EKONOMISTA | **ARTYKUŁY**
2026, 3, 468–488
DOI: 10.52335/ekon/225680

Omer Erkut Bulut
Faculty of Law, Bogazici University, Turkey
https://orcid.org/0000-0001-5380-8458, omererkut.bulut@bogazici.edu.tr

Bridging International Trade and Investment Law in a Fragmenting International Economic Order

Łączenie międzynarodowego prawa handlowego i inwestycyjnego w rozdrobnionym międzynarodowym porządku gospodarczym

Abstract

This article examines fragmentation between international trade law and international investment law, two closely related regimes of international economic law that share common post-World War II foundations but have developed along different legal and institutional paths. It focuses on the legal and economic implications of this divide, particularly where trade measures also affect protected investments. Using doctrinal analysis, case studies and insights from law and economics, the paper evaluates how fragmentation affects predictability, transaction costs, strategic behaviour and regulatory autonomy. The Philip Morris plain packaging and Ontario renewable energy disputes show that the same state measure may be assessed through different legal standards and remedial logics. The article argues that the problem is not fragmentation as such, but unmanaged or strategically exploitable divergence. It concludes that coherence should be pursued through selective coordination rather than institutional merger, including clearer treaty design, institutional dialogue, cross-regime awareness and reason-giving practices.

Keywords: International Economic Law, International Trade Law, International Investment Law, Legal Fragmentation, International Litigation.

JEL: F13, F21, K33, K41

Streszczenie

W artykule poddano analizie proces fragmentacji międzynarodowego prawa handlowego oraz międzynarodowego prawa inwestycyjnego– wzajemnie powiązanych reżimów międzynarodowego prawa gospodarczego, które mają wspólne powojenne źródła, lecz rozwinęły odmienne formy prawne i instytucjonalne. Analiza dotyczy prawnych i gospodarczych skutków tego podziału, zwłaszcza w sytuacjach, gdy środki z zakresu polityki handlowej oddziałują na chronione prawnie inwestycje. Na podstawie analizy doktrynalnej, studiów przypadku i ekonomicznej analizy prawa oceniono wpływ fragmentacji na przewidywalność, koszty transakcyjne, zachowania strategiczne i autonomię regulacyjną. Spory dotyczące ujednoliconych opakowań wyrobów tytoniowych (tzw. plain packaging) w sprawie Philip Morris oraz odnawialnych źródeł energii w Ontario pokazują, że ten sam środek zastosowany przez państwo może być oceniany w świetle odmiennych standardów prawnych i odmiennych zasad dotyczących środków ochrony prawnej. Artykuł kończy konkluzja, że problemem nie jest sama fragmentacja, lecz nieskoordynowana lub podatna na strategiczne wykorzystanie rozbieżność. Spójność należy osiągać nie za sprawą fuzji instytucjonalnej, a dzięki wybiórczej koordynacji, precyzyjniejszym traktatom, dialogowi instytucjonalnemu, świadomości międzyreżimowej oraz należytemu uzasadnianiu decyzji.

Słowa kluczowe: międzynarodowe prawo gospodarcze, międzynarodowe prawo handlowe, międzynarodowe prawo inwestycyjne, fragmentacja prawa, międzynarodowe postępowanie sporne.

JEL: F13, F21, K33, K41

1. Introduction

International trade law and international investment law are often referred to as sister regimes (Di Mascio & Pauwelyn, 2008). Both originated within the same post-World War II liberal economic order, aimed at fostering free trade, capital flows, and investor confidence (Kribeaum, Dolzer & Schreuer, 2022). They also share a practical economic foundation: cross-border trade and foreign investment are not isolated phenomena, but closely connected forms of international economic activity. Firms may export, establish foreign affiliates, participate in global value chains (GVCs), respond to local content rules, or structure their operations across several jurisdictions. In this sense, the legal regimes governing trade and investment inevitably interact.

Yet this interaction has not produced a unified legal framework. Both trade and investment law have developed through different institutional structures, doctrinal categories, remedial models, professional communities and normative priorities. Trade law disciplines state conduct from the perspective of reciprocal market access and collective trade commitments. By contrast, investment law protects foreign investors against certain forms of host-state mistreatment, including expropriation, discrimination, denial of fair and equitable treatment (FET), and arbitrary or abusive regulation. These differences are not merely technical. They shape how each regime characterises state conduct, allocates risk, evaluates regulatory autonomy and responds to economic disruption.

This article examines the fragmentation between international trade and international investment law. Its central argument is not that the overlap between the World Trade Organization (WTO) and investor-state dispute settlement (ISDS) is the dominant pattern of international economic dispute settlement. Genuine parallel proceedings involving the same measure remain relatively rare. Rather, the article argues that such overlap is a high-salience manifestation of a deeper structural problem. Trade and investment law increasingly operate over the same economic terrain, especially in policy areas such as subsidies, local content requirements (LCRs), renewable energy programmes, public procurement, public health regulation, climate transition measures, sanctions, and national security-related economic policies. In these areas, the same domestic measure may be treated under WTO law as a trade measure and under investment law as state conduct affecting a protected foreign investment.

This is a problem that is distinct from but connected to the broader crisis of multilateral economic governance. The paralysis of the WTO Appellate Body, the rise of unilateral trade measures, and the shift toward a more multipolar and less multilateral world order form part of the background against which this article is written. However, they are not the article's main subject. The focus here is narrower: the legal and economic consequences of fragmentation between two closely related regimes within international economic law (IEL). The question is not why the WTO is in crisis, or whether the post-World War II economic order is being replaced, but how trade and investment law interact when they assess overlapping state conduct through different legal lenses.

The economic implications of this fragmentation should also be framed carefully. Fragmentation does not necessarily paralyse global trade, deter foreign investment generally or produce a universal breakdown of international economic governance. Its costs are more concentrated. From a law and economics perspective, fragmentation matters because it can alter incentives, raise transaction costs, encourage strategic corporate structuring, complicate regulatory planning, and contribute to regulatory chill in sensitive sectors. These effects may arise not only in litigated cases, but also in the pre-litigation environment, where states and firms anticipate how trade measures may be characterised under multiple legal regimes.

The article therefore adopts a more specific remedial position. It does not argue for full harmonisation between international trade and investment law, or for collapsing the two regimes into a single institutional structure. Such proposals would be neither politically realistic nor normatively desirable. The proper objective is selective coordination. Treaty design, institutional dialogue, scholarly and practitioner networks, and disciplined cross-referencing can reduce avoidable inconsistency without erasing the autonomy of either regime.

The article proceeds as follows. Section 2 introduces the legal architecture of international trade and investment law. Section 3 examines the historical, institutional and epistemic roots of fragmentation. Section 4 analyses the Philip Morris and Mesa Power disputes as examples of overlapping measures and divergent legal reasoning. Section 5 assesses the economic implications of fragmentation. Section 6 evaluates possible mechanisms for reducing fragmentation. The conclusion argues that the central challenge is not to eliminate fragmentation, but to manage its most avoidable costs in sectors where trade and investment law increasingly collide.

2. The legal architecture of trade and investment in international economic law

Understanding the tensions between international trade and investment law requires a grasp of the legal architecture for both regimes. This section outlines the foundational components of IEL, namely the legal regimes of trade and investment.

