

Coding guidelines – IIAPP database

October 2010

The following guidelines describe the step-by-step process of coding data for entry into the IIAPP database.

[NOTE: Data was collected and reviewed by coders based mainly on publicly-available awards in known treaty cases decided before May 10, 2010 and publicly available before June 1, 2010. Data was also collected from information available as of August 31, 2010 on official websites of ICSID, the Permanent Court of Arbitration, the Energy Charter Secretariat, and the governments of Canada, Mexico and the United States. Secondary sources were not relied on to supplement information in the database other than for supplementary information on individual arbitrators (e.g. name, gender). The database is non-exhaustive due to the confidentiality of some awards and other coding limitations. For example, cases may engage a specific Policy area (Field 3 below) but not be identified as such in the database where the text of the available award(s) did not identify the challenged government measure(s) in terms relating to the specific Policy area. The database may also be contradicted by other information sources that use a different methodology to collect and code data.]

Data sources for information on known and confirmed treaty-based cases

1. Investment Treaty Arbitration website (University of Victoria, Andrew Newcombe) (information on investment treaty cases; text of investment treaty decisions and awards)
2. Government of Canada website (information on NAFTA Chapter 11 claims; text of NAFTA Chapter 11 decisions and awards)
3. Government of Mexico website (information on NAFTA Chapter 11 claims; text of NAFTA Chapter 11 decisions and awards)

4. U.S. State Department website (information on NAFTA Chapter 11 claims; text of NAFTA Chapter 11 decisions and awards)
5. International Centre for the Settlement of Investment Disputes (ICSID) website (information on ICSID and ICSID Additional Facility Rules cases)
6. Permanent Court of Arbitration website (information on UNCITRAL cases)
7. Energy Charter Secretariat website (information on Energy Charter Treaty cases)

For coding purposes, information about cases must be known to the researcher. Information is “known” only when derived from a decision or award that is available from resource 1 above, from an arbitration document that is available from resources 2 to 4 above, or from case information that is posted on resources 5 to 7 above.

Information must also be derived from confirmed treaty-based cases. A case is “confirmed treaty-based” where referred to as such in the text of an arbitration document (including a decision or award) that is available on resources 1 to 7 above OR where referred to as such in case information posted on resources 1 to 7 with an express reference to the name of the treaty under which the claim was brought.

General notes

“DU” – Data unavailable: Enter “DU” where the relevant data is unavailable or unknown.

“NA” – Not applicable: Enter “NA” where there can be no relevant data for a column because the subject matter of the column is not applicable to the case at hand (e.g. where a claim was rejected at the jurisdictional stage, there can be no year of an award on the merits).

Date entries: When determining the year of an award or decision, use this order of preference: formal statement at end of award (e.g. “done at...”); date on front cover of award (e.g. “date of dispatch”); and latest of dates listed under arbitrator signatures.

Coding of fields

1. **State (respondent):** Enter state against which claim was brought.

2. **Case name:** Enter “[short-hand version of claimant name] v [respondent state]” in italics.
 - a. The short-hand version is normally the first word of a corporate claimant’s name, an abbreviation of the corporate claimant’s name, or the last name of a natural person claimant. If unsure what short-hand version to use, enter long-hand version of claimant’s name.

3. **Policy area:** Enter the policy area(s) that appear to relate to the specific government measure(s) challenged by the claimant, as outlined in the applicable decision(s), award(s), or other arbitration document(s). Enter one or more of the following categories, with further details on each category in brackets.

- a. administration of justice
- b. elections
- c. public morals
- d. public order

- e. border control
- f. international relations
- g. international trade
- h. maritime affairs
- i. national security

- j. financial regulation
- k. monetary system
- l. sovereign borrowing
- m. tax

- n. postal delivery
- o. transportation
- p. utilities
- q. social security

- r. agrarian reform
- s. agriculture

- t. employment
- u. industrial policy
- v. tourism

- w. energy
- x. resource management

- y. climate change
- z. environmental protection
- aa. health care
- bb. public health

- cc. broadcasting
- dd. cultural heritage
- ee. culture
- ff. telecommunications

- gg. human rights
- hh. indigenous rights

- ii. land use planning
- jj. local government
- kk. public contracting
- ll. privatization

4. Treaty: Enter the abbreviated name of the treaty under which claim was brought (e.g. “NAFTA”, “ECT”, “US-Jordan BIT”).

- a. Use the abbreviation “BIT” where the treaty is a bilateral investment treaty regardless of whether the treaty was a Foreign Investment Protection Agreement, Investment Protection and Promotion Agreement, etc.

- b. Enter the abbreviated name of the treaty regardless of whether the tribunal accepted or rejected jurisdiction.

