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Re: Submission on the anti-ISDS provisions in the Trade and Investment Agreements (Consultation) Bill 2026[1]

With a strong sense of déjà vu (from 2014), I oppose this Bill's clauses 16(2)(a) and 23(c) that simply state that a (trade) Minister must not sign a proposed free trade agreement or bilateral investment treaty if it "includes provision for investor-state dispute settlement" (ISDS). I hope the Australian government deletes these provisions, or better still supports the Senate referring this controversial Bill to its Foreign Affairs and Trade Committee for proper public consultation.

I have been a Professor at Sydney Law School since 2012, cross-appointed since April 2026 as Professor of Law at The University of Tokyo, writing and lecturing on comparative and international business. One area of expertise is international investment regulation, treaties and dispute resolution.

Since 2010 I have made ten substantial Submissions to Parliament and the Government (listed in **Appendix A**) regarding investment treaty ratifications and reviews, often called to give oral evidence to Committees and/or being cited in their reports. Given emergent public concern, somewhat curiously since it is only a procedure rather than a substantive commitment typically provided nowadays through treaties, I have addressed consideration attention in these Submissions (and related publications) on ISDS. I have focused on ISDS arbitration, in which the third-party neutrals can give binding decisions, unlike much less popular ISDS conciliation or mediation – where they can only facilitate the disputing investor and host state reaching an amicable settlement.

From the outset I have presented principled and empirically-grounded reasons why ISDS arbitration understandably became the primary mechanism in international law to make credible host states' commitments in investment treaties to welcome inbound investment

[1] https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s1498

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(especially less mobile FDI) by offering improved market access and/or subsequent protections of investment against expropriation without adequate compensation, discrimination, lack of fair and equitable treatment, and other minimum standards widely expected and enforced through international law. My work carefully counters glib assertions to show how there is significant evidence that ISDS-backed provisions contribute to more cross-border FDI, are used by Australia's outbound investors, and do not lead to excessive extra regulatory chill in a developed democratic economy like ours.

Despite arguing that ISDS arbitration remains better than alternative mechanisms, such as inter-state arbitration or individually negotiated investment contracts, I have also made various suggestions for improving ISDS procedures through treaty negotiations and drafting. I have been pleased that successive Australian governments have often joined with other states (in bilateral, regional and UNCITRAL multilateral fora) in pursuing and often achieving such initiatives (such as more transparency in ISDS, befitting the greater public interests than in purely commercial arbitration). I also urged more public consultation in developing a Model BIT for Australia (as recommended by a committee in 2015), which has not occurred but DFAT led a public consultation to review Australia's old treaties.[2]

My research and publications,[3] including in eminent peer-reviewed journals and edited book collections, also often show how states that have been subjected to initial inbound treaty-based claims have not abandoned ISDS completely because they recognize its net benefits in promoting cross-border investment and minimum standards for the rule of law (around Asia and contrasting Australia, see my recently published article[4]). Australia instead seems to have over-reacted when the Labor/Greens coalition shifted to a blanket anti-ISDS policy when in power over 2011-3, partly in response to Australia's first-inbound claim (by Philip Morris Asia under an old BIT with Hong Kong, renegotiated in 2019 so better balanced). The Albanese Labor Government in 2022 reverted to this policy, under a pre-election commitment but without any public consultation, perhaps responding to further recent inbound claims by (Australia's Clive Palmer controlled)

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[2] Compare **(in Appendix A)** https://japaneselaw.sydney.edu.au/2015/06/senates-report-into-australias-treaty-making-process-and-isds-model/ and https://www.dfat.gov.au/trade-and-investment/discussion-paper-review-australias-bilateral-investment-treaties

[3] Many of my papers are available in open-access or freely via http://ssrn.com/author=488525, and are also listed at https://japaneselaw.sydney.edu.au/2026/03/my-cv-and-recent-papers-presentations/ . Extracted as **Appendix B** are the publications (and media commentary) most relevant to investment treaties and ISDS.

