Some concerns about ISDS

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Overview

• Concerns are not new
• Trend downward in BITs and arbitrations
• Possible factors
• What next
Preliminary issues II

- Not a new concern
- MAI
- NAFTA
- Productivity Commission
- Bolivia, Ecuador

This table is based on data from UNCTAD’s world investment report
Awards by year

Possible explanations

- Trends in the jurisprudence
  - Maffezini v Spain
  - Renta 4 v Russian Federation
- Inconsistent jurisprudence
- Tables turning
- Concerns of ‘civil society’
Awards: OECD vs non OECD

This table is based on data from UNCTAD's IIAs issues note 1 of 2011

What next?

• A question for governments in weighing the costs and benefits
  – Tighter drafting?
• A question also for the arbitration community