre disposition du présent accord ou d'un accord international distinct n'établit pas un manquement* » à la clause de TJE.² Cette formulation est observée dans les traités d'investissement qui lient le TJE au SMT³ aussi bien que dans les traités qui contiennent une liste exhaustive.⁴

14. Cette clarification supplémentaire apparaît dans 141 traités d'investissement répertoriés dans la base de données des traités d'investissement de l'OCDE. Parmi les juridictions participantes qui incluent le plus souvent cette limitation supplémentaire, tous les traités canadiens conclus à partir de 2006 contiennent cette formulation.⁵

² Par exemple, le [CPTPP \(2018\)](#) dispose la chose suivante : « *[l]a constatation d'un manquement à une autre disposition du présent accord ou d'un accord international distinct n'établit pas un manquement au présent article* ».

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

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

⁵ Cela représente 31 traités d'investissement et accords préférentiels commerciaux contenant un chapitre sur l'investissement conclus par le Canada depuis 2006 : [Canada-Benin BIT \(2013\)](#); [Canada-Burkina Faso BIT \(2015\)](#); [Canada-Cameroun 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. **La violation du droit interne n'équivaut pas à une violation du TJE.** Quelques traités d'investissement précisent que « [l]e fait qu'une mesure viole le droit interne n'établit pas une violation » du TJE.⁶ Une telle formulation est observée dans plusieurs traités conclus par le Canada, à commencer par l'[AECCG](#) en 2016.⁷

1.2. TJE et prévisibilité de l'action de l'État d'accueil

16. Plusieurs variantes linguistiques des clarifications supplémentaires de l'obligation d'accorder le TJE font référence à l'interaction entre la prévisibilité des évolutions futures et le TJE. Il peut s'agir de changements objectifs, tels que des modifications de la réglementation ou la poursuite de pratiques administratives, ou de changements subjectifs, tels que des écarts entre les attentes d'un investisseur et l'évolution d'une situation.

17. **Les changements de réglementation ne constituent pas une violation du TJE.** Certains traités stipulent que le changement de réglementation d'une partie contractante ne constitue pas en soi une violation des clauses de TJE.⁸ Il semble que cette pratique conventionnelle ait été initiée par la Colombie en 2011.⁹

18. Certains traités limitent cette règle aux seuls changements appliqués à la poursuite d'objectifs de politique publique. Parmi ces traités, certains énumèrent des objectifs légitimes spécifiques au moyen d'une liste non exhaustive,¹⁰ tandis que d'autres ne précisent pas quels intérêts légitimes peuvent être invoqués.¹¹ La plupart des traités dotés

* Cette désignation est sans préjudice des positions sur le statut et est conforme à la résolution 1244/1999 du Conseil de sécurité des Nations unies ainsi qu'à l'avis consultatif de la Cour internationale de justice sur la déclaration d'indépendance du Kosovo.

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”. La même précision apparaît dans le traité suivant : [India-Chinese Taipei BIT \(2018\)](#).

⁹ Le premier traité contenant des dispositions excluant les changements de réglementation du champ de la clause de TJE est le suivant : [Colombia-Japan BIT \(2011\)](#).

¹⁰ Par exemple, la [Colombia-India BIT \(2009\) - Joint Interpretative Declaration \(2018\)](#) dispose la chose suivante : “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”. De la même manière, le [Argentina-United Arab Emirates BIT \(2018\)](#) dispose la chose suivante : “[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”.

¹¹ Par exemple, le l'article 4.5 du [Colombia-Türkiye BIT \(2014\)](#) dispose la chose suivante : ““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”.

de cette formulation exigent toutefois que la mesure soit non discriminatoire et non arbitraire.¹²

19. **La frustration des attentes d'un investisseur ne constitue pas une violation du TJE.** Certains traités font référence aux attentes des investisseurs plutôt qu'à des changements objectifs de règles. Ils stipulent par exemple que le simple fait qu'une Partie prenne ou ne prenne pas une mesure susceptible d'être incompatible avec les attentes d'un investisseur ne constitue pas une violation du TJE, même s'il en résulte une perte ou un dommage pour l'investissement couvert.¹³ Ce type de formulation a été utilisé pour la première fois dans [l'ALE Australie-Singapour \(version révisée de 2016\)](#). Il apparaît désormais fréquemment dans les traités d'investissements et accords commerciaux préférentiels conclus par l'Australie.¹⁴

