Treaties as Data: Leveraging Technology to Support Trade Negotiators

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Three Premises

1. Law is a form of data

→ **“treaty texts as data”**

2. Data science is a natural complement to traditional legal analysis, but requires different tools

→ **processing rather than reading scales analysis**

3. Technology does not have to be sophisticated to be useful

→ **less AI-hype and more knowledge management**

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What is data?

Traditional Data

"Structured data"

H8 fx 0

	A	B	C	D	E	F
1	Item #	Description	Vendor	Category	Size	Unit
2	492229	TURKEY SLICED .5 OZ	Ben E Keith	2 - FROZEN FOOD	0	0
3	662371	DRESSING CAESAR CREAMY	Ben E Keith	4 - GROCERY	0	0
4	779243	MARGARINE LIQUID OLEO	Ben E Keith	4 - GROCERY	0	0
5	815306	LID PLAS SOUFFLE CLEAR	Ben E Keith	4 - GROCERY	0	0
6	860055	LID PLAS 16SL SLOTTED	Ben E Keith	4 - GROCERY	0	0
7	860060	CUP FOAM 16OZ 16J16	Ben E Keith	4 - GROCERY	0	0
8	774704	PAPRIKA	Ben E Keith	4 - GROCERY	0	0
9	664005	Mustard Prepared	Ben E Keith	4 - GROCERY	512	fl oz
10	750100	CHEESE PARMESAN SHRED	Ben E Keith	4 - GROCERY	0	0
11	250025	EGG FRESH SHELL MED USDA AA	Ben E Keith	1 - PRODUCE	0	0
12	686034	VINEGAR APPL CIDER 40GRAIN	Ben E Keith	4 - GROCERY	0	0
13	29078	LIME 12 CT	Ben E Keith	1 - PRODUCE	12	ct

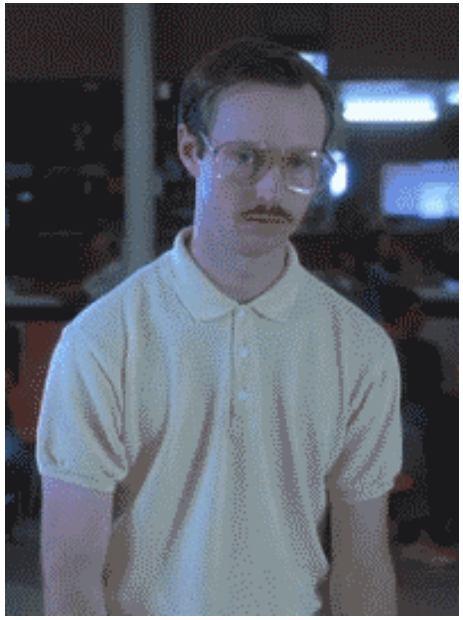
New Data

"Unstructured data"

Legal Data

<u>Significant opportunity</u>

- Legal data is everywhere
  - Treaties, MOUs
  - Legal decisions
  - Minutes
  - News items
  - Non-text data
- Government has lots of it