[4] Luke Nottage, "Evolving Antipodean, Asian and European Ambivalence Around ISDS Arbitration", 36 Griffith Law Review (September 2026) 1-22, OPEN ACCESS at https://www.tandfonline.com/doi/full/10.1080/10383441.2026.2732469

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Zeph under the ASEAN Australian NZ FTA. Yet Australia won the Philip Morris claim on jurisdiction, and has done so recently again in the first Zeph claim (regarding extreme Western Australian government measures concerning an iron ore project).[5] Perhaps now Australia is (over-)reacting to an ISDS claim from a Chinese investor regarding the Port of Darwin dispute, but whether and when that will progress to any outcome adverse to Australia is far from obvious.[6]

In light of this trajectory, with Asian partner economies much more sanguine, I am therefore bemused to find this Bill now proposing to legislate for Australia a blanket prohibition on not only this Government, but also all future Governments (unless and until they manage to amend such legislation), regarding negotiations towards and agreement on any form of ISDS (even it seems mediation, surely raising far fewer concerns than arbitration). It is even more curious to find a Labor Government now proposing this "nuclear option", given that in 2014 the Labor Senators on the Senate's Foreign Affairs, Defence and Trade Legislation committee agreed with its recommendation not to enact a similar "anti-ISDS" *Trade and Foreign Investment (Protecting the Public Interest) Bill* proposed by a Greens Senator, stating in their Additional Comments:[7]

> "**Executive responsibility**
> 1.15 In our parliamentary system the responsibility for negotiating and signing international treaties, including trade and investment treaties, is vested in the executive government.
> 1.16 Previous Labor Governments have utilised this executive treaty making power to enter treaties, agreements and contracts to make progressive reforms in the national interest, including protecting workers against unfair dismissal; saving the Franklin River through world heritage listing; ratifying the Kyoto Protocol to tackle climate change, and tackling discrimination and other abuses of human rights.

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[5] Updating the above article on the latter case, see https://www.ag.gov.au/international-relations/publications/federal-supreme-court-switzerland-judgement-set-aside-application-zeph-investments-translated and https://www.ag.gov.au/international-relations/publications/federal-supreme-court-switzerland-judgement-revision-application-zeph-investments-translated. Given this setback for the investor and similar jurisdictional objections in the remaining Zeph claims (about Queensland state measures regarding coal mine linked projects), it seems unlikely those will proceed or can ultimately succeed.

[6] For an early analysis of key facts and issues, see Tianqi Gu and Luke Nottage (20 May 2025) https://eastasiaforum.org/2025/05/19/australias-port-of-darwin-move-risks-isds-arbitration-with-china/

[7] Available via https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=s951. For my Submission, responses to Questions on Notice following oral evidence given, and other context, see: Luke Nottage, "The 'Anti-ISDS Bill' Before the Senate: What Future for Investor-State Arbitration in Australia?" XVIII International Trade and Business Law Review (2015) 245-293, https://ssrn.com/abstract=2483610 or http://dx.doi.org/10.2139/ssrn.2483610

> 1.17 Governments are ultimately accountable to the people through the ballot box for their exercise of executive power.
> 1.18 In our view it is not desirable to radically constrain the executive's treaty-making power in the manner proposed by this bill."

The Labor Senators' point in 2014 remains very apposite. If the current Bill had been in place when the Albanese Labor Government was conducting negotiations for the Second Protocol of the ASEAN Australia NZ FTA, it would not have permitted the Trade Minister to sign the Protocol that maintains AANZFTA's ISDS provisions (albeit with reasonable compromises of a Work Program to keep reviewing such provisions, along with a delayed phase-in for the new investment liberalisation commitments under the Protocol).[8] Yet the Labor Government, along with the Coalition in Opposition, agreed (after public consultation through the Joint Standing Committee on Treaties) that the overall Protocol deal was very much in Australia's national interest and so should be ratified. As remarked originally for example by the Trade Minister:[9]

> "The AANZFTA upgrade will create new commercial opportunities for Australians, for our exporters and investors to work hand-in-hand with businesses in Southeast Asia. This will cement Australia as a partner of choice in an open and inclusive region."