20. **Les changements de pratiques administratives ou les décisions inattendues ne constituent pas une violation du TJE.** Une troisième variante, relativement peu fréquente, du langage relatif à la prévisibilité se situe quelque peu entre le changement objectif des règles et la frustration des attentes de l'investisseur. Cette variante fait référence aux subventions et précise que le simple fait qu'une subvention ou un avantage n'ait pas été accordé, renouvelé ou maintenu, ou qu'il ait été modifié ou réduit ne constitue pas une violation de la clause de TJE.¹⁵ Cette formulation apparaît comme une limitation autonome

¹² Par exception, le [India-Bangladesh BIT \(2009\) - Joint Interpretative Agreement \(2017\)](#) dispose la chose suivante : *“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 \(2019\)](#): *“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”*. Une variation proche de cette formulation apparaît dans le [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#), Annexe 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”* (souligné par l'auteur).

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](#). En dehors de la pratique conventionnelle australienne, cette formulation apparaît également dans les accords suivants : [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](#). Une variante de cette formulation apparaît dans l'article 2.4.3, note de bas de page 2 du [EU-Singapore Investment Protection Agreement](#), qui dispose la chose suivante : *“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”*. Une variation apparaît dans le [Canada-Chile FTA \(1996\) - Amendment \(2017\)](#), qui dispose la chose suivante : *“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*

dans quelques traités, principalement des traités australiens,¹⁶ à partir de 2016.¹⁷ Le plus souvent, elle est toutefois associée à une précision relative aux attentes de l'investisseur.¹⁸

1.3. Limitations des effets des clauses de TJE

21. Plutôt que de fournir des clarifications sur les conditions de violation du TJE, comme indiqué dans la section précédente, certains traités contiennent des dispositions qui cherchent à moduler l'effet des clauses relatives au TJE. Deux variantes de cette conception peu fréquente sont observées.

22. **La clause de TJE ne produit pas les effets d'une clause parapluie.** Quelques traités d'investissement précisent que les clauses de TJE n'ont pas pour effet d'élever de prétendues représentations, promesses contractuelles ou autres engagements de la partie contractante au rang d'engagements contraignants ou exécutoires en vertu du traité¹⁹ – une limitation de l'effet habituellement produit par les clauses « parapluie ».²⁰

23. **La clause de TJE ne produit pas les effets d'une clause de stabilisation.** Certains traités d'investissement précisent que la clause de TJE « *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* ».²¹

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" (souligné par l'auteur).

¹⁶ La pratique australienne semble débiter avec le [Australia-Singapore FTA \(revised version of 2016\)](#). Cette limitation apparaît ensuite dans les traités suivants : [Australia-Peru FTA \(2018\)](#); [Australia-Uruguay BIT \(2019\)](#); [Australia-United Kingdom FTA \(2021\)](#); [CPTPP](#).

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

¹⁸ [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*” (souligné par l'auteur).

²⁰ La clause « parapluie » ou « clause de respect des engagements », figure dans la plupart des traités d'investissement et offre une protection additionnelle aux investisseurs en élevant tout engagement pris par un État d'accueil vis-à-vis d'investisseurs étrangers au rang d'une obligation exécutable en vertu du traité d'investissement. Pour de plus amples informations, voy. 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 : “*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 associées à des modèles spécifiques de clauses de TJE

24. Certaines clarifications supplémentaires associées aux clauses de TJE sont spécifiques à la méthode de délimitation du champ de la clause. Le contenu de ce langage dépend du choix de modèle : les traités d'investissement qui lient le TJE au SMT précisent souvent le contenu du droit international coutumier (2.1). Les traités qui décrivent la portée des obligations en matière de TJE au moyen d'une liste exhaustive offrent des outils d'interprétation sur les éléments individuels de cette liste (2.2).