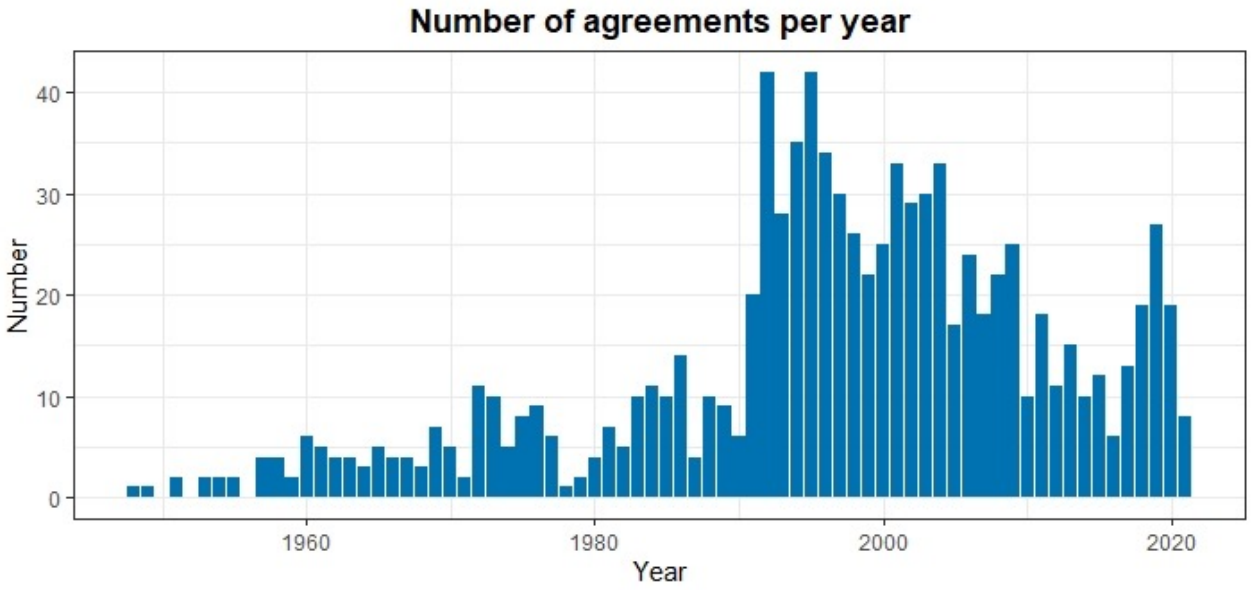


Legal Data

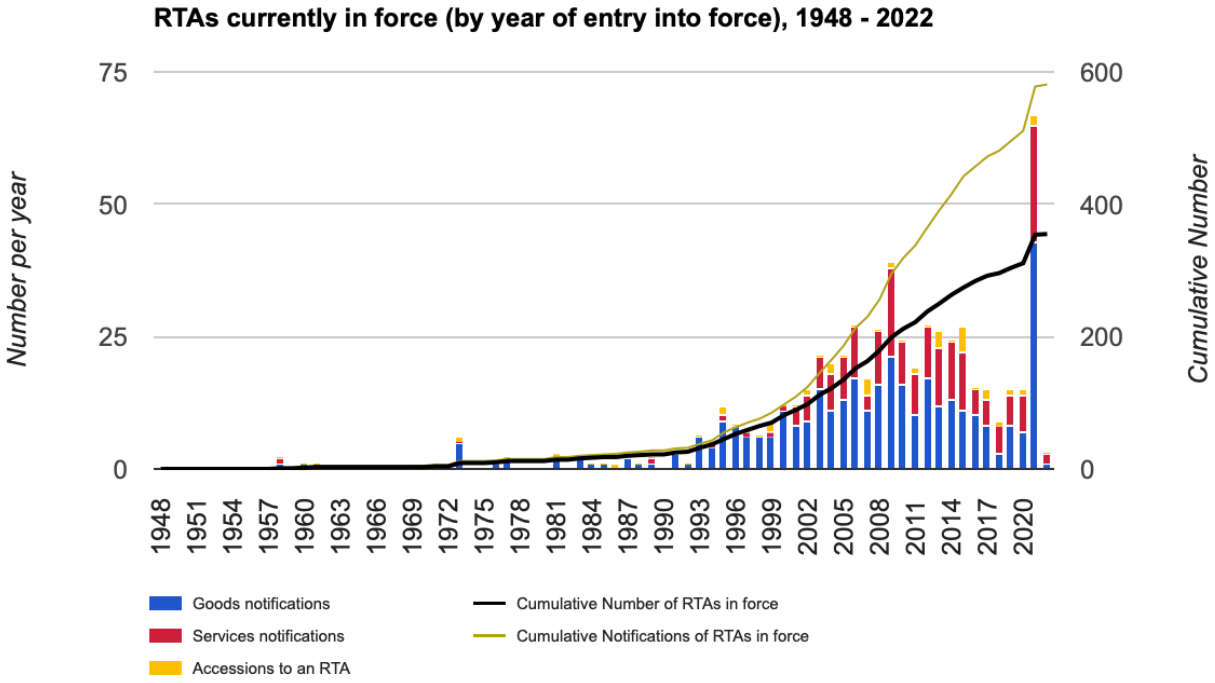
Significant challenges

- Texts not in machine-readable format
- Need to be laborious collected (and digitized)
- Missing data
- Unclear benchmarks

