



Trends in redefining international investment protection

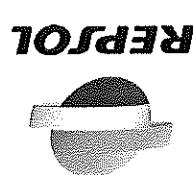
REPSOL PERSPECTIVE



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**Rethinking International Investment Law:
An Investor's Perspective – Repsol/YPF in Argentina**

- I FDI : Main Driver of economic growth
- II BITS: Relevant Features
- III Investor – State Dispute Settlement
- IV EU investment policy after the Lisbon Treaty
- V Repsol vision on the EU investment policy



AGENDA

I FDI: Main driver of economic growth



In 2012 FDI flows reached approx. \$ 1.6 trillion. FDI flows are expected to increase moderately reaching \$ 1.8 trillion and \$1.9 trillion in 2013 and 2014 respectively.

In 2011 World FDI inflows reached \$1.52 trillion with the developed economies accounting for 49.1%. East and Southeast Asia accounted for 22.00% and Latin America and the Caribbean 14.2%.

FDI inflows to LAC increased by 16% to \$ 217 billion driven mainly by higher flows to South America (up to 34%).

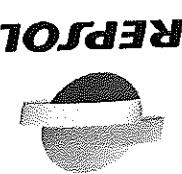
FDI FLOWS BY REGION 2009-2011 (\$ billion)

Region	FDI inflows			FDI outflows		
	2009	2010	2011	2009	2010	2011
World	1 197.8	1 309.0	1 524.4	1 175.1	1 451.4	1 694.4
Developed economies	606.2	618.6	747.9	857.8	989.6	1 237.5
Developing economies	519.2	616.7	684.4	268.5	400.1	383.8
Africa	52.6	43.1	42.7	3.2	7.0	3.5
East and South-East Asia	206.6	294.1	335.5	176.6	243.0	239.9
South Asia	42.4	31.7	38.9	16.4	13.6	15.2
West Asia	66.3	58.2	48.7	17.9	16.4	25.4
Latin America and the Caribbean	149.4	187.4	217.0	54.3	119.9	99.7
Transition economies	72.4	73.8	92.2	48.8	61.6	73.1