2.1. Clarifications du contenu du droit international coutumier

25. Les traités d'investissement récents qui établissent un lien entre le TJE et le SMT précisent souvent ce que constitue le DIC (2.1.1). Quelques traités attribuent également au demandeur la charge de la preuve pour établir l'existence d'une obligation contraignante en vertu du DIC en plus de la violation de cette obligation (2.1.2).

2.1.1. Les notions de droit international coutumier et de *standard minimum de traitement*

26. Depuis 2003, un nombre croissant de traités contenant une clause de TJE liée au SMT incluent une clarification de ce que constitue le DIC. Cette clarification est souvent composée de deux éléments : Elle décrit généralement la notion de « **droit international coutumier** » en termes de pratique générale et constante des États découlant d'un sentiment d'obligation juridique ; et le « **standard minimum de traitement** » comme regroupant tous les principes de droit international coutumier qui protègent l'investissement des étrangers.²² Si ces deux éléments sont souvent associés, l'un ou l'autre peut également apparaître de manière isolée.²³

27. Plusieurs formulations de ces clarifications sont observées :

²² [Australia-United Kingdom FTA \(2021\)](#), Annexe 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" (souligné par l'auteur). Une variation de cette formulation apparaît dans le [Australia-Hong Kong \(China\) FTA \(2019\)](#), qui dispose la chose suivante : "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 Par exemple, le [Costa Rica-United Arab Emirates BIT \(2017\)](#) fait uniquement référence au « droit international coutumier » sans aucune mention du standard minimum de traitement : "El "derecho internacional consuetudinario" resulta de una practica general y consistente de los Estados seguida por ellos en el sentido de una obligacion legal". A l'inverse, le [Korea-Singapore FTA \(2005\)](#) ne contient qu'une clarification portant sur le standard minimum de traitement des étrangers : "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".

- Le « **droit international coutumier** » est soit lié aux principes qui protègent les investissements des étrangers,²⁴ soit décrit par référence à la coutume internationale, en tant que preuve d’une pratique générale acceptée comme loi, cette dernière formulation faisant référence au libellé de l’article 38.1(b) du Statut de la Cour internationale de justice.²⁵
- Le « **standard minimum de traitement** » est parfois décrit par référence aux droits économiques des étrangers²⁶ ou à la pratique générale des États, sans précision sur le contenu d’une telle pratique.²⁷

2.1.2. La charge de la preuve

28. Quelques traités stipulent que la charge d’établir l’existence et l’applicabilité d’une obligation contraignante en vertu du droit international coutumier qui répond à l’exigence de la pratique des États et de l’*opinio juris* incombe toujours au demandeur. La charge de la preuve de la violation de la norme pèse également sur le demandeur, comme l’indiquent expressément certains traités.²⁸

29. Les Parties à l’ALENA ont à plusieurs reprises soumis ce type de formulation dans le cadre des soumissions de tierces parties,²⁹ mais il semble qu’elles n’aient pas encore inclus ce type de formulation dans aucun de leurs traités.

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

²⁵ Par exemple, le [Canada-Colombia FTA \(2008\)](#) dispose la chose suivante : “*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*”. La même formulation apparaît dans le [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 Par exemple, le [Chile-Hong Kong \(China\) BIT \(2016\)](#) dispose la chose suivante : “*The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens*” (souligné par l’auteur).

²⁷ À ce titre, le [Canada-China BIT \(2012\)](#) dispose la chose suivante : “*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*” (souligné par l’auteur). De la même manière, le [China-Mexico BIT \(2008\)](#) dispose que “[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 Par exemple, la [Colombia-India BIT \(2009\) - Joint Interpretative Declaration \(2018\)](#) dispose la chose suivante : “*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*”. La même formulation apparaît dans le [India-Bangladesh BIT \(2009\)-Joint Interpretive Agreement \(2017\)](#), note de bas de page 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](#)”.