Trade Agreements based on the DESTA Research Data



Trade Agreements based on WTO Data



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Complementary Tools

"To succeed in the profession of the law, you must seek to cultivate command of language. **Words are the lawyer's tools of trade**.

… When I was young, I did not think much in words. At Oxford, I studied **Mathematics**. No need for words there. The tools I used then were **numbers, letters and symbols**. Lifeless things without meaning or sound – the **necessary tools of the scientist but not of the lawyer**."

Lord Denning, "The Discipline of Law", 1979

Complementary Tools

Traditional Legal Techniques

Reading

Small Scale

Interpretation

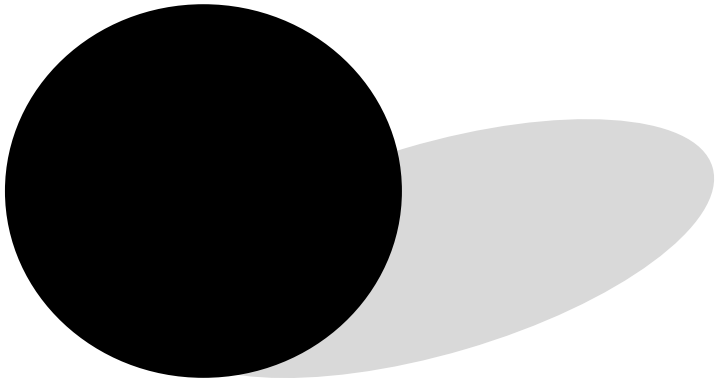
