



AMERICAN PETROLEUM INSTITUTE

API Supports Investor State Dispute Settlement (ISDS)

API members support a strong Investor State Dispute Settlement (ISDS) mechanism, as part of free trade agreements (FTAs) and bilateral investment treaties (BITs), to strengthen the enforceability of commitments in the agreements and the principles of contract sanctity, anti-corruption and protection from arbitrary asset confiscation. For oil and natural gas companies, ISDS is especially important because it provides the right to companies, as investors, to go to international arbitration (1) to pursue compensation for expropriation and (2) for claims related to investment agreements when there is a denial of fair and equitable treatment in local courts.

Why is ISDS Important for the Oil & Natural Gas Industry?

- 1. Mechanism to Pursue Compensation for Expropriation.** ISDS provides US companies recourse if their assets are expropriated without compensation. For example, recently a US oil and natural gas company's assets were nationalized by a foreign government. The ISDS mechanism in a BIT to which the country was signatory allowed the company to pursue a claim that eventually resulted in a ruling for the country to pay compensation for the nationalized assets.
- 2. International Arbitration for Denial of Fair and Equitable Treatment in Local Courts.** ISDS provides US companies protection against gross abuses of due process. For example, in recent years a US oil and natural gas company was able to pursue arbitration against a foreign government that did not honor its commercial contractual obligations, proving a breach of the effective means provision of the BIT (delay in resolution of a commercial case).

ISDS in a Nutshell

ISDS is a neutral, international arbitration procedure. In US agreements to date, the investment rules enforced by ISDS provide investors in foreign countries basic protections from foreign government actions. The investor-state arbitration provided by ISDS is necessary to ensure that, when US oil and natural companies invest abroad, they can seek protection for their investments if they do not have access to developed and independent court systems. For example, in free trade agreements (FTA) or bilateral investment treaties (BIT), ISDS protections are important because they make substantive investment protections enforceable.

ISDS does not provide an unprecedented right to challenge governments. The US and other countries have been parties to agreements containing ISDS for over half a century.

A narrowing of the scope or watering down of ISDS in future investment treaties and trade agreements is as problematic as outright exclusion of ISDS. The 2012 US Model BIT recognizes the importance of strong investment protection and investor state dispute resolution. It is critical that this high standard be retained in future agreements.

API members support a strong Investor State Dispute Settlement (ISDS) mechanism as part of free trade agreements, such as the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (TTIP).