Bibliography

LEGAL INSTRUMENTS AND DOCUMENTS

Accord entre la Confédération suisse et la République orientale de l’Uruguay concernant la promotion et la protection réciproques des investissements, signed 7 October 1988 (entered into force 22 April 1991)


Agreement between the Swiss Confederation and the Oriental Republic of Uruguay concerning the Reciprocal Promotion and Protection of Investments, 1976 UNTS 413 (signed and entered into force 7 October 1988)

Agreement Establishing the ASEAN—Australia—New Zealand Free Trade Area, signed 27 February 2009, [2010] ATS 1 (entered into force 1 January 2010)


Broadcast and Television Amendment Act 1976 (Cth)

Charter of Fundamental Rights [2000] OJ C 364/1


Convention on the Recognition and Enforcement of Foreign Arbitral Awards,
opened for signature 10 June 1958, 330 UNTS 3 (entered into force 7 June 1959)


Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 575 UNTS 159, 1639 UNTS 409 (entered into force 14 October 1966)


False Claims Act, 31 USC § 3729 (1863)


Foreign Sovereign Immunities Act of 1976, 28 USC § 1602

Framework Convention on Tobacco Control, opened for signature 21 May 2003, 2302 UNTS 166 (entered into force 27 February 2005)


Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009

Public Health (Tobacco) Act 2008 (NSW)

Public Health Act 1997 (Tas)


Smoking and Tobacco Products Advertisements (Prohibition) Act 1989 (Cth)

Tobacco (Amendment) Act 1990 (ACT)

Tobacco Act 1927 (ACT)

Tobacco Act 1987 (Vic)

Tobacco Advertising Prohibition Act 1992 (Cth)
Public health and plain packaging of cigarettes

_Tobacco Amendment (Protection of Children) Act 2009 (Vic)_
_Tobacco Control Act 1990 (WA)_
_Tobacco Control Act 2002 (NT)_
_Tobacco Plain Packaging Bill 2011 (Cth)_
_Tobacco Products Control Act 1988 (SA)_
_Trade Marks Act 1995 (Cth)_
_Trade Marks Amendment (Tobacco Plain Packaging) Bill 2011 (Cth)_
_UNCITRAL Arbitration Rules As Revised in 2010, GA Res 65/22, UN GAOR, 65th sess, 57th plen mtg, UN Doc A/RES/65/22 (6 December 2010)_

CASES AND AWARDS

_ADC Affiliate Ltd and ADC & ADMC Management Ltd v Hungary (Final Award on Jurisdiction, Merits and Damages) (ICSID Arbitral Tribunal, Case No ARB/03/16, 27 September 2006)_
_ADM Ölmühlen (C-339/92) [1993] ECR I-6473_
_AES Summit Generation v Hungary (Award) (ICSID Arbitral Tribunal, Case No ARB/07/22, 17 September 2010)_
_Affish BV v Rijksdienst voor de keuring van Vee en Vlees (C-183/95) [1997] I-04315_
_Agrarproduktion Staebelow GmbH v Landrat des Landkreises Bad Doberan (C-504/04) [2006] ECR I-679_
_Airservices Australia v Canadian Airlines International Ltd (1999) 202 CLR 133_
_Al-Bahloul v Tajikistan (Partial Award) (Arbitration Institute of the Stockholm Chamber of Commerce, Case No 064/2008, 2 September 2009)_
_Alpha Projektholding v Ukraine (Award) (ICSID Arbitral Tribunal, Case No ARB/07/16, 20 October 2010)_


Public health and plain packaging of cigarettes


*Archer Daniels Midland v Mexico (Award)* (ICSID Arbitral Tribunal, Case No ARB(AF)/04/05, 26 September 2007)

*Arnold André GmbH & Co KG v Landrat des Kreises Herford* (C-434/02) [2004] ECR I-11825

*Arsenal Football Club plc v Reed* (C-206/01) [2002] ECR I-10273

*Attorney-General for the Northern Territory v Chaffey; Santos Limited v Chaffey* (2007) 231 CLR 651

*Attorney-General of the Commonwealth v Schmidt* (1961) 105 CLR 361

*Australasian United Steam Navigation Co Ltd v Shipping Control Board* (1945) 71 CLR 508

*Australian Capital Television Pty Ltd v Commonwealth (Political Advertising case)* (1992) 177 CLR 106

*Australian Tape Manufacturers Association Ltd v Commonwealth* (1993) 176 CLR 480

*Azurix Corp v Argentina (Award)* (ICSID Arbitral Tribunal, Case No ARB/01/12, 14 July 2006)