Legal Data Science

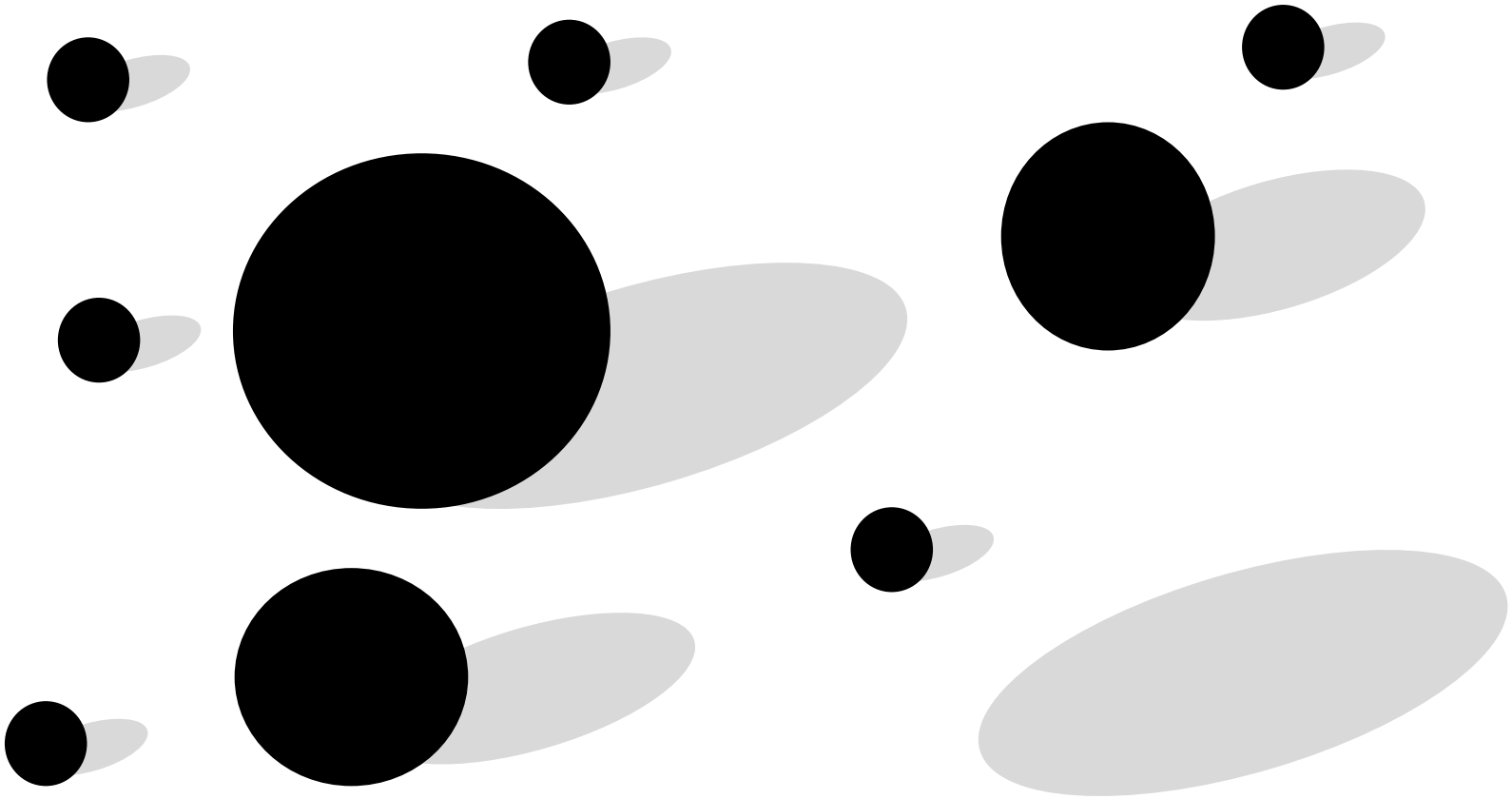
Processing

Large Scale

Computation

Rendering Policy Analysis Scalable





Three Premises

1. Law is a form of data

→ **“treaty texts as data”**

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→ **processing and visualizing rather than just reading**

3. Technology does not have to be sophisticated to be useful

→ **less AI-hype and more knowledge management**

Technology as Knowledge Management & Analysis Tool

Technology solves old problems

- Retain expertise and experience
- Replace labor-intensive tasks
- Ensure efficiency by creating analysis pipelines for recurring questions
- Level-the-playing field by providing equal access to insights