IEL encompasses the legal norms, principles, and institutions governing cross-border economic activity. It is not a monolithic body of rules, but rather a loosely integrated legal framework comprising various subfields, primarily international trade, investment, monetary regulation, and development finance (Herdegen, 2025). It operates at the point of intersection of law, economics, and politics, and is increasingly informed by considerations such as sustainability, human rights, and technological change (Qureshi, 2019).

2.1. International trade law: Key norms and institutions

At the core of international trade law stands the WTO, established in 1995 as the institutional successor to GATT, signed in 1947. The WTO provides a comprehensive treaty framework governing the liberalisation of trade in goods, services, and intellectual property, and houses a well-structured dispute settlement system. Key substantive norms include most-favoured-nation (MFN) treatment, national treatment (NT), and disciplines on tariffs, subsidies, and non-tariff barriers. Importantly, WTO law comprises public policy exceptions (such as those under Article XX of GATT), enabling a balance to be reached between trade liberalisation and regulatory autonomy. The WTO's dispute settlement system is strictly intergovernmental: businesses lack standing, even though they are directly affected by trade measures (art IV, WTO Dispute Settlement Understanding).

The subject matter of WTO agreements is protection of free trade, in goods, services or intellectual property. On the other hand, trade agreements do not define the notion of *trade*. The concept of *trade* is not expressly defined in trade agreements: GATT does not define a *product*, and the General Agreement on Trade in Services (GATS) defines *services* in a tautological way, referring to it as *supply of services* in article I. In fact, the architects who drafted GATS conclude that there is no practical purpose in defining *services*, again citing the enormity, continuously changing nature of tradable services and *constant technological advances* (Abu-Akeel, 1999, p. 190). Hence, this is an omission made not by accident, but by design.

A particularly important instrument in international trade law is the Agreement on Trade-Related Investment Measures (TRIMs), which directly addresses the relationship between trade in goods and investment-related state measures. TRIMs do not create a general multilateral investment regime. Rather, they discipline investment measures that are inconsistent with core GATT obligations, especially NT and the prohibition of quantitative restrictions. Its illustrative list identifies LCRs and trade-balancing requirements as examples of measures that distort trade in goods. TRIMs occupy a distinctive position within WTO law, confirming that trade and investment are not hermetically separate fields, while still addressing the issue from the perspective of trade in goods rather than investor protection.

The present crisis within the WTO dispute settlement system adds another layer to this analysis. The Appellate Body has been unable to function because appointments have been blocked, allowing losing parties to appeal panel reports *into the void* (Pauwelyn, 2019). In addition, renewed tariff escalation and unilateral reciprocal tariff policies challenge the basic architecture of the GATT/WTO system, particularly the disciplines on bound duties and MFN treatment (Dunoff & Pollack, 2025). On top of the long-standing deadlock within the WTO dispute settlement system, the second Trump administration introduced *reciprocal tariffs* in November 2025, further undermining the basic architecture of the GATT/WTO system. Given that these measures originate from the world's largest economy (IMF, 2026) and the world's largest import market (WTO, 2025), these measures directly challenge core disciplines such as bound tariff commitments under article II of the GATT, the MFN principle under article I, and the general framework of non-discrimination among WTO members. They also place pressure on the balance between multilateral commitments, preferential trade arrangements, and the dispute settlement mechanism itself. As a result, the WTO system has been seriously weakened, and the outcomes of successive multilateral rounds of negotiations have been significantly undermined.

This does not mean that WTO law has become irrelevant, especially since first-instance panels continue to decide disputes (Pahis, 2025). Nor has the membership response been entirely passive. Several WTO members, including major trading economies, have sought to preserve appellate review through the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). It is a mechanism based on article 25 DSU, *Arbitration*, which replicates core features of Appellate Body-style review between participating members (WTO, 2020; Stoll et al., 2026, pp. 46-47). This confirms a measure of institutional adaptability, but the MPIA remains voluntary, interim and incapable of substituting for a restored multilateral appellate mechanism (Stoll et al., 2026, pp. 9–10, 50).

Nevertheless, outside such interim arrangements, the appellate paralysis undermines formal adoption and remedies. More importantly, it means that a regime once associated with centralised legality and appellate supervision now operates under significant institutional stress and a serious political crisis. It is yet to be seen whether this is a very turbulent, but still a temporary period or it signals a systemic shift which will permanently change the main rules of international trade for good.

2.2. International investment Law: key norms and institutions

Unlike the WTO, international investment law has developed in a fragmented and decentralised manner. Its procedural architecture is most closely associated with ISDS, especially under the ICSID Convention of 1965, which established the International Centre for Settlement of Investment Disputes (ICSID) within the World Bank Group. However, the substantive protection of foreign investment is not contained in a single multilateral code. It is built primarily through bilateral investment treaties (BITs), regional agreements, and investment chapters in broader economic treaties (UNCTAD, n.d.). These instruments usually provide standards such as FET, protection against direct and indirect expropriation, full protection and security (FPS), national treatment and most-favoured-nation treatment. Unlike WTO law, investment law lacks a centralised institutional home or appellate mechanism, which has contributed to interpretive inconsistency and continuing concerns about the balance between investor protection and regulatory autonomy (Baltag et al., 2023).

The subject matter of this regime is the protection of foreign investment. Yet the concept of *investment* is not defined uniformly across international investment law. Some tribunals have relied on objective criteria associated with the Salini line of cases, including contribution, duration, risk and contribution to the host state's economic development (Fedax v. Venezuela, 1998; Salini v. Morocco, 2001). Others have given greater weight to the wording of the applicable treaty, especially where the treaty contains an asset-based definition of investment (Plama v. Bulgaria, 2005). The point for present purposes is not to resolve this definitional debate. It is enough to note that investment law uses the concept of *investment* as a legal threshold for jurisdiction and protection. Not every cross-border economic activity is automatically protected as an investment, and the applicable treaty language remains central to determining the scope of protection (Petsche, 2023, p. 894).

This legal inquiry should be distinguished from economic theories explaining why firms engage in foreign direct investment (FDI). The Salini criteria and treaty definitions do not seek to explain the commercial motivation of multinational enterprises. They determine whether an asset or activity qualifies for the special jurisdictional and substantive protection offered by investment law. By contrast, economic theories of FDI, including Dunning's ownership-location-internalization framework (1988) and the Helpman-Melitz-Yeaple model (2004), explain why firms choose to internalise production abroad rather than export, license, or contract at arm's length. These theories are relevant to the broader relationship between trade and investment because they show how fixed costs, firm productivity, market proximity and trade costs shape the choice between exporting and establishing a foreign affiliate.

This distinction is important for the fragmentation argument. International trade law and investment law do not protect the same legal interests, but they often concern connected economic conduct. A firm may begin as an exporter, establish a local subsidiary to access a market, respond to LCRs, or participate in a global value chain through a foreign affiliate. The same regulatory measure may therefore affect both market access and a protected investment. Investment law approaches this situation through standards such as FET, expropriation, non-discrimination and legitimate expectations, while trade law approaches it through disciplines on market access, national treatment, subsidies, TRIMs and public policy exceptions. The overlap between economic reality and legal separation is one of the main sources of fragmentation examined in this article.