*Bank of New South Wales v Commonwealth* (1948) 76 CLR 1

*Belfast Corporation v OD Cars Ltd* [1960] AC 490

*Biwater Gauff (Tanzania) v Tanzania (Award)* (ICSID Arbitral Tribunal, Case No ARB/05/22, 18 July 2008)

*British American Tobacco Australia Limited v Secretary, Department of Health and Ageing* [2011] FCAFC 107 (23 August 2011)

*Burton v Honan* (1952) 86 CLR 169

*Canadian Cattlemen for Fair Trade v United States (Jurisdiction)* (North American Free Trade Agreement Chapter 11 Panel, 28 January 2008)

*Canfor Corporation v United States (Decision on Preliminary Question)* (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 6 June 2006)

*Cargill v Mexico (Award)* (ICSID Arbitral Tribunal, Case No ARB(AF)/05/2, 13 August 2009)
Bibliography

Certain Norwegian Loans (France v Norway) (Judgment) [1957] ICJ Rep 9
Chevron Corporation v Ecuador (Partial Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 30 March 2010)
Clark Equipment Co v Reg of Trade Marks (1964) 111 CLR 511
Clyne v Deputy Commissioner of Taxation (NSW) [No 1] (1982) 13 ATR 463
CME Czech Republic v Czech Republic (Partial Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 13 September 2001)
CMS Gas Transmission Company v Argentina (Decision on Annulment) (ICSID Ad Hoc Committee, Case No ARB/01/8, 21 August 2007)
Commonwealth of Australia v WMC Resources Ltd (1998) 194 CLR 1
Commonwealth v Western Australia (1999) 196 CLR 392
Compañía de Aguas del Aconquija SA and Vivendi Universal SA v Argentina (Award) (2001)16 ICSID Rev – FILJ 641
Compañía del Desarrollo de Santa Elena SA v Costa Rica (Final Award) (2002) 5 ICSID Rep 157
Compañía del Desarrollo de Santa Elena SA v Costa Rica (Final Award) (ICSID Arbitral Tribunal, Case No ARB/96/1, 17 February 2000)
Compañía del Desarrollo de Santa Elena SA v Costa Rica (Final Award) (ICSID Arbitral Tribunal, Case No ARB/96/1, 17 February 2000)
ConAgra v McCain Foods (1992) 33 FCR 302
Continental Casualty Company v Argentine Republic (Award) (ICSID Arbitral Tribunal, Case No ARB/03/9, 5 September 2008)
Convention on the Settlement of Investment Disputes between States and Nationals of Other States 575 UNTS 159, signed 18 March 1965 (entered into force 14 October 1966)
Corn Products International v Mexico (Decision on Responsibility) (ICSID Arbitral Tribunal, Case No ARB(AF)/04/1, 15 January 2008)
Crompton (Chemtura) Corp v Canada (Award), Ad Hoc NAFTA Tribunal under UNCITRAL Rules (2 August 2010)
Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v United States) (Judgment) [1984] ICJ Rep 246
Duke Energy v Ecuador (Award) (ICSID Arbitral Tribunal, Case No ARB/04/19, 12 August 2008)
E & J Gallo Winery v Lion Nathan Pty Limited (2010) 244 CLR 144
Eastern Sugar BV v Czech Republic (Partial award and partial dissenting opinion) (2007) IIC 310
Enron Corporation v Argentina (Award) (ICSID Arbitral Tribunal, Case No ARB/01/3, 22 May 2007)
Enron v Argentina (Award) (ICSID Arbitral Tribunal, Case No ARB/01/3, 22 May 2007)
Public health and plain packaging of cigarettes