As the Government added after Australia's ratification:

> "Coming 15 years after the Agreement's original entry into force on 1 January 2010, AANZFTA's continued relevance underscores the importance of cooperative, collective and regional efforts to liberalise markets, expand the benefits of trade, and grow regional economic integration, for our mutual prosperity. The AANZFTA Upgrade reinforces regional commitment to an open, rules-based, non-discriminatory trading system."

Back in 2014, the Senate committee's report on the Greens' anti-ISDS Bill had reached the recommendation against that enactment with a conclusion that is even more true today, given improvements in the ISDS regime that Australia has engaged with since then:

> "2.59 On balance the committee is not convinced that legislation is the best mechanism by which to address the concerns raised about risks associated with ISDS provisions. The committee agrees with Professor Nottage and others that the risks associated with ISDS can and should be managed more effectively and in ways which

[8] For my Submission and later evidence to JSCOT in Parliament supporting Protocol ratification, see https://japaneselaw.sydney.edu.au/2024/05/australias-anti-isds-approach-again-aanzfta-protocol-to-be-ratified/. The present Bill in clause 9(1) captures such a Protocol as an "amendment" to an FTA, defined as " as "a change to the text of the agreement that significantly modifies Australia's rights or obligations under the agreement."

[9] See further attributable quotes from the Minister (and Assistant Ministers) at https://www.trademinister.gov.au/minister/don-farrell/media-release/deepening-economic-ties-our-asean-partners.

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> do not require legislation, including careful treaty drafting (of both old and new agreements) and development of a well-balanced Model Investment Treaty.67
> 2.60 The committee is of the view that many of the alleged risks to Australian sovereignty and law making arising from the ISDS system are overstated and are not supported by the history of Australia's involvement in negotiating trade agreements. While the committee acknowledges that past experience may not be an accurate guide to the future in terms of potential ISDS claims against Australia, it stresses that the investment treaty arbitration field is evolving in positive ways to enable countries, including Australia, to put exclusions in place, limit the application of ISDS to the investment sections of agreements, and generally tighten up the wording of agreements. The committee is of the view that it is far more important for Australia to manage any risks associated with ISDS provisions than to reverse its longstanding treaty practice and opt out of the ISDS system altogether.
> 2.61 The committee accepts the view that the ISDS system has improved significantly over recent years both in the way treaties are drafted in relation to ISDS clauses and in the way that cases are argued and how arbitrators decide cases. Australia therefore stands to gain more by remaining actively engaged with the international investment law system, including where ISDS provisions apply. The committee is concerned that were Australia to legislate for a blanket ban on ISDS provisions in trade agreements, it would be sending a message to existing and potentially new trading partners that Australia was turning inward-looking and distancing itself from the international law system.
> 2.62 The committee is of the view that a blanket ban on ISDS would impose a significant constraint on the ability of Australian governments to negotiate trade agreements that benefit Australian business. …"

In addition, on a technical level, it is bizarre that the Bill does not include a definition of ISDS. It presently encompasses investor-state mediation as well as arbitration, despite the former's much lesser impact on host states. The Bill should also have indicated whether it intended to preclude signing an investment agreement providing for an EU-style "investment court" arbitration (as I proposed in the context of AANZFTA Protocol ratification hearings as a possible compromise, also potentially for ongoing and complex negotiations over investment protections eg with India, the EU and under the Regional Comprehensive Economic Partnership FTA.[10] Unless ISDS is defined in this Bill to exclude such an investment court mechanism, it will also preclude Australia signing such a multilateral mechanism that has been extensively debated and seemingly reaching a

