

India's Stand on ISDS

Why in news?

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India and some other countries have rejected an informal proposal made by the EU and Canada to work towards a multilateral pact on investments at the World Trade Organisation that would have an Investor-State Dispute Settlement (ISDS) mechanism built into it.

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What new proposal has been made?

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- The EU and Canada have got into an investment agreement in which they have got the much contentious ISDS which allows corporates to take sovereign governments to international arbitration.

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- They now want it to be the template for a multilateral agreement.

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- **Investor-state dispute settlement (ISDS)** or **investment court system (ICS)** is a system through which individual companies can sue countries for alleged discriminatory practices.

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- ISDS is a neutral, international arbitration procedure. Like other forms of commercial, labour, or judicial arbitration, ISDS seeks to provide an impartial, law-based approach to resolve conflicts.

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- The proposal for a global investment pact, made at an informal breakfast meeting of Trade Ministers of select countries in Davos last week, was **rejected by India, Brazil, Japan and Argentina.**

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What is the need for ISDS?

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- To resolve investment conflicts without creating state-to-state conflict
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- To protect citizens abroad
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- To signal to potential investors that the rule of law will be respected
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7 reasons to scrap the Investment Court System

- 1:** ICS would **empower corporations to sue governments** over measures to protect the environment, health & workers
- 2:** The ICS means **billions in taxpayer money** could be paid to compensate corporations, including for missed future profits
- 3:** ICS is a sure-fire way to bully decision-makers, potentially **curtailing desirable policymaking**
- 4:** The ICS would give powerful **rights and privileges** to foreign investors, **without any obligations**
- 5:** Since only investors can sue, there is an incentive for **ICS arbitrators to side with them** to bring more lawsuits & fees
- 6:** ICS is likely to be **incompatible with EU law**, as it sidelines European courts and is fundamentally discriminatory
- 7:** ICS risks locking us into a **legal straightjacket**, as it will be practically impossible to remove investor privileges from larger trade deals

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Why India rejects?

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- It is only after all options for settling disputes between a sovereign government and a corporate in domestic courts have been exhausted do we want to allow the issue to be taken up in international courts.
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- It should be part of a bilateral agreement and not a multilateral agreement.
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- The EU, in a bilateral meeting with India, also indicated that it would hold free trade talks with India only after concluding a new **bilateral investment treaty (BIT)** with India.
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- Last year, New Delhi had asked all countries with which India has investment protection agreements, including the EU, to re-negotiate those pacts on the basis of the new draft text of BIT.
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- EU did not do so and the existing BITs with existing members are set to lapse in April.
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