Enron v Argentina (Decision on Annulment) (ICSID Ad Hoc Committee, Case No ARB/01/3, 30 July 2010)
Erven Warnink Besloten Vennootschap v J Townend & Sons (Hull) Ltd [1979] 1 AC 731
Ethyl Corporation v Canada (Jurisdiction) (1999) 38 ILM 708
Eureko BV v Poland (Partial Award and Dissenting Opinion) (2005) IIC 98
Fireman’s Fund Insurance Company v Mexico (Award) (ICSID Arbitral Award, Case No ARB(AF)/02/01, 17 July 2006)
Frontier Petroleum Services v Czech Republic (Final Award) (Permanent Court of Arbitration, 12 November 2010)
Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Merits) [1997] ICJ Rep 7
GEA Group v Ukraine (Award) (ICSID Arbitral Tribunal, Case No ARB/08/16, 31 March 2011)
Genin v Estonia (Award) (ICSID Arbitral Tribunal, Case No ARB/99/2, 25 June 2001)
Georgiadis v Australian and Overseas Telecommunications Corporation (1994) 179 CLR 297
Germany v Council (C-280/93) [1994] ECR I-4973
Germany v European Parliament and Council of the European Union (Tobacco Advertising II) (C-380/03) [2006] ECR I-11573
Glamis Gold Ltd v United States (Award) (2009) IIC 380
Grace Brothers Pty Ltd v Commonwealth (1946) 72 CLR 269
Grand River Enterprises Six Nations Ltd and Ors v United States (Award) (2011) IIC 481
ICM Agriculture Pty Ltd v Commonwealth (2009) 240 CLR 140
Impregilo v Argentine Republic (Award) (ICSID Arbitral Tribunal, Case No ARB/07/17, 21 June 2011)
Inland Revenue Commissioners v Muller & Co’s Margarine Ltd [1901] 1 AC 217
International Thunderbird Gaming Corporation v Mexico (Award) (2006) IIC 136
Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel (C-11/70) [1970] ECR 1125
Jippes and Others v Minister van Landbouw, Natuurbeheer en Visserij (C-189/01) [2001] ECR I-5689
Jones v Commonwealth (1963) 109 CLR 475
Käserei Champignon Hofmeister (C-210/00) [2002] ECR I-6453
Lauder v Czech Republic (Final Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 3 September 2001)
LG&E v Argentina (Decision on Liability) (2007) 46 ILM 36
Loewen v United States (Award) (North American Free Trade Agreement Chapter 11 Arbitral Tribunal, Case No ARB(AF)/98/3, 26 June 2003)
Maizena (137/85) [1987] ECR 4587
Malaysian Historical Salvors v Malaysia (Award on Jurisdiction) (ICSID Arbitral Tribunal, Case No ARB/05/10, 10 May 2007)
Malaysian Historical Salvors v Malaysia (Decision on Annulment) (ICSID Ad Hoc Committee, Case No ARB/05/10, 16 April 2009)
Markus Stoß and Others v Wetteraukreis; Kulpa Automatenservice Asperg GmbH and Others v Land Baden-Württemberg (Court of Justice of the European Communities, C-316/07, C-358/07, C-360/07, C-409/07 and C-410/07, 8 September 2010)
Merrill & Ring Forestry LP v Canada (Award) (2010) IIC 427
Metalclad Corp v Mexico (Award) (2002) 5 ICSID Rep 212
Metalclad v Mexico (Review by the Supreme Court of British Columbia) (ICSID Case No ARB(AF)/97/1, 2 May 2001)
Methanex v United States (Final Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 3 August 2005)
Minister of State for the Army v Dalziel (1944) 68 CLR 261
Mondev International v United States (Award) (ICSID Arbitral Tribunal, Case No ARB(AF)/99/2, 11 October 2002)
Mutual Pools and Staff Pty Ltd v Commonwealth (1994) 179 CLR 155
Neer v Mexico (1926) 4 R Int’l Arb Awards
New South Wales v Commonwealth (WorkChoices case) (2006) 229 CLR 1
Newcrest Mining (WA) Ltd v Commonwealth (1997) 190 CLR 513
Nintendo Co Ltd v Centronics Systems Pty Ltd (1994) 181 CLR 134
Noble Ventures Inc v Romania (Award) (ICSID Arbitral Tribunal, Case No ARB/01/11, 5 October 2005)
Occidental Exploration and Production Company v Ecuador (Award) (London Court of International Arbitration, Case No UN 3467, 1 July 2004)
OHIM, Decision of the Fourth Board of Appeal of 19 November 2008 (R 804/2008-4)
Oxford University Press v Reg of Trade Marks (1990) 17 IPR 509
Panel Report, European Communities – Measures Affecting Asbestos

Panel Report, European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, Complaint by Australia, WTO Doc WT/DS290/R (adopted 20 April 2005)

Panel Report, European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs, Complaint by Australia, WTO Doc WT/DS290/R (adopted 20 April 2005)


Panel Report, United States – Measures Affecting the Production and Sale of Clove Cigarettes, WTO Doc WT/DS406/R (circulated 2 September 2011)

Panel Report, United States – Measures concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WTO Doc WT/DS381/R (circulated 15 September 2011)


Parkerings-Compagniet v Lithuania (Award) (ICSID Arbitral Tribunal, Case No ARB/05/8, 14 August 2007)

Patrick Mitchell v The Democratic Republic of Congo (Decision on Annulment) (ICSID Ad Hoc Committee, Case No ARB/99/7, 1 November 2006)