[10] See further (also OPEN ACCESS) Luke Nottage, "Australia's Ambivalence Again Around Investor-State Arbitration: Comparisons with Europe and Implications for Asia", 39(2) *ICSID Review - Foreign Investment Law Journal* (2024) 320–346, https://academic.oup.com/icsidreview/article/39/2/320/7749344

finalized form in UNCITRAL Working Group III, including years of Australian contributions.[11]

Further, this Bill's provisions jar with the Trade Minister's very recent comments, in response to the Opposition questioning ratification of the FTA signed with the EU (but curiously omitting investment protections), that:[12]

> "The world is now falling into two camps – it's either the tariffs and protectionist camp or the free-trade camp … Australia's national interest depends upon being a free-trade country. That is the source of our future prosperity and we need to send this message to the world."

Overall, the Bill's anti-ISDS provisions seem instead an embarrassingly uninformed swing to and appeal to the far left, given also that this Labor Government has conducted no proper public consultation nor offered views (or anything in the Explanatory Memorandum) on recent best evidence and developments around investment treaties – and ISDS in particular. In an era when the far right is joining with the far left – not only in Australia but also in some other Western democracies – in retreating from the post-WW2 international rules-based order, I hope and trust we do not pass these parochial and retrograde provisions in the Bill.

I would be very happy to provide further elaboration and information to you or any parliamentary Committee.

Yours sincerely,

Luke R Nottage

[11] See generally https://uncitral.un.org/en/multilateralpermanentinvestmentcourt
[12] Paul Kelly, "'Dud' Trade Deal: Libs Rebuff ALP" *The Weekend Australian* (24-5 October 2026) p1.

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Appendix A:

1. Submission to Parliament (JSCOT) on ratifying the Second Protocol to Amend AANZFTA, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/AANZFTASecondProtocol/Submissions **(4 January 2024)**; invited to give evidence at hearings on **25 March 2024 -** https://japaneselaw.sydney.edu.au/2024/05/australias-anti-isds-approach-again-aanzfta-protocol-to-be-ratified/
2. DFAT *Review of Australia's Bilateral Investment Treaties*, Submission dated **14 September 2020**, https://www.dfat.gov.au/trade-and-investment/discussion-paper-review-australias-bilateral-investment-treaties
3. Australian Parliament, Submissions to two JSCOT treaty ratification inquiries, both quoted in respective JSCOT Reports recommending ratification:
   - HK and Indonesia investment treaties (including evidence given **26 August 2019)** via eg https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/A-HKFTA;
   - Mauritius "UN ISDS Convention" on transparency, submission dated **27 August 2019** via https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/ISDSUNConvention .
4. Australian Parliament, Submission to second JSCOT inquiry into Peru-Australia FTA, **2 November 2018**, quoted (at 4.18 and 4.26-28) of its Report No 138
5. Australian Parliament, Submissions to Senate and JSCOT inquiries into ratifying the CPTPP, **April 2018**, including oral evidence given to at JSCOT hearings on **15 June**, https://japaneselaw.sydney.edu.au/2018/04/the-tpp-is-back-submission-to-australian-parliamentary-inquiries/ - Answers to Questions on Notice later incorporated into:
   - Luke Nottage and Ana Ubilava "Costs, Outcomes and Transparency in ISDS Arbitrations: Evidence for an Investment Treaty Parliamentary Inquiry" 21(4) *Intl Arb L Rev* 111-7 (2018) https://ssrn.com/abstract=3227401
6. Australian Parliament, Submissions to the Senate Committee Inquiry into ratifying the TPP: No 3 (**September 2016**)

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http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/TPP/Submissions