This institutional contrast is central to the argument made in this article. Trade and investment law share a post-World War II economic background and often concern connected economic conduct, but they developed through different legal forms, remedies and professional cultures. The following section therefore turns from the basic architecture of the two regimes to the roots of their fragmentation.

3. The nature and roots of fragmentation

3.1. The concept of *legal fragmentation*

According to Oxford Bibliographies (2014), *fragmentation of international law* means *normative and institutional development and evolution in inter-state relations. Separate legal norms and institutions have developed largely independently from one another.*

While fragmentation is a general feature of modern international law, its consequences are particularly acute in IEL, where trade and investment regimes regularly engage the same or related state conduct. The risk is not only legal uncertainty, but also forum shopping, contradictory rulings, and erosion of trust in the international legal system.

3.2. Historical, institutional and normative divergence

Trade and investment law are often treated as distinct regimes, although they emerged from a shared post-war economic context. The post-World War II order sought to create a more stable legal framework for trade, finance, and development, supported by institutions such as the IMF and the World Bank Group (Herdegen, 2025). Yet, despite this common background, trade and investment law developed through markedly different institutional structures.

The GATT system, later formalised as the WTO in 1995, was multilateral, state-driven, and built around a centralised dispute settlement mechanism, including appellate review. By contrast, international investment law evolved largely through bilateral treaties and decentralised arbitration under ICSID, UNCITRAL or *ad hoc* rules. These different institutional trajectories produced distinct legal cultures, procedural standards and interpretive methodologies.

The divergence is not merely procedural. The two regimes were meant to be complementary: trade liberalisation facilitates investment, while stable investment climates encourage trade. Wagner (2014, p. 11) therefore describes them as *twins separated at birth*. However, they came to reflect different priorities and normative assumptions. Trade law emphasises reciprocal market access, non-discrimination and collective commitments between states. Investment law, by contrast, developed around the protection of foreign investors against unstable regulation, discrimination, and interference with property rights. As Baetens (2022) argues, this difference in ethos can lead to divergent interpretations even of the same legal standards.

3.3. Epistemic and professional divides

Another driver of fragmentation is the existence of distinct epistemic communities. Puig (2015) points out the networks of professionals, scholars, arbitrators, and practitioners who specialise in either trade or investment law. These communities shape how legal norms are interpreted and developed, reinforcing siloed understandings of international economic law.

WTO lawyers and adjudicators tend to emphasise systemic coherence, multilateralism, and regulatory exceptions. Their training and professional incentives prioritise collective rules and interpretive restraint. Conversely, ISDS lawyers often come from a background in commercial arbitration and prioritise procedural autonomy, party consent, and the protection of private rights (Fukunaga, 2023). These cultural and professional divergences reinforce normative disjunctions.

The result is a lack of cross-pollination between the two regimes. Even where the same principles appear, such as MFN or NT, they are often interpreted through different lenses. WTO panels apply economic analysis and systemic interpretation, while investment tribunals lean toward investor protection. The outcome is not simply fragmentation in a formal sense, but also in the underlying ethos of adjudication.

The point is not that trade and investment lawyers form hermetically sealed communities. There is in fact increasing overlap between the two fields (Puig, 2015).

Rather, the assertion is more specific: historically, the two regimes have developed through different professional fora, procedural cultures, citation practices, and dominant argumentative styles, which plausibly contributes to divergent reasoning.

4. Fragmentation in practice: Overlapping measures, conflicting standards

This section examines how fragmentation between the two regimes plays out in practice. Using selected cases, it illustrates how the same state measure may be assessed differently under each regime, creating legal uncertainty for all stakeholders, not only states, but also investors, businesses, and the general public.

4.1. Case I: Philip Morris and plain packaging

A well-known example of fragmented adjudication is found in the tobacco plain packaging cases. In the early 2010s, Uruguay and Australia introduced legislation requiring standardised packaging for tobacco products as part of their public health campaigns. The measures triggered WTO dispute settlement proceedings, and ISDS claims under BITs.

While Australia's measures under the Agreement on Technical Barriers to Trade and TRIPS were challenged before the WTO, the Philip Morris Corporation filed separate ISDS claims against both Uruguay and Australia, arguing that the measures amounted to indirect expropriation of their trademark rights and a violation of the FET standard.

These legal challenges unfolded in parallel but with minimal interaction. The WTO process upheld the legitimacy of the public health objectives and found the plain packaging rules consistent with trade obligations. The investment tribunal in *Philip Morris v. Uruguay* (2016) similarly ruled in favour of the state but engaged only briefly with the WTO jurisprudence. The lack of cross-reference between the two rulings highlights both a danger for systemic coordination, and an increased cost of procedural duplication and fragmented legal reasoning.

The case exemplifies how a single public measure can be assessed under two separate legal regimes. Both regimes have their own interpretive logic, evidentiary burdens and normative priorities, including different approaches to non-discrimination and *likeness* (Baetens, 2022, p. 18). Although the outcomes converged, they did so without meaningful shared reasoning or institutional dialogue. The investment tribunal's reliance on the police powers doctrine protected regulatory space in a sensitive area of public health, but it did not resolve the broader problem of WTO-ISDS divergence (Bulut, 2022). The Philip Morris saga is therefore best understood as an example of procedural duplication and limited cross-regime coordination rather than direct normative conflict.

4.2. Case II: LCRs in Canada's renewable energy sector

A more revealing case of divergent legal outcomes can be found in the litigation surrounding Ontario's renewable energy programme. Canada's Feed-in Tariff (FIT) Program required a certain percentage of renewable energy components to be sourced locally (Charnovitz & Fischer, 2015). This *local content* requirement was challenged both at the WTO and through investment arbitration.

At the WTO, Japan and the EU initiated dispute settlement proceedings (DS412 and DS426), arguing that the measure violated Canada's obligations under the TRIMs Agreement, the SCM Agreement and the GATT. The WTO Panel and Appellate Body (2013) ultimately left standing findings that the domestic content requirements were inconsistent with TRIMs article 2.1 and GATT article III:4, while the SCM Agreement issues produced a more limited and inconclusive appellate outcome. The procurement issue arose in this context through GATT article III:8(a), which allows certain government procurement measures to fall outside the NT obligation. However, the Appellate Body rejected Canada's reliance on this defence because the product being procured was electricity, whereas the allegedly discriminatory treatment concerned renewable energy generation equipment and components (paras 5.74–5.79). In other words, the procurement defence failed because WTO law focused on the relationship between the product procured and the product discriminated against.

This is precisely why the dispute is significant for the present analysis. It shows how an investment-related industrial policy measure, especially a domestic content requirement, may be disciplined within WTO law as a trade-in-goods issue before its treatment under investment law is considered separately. Meanwhile, in *Mesa Power v. Canada* (2016), a US investor brought a claim under NAFTA chapter 11, arguing that the administration and modification of Canada's FIT Program violated its rights as a foreign investor, including the FET standard under article 1105. The arbitral tribunal ultimately rejected the investor's claim. Importantly, procurement was found to operate differently in the context of investment arbitration. Under NAFTA article 1108, the investment tribunal treated the FIT Program as procurement by a party or state enterprise, with the consequence that several non-discrimination and performance-requirement claims were excluded or substantially narrowed (paras. 417–420, 507, 706(iii)). This left Mesa Power mainly with its article 1105 claim, which it failed to prove.