Paushok v Mongolia (Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 28 April 2011)

Penn Central Transportation Co v City of New York 438 US 104 (1978)

Pennsylvania Coal Co v Mahon 260 US 393 (1922)

Pfizer Animal Health v Council (T-13/99) [2002] ECR II-3305
Bibliography

Philip Morris Limited and Prime Minister [2011] AATA 556 (15 August 2011)

Plama Consortium v Republic of Bulgaria (Award) (ICSID Arbitral Tribunal, Case No ARB/03/24, 27 August 2008)

Pope & Talbot v Canada (Interim Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 26 June 2000)

Procureur du Roi v Dassonville (C-8/74) [1974] ECR 837

PSEG Global v Republic of Turkey (Award) (ICSID Arbitral Tribunal, Case No ARB/02/5, 17 January 2007)

Re Director of Public Prosecutions; Ex parte Lawler (1994) 179 CLR 270

Reckitt & Coleman Products v Borden Inc [1990] 1 All ER 873

Romak SA v Uzbekistan (Award) (Permanent Court of Arbitration, Case No AA280, 26 November 2009)

Salini Costruttori SPA and Italstrade SPA v Kingdom of Morocco (Decision on Jurisdiction of 23 July 2001) (2003) 42 ILM 609

Saluka Investments BV v Czech Republic (Partial Award) IIC 210 (2006)

Schräder (265/87) [1989] ECR I-2237

SD Myers v Canada (First Partial Award) (Ad Hoc Arbitral Tribunal, UNCITRAL Rules, 13 November 2000)

Sempra Energy v Argentina (Award) (ICSID Arbitral Tribunal, Case No ARB/02/16, 18 September 2007)

Sempra Energy v Argentina (Decision on Annulment) (ICSID Ad Hoc Committee, Case No ARB/02/16, 10 June 2010)

SGS Société Générale de Surveillance v Philippines (Decision on Jurisdiction and Separate Declaration) (ICSID Arbitral Tribunal, Case No ARB/02/6, 29 January 2004)

Siemens v Argentina (Award) (ICSID Arbitral Tribunal, Case No ARB/02/8, 6 February 2007)

Smith Kline & French Laboratories (Australia) Ltd v Secretary, Department of Community Services and Health (1990) 22 FCR 73

Smith v ANL Ltd (2000) 204 CLR 493

SMW Winzersekt GmbH v Land Rheinland-Pfalz (C-306/93) [1994] ECR I-5555

Spain and Finland v Parliament and Council (C-223/02) [2004] ECR I-7789

Spalding Brothers v Gamage (1915) 84 LJ Ch 449

Sports Warehouse, Inc v Fry Consulting Pty Ltd [2010] FCA 664

Suez v Argentina (Decision on Liability) (ICSID Arbitral Tribunal, Case No ARB/03/17, 30 July 2010)

Swedish Match AB and Swedish Match UK Ltd v Secretary of State for Health (C-210/03) [2004] ECR I-11893

Tasmania v Commonwealth (Tasmanian Dam case) (1983) 158 CLR 1
Técnicas Medioambientales Tecmed v Mexico (Award) (ICSID Arbitral Tribunal, Case No ARB(AF)/00/2, 29 May 2003)
Telstra Corporation v Commonwealth (2008) 234 CLR 210
The Queen v Ministry of Agriculture, Fisheries and Food, Commissioners of Customs & Excise, ex parte National Farmers’ Union and Others (C-157/96) [1998] ECR I-2211
The Queen v Secretary of State for Health, ex parte British American Tobacco (Investments) Ltd and Imperial Tobacco Ltd (C-491/01) [2002] ECR I-11453
The Queen, on the Application of Natural Health and Others v Secretary of State for Health and National Assembly for Wales (C-154/04 and C-155/04) [2005] ECR I-6451
The Queen, on the application of Vodafone Ltd and Others v Secretary of State for Business, Enterprise and Regulatory Reform (Court of Justice of the European Union, C-58/08, 8 June 2010)
Tokios Tokelės v Ukraine (Award) (ICSID Arbitral Tribunal, Case No ARB/02/18, 29 June 2007)
Total v Argentina (Decision on Liability) (ICSID Arbitral Tribunal, Case No ARB/04/1, 21 December 2010)
Toto Costruzioni Generali v Republic of Lebanon (Decision on Jurisdiction) (ICSID Arbitral Tribunal, Case No ARB/07112, 8 September 2009)
Trade Practices Commission v Tooth & Co Ltd (1979) 142 CLR 397
United Kingdom of Great Britain and Northern Ireland v Council of the European Union (C-84/94) [1996] ECR I-5755
Upjohn Ltd v The Licensing Authority Established by the Medicines Act 1968 and Others (C-120/97) [1999] ECR 223
W H Blakeley & Co Pty Ltd v Commonwealth (1953) 87 CLR 501
Wurridjal v Commonwealth (2009) 237 CLR 209