Trade Agreement Lifecycle

Trade Agreement Lifecycle

Preparing Negotiations

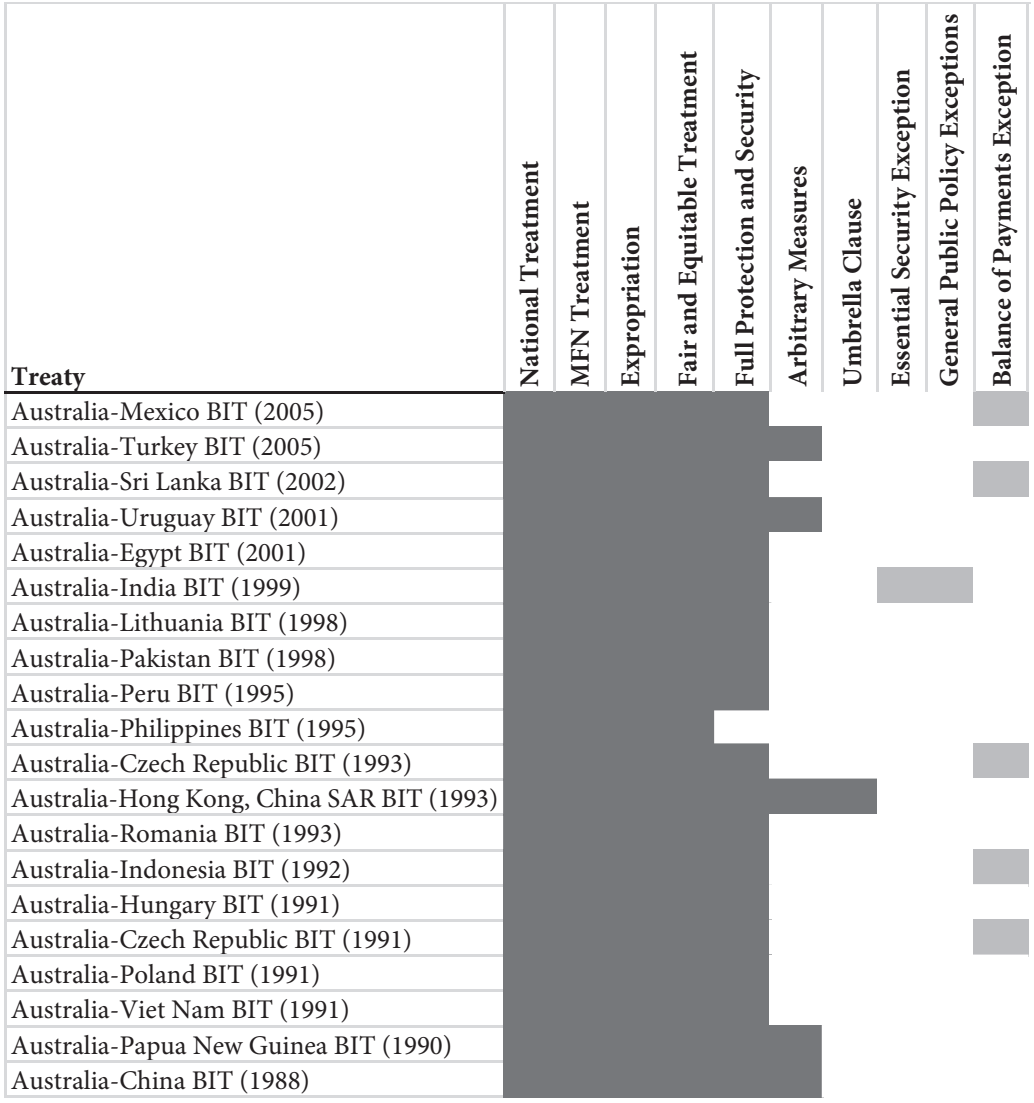
Economic and Political Determinants

Normative Determinants

- Outdatedness of existing rules
- Overlap with existing treaties
- Exposure to litigation risk

Identify targets for re(negotiation)

- Litigation Risk -



Alschner, Wolfgang. *Investment Arbitration and State-Driven Reform: New Treaties, Old Outcomes*. Oxford, New York: Oxford University Press, 2022.