5. Year of claim: Enter the year in which notice of the arbitration was provided by the investor or in which the claim was registered by the arbitration institution. Where multiple years apply, enter the earliest year.

6. Arbitration rules: Enter the rules under which the claim was brought.

- a. Enter the appropriate abbreviation as follows:
 - i. “ICSID” (International Centre for Settlement of Investment Disputes Rules).
 - ii. “ICSID AF” (ICSID Additional Facility Rules).
 - iii. “UNCITRAL” (UN Commission on International Trade Law Rules).

- iv. "LCIA" (London Court of International Arbitration Rules).
- v. "ICC" (International Chamber of Commerce Rules).
- vi. "SCC" (Stockholm Chamber of Commerce Rules).
- vii. "ad hoc" (rules determined by the arbitration tribunal based on use of the words "ad hoc" in the treaty).

b. If the rules are unknown or the data is unavailable, enter "DU" (Data unknown).

7. Appointing authority: Enter the abbreviated name of the appointing authority (i.e. the entity that has the ability to appoint arbitrators in the absence of appointment or agreement by the parties, to resolve conflict of interest claims, etc., as provided for in the treaty under which the claim was brought or (where the treaty is silent on this issue) in the arbitration rules under which the claim was filed.

a. Possible entries include but are not limited to:

- i. ICSID (International Centre for the Settlement of Investment Disputes; i.e. Chair of the ICSID Administrative Council).
- ii. ICSID SG (ICSID Secretary General).
- iii. PCA (Permanent Court of Arbitration).
- iv. ICC (International Chamber of Commerce).
- v. SCC (Stockholm Chamber of Commerce).
- vi. LCIA (London Court of International Arbitration).
- vii. An individual (normally where selected by the PCA acting under the UNCITRAL Rules).

b. Adopt the following presumptions:

- i. If the claim is known to have been filed under the ICSID or the ICSID Additional Facility Rules, and the treaty under which the claim is brought does not provide for a specific appointing authority, then the appointing authority will be ICSID.
 - ii. If the claim is known to have been filed under the ICC or SCC or LCIA Rules, and the treaty under which the claim is brought does not provide for a specific appointing authority, then the appointing authority will be the ICC, SCC, or LCIA, respectively.
 - iii. If the claim is known to have been filed under the UNCITRAL Rules, and the treaty under which the claim is brought does not provide for a specific appointing authority, then the appointing authority will be chosen – where required after the claim has been filed – by the Permanent Court of Arbitration (PCA). In such cases, enter the appointing authority that was chosen by the PCA, not the PCA itself. Where the appointing authority, as decided by the PCA pursuant to the UNCITRAL Rules, is an individual, enter the name of the individual and that she or he was designated by the PCA (e.g. “Hanotiau, Bernard”).
 - iv. If the claim is known to have been filed under the UNCITRAL Rules but there is no information available in the award(s), decision(s), or other arbitration documents(s) that the PCA chose an appointing authority, enter “PCA (authority to select appointing authority)”.
 - c. If the award, decision or other arbitration document provides information about the identity of the appointing authority beyond that which is reflected by the above abbreviations and presumptions, supplement the abbreviated entry to reflect this information.
 - d. If the appointing authority is unknown or the data is unavailable, enter “DU”.
- 8. Claimant 1:** Enter name of claimant as listed in the arbitration document (i.e. style of clause). The name should be listed in long-hand version and should include corporate designations such as Inc., S.A., Ltd. or any first, middle, and last name of a natural person (e.g. “Smith, John”).

9. Claimant 2 to 5: Follow the above instructions for additional claimants whose names appear in the style of cause of the arbitration document.

- a. If there are more than 5 Claimants, or if the claimants are denoted as ‘others’ or ‘et al.’ in the style of cause, enter “Others” in the appropriate Claimant column.

10. Primary nationality of claimant: Enter the “primary” nationality of the claimant as follows.

- a. If the claim was brought under a bilateral investment treaty, enter the name of the state party to the BIT that is not the respondent state (e.g. for a claim against Argentina under US-Argentina BIT, enter: “USA”). If the claim was filed under multiple BITs, enter all relevant nationalities.
- b. If the claim was filed under a treaty other than a BIT, enter the state of which the claimant (other than a claimant that is said to have the nationality of the respondent state) claims to be a national at the time of the claim. For example, if the claimant claims to be a national of Austria, then the primary nationality of the claimant should be entered as “Austria.” If there are multiple claimants that claim to have the nationality of a state other than the respondent state, enter all relevant nationalities.
- c. If the information is unknown or the data is unavailable, enter “DU”.