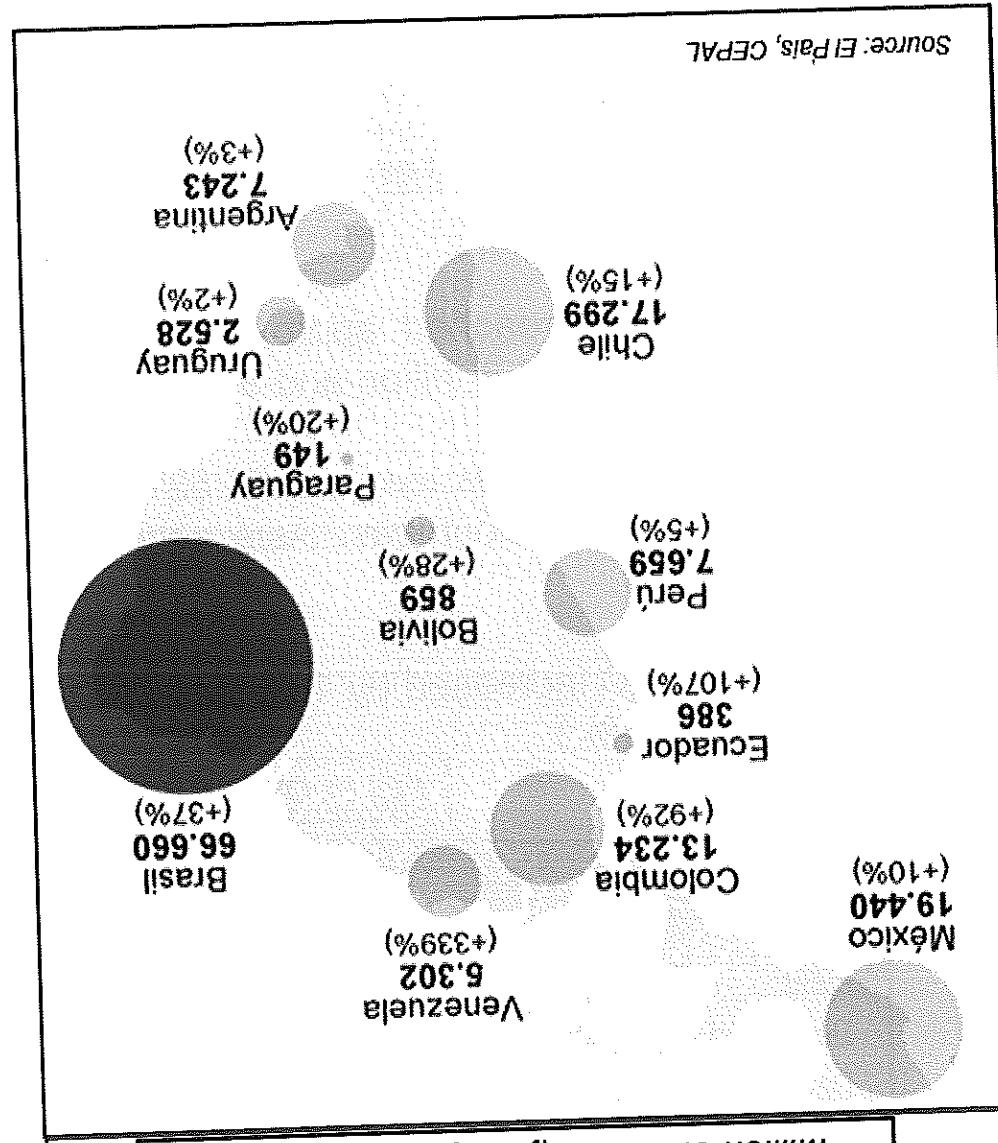
- In general terms, the FDI in South America go to activities related with natural resources, while in Mexico and Caribbean the investments predominated in services and manufacture.
- The increase of investment in the region mainly is due to the expansion of consumer markets, high rates of economic growth and its natural riches.

- Europe is still the main origin of FDI for the region over 40% of the total in 2011. Main investors are: Netherlands (21%), Spain (14%), UK (4%).
- Regarding region policy trend: More State regulation became manifest primarily in regulation new entry barriers and more introducing nationalization.

1. LAC - one of the most promising regions



FDI in Latin America 2011
Million of dollars (y on y change 2010)



Source: El País, CEPAL

II. BITs: Relevant features



The BIT between the Kingdom of Spain and the Argentine Republic was signed in 1991

BIT is a binding agreement between 2 states in which each assumes obligations with respect to investments made in its country by other's investors.

THE MAIN PROVISIONS OF A BIT ARE:



Foreign investors receive no less favourable treatment, than nationals



Investors treated as favourably with the host State, as any other third party



Stable and predictable legal framework

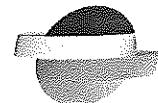


Adequate and effective compensation in case of expropriation

These main Provisions in the BITs are aimed to guarantee a stable and predictable Investment climate promoting FDI

II. The Confiscation of YPF : Breach of the key BIT

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- a) Expropriation is discriminatory. The YPF Expropriation Law is directed only towards Repsol. No other oil and gas company in Argentina has been affected. No other shareholder of YPF has been affected.
- b) Expropriation requires a payment or judicial allocation before the State takes hold of the expropriated asset. No adequate and effective compensation has been paid to Repsol. As a fact Repsol has not received any compensation at all.
- c) Instead of assuring the hydrocarbons sovereignty of the country, the expropriation seems to have been designed to wrongfully and unfairly "punish" Repsol.
- d) Argentina effectively took control over both companies, with the consecutive loss of rights and physical expulsion of Repsol.