The difference between the WTO proceedings and *Mesa Power* should therefore not be understood simply as two tribunals interpreting the same concept differently. Rather, procurement performed different functions under different treaty texts and doctrinal structures. In the WTO disputes, procurement was examined as a possible derogation from NT under GATT article III:8(a). In *Mesa Power*, procurement operated as a carve-out from certain NAFTA investment obligations. This distinction is central to understanding why WTO findings could be relevant background but not a controlling authority in the investment arbitration.

The tribunal in *Mesa Power* briefly acknowledged the WTO proceedings, but it did not treat them as binding or determinative (paras 411–414). This is consistent with the broader problem of WTO-ISDS overlap: absent an express rule of hierarchy, preclusion or cross-regime incorporation, WTO reports remain at most a persuasive background in investment arbitration. Therefore, the case illustrates not only divergent outcomes, but also the limits of institutional dialogue, as examined further in section 6. WTO law focused on discriminatory trade effects and the structure of the procurement defence, whereas the investment tribunal focused on the scope of NAFTA carve-outs, investor expectations, administrative fairness and the absence of specific commitments to Mesa Power. Although both proceedings concerned the same renewable energy programme, their legal assessments diverged because they operated under different benchmarks, procedures, remedies and underlying rationales.

5. Economic Implications of Legal Fragmentation

Fragmentation between international trade and investment law is not merely a formal legal concern: it creates structural inefficiencies that ripple across markets, regulatory behaviours, and dispute resolution mechanisms. From a law and economics standpoint, fragmentation can undermine key pillars of economic governance: predictability, transaction cost minimisation, and the optimal allocation of capital.

However, any empirical analysis of these economic costs must be approached with caution. While the conceptual mechanisms of transaction costs, strategic behaviour, and regulatory chill are theoretically coherent, their systemic magnitude depends heavily on specific scope conditions.

5.1. Misaligned incentives and strategic behaviour

One of the central insights of law and economics is that legal rules structure incentives (Coase, 1960). Fragmentation incentivises strategic behaviours on the part of both states and investors, though the channels through which these incentives operate vary by sector. States may rely on WTO compliance to justify aggressive domestic regulatory interventions, operating under the assumption that trade-legality shields them from liability, while failing to anticipate how those same measures might violate investment protection standards under a BIT (Allen & Soave, 2014, p. 14).

Conversely, investors may engage in corporate structuring or forum shopping, not based on commercial logic, market proximity, or productive efficiency, but purely to secure optimal legal insulation (Betz et al., 2021). This misalignment can distort competitive neutrality. A multinational firm might select an investment location primarily because its corporate structure permits an ISDS claim if a domestic trade adjustment reduces profitability, a dynamic illustrated by the extensive jurisdictional manoeuvring in *Tokios Tokelés v. Ukraine* (2007).

Crucially, the incentive to exploit these fragmented regimes is not evenly distributed across the global economy. It operates predominantly as a sector-specific scope condition. Strategic behaviour and parallel track exploitation are heavily concentrated in highly regulated, capital-intensive policy areas such as public subsidies, LCRs, environmental mandates, and public health campaigns where trade rules and investor guarantees directly collide.

5.2. Transaction costs, legal uncertainty and the scope of fragmentation

Legal fragmentation multiplies transaction costs for both private actors and public regulators. Businesses must navigate overlapping and sometimes contradictory legal regimes, resulting in increased legal expenditures, risk assessments, and contractual safeguards. It is argued that the frictions raise the cost of cross-border transactions and may deter entry into certain markets, especially for SMEs (Betz, et al., 2021).

Legal uncertainty also discourages long-term investment (Schoenherr, 2022). The same public policy measure, such as a tariff or a health regulation, can be deemed legitimate under WTO law but unlawful under ISDS. This unpredictability may force investors to hedge against multiple legal outcomes, undermining the economic efficiency of the legal framework.

The magnitude of these costs must also be anchored against empirical baselines. The absolute volume of cross-regime litigation indicates that a universal system-wide failure is rare: the WTO dispute settlement system registered 631 disputes between 1995 and the end of 2024, while the ICSID system, including the Convention and Additional Facility, registered 1,085 cases by 31 December 2025 (WTO, 2025; ICSID, 2026). Against the scale of global trade and investment flows, these figures confirm that genuinely parallel proceedings involving the same measure remain an emerging phenomenon rather than the dominant operational reality.

However, this rarity should not be treated as evidence that fragmentation is economically insignificant. Formal case numbers measure only disputes that mature into litigation. They do not capture the *ex-ante* effects of legal uncertainty on regulatory design, corporate structuring, contractual planning, risk pricing, settlement behaviour or project avoidance. The trade-policy uncertainty literature shows that uncertainty about future trade measures can affect firm entry, export decisions, investment behaviour and trade linked to GVCs (Handley & Limão, 2017; Li & Swenson, 2017; Bao et al., 2022; Constantinescu et al., 2020). WTO monitoring practice similarly confirms that trade-related measures may be economically significant even when they do not become disputes.

The economic significance of WTO-ISDS fragmentation is therefore specific rather than systemic. It creates heightened legal and economic risks in sectors where trade regulation, foreign investment, and public policy are closely intertwined, including subsidies, LCRs, public procurement, public health regulation, climate and energy transition measures, sanctions and national security measures (Allen & Soave, 2014; Kurtz, 2018). In these settings, fragmentation may affect legal planning, public measure design, corporate structuring, risk pricing, and strategic behaviour. The challenge is therefore not to eliminate institutional diversity, but to reduce avoidable uncertainty where the same state conduct may be assessed through divergent legal and economic logics.

5.3. Regulatory chill and suboptimal outcomes

States facing the threat of costly ISDS claims refrain from adopting socially desirable regulations, such as environmental standards or public health measures (Fyock, 2025). This phenomenon, known as *regulatory chill*, is particularly problematic where WTO law permits such measures under general exceptions like article XX of GATT. Meanwhile, many investment treaties still lack similar calibrated carve-outs even though ISDS reform to accommodate legitimate regulatory concerns has been taking place over a decade (Alvarez, 2021).

As a result, states may refrain from adopting welfare-enhancing policies because of asymmetric legal risks, leading to suboptimal regulatory outcomes. The system thereby fails to internalise externalities and distorts the balance between liberalisation and public interest. John and Sachs (2016) observe that ISDS can discourage even economically efficient regulations adopted in the public interest.

To remain empirically grounded, the *regulatory chill* hypothesis must be qualified by explicit scope conditions. The threat of chill is rarely a system-wide phenomenon that paralyses ordinary state administration. Rather, it tends to materialise within specific regulatory areas where the distributive stakes are high, and the affected investors possess both the incentives and the resources to litigate. The first such frontier concerns climate and energy transitions, especially where states phase out fossil fuel infrastructure or revise renewable energy subsidy schemes, thereby creating friction under instruments such as the ECT. The second concerns regulations designed to protect essential public interests, including public health and consumer protection. As explained in the previous section, the Philip Morris saga is illustrative of this danger.