2.2. Définitions d'éléments spécifiques des clauses de TJE sous forme de liste exhaustive

30. Certains traités d'investissement qui clarifient le champ d'application du TJE au moyen d'une liste exhaustive contiennent des clarifications secondaires de certains ou de tous les éléments de la liste.³⁰
31. La première approche apparaît vis-à-vis des termes suivants :
- L'expression « **attentes raisonnables** » est clarifiée comme dépendant de facteurs tels que la question de savoir si le gouvernement a fourni à l'investisseur des garanties écrites contraignantes et la nature et l'étendue de la réglementation gouvernementale ou de la réglementation gouvernementale potentielle dans le secteur concerné.³¹
 - La notion d'« **arbitraire manifeste** », dans [l'Accord de libre-échange Canada-Ukraine \(2023\)](#), est décrite plus en détail comme suit : « [u]ne mesure constitue un cas d'arbitraire manifeste lorsqu'il est évident qu'elle n'est pas rationnellement liée à un objectif légitime en matière de politique, notamment lorsqu'elle est fondée sur des préjugés ou un parti pris plutôt que sur la raison ou les faits ».³²
 - Le terme « **déni de justice** », dans [l'Accord de protection des investissements UE-Singapour \(2018\)](#), est spécifié comme suit : « le seul fait de rejeter, de refuser ou d'écarter une demande introduite par un investisseur visé ne constitue pas en soi un déni de justice ».³³
32. Pour un traité, l'AECG, les parties ont récemment publié un [projet de déclaration interprétative](#) qui cherche à clarifier chaque élément de la liste exhaustive des protections contenues dans la clause de TJE de l'AECG.³⁴ Le projet précise chaque élément de la clause de TJE de la manière suivante :

[under Customary International Law](#)”, OECD Working Papers on International Investment, 2017/03, OECD Publishing No.2017/3, pp.34-35.

³⁰ Le [Colombia-France BIT \(2014\)](#) contient une liste non-exhaustive sur le TJE, qui a ensuite été complétée par une clarification dans la [Colombia-France BIT \(2014\) - Joint Interpretative Declaration \(2020\)](#). Cette déclaration dispose la chose suivante : « *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 Interprétation conjointe du [Colombia-Israel FTA \(2013\)](#) : “*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” (souligné par l'auteur). Des extraits de ce texte sont disponibles en ligne : [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, note de bas de page 3.

³³ Article 2.4.2, note de bas de page 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

- L'établissement d'un « **déni de justice** » ou une « **violation fondamentale du principe de l'application régulière de la loi** » requiert « *une conduite procédurale incorrecte et choquante [...] dans les procédures judiciaires ou administratives, qui ne respecte pas les normes fondamentales internationalement reconnues en matière d'administration de la justice et d'application régulière de la loi, et qui heurte, ou du moins surprend le sens de la correction juridique, tel que le refus infondé d'accès aux tribunaux ou à la représentation en justice, l'absence de possibilité d'être entendu, un traitement discriminatoire par les tribunaux, des juges clairement subjectifs et corrompus, ou un manque complet ou injustifiable de transparence dans la procédure, tel qu'un défaut de notification de la procédure ou des motifs de la décision* ».
- Une mesure « **manifestement arbitraire** » est constatée « *lorsqu'il est évident qu'elle n'a pas de lien rationnel avec un objectif légitime en matière de politique, par exemple lorsqu'une mesure est fondée sur un préjugé ou un parti pris plutôt que sur la raison ou les faits* ».
- Une « **discrimination ciblée basée sur des motifs manifestement illicites, comme le sexe, la race ou les croyances religieuses** » se réfère à une mesure ou série de mesures qui « *distingue l'investisseur en lui accordant un traitement différencié fondé sur des motifs illégitimes tels que le sexe, la race ou les croyances religieuses* ». La déclaration interprétative prévoit en outre que la clause n'est pas interprétée « *comme empêchant les Parties d'accorder un traitement préférentiel pour promouvoir l'égalité entre les hommes et les femmes ou l'égalité raciale, ou remédier de toute autre manière à la sous-représentation des groupes défavorisés sur le plan socio-économique* ».
- Un « **traitement abusif des investisseurs, tel que la coercition, la contrainte et le harcèlement** » requiert une « *faute grave de la part d'une Partie* ». La déclaration prévoit en outre que « *[p]our parvenir à cette détermination, les considérations pertinentes peuvent inclure le préjudice ou la menace de préjudice pour l'investisseur, notamment la question de savoir si les épisodes de harcèlement ou de coercition allégués étaient répétés et persistants, et la justification des actions de la Partie, notamment la question de savoir si les autorités agissaient dans le cadre de leur compétence ou s'il y a eu un abus de pouvoir* ».
- Les « **attentes légitimes** » « *ne peuvent pas découler de déclarations si un investisseur prudent et avisé ne se serait raisonnablement pas fié aux déclarations pour effectuer l'investissement, notamment parce que les déclarations n'étaient pas suffisamment précises et dépourvues d'ambiguïté et qu'elles n'avaient pas le degré de formalité requis, par exemple parce qu'elles n'ont pas été faites par écrit par l'autorité compétente d'une Partie* ».

