Proposal for the development of a “Multilateral Investment Reform Agreement” to reform ISDS

WP 182 (Chile, Israel, Japan, Mexico, Peru)
Not all States face the same concerns

Not all States need, want, or are in a position to implement the same solutions at the same time

To attain the widest possible participation of States in reformed ISDS, we need to provide a flexible framework to implement ripe solutions
WP 182 – General Principles

• Reform tools should be pursued independently from one another

• Reform tools should be implemented when they are ripe to allow early harvest of solutions achievable in the short term

• All reform tools identified, addressed and developed by the WG, can be incorporated in one instrument, a Multilateral Investment Reform Agreement
The Multilateral Investment Reform Agreement ("MIRA")

• The MIRA will provide an implementation framework for all reform options

• The MIRA could contribute to achieve uniformity of the applicable procedural norms, and thus consistency and coherence of the investment regime as a whole

• The MIRA will enable countries to efficiently update their networks of older-style bilateral investment treaties
• Broad agreement on nature of procedural tools

• WP182 Table highlights common approaches, with reference to a few recent treaties: CPTPP, EU-Mexico FTA, and USMCA
Implementation could occur, among other approaches, through different treaty amendment processes, including:

- Mauritius Convention on Transparency
- MLI (Submission by the Government of Colombia)

The UNCITRAL Secretariat and members of the Academic forum have published papers addressing the possible architecture of the instrument and the interaction of the multilateral instrument with the IIAs.
MIRA - Policy Considerations

- Flexibility v. Uniformity
  - Feasibility of defining core provisions // minimum standards

- Opt-in v. Opt-out

- Convention with provisions v. Convention with protocols v. reservations v. declarations

- Phased entry into force could be challenging on a domestic level
Thank you!