Newer-generation BITs have attempted to address this concern more directly by creating a broader and clearer regulatory space for host states, allowing them to adopt good-faith and proportionate measures for the protection of essential public interests without the constant fear of large-scale ISDS claims (Bulut, 2022). Again, these developments are not primarily motivated by ensuring compliance with WTO law, but rather by responding to criticisms of excessive investor privilege and insufficient regard for wider public interests. They also contribute to greater coherence between the two sister regimes of IEL. In this way, more attentive treaty design can preserve the core function of ISDS while reducing unnecessary friction with states' regulatory autonomy. Section 6 further elaborates on this remedial function of treaty design.

5.4. Fragmented adjudication and loss of precedential value

The WTO's adjudicatory system was originally celebrated for its centralised, appellate-based structure, which helped generate consistent interpretations and contributed to legal certainty (Cottier & Oesch, 2005, p. 28). By contrast, ISDS has long been criticised for its decentralised and *ad hoc* nature, especially due to the absence of a formal doctrine of precedent (Schill, 2007). From a law and economics perspective, this fragmentation has often caused increased uncertainty and litigation costs, particularly for repeat players navigating divergent rulings, as aptly mapped out by Ridi and Schultz (2021).

However, this conventional view requires some qualification. While doctrinal consistency may in theory reduce transaction costs, the practical effectiveness of a system also depends on its functionality. In this regard, the current crisis of the WTO Appellate Body has effectively paralysed the WTO's dispute settlement system, as explained in section 2. On the other hand, ISDS has continued to function and deliver awards, despite its fragmented institutional design.

Paradoxically, it is precisely the decentralisation of ISDS that has made it more resilient in recent years. Despite concerns over inconsistency, tribunals have continued to develop a body of jurisprudence that, while formally non-binding, increasingly exerts persuasive authority. From a law and economics point of view, this points to a trade-off: the WTO offers greater normative coherence when operational, but ISDS provides a more flexible and responsive dispute settlement mechanism under conditions of institutional stress.

5.5. Global Value chains, vertical integration and allocative frictions

Modern GVCs depend on the close interaction between trade and investment decisions. Firms do not simply choose between exporting and investing abroad in the abstract; they organise production across borders by weighing market access, fixed costs, regulatory conditions, transaction costs, and the relative advantages of internalising production rather than relying on arm's-length contracting (Berthet & Fusacchia, 2024). This insight is consistent with economic theories of the firm and international production, including the literature on vertical integration, global sourcing and the geography of GVCs (Antràs & Chor, 2013; Alfaro et al., 2019; Antràs & de Gortari, 2020). In this sense, trade and investment are not separate economic phenomena, but alternative and often complementary modes through which firms structure cross-border production.

Legal fragmentation can create frictions within this decision-making process. Where a firm establishes a foreign affiliate to serve an export market, comply with LCRs, or participate in a regulated sector such as renewable energy, the same state measure may affect both its market access conditions and its protected investment. A plausibly legitimate tariff, subsidy scheme or procurement rule may therefore be reframed under investment law as a breach of legitimate expectations, FET, non-discrimination, or indirect expropriation.

From an economic perspective, the problem is not simply that two legal regimes exist. Institutional plurality may be justified where different regimes serve different functions. The difficulty arises when the boundary between trade regulation and investment protection is unclear enough to increase the costs of planning, contracting, compliance, and dispute avoidance. In capital-intensive sectors, especially energy transition projects and infrastructure-linked investments, these legal uncertainties may affect the structure of the investment itself. Firms may respond by increasing contractual safeguards, restructuring their corporate nationality, pricing legal risk into the project, or avoiding particular markets (Betz et al., 2021).

This is consistent with the broader transaction-cost logic that legal rules shape the costs of organising economic activity and the choice between market transactions and internalised production (Coase, 1960; Williamson, 1985).

Antràs and de Gortari (2020) further show that the optimal location of a given production stage is shaped in multi-stage production not only by the marginal cost of production in a particular country, but also by that country's proximity to preceding and subsequent stages of production. They also show that trade costs can compound along the value chain and that changes in trade barriers affect whether countries participate in domestic, regional or GVCs. This matters for the present argument because legal uncertainty at the trade-investment interface may operate in a similar way: it does not merely affect one isolated transaction but may alter how firms structure cross-border production chains across jurisdictions, considering legal risks rather than purely economic calculations.

This does not mean that fragmentation systematically impairs all GVCs. This assertion is more limited. Fragmentation generates allocative frictions where trade and investment functions are economically integrated but legally assessed through separate regimes. In such cases, legal uncertainty can distort the choice between exporting, licensing, contracting and establishing a foreign affiliate. It may also encourage firms to structure transactions for dispute-settlement advantage rather than productive efficiency, a dynamic that is consistent with the evidence that investment agreements may influence the fragmentation of firms across countries (Betz et al., 2021). The economic cost of fragmentation therefore lies not in the mere coexistence of WTO law and ISDS, but in the additional uncertainty created when cross-border production strategies are exposed to inconsistent legal characterisation across regimes.

6. Toward policy coherence: Paths to bridging the divide

Reducing fragmentation does not necessarily require institutional unification. The most robust solutions to fragmentation would be either a common appellate or supervisory mechanism capable of ensuring uniform interpretation across regimes, or a preliminary reference mechanism. However, these measures are neither politically realistic nor institutionally desirable in the present architecture of IEL. A common appellate body covering trade and investment disputes would require an exceptional degree of multilateral agreement at a time when even the WTO Appellate Body remains paralysed. A preliminary reference mechanism between WTO panels and investment tribunals would raise similar difficulties, including questions of consent, delay, applicable law, confidentiality, and the autonomy of treaty-based adjudication. Consequently, the aim is not to eliminate fragmentation altogether, but to reduce unnecessary friction in those limited but high-salience situations where the same state measure is capable of being assessed under both regimes.

6.1. Treaty design

The first option is more attentive treaty design. Newer-generation BITs and investment chapters in preferential trade agreements can draw clearer boundaries between trade measures and investment protection. Some treaties already exclude or qualify trade-related measures, including customs duties, taxation, subsidies, procurement and prudential regulation. Integrated agreements such as USMCA and CETA also create an opportunity to specify which obligations apply to which aspects of state conduct, and which bodies are competent to assess them.

However, treaty design should be understood as a forward-looking and targeted remedy, not a system-wide solution. UNCTAD's IIA Navigator lists 2,869 BITs, 2,242 of which are in force, together with 521 treaties with investment provisions, 420 of which are in force (UNCTAD, 2026). Redesigning this treaty stock would require immense coordination and political will. Treaty design is therefore most realistic for new treaties, treaty amendments, joint interpretive statements, and model BIT revisions. It is also most justified in recurrent areas of friction, including subsidies, LCRs, procurement, public health regulation, climate measures, energy transition policies and national security measures. The literature on jurisdictional overlap similarly notes that traditional doctrines such as *res judicata* have limited purchase in WTO-investment overlap because the parties, causes of action, applicable law, and remedies differ (Allen & Coave, 2014).

Even then, drafting has limits. *Mesa Power* shows that even where WTO law and investment law engage related concepts, such as procurement and discriminatory treatment, the interpretive inquiry may still diverge. General references to *consistency* or *mutual supportiveness* are therefore unlikely to be enough. More useful tools include express carve-outs, conflict clauses, fork-in-the-road provisions, agreed interpretive notes, or provisions clarifying the evidentiary and interpretive relevance of prior WTO findings. In this narrower sense, treaty design cannot eliminate fragmentation, but does remain the most concrete legal tool for reducing future overlap.