11. Year of decision on jurisdiction: Enter the year of the award in which the tribunal decided whether it had jurisdiction over the claim. Where there are multiple awards in which the tribunal addressed jurisdictional issues, enter the year of the award in which the tribunal decided the most of the jurisdictional objections raised by the respondent.

- a. If the year of the award is unknown or the data is unavailable (e.g. because the relevant award is not publicly available), enter “DU”. If the case is pending and an award on jurisdiction is not known to have been issued, enter “DU”.

- b. If the case is known to have been resolved prior to the jurisdictional stage of the proceedings (e.g. where the case settled prior to the merits stage), enter “NA”.

12. Year of decision on merits: Enter the year of the award in which the tribunal, having dealt with jurisdictional objections raised by the respondent, decided whether there was a violation of the treaty by the respondent.

- a. If the year of the award is unknown or the data is unavailable, enter “DU”. If the case is pending and an award on the merits is not known to have been issued, enter “DU”.
- b. If the case is known to have been resolved prior to the merits stage of the proceedings (e.g. where the tribunal rejected jurisdiction over the claim or where the case settled prior to the merits stage), enter “NA”.

13. Year of decision on damages: Enter the year of the award in which the tribunal, having found a violation of the treaty, determined whether to award, and if so how much, damages to the claimant.

- a. If the year of the award is unknown or the data is unavailable, enter “DU”. If the case is pending and an award on damages is not known to have been issued, enter “DU”.
- b. If the case is known to have been resolved before the damages stage (e.g. where the tribunal rejected jurisdiction over the claim, where the tribunal decided there was no violation of the treaty, or where the case settled prior to the damages stage), enter “NA”.

14. Outcome: Enter a brief summary of the outcome in the case as follows. Enter information about each stage of the case referred to below, as applicable.

- a. Settlement or withdrawal of claim. If the case was settled or the claim was withdrawn, enter “Case was settled [or claim was withdrawn]”. Enter additional information, where available,

- on whether the case was settled or the claim was withdrawn before any award on jurisdiction, merits, damages, or costs”.
- b. Jurisdiction. If the tribunal accepted or rejected jurisdiction over the claim, enter “Tribunal accepted [or rejected] jurisdiction over claim”. Do not distinguish between full and partial acceptance/ rejection of jurisdiction. Where a tribunal accepts jurisdiction over any part of the claim, this qualifies as acceptance of jurisdiction.
 - c. Merits. If the tribunal made a final decision on the merits, enter “Tribunal decided that respondent state violated [or did not violate] treaty”].
 - d. Damages. If the tribunal decided that the respondent state violated the treaty, enter information on the award of damages. Enter the approximate amount in USD or Euros (and whether or not the amount includes interest in relation to any period before (but not after) the award on damages). Convert currencies other than USD or Euros to USD using the historical exchange rate for the relevant date as found on www.oanda.com.
 - e. Costs. If the tribunal rejected jurisdiction over the claim or decided the case on the merits, enter information on the tribunal’s allocation of arbitration costs between the parties. Enter information on the tribunal’s allocation of legal costs only where the tribunal decided not to have each party bear its own legal costs.
 - f. Annulment or set aside. Enter information on annulment or set aside of an award only where an award in the case was in fact annulled or set aside.
 - g. Case pending. If the case is pending and no award on jurisdiction is available, enter “Case pending, with no award on jurisdiction, as of [cut-off date]”. A case is not pending if the tribunal has decided the final outcome of the case at any of these stages of the case: jurisdiction, merits, damages, or costs. Do not enter that the case is pending where the

tribunal has decided the final outcome at any of these stages but the case remains subject to set aside or annulment.

- h. If information on outcome is unknown or the data is unavailable, enter “Information unavailable” with a brief explanation where possible.

15. Arbitrators: Enter the last name of each arbitrator who was a member of the tribunal and, where available, information on whether each arbitrator was the presiding (or sole) arbitrator, the investor arbitrator, or the state arbitrator (e.g. “Smith, John (investor)”).

- a. Enter information on any changes in the make-up of the tribunal as reflected at any of these stages in a case: establishment of the tribunal, award on jurisdiction, award on merits, award on damages, award on costs.
- b. If information on the make-up of the tribunal, or on whether each arbitrator was presiding, investor, or state arbitrator, is unavailable, provide a brief statement of what information is unavailable.
- c. If the case is pending and the tribunal is not known to have been established, enter “Tribunal not yet established as of [cut-off date]”.
- d. If the case is known to have been resolved before a tribunal was established (e.g. where the claim was withdrawn or the case settled prior to establishment of the tribunal), enter “NA”.

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