BOOKS

Alvarez, José et al (eds), The Evolving International Investment Regime: Expectations, Realities, Options (Oxford University Press, 2011)
Binder, Christina et al (eds), International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer (Oxford University Press, 2009)
Buffard, Isabelle et al (eds), International Law between Universalism and Fragmentation (Brill, 2009)
Campbell, Tom, Jeffrey Goldsworthy and Adrienne Stone (eds), Protecting Rights without a Bill of Rights: Institutional Performance and Reform in Australia (Ashgate, 2006)
Carvalho, Nuno Pires de, The TRIPS Regime of Trademarks and Designs (Kluwer, 2005)
Craig, Paul, EU Administrative Law (Oxford University Press, 2006)
Dekker, Ige and Harry Post (eds), On the Foundations and Sources of International Law (TMC Asser Press, 2003)
Dolzer, Rudolf and Christoph Schreuer, Principles of International Investment Law (Oxford University Press, 2008)
Dolzer, Rudolf and Margrete Stevens, Bilateral Investment Treaties (Martinus Nijhoff, 1995)
Dupuy, Pierre-Marie, Ernst-Ulrich Petersmann and Francesco Francioni (eds), Human Rights in International Investment Law and Arbitration (Oxford University Press, 2009)
Gervais, Daniel, The TRIPS Agreement: Drafting History and Analysis (Sweet & Maxwell, 2nd ed, 2003)
Grando, Michelle, Evidence, Proof, and Fact-Finding in WTO Dispute Settlement (Oxford University Press, 2010)
Kahn, Philippe and Thomas Wälde (eds), New Aspects of International Investment Law (Martinus Nijhoff Publishers, 2007)
Kenyon, Andrew T, Ng-Loy Wee Loon and Megan Richardson (eds), The
Public health and plain packaging of cigarettes

Law of Reputation and Brands in the Asia Pacific (Cambridge University Press, 2012)
McGrady, Benn, Trade and Public Health: The WTO, Tobacco, Alcohol, and Diet (Cambridge University Press, 2011)
Mitchell, Andrew, Legal Principles in WTO Disputes (Cambridge, 2008)
Muchlinski, Peter, Federico Ortino and Christoph Schreuer (eds), The Oxford Handbook of International Investment Law (Oxford University Press, 2011)
Reinisch, August, Standards of Investment Protection (Oxford University Press, 2008)
Rogers, Catherine and Roger Alford (eds), The Future of Investment Arbitration (Oxford University Press, 2009)
Scollo, Michelle and Margaret Winstanley (eds), Tobacco in Australia: Facts and Issues (Cancer Council Victoria, 3rd ed, 2008)
Tudor, Ioana, The Fair and Equitable Treatment Standard in International Foreign Investment Law (Oxford University Press, 2008)
Voon, Tania, Cultural Products and the World Trade Organization (Cambridge University Press, 2007)
Bibliography


ARTICLES


Chapman, Simon and Stacy Carter, ‘“Avoid Health Warnings on All Tobacco Products for Just As Long As We Can”: A History of Australian Tobacco Industry Efforts to Avoid, Delay and Dilute Health Warnings on Cigarettes’ (2003) 12(supp3) *Tobacco Control* iii13


Gaines, Sanford, ‘Methanex Corp v United States’ (2006) 100 American Journal of International Law 683

Ganguly, Samrat, ‘The Investor–State Dispute Mechanism (ISDM) and a Sovereign’s Power to Protect Public Health’ (1999) 38 Columbia Journal of Transnational Law 113


Gray, N and D Hill, ‘Patterns of Tobacco Smoking in Australia’ (1975) 2 Medical Journal of Australia 819


McGrady, Benn, ‘TRIPs and Trademarks: The Case of Tobacco’ (2004) 3(1) World Trade Review 53

Bibliography

Mitchell, Andrew and Tania Voon, ‘Patents and Public Health in the WTO, FTAs and Beyond: Tension and Conflict in International Law’ (2009) 43(3) Journal of World Trade 571
Schreuer, Christoph, ‘Fair and Equitable Treatment in Arbitral Practice’ (2005) 6 Journal of World Investment & Trade 357