6.2. Institutional dialogue

A second path is institutional dialogue, but this concept requires greater precision. *Dialogue* may refer either to adjudicator-facing practices or to institution-facing reforms. These two possibilities differ significantly in terms of feasibility and legal effect.

Adjudicator-facing dialogue means that WTO panels and ISDS tribunals voluntarily take account of relevant findings from the other regime when the same or closely related state measure is being examined. This expectation is particularly justified in investment arbitration, because arbitrators are not merely private dispute resolvers. As Schill (2010) argues, investment treaty arbitration performs a public function: arbitral reasoning contributes to the normative development of the investment regime and shapes expectations beyond the immediate parties to the dispute. This public function strengthens the case for transparent engagement with relevant external legal materials, including WTO findings, even where such materials are not formally binding.

This does not mean deference, and still less formal subordination. It means that a tribunal should explain whether and why another forum's reasoning is relevant, distinguishable or inapplicable. This would not bind the tribunal, but it would improve transparency and reduce the appearance of arbitrary divergence. However, the difficulty here is incentive-based. Investment arbitrators operate in a party-appointed and reputational market, and they are not institutionally required to promote systemic convergence with WTO law (Ridi & Schultz, 2021). In addition, ISDS does not recognise a formal doctrine of precedent, and WTO findings do not automatically form part of the applicable law under a BIT. *Mesa Power* illustrates this limitation clearly: the tribunal could acknowledge the WTO proceedings without treating them as controlling or even particularly influential. Adjudicator-facing dialogue is therefore useful only as a discipline of reason-giving, not as a mechanism of legal integration.

Institution-facing dialogue would be more ambitious. It could involve amendments to arbitration rules, treaty rules, or institutional practice, for example by encouraging submissions on related WTO proceedings, permitting *amicus curiae* briefs from trade law experts, allowing expert evidence on WTO law, or inviting treaty parties to issue joint interpretive statements. Such mechanisms would have a clearer legal basis if they were included in investment treaties, free trade agreements, institutional rules, or interpretive instruments adopted by treaty parties. Without such a basis, institutional dialogue risks remaining purely aspirational. The key point, therefore, is that dialogue must be connected to an institutional actor: treaty parties, arbitral institutions, WTO members, counsel, or tribunals. Otherwise, the proposal lacks an addressee.

From a law and economics perspective, institutional dialogue is valuable only if it changes incentives. It may reduce the informational costs faced by tribunals, increase the reputational cost of ignoring relevant cross-regime findings, and help parties anticipate how a measure may be treated under another legal regime. Yet it cannot overcome the basic incentive structure of decentralised arbitration. Arbitrators may have professional reasons to preserve the autonomy of investment law, and parties may strategically prefer fragmented reasoning when it benefits their case. Institutional dialogue should therefore be presented as a coordination device rather than a guarantee of convergence.

6.3. Scholarly and practitioner networks

The third mechanism is the development of scholarly and practitioner networks across trade and investment law. This remedy also requires a clearer causal mechanism. Epistemic networks may not directly prevent inconsistent awards, but they may still reduce fragmentation through three more specific channels.

First, they may influence litigation strategies. Counsel trained in both WTO law and investment law are more likely to understand the risks of opportunistic forum selection, duplicative proceedings and inconsistent argumentation. This may not eliminate forum shopping, but it can make cross-regime consequences more visible to both investors and states. Secondly, epistemic cross-pollination may influence tribunal reasoning. Arbitrators and adjudicators exposed to both regimes may be more likely to distinguish carefully between trade-law concepts and investment-law concepts, rather than importing assumptions unconsciously from one field into the other. Thirdly, these networks may influence treaty drafting. The most concrete impact of scholarly and practitioner communities is often indirect: they shape model treaty language, reform debates, institutional guidelines, and the professional vocabulary through which states understand legal risk.

As Puig (2015) observes, the separation between the two regimes has never been absolute and has become increasingly difficult to maintain in practice. A relatively small group of visible international lawyers moves across WTO dispute settlement and investment arbitration, facilitating the circulation of arguments, concepts and techniques between the two fields (Puig, 2015, pp. 12–15). This overlap may also help explain why claims traditionally framed as trade disputes can sometimes be rearticulated as investor-state disputes where this offers procedural or remedial advantages. At the same time, such epistemic overlap must be managed carefully, so that the norms and principles of each regime are applied in accordance with their own ethos and institutional function.

6.4. Cross-referencing mechanisms

A more ambitious version of institutional dialogue involves establishing formal cross-referencing mechanisms between investment tribunals and WTO panels. This can be done by encouraging investment tribunals to engage with relevant WTO findings when assessing similar measures under investment treaties.

At the same time, greater harmonisation does not always produce greater efficiency. The WTO dispute settlement mechanism, once praised for its centralised appellate system, has descended into crisis, exposing the fragility of highly centralised systems under geopolitical pressure (Cottier & Oesch, 2005, p. 28). By contrast, the decentralised structure of ISDS has continued to function despite recurring concerns about inconsistency, foreseeability and legitimacy, especially in disputes touching upon regulatory autonomy, environmental protection, public health or human rights (UNCTAD, 2019).

Therefore, cross-referencing has its risks as much as its benefits. If it is soft, it collapses into the same incentive structure as institutional dialogue. Tribunals may cite external decisions when useful, ignore them when inconvenient, or distinguish them without much explanation. Soft cross-referencing can improve transparency, but it cannot guarantee convergence. By contrast, if cross-referencing is hard, it begins to resemble the hierarchy or preliminary reference mechanisms that this paper deliberately avoids.

Hence, the better approach can be neither binding cross-reference nor complete isolation. Instead, cross-referencing may operate as a reason-giving requirement. Where a party relies on a WTO ruling, an investment tribunal should explain whether that ruling is relevant, and give reasons for its standpoint. Its relevance may depend on the identity of the measure, the legal standard being applied, the factual findings made by the earlier forum, and the degree of overlap between the two proceedings. Such a mechanism would preserve doctrinal independence while increasing transparency. It would not require tribunals to follow WTO law, but it would make unexplained disregard less acceptable.

The legal instrument for such a mechanism could vary. The strongest basis would be treaty language requiring tribunals to take account of relevant decisions from other international fora without treating them as binding. A weaker but still useful basis could be joint interpretive statements issued by treaty parties. Procedural rules could also facilitate this practice by allowing parties to submit related decisions, expert opinions, or *amicus* briefs addressing cross-regime implications. In the absence of such instruments, cross-referencing remains a matter of arbitral discretion.

Hence, coherence should not be pursued at all costs. Excessive harmonisation may undermine the distinct functions of trade and investment law. The proper objective is therefore selective coordination rather than full integration. Treaty design, institutional dialogue, epistemic networks and cross-referencing can contribute to this objective only if they are understood as feasible and incentive-sensitive tools. They do not solve fragmentation, but they can reduce its most avoidable costs.

7. Conclusion

The fragmentation between the two regimes is not new, but it has become more consequential. The two emerged from a broadly shared post-World War II project of economic legalisation yet developed through different institutional pathways. Trade law became associated with inter-state dispute settlement, market access, non-discrimination, subsidies disciplines, and public policy exceptions. By contrast, investment law developed through a decentralised network of treaties, ISDS, and standards such as FET, expropriation and FPS.