février 2024. Le projet d'interprétation couvre également d'autres dispositions de l'AECG qui ne sont pas discutées ici.

Annex A. Exemples de traités et formulations figurant dans ces traités

33. Le tableau 1 énumère les traités dans lesquels une formulation pertinente pour les sections 1 et 2.2 de cette note a été trouvée. Il contient des extraits du texte des traités qui sont susceptibles de présenter un intérêt aux fins de la présente note. Certaines formulations peu fréquentes sont indiquées en gras.

Tableau 1. Formulations additionnelles relatives aux clauses de TJE

traité	extrait du texte observé (souligné par l'auteur)
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.

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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. 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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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.

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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>

traité	extrait du texte observé (souligné par l'auteur)
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. Le tableau 2 énumère les traités dans lesquels une formulation pertinente pour la section 2.1 de cette note a été trouvée. Il contient des extraits de texte de traités susceptibles de présenter un intérêt aux fins de la présente note. Certaines formulations peu fréquentes sont indiquées en gras.

Tableau 2. Clarification du contenu du DIC et répartition de la charge de la preuve

traité	extrait du texte observé (souligné par l'auteur)
Argentina-Chile FTA (2017)	<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 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</p>
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>

traité	extrait du texte observé (souligné par l'auteur)
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>
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>

traité	extrait du texte observé (souligné par l'auteur)
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>
Colombia-Panama FTA (2013)	<p>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."</p>
Colombia-Peru BIT (2007)	<p>"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.</p> <p>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"</p>
Colombia-Singapore BIT (2013)	<p>El derecho internacional consuetudinario es el resultado de la practica general y consistente, que siguen los Estados como si esta tuviera obligatoriedad jurídica.</p> <p>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.</p>
Colombia-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>
Costa Rica-Peru 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>
Costa Rica-Singapore FTA (2010)	<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 all customary international law principles that protect the economic rights and interests of aliens."</p>
Costa Rica-United Arab Emirates BIT (2017)	<p>"El "derecho internacional consuetudinario" resulta de una practiva general y consistente de los Estados seguida por ellos en el sentido de una obligacion legal."</p>
Japan-Kenya BIT (2016)	<p>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.</p>
Japan-Mongolia EPA (2015)	<p>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.</p>
Japan-Morocco BIT (2020)	<p>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.</p> <p>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.</p>

traité	extrait du texte observé (souligné par l'auteur)
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."
Korea-United States FTA (2007) - Protocol (2018)	"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."
Mexico-Hong Kong (China) BIT (2020)	For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens ¹ (as evidenced by general and consistent State practice and <i>opinio juris</i>) as the standard of treatment to be afforded to investments. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights of aliens.
Mexico-Singapore BIT (2009)	"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"
Morocco-United States FTA (2004)	"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. 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."
PACER Plus	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. 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.
Peru-Guatemala FTA (2011)	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. 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."
Peru-Panama 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."
Peru-Singapore FTA (2008)	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 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.

traité	extrait du texte observé (souligné par l'auteur)
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>
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>

traité	extrait du texte observé (souligné par l'auteur)
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>
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.

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