Trade Agreement Lifecycle

Implementation

Compliance

Uptake of agreement benefits

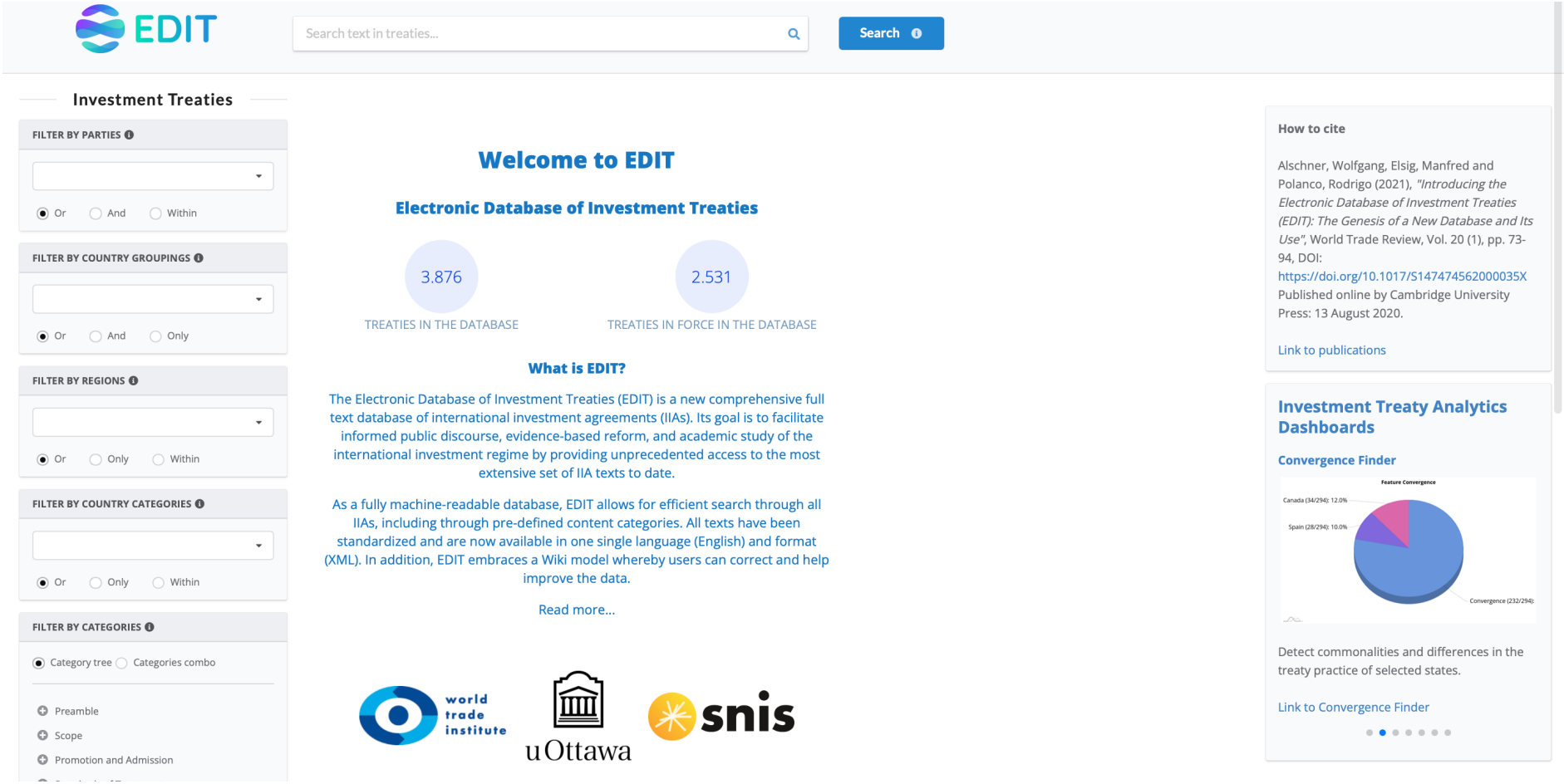
Litigation intensity

Trade Agreement Lifecycle

Data-Driven Negotiations

1. Reviewing global treatymaking trends
   - best practices
   - practices falling into disuse
2. Analysing treaty networks of partners
   - Consistency of past practice/ willingness to compromise
   - Evolving national practices
3. Comparing partner countries' treaties and treaty networks with Canadian practice
   - Identify low-hanging fruit and contentious issues
   - Contrasting different formulations

EDIT (edit.wti.org)



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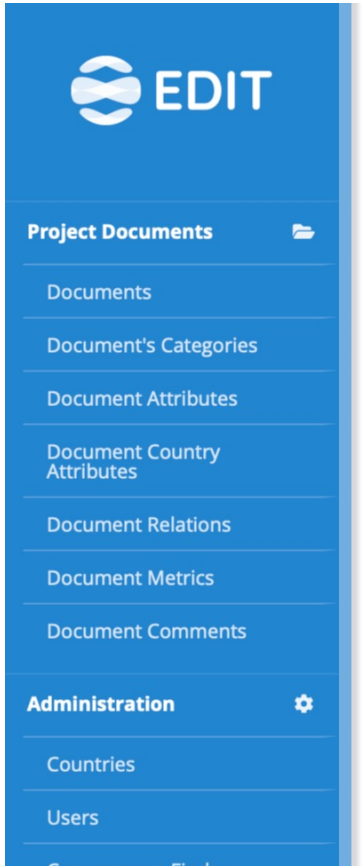