Parallel proceedings involving the same measure are not the ordinary pattern of international economic adjudication. Yet their relative rarity does not make them insignificant. They reveal a broader structural condition: trade and investment law increasingly operate over the same economic terrain while preserving separate procedures, remedies, interpretive habits and professional communities. This creates a concentrated governance risk in sensitive policy areas such as subsidies, LCRs, renewable energy programmes, public health regulation, climate transition measures, sanctions, and national security-related economic policies.

The case studies illustrate this point. The Philip Morris and Ontario renewable energy disputes show that trade disputes and ISDS pose a real risk of conflicting results relating to the same conduct. The economic implications of this fragmentation are real, but they should be framed carefully. Its effects are more specific. They are most distinct where regulatory measures affect both market access and foreign investor interests. In such settings, fragmentation may increase transaction costs, encourage strategic corporate structuring, create incentives for forum shopping, complicate regulatory planning, and contribute to *regulatory chill*.

Complete separation is no longer convincing, because the two regimes often regulate overlapping economic conduct. At the same time, full harmonisation is neither feasible nor desirable. Both regimes have different parties, causes of action, applicable laws, remedies, evidentiary structures, and institutional functions. A WTO finding that a measure violates GATT or TRIMs does not automatically mean that the same measure breaches FET, NT or expropriation provisions in an investment treaty. Conversely, a measure that survives WTO scrutiny may still violate an investment protection standard. Hence, the problem is not divergence as such, but unexplained, avoidable, or strategically exploited divergence.

The appropriate response is selective coordination. Treaty design remains the most concrete tool, especially for new-generation investment treaties, model BITs, joint interpretive statements and treaty amendments. Clearer carve-outs, conflict clauses, procurement provisions, subsidy disciplines, public policy exceptions and rules on the relevance of prior international decisions can reduce uncertainty in future disputes. Yet treaty design is mainly forward-looking and cannot easily reform the thousands of existing investment treaties that continue to shape investor-state arbitration.

Institutional dialogue and cross-referencing may also help, but only if their limits are recognised. WTO panels and investment tribunals cannot be expected to defer to one another in the absence of legal basis. Nor should cross-referencing become a hidden hierarchy. A more realistic approach is a reason-giving requirement which would preserve doctrinal autonomy while making decentralised adjudication more transparent and better informed. Scholarly and practitioner networks can support this process by improving the quality of legal argumentation, drafting treaties in an informed manner, and limiting category mistakes between trade and investment law.

Consequently, coherence should not be pursued at all costs. Fragmentation is not always pathological; it may reflect functional differentiation within international law. The difficulty arises when fragmentation becomes unmanaged or strategically exploitable. In the trade-investment context, the goal should be to reduce unnecessary friction while respecting the distinct rationalities of each regime. Therefore, bridging the divide is not a call for institutional merger. It is a call for legal awareness, careful drafting, better reason-giving and more sophisticated engagement across regimes. The future of IEL is unlikely to be marked by perfect unity, but it can still be made more predictable, transparent and responsive to the realities of a fragmented global economy.

References

Abu-Akeel, A. K. (1999). Definition of trade in services under GATS: Legal implications. *George Washington Journal of International Law and Economics*, *32*, 189–210.

Alfaro, L., Antràs, P., Conconi, P., & Chor, D. (2019). Internalizing global value chains: A firm-level analysis. *Journal of Political Economy*, *127*(2), 508–559. https://doi.org/10.1086/700935

Alvarez, J. E. (2021). ISDS reform: The long view. *ICSID Review-Foreign Investment Law Journal*, *36*(2), 253–277. https://doi.org/10.1093/icsidreview/siab036

Antràs, P., & de Gortari, A. (2020). On the geography of global value chains. *Econometrica*, *88*(4), 1553–1598. https://doi.org/10.3982/ECTA15362

Antràs, P., & Chor, D. (2013). Organizing the global value chain. *Econometrica*, *81*(6), 2127–2204. https://doi.org/10.3982/ECTA10813

Baltag, C., Joshi R., & Duggal K. (2023). Recent trends in investment arbitration on the right to regulate, environment, health and corporate social responsibility: Too much or too little? *ICSID Review – Foreign Investment Law Journal*, *38*(2), 381–421. https://doi.org/10.1093/icsidreview/siac031

Berthet, E., & Fusacchia, I. (2024). Navigating the complexity: The sustainability challenges in global value chains. The sustainability challenges in global value chains. *Annual Review of Resource Economics*, *16*, 349–377.

Betz, T., Pond, A., & Yin, W. (2021). Investment agreements and the fragmentation of firms across countries. *The Review of International Organizations 16*, 755–791. https://doi.org/10.1007/s11558-020-09402-0

Brooks, E. A., & Soave, T. (2014) Jurisdictional overlap in WTO dispute settlement and investment arbitration. *Arbitration International*, 30(1), 1–58. https://doi.org/10.1093/arbitration/30.1.1

Bulut, O. E. (2022). Drawing boundaries of police powers doctrine: A balanced framework for investors and states. *Journal of International Dispute Settlement*, *13*(4), 583–607. https://doi.org/10.1093/jnlids/idac026

Charnovitz, S., & Fischer, C. (2015) Canada–Renewable Energy: Implications for WTO law on green and not-so-green subsidies. *World Trade Law*, *14*(2), 177–210. https://doi.org/10.1017/S1474745615000063

Coase, R. H. (1960). The problem of social cost. *The Journal of Law & Economics*, *3*, 1–44.

Cottier, T., & Oesch, M. (2005). WTO law, precedents and legal change. In M. Bronckers, & R. Quick (Eds.), *WTO dispute settlement: A history of GATT/WTO dispute settlement* (Vol. 3, pp. 57-89). Cambridge University Press.

Dunning, J. H. (1988) The eclectic paradigm of international production: A restatement and some possible extensions. *Journal of International Business Studies*, *19*(1), 1–31. https://doi.org/10.1057/palgrave.jibs.8490372

Dunoff, J., & Pollack, M. A. (2025). The Trump administration trade policy and the international trading system. *American Journal of International Law*, *119*(4), 680–699. https://doi.org/10.1017/ajil.2025.10108

Fedax N.V. v. The Republic of Venezuela, ICSID Case No. ARB/96/3 (Award, March 9, 1998).

Fukanaga, Y. (2023, July 12). *Global perspectives on teaching international investment arbitration: effective use of comparative analysis of investment treaty arbitration and WTO settlement*. Kluwer Arbitration Blog. https://arbitrationblog.kluwerarbitration.com/2023/07/12/global-perspectives-on-teaching-international-investment-arbitration-effective-use-of-comparative-analysis-of-investment-treaty-arbitration-and-wto-dispute-settlement/

Fyock, C. (2025). Getting 'real' about ISDS reform: A critical realist view of international investment law's status quo. *Journal of International Dispute Settlement*, *16*(2), 1–22. https://doi.org/10.1093/jnlids/idae027

Gómez Fach, K. (Ed.). (2021) *Private Actors in International Law*. Springer. https://doi.org/10.1007/978-3-030-48393-7

Helpman, E., Melitz, M. J., & Yeaple, S. R. (2004). Export versus FDI in heterogeneous firms. *American Economic Review*, *94*(1), 300–316. https://doi.org/10.1257/000282804322970814

Herdegen, M. (2025). *Principles of international economic law*. (3rd ed.). Oxford University Press.