provisions

National Treatment

Art. IV

Nationalization and Expropriation

Art. V

Protection for Investors

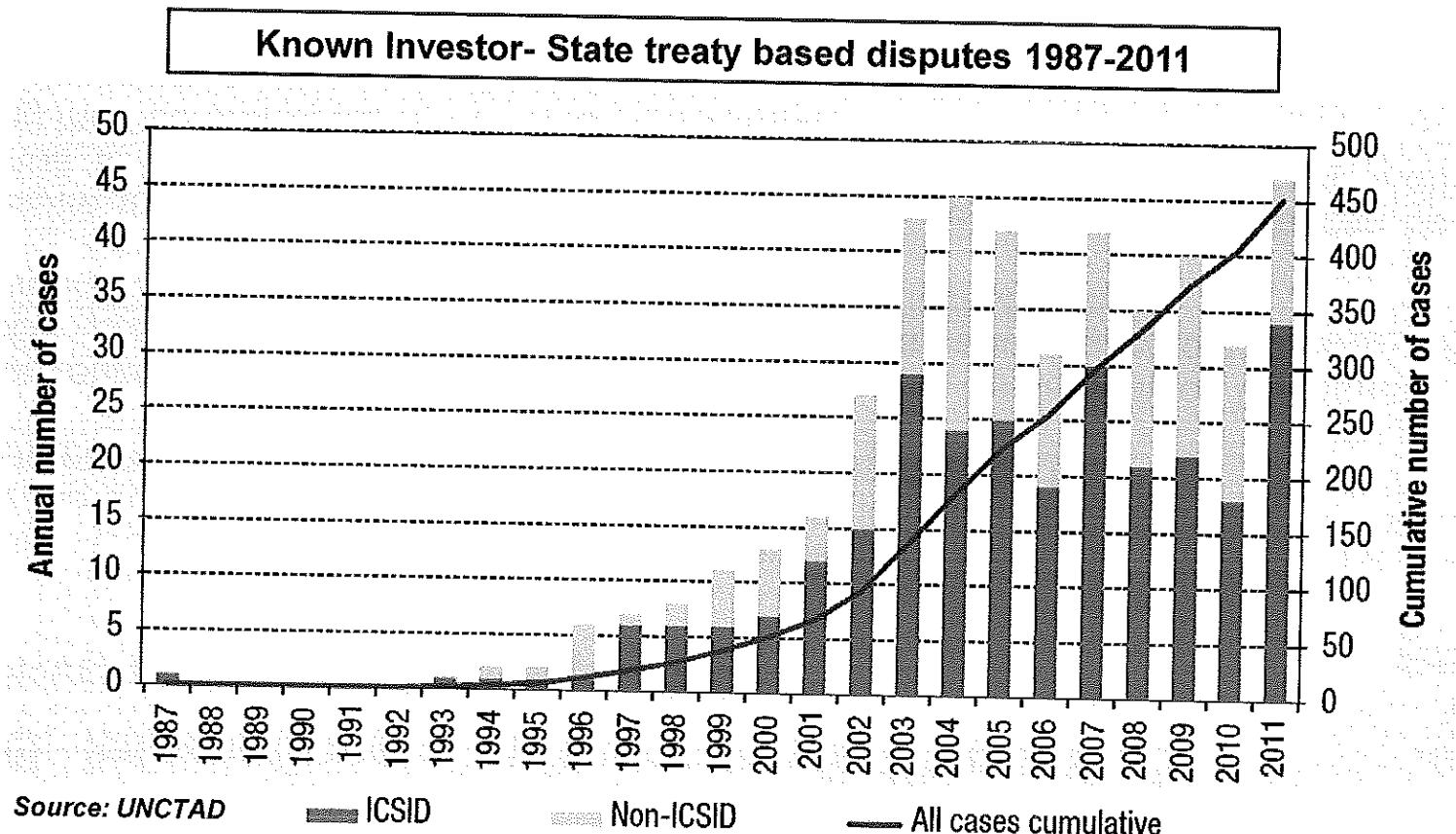
Art. III

III. Investor- State Dispute Settlement



2012: ICSID registered 419 cases under the ICSID Convention and Additional Facility Rules.
By economic sector : 25% - Oil, Gas & Mining, 12% - Electric Power & other Energy, 11% - Transportation.