CATEGORIES
Fair and Equitable Treatment

ARTICLE TITLE
6 **Minimum standard of treatment**

CATEGORIES
Fair and Equitable Treatment | Linked to custom | Full protection | Full protection and security

1. Each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatmer protection and security.

CATEGORIES
Fair and Equitable Treatment | Linked to custom | Full protection | Full protection and security

2. The concepts of fair and equitable treatment and full protection and security in paragraph 1 do not require treatment in addition to or beyonc law minimum standard of treatment of aliens.

CATEGORIES
Indirect Breach Carve-out

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

CATEGORIES
Compensation for Losses

ARTICLE TITLE
7 **Compensation for losses**

CATEGORIES
Armed Conflict | Non-discrimination | Compensation | Civil Strife

Notwithstanding subparagraph 5(b) of Article 16 (Reservations and Exceptions), each Party shall accord to an investor of the other Party, and to a respect to measures it adopts or maintains relating to compensation for losses incurred by investments in its territory as a result of armed confl

EDIT (edit.wti.org)

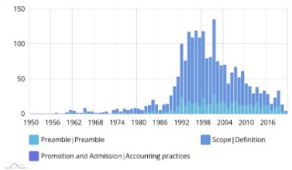
EDIT

EDIT - a Electronic Database of Investment Treaties

Try a new search

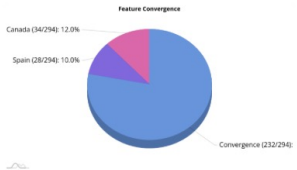
Investment Treaty Analytics Dashboards

EDIT provides a selection of dashboards that allow users to investigate the content of investment treaties in novel ways. The dashboards help track trends in investment treaty-making, compare country practices and identify areas of convergence and divergence. Together these dashboards form an analytics toolkit to support investment treaty negotiation, the reform of the investment regime, and research and analysis on past and current treaty practice.



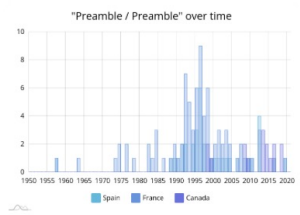
Clause Tracker

Explore the evolution of treaty provisions to spot trends over time.



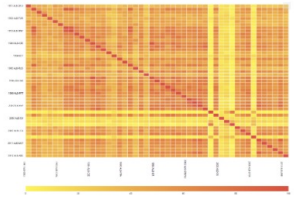
Convergence Finder

Detect commonalities and differences in the treaty practice of selected states.



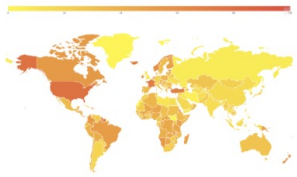
Country Comparator

Compare the treaty practice of multiple states on specific provisions.



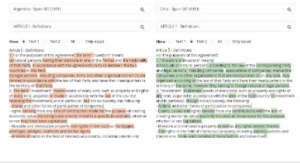
Country Heatmap

Assess the consistency of treaty networks.



World Map (Choropleth map)

Spot global treaty making patterns.



Text Comparator

Compare the language of individual treaty provisions.

Questions

1. How to convince a partner country to include sustainable development references in the treaty preamble?
2. What is likely to be a contentious procedural issue if Canada and Turkey were to negotiate a FIPA with ISDS?
3. What are key differences in the 'Environmental Measures' clauses of NAFTA (Art. 1114) and the Guatemala – Trinidad BIT (Art. 16)?

Merci

Get in touch:
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Learning Resources: www.datascienceforlawyers.org

Treaty Analytics:
EDIT Database (edit.wti.org)
Mapping Treaties (mappinginvestmenttreaties.com)