International Monetary Fund. (2026). *GDP, current prices (NGDPD): United States*. IMF Data Mapper. Retrieved June 8, 2026, from https://www.imf.org/external/datamapper/NGDPD@WEO/USA?zoom=USA&highlight=USA

Johnson, L., & Sachs, L. E. (2016). The outsized cost of investor-state dispute settlement. *Academy of International Business Insights*, *16*(1), 10–13. https://dx.doi.org/10.2139/ssrn.3452136

Kriebaum, U., Dolzer, R., & Schreuer, C. (2022). *Principles of international investment law* (3rd ed.). Oxford University Press.

Kurtz, J. (2018). *The WTO and International Investment Law*. Cambridge University Press. https://doi.org/10.1093/ejil/chw043

Mesa Power Group, LLC v. Government of Canada, (2012), PCA Case No. 2012-17 (Award, March 24, 2016).

Pahis, S. (2025). An Autopsy of the Appellate Body: International legal theory on the demise of the rule of law at the WTO. (SSRN Scholarly Paper No. 5414818). Social Science Research Network. http://dx.doi.org/10.2139/ssrn.5414818

Pauwelyn, J. (2019). WTO dispute settlement post-2019: What to expect? *Journal of International Economic Law*, *22*(3), 297–321. https://doi.org/10.1093/jiel/jgz024

Petsche, M. (2023). The application of the Salini test beyond article 25 of the ICSID convention: Analysis of recent trends in treaty and arbitral practice. The Journal of World Investment & Trade, *24*(6), 879–906. https://doi.org/10.1163/22119000-12340314

Philip Morris Asia Ltd. v. Commonwealth of Australia, PCA Case No. 2012-12 (Award on Jurisdiction and Admissibility, December 17, 2015).

Philip Morris Brands Sàrl, Philip Morris Products S.A., and Abal Hermanos S.A. v. Oriental Republic of Uruguay, ICSID Case No. ARB/10/7 (Award, July 8, 2016).

Plama Consortium Limited v. Republic of Bulgaria, ICSID Case No. ARB/03/24 (Decision on Jurisdiction, February 8, 2005).

Puig, S. (2015). The merging of international trade and investment law. *Berkeley Journal of International Law*, *33*(1), 1–59.

Qureshi, A. (2019). *International economic law* (4th ed.). Sweet & Maxwell.

Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Marocco, ICSID Case No. ARB/00/4 (Award, July 31, 2004).

Schill, S. W. (2007). *The multilateralization of international investment law*. Cambridge University Press.

Schjelderup, G., & Stähler, F. (2021). Investor-state dispute settlement and multinational firm behavior. *Review of International Economics*, *29*(4), 1013–1024. https://doi.org/10.1111/roie.12532

Shill, S. W. (2010). Crafting the international economic order: The public function of investment treaty arbitration and its significance for the role of the arbitrator. Leiden Journal of International Law, 23(2), 401–430. https://doi.org/10.1017/S0922156510000117

Sornarajah, M. (2021) *The international law on foreign investment*. Cambridge University Press. https://doi.org/10.1017/9781316459959

St John, T. (2018). *The rise of investor-state arbitration: Politics, law, and unintended consequences*. Oxford University Press.

Stoll, P.-T., Hagemejer, J., Woolcock, S., & Chmiel, O. (2026). *The role of the WTO in EU trade: State of play ahead of MC14*. European Parliament, Directorate-General for External Policies of the Union.

Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States, ICSID Case No. ARB (AF)/00/2 (Award, May 29, 2003).

Tokios Tokelés v. Ukraine, ICSID Case No. ARB/02/18 (Award, July 26, 2007).

United Nations Conference on Trade and Development. (2019, March). *Reforming investment dispute settlement: A stocktaking* (IIA Issues Note No. 1). United Nations. https://unctad.org/system/files/official-document/diaepcbinf2019d3_en.pdf

United Nations Conference on Trade and Development. (2024, October 30). *International investment agreements trends: The increasing dichotomy between new and old treaties* (IIA Issues Note No. 2, 2024). https://unctad.org/publication/international-investment-agreements-trends-increasing-dichotomy-between-new-and-old

United Nations Conference on Trade and Development. (2025). *World investment report 2025: International investment in the digital economy. Chapter 2: Investment policy trends*. United Nations. https://unctad.org/system/files/official-document/wir2025_ch02_en.pdf

United Nations Conference on Trade and Development. (n.d.). *IIA content mapping*. Investment Policy Hub. Retrieved June 2, 2025, from https://investmentpolicy.unctad.org/international-investment-agreements/iia-mapping

United Nations Conference on Trade and Development. (n.d.). *International investment agreements navigator*. UNCTAD Investment Policy Hub. Retrieved June 8, 2026, from https://investmentpolicy.unctad.org/international-investment-agreements

Wagner, M. (2014). Regulatory space in international trade law and international investment law. *University of Pennsylvania Journal of International Law*, *36*(1), 1–88. https://dx.doi.org/10.2139/ssrn.2403959

Williamson, O. E. (1985). *The economic institutions of capitalism: Firms, markets, relational contracting*. Free Press.

World Trade Organization. (2013*). Canada—Certain measures affecting the renewable energy generation sector: Report of the Appellate Body (WT/DS412/AB7R)*. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds412_e.htm

World Trade Organization. (2013). *Canada—Measures relating to the feed-in tariff program: Report of the Appellate Body (WT/DS426/AB/R)*. https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds426_e.htm

World Trade Organization. (2013). *Canada—Certain measures affecting the renewable energy generation sector: Report of the Appellate Body* (WT/DS412/AB/R).

World Trade Organization. (2013). *Canada—Measures relating to the feed-in tariff program: Report of the Appellate Body* (WT/DS426/AB/R).

World Trade Organization. (2020). *Australia—Certain measures concerning trademarks, geographical indications and other plain packaging requirements applicable to tobacco products and packaging: Reports of the Panel* (WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R).

World Trade Organization. (2020). *Australia—Certain measures concerning trademarks, geographical indications and other plain packaging requirements applicable to tobacco products and packaging: Report of the Appellate Body* (WT/DS435/AB/R, WT/DS441/AB/R, WT/DS458/AB/R, WT/DS467/AB/R).

World Trade Organization. (2020). *Statement on a mechanism for developing, documenting and sharing practices and procedures in the conduct of WTO disputes—Addendum: Multi-Party Interim Appeal Arbitration Arrangement pursuant to Article 25 of the DSU* (JOB/DSB/1/Add.12).

World Trade Organization. (2025, April). *Global trade outlook and statistics*. World Trade Organization. https://www.wto.org/english/res_e/booksp_e/trade_outlook25_e.pdf

Yamaguchi, M. (2025, May 13). *World trade chief says global free trade is in a crisis while on visit to Japan*. APNews. Retrieved May 29, 2025, from https://apnews.com/article/japan-wto-ishiba-trade-us-tariffs-84abf61fe8610094771a024f4b8211bd