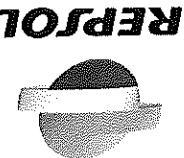
2012: There were 50 new arbitration cases registered. 67% basis of consent in BITs. 12% Investment law of the Host state. 13% Investment contract between the Investor and the Host State.



- 1965: Convention on the Settlement of Investment Disputes, promoted by and signed under the auspices of the World Bank, is a milestone in the move towards the establishment of an international legal framework protecting and promoting FDI.
- Convention set up the International Centre for the Settlement of Investment Disputes (ICSID), providing for the first time an international and highly delocalized institutional machinery for the settlement of disputes arising out of investments.
- Despite the worldwide acceptance of the ICSID, several States in American hemisphere continue to be distant from ICSID: Canada, Cuba, Mexico, Brazil, Russia, India are not among the 158 Members of the ICSID Convention.
- Bolivia, Ecuador and Venezuela withdrew from the ICSID Convention in recent years.
- The scepticism over ICSID should be dispelled through the international reinforcement of this institution.

Since the 1965 ICSID convention, Argentina has been the country appearing in most cases as a Respondent, 49 cases including some which have been settled or discontinued, followed by Venezuela with 36 cases, Egypt with 17 cases and Ecuador with 12 cases.

III. International Centre for the Settlement of Investment Disputes (ICSID)



IV. EU investment policy after the Lisbon Treaty



EU states are the main users of BITs globally, with a total number of about 1200 BITs already concluded.

Investment presents itself as a new frontier for the common commercial policy.

FIRST STEPS TO A EUROPEAN INVESTMENT POLICY

The Lisbon Treaty's attribution of EU exclusive competence on FDI integrates FDI into the common commercial policy.

The EU investment platform vis-à-vis third countries could be gradually enriched with investment protection standards for all EU investors establishing its presence in these countries.





"This is a major step forward for EU investment policy and one of

EU-wide investment negotiations.

It confirms that agreements before Lisbon Treaty may be maintained in force until they are replaced by an EU investment agreement. It establishes a mechanism for empowering MS to negotiate BIT with countries not immediately scheduled for the

dispute between Repsol and Argentina is a case in point. The legal channels to defend themselves when needed - the current Commission will review and assess such agreements to prepare the ground for EU wide investment agreements that will replace the bilateral texts over time. (...)", said EU Trade Commissioner Karel De Gucht.

Regulation: Establishing transitional arrangements for bilateral investment agreements between Member States and third countries

The integration of investment into the common commercial policy arise in trade negotiations (FTA): EU-Canada, EU- India, EU-Russia, EU-Mercosur etc.

Communication: Towards a comprehensive European international investment policy

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IV. EU investment policy after the Lisbon Treaty

V. Repsol vision on the EU investment policy



- The EU Investment treaty approach should build on the BIT policy and practice of EU member States.
- The current ICSID arbitration procedure needs to find additional enforcement measures in order to enable the completion and payment of arbitral awards.
- There is a need to improve enforceability of arbitration awards: additional measures should be considered (ex: US Trade Act).
- Coordinated position of EU member States (European Commission) in IFIs and other multilateral organisations.
- A strongly coordinated position (with the majority of votes of the Member States) in the main IFIs voting against financing development projects in States that have refused to pay awards issued under the ICSID rules and outstanding claims with the Paris Club.
- The EU should seek to establish alliances and agreements with the US and other countries with similar perspective in order to strengthen the rule of Law and the mechanisms of Investment protection.

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