7. Australian Parliament, Senate and JSCOT inquiries into the China-Australia Free Trade Agreement (**August 2015**)
   - Elaborating on: https://japaneselaw.sydney.edu.au/2015/06/compromised-isds-backed-investment-commitments-in-the-china-australia-fta/
8. Australian Senate, Inquiry into the Commonwealth's Treaty Making Process at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process:
   - submission dated **25 February 2015**, transcript of Evidence given at Committee hearings on **5 May**, via https://japaneselaw.sydney.edu.au/2015/03/submission-to-the-senate-inquiry-into-the-commonwealths-treaty-making-process/
   - cited approvingly in the majority report of **25 June 2015**: https://japaneselaw.sydney.edu.au/2015/06/senates-report-into-australias-treaty-making-process-and-isds-model/
9. Australian Senate, Inquiry into *The Trade and Foreign Investment (Protecting the Public Interest) Bill 2014*, submission dated **2 April 2014**, with a version at https://japaneselaw.sydney.edu.au/2014/09/the-anti-isds-bill-before-the-australian-parliament/
   - Evidence given at the Committee hearings on **6 August 2014**, from 2.08-3.10 in the video-recording available at http://parlview.aph.gov.au/mediaPlayer.php?videoID=233409&operation_mode=parlview
   - Incorporated into a paper at http://ssrn.com/abstract=2483610
10. Productivity Commission, "Review of Bilateral and Regional Trade Agreements", Supplementary Submission, **12 August 2010**, at http://www.pc.gov.au/projects/study/trade-agreements

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Appendix B Luke Nottage – Publications and Media on Investment Treaties and Investor-State Arbitration (ISDS)

A. Books

- Luke Nottage, International Commercial and Investor-State Arbitration: Australia and Japan in Regional and Global Contexts (2021, Cheltenham: Edward Elgar) [12 chapters] (awarded LLD by publications, Kyoto University, 2022)

B. Edited Books

- Corruption, Illegality and Asian Investment Arbitration (Nobumichi Teramura, Luke Nottage and Bruno Jetin, eds, April 2024, Springer – for series Asia in Transition) [16 chapters (4 co-authored), with a Foreword by Dr Amokura Kawharu] xviii + 454pp (open access: https://link.springer.com/book/10.1007/978-981-99-9303-1)
- New Frontiers in Asia-Pacific International Arbitration and Dispute Resolution (Luke Nottage, Shahla Ali, Bruno Jetin and Nobumichi Teramura, eds, 2021, Wolters Kluwer) [15 chapters (5 co/authored), with a Preface from Michael Hwang SC] xxxvi + 374pp
- International Investment Treaties and Arbitration Across Asia (Julien Chaisse and Luke Nottage, eds, 2018, Leiden: Brill) [21 chapters (3 co-authored), with a Preface from former Chief Justice of Australia Robert French] xxxiii + 691pp
- Foreign Investment and Dispute Resolution Law and Practice in Asia (Vivienne Bath and Luke Nottage, eds: 2011, London: Routledge) xix + 273pp [12 chapters (including two co-authored) plus Preface from the then IBA President]
- International Arbitration in Australia (Luke Nottage and Richard Garnett, eds: 2010, Sydney: Federation Press) 296pp [11 chapters, including five co-authored (three lead-authored), plus Foreword by Spigelman CJ]

C. Book Chapters

2026 (forthcoming)

- Robert Stendel and Luke Nottage, "Concurrent Investor-State Claims before Domestic Courts and Investment Treaty Arbitration Tribunals" in Martin Jarrett et al (eds) The Rise of Domestic Courts in International Investment Law (OUP) forthcoming

2024

- Nobumichi Teramura, Luke Nottage and Bruno Jetin, "Bribery and Other Serious Illegality in Asian Investment Arbitration", in ibid (eds), Corruption, Illegality and Asian Investment Arbitration (Springer) 1-35
- Sirilaksana Khoman, Luke Nottage and Sakda Thanitcul, "Foreign Investment, Corruption, Investment Treaties and Arbitration in Thailand" in Nobumichi Teramura, Luke Nottage and Bruno Jetin (eds), Corruption, Illegality and Asian Investment Arbitration (Springer) 393-421

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- Longer version (Nottage et al) retitled at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4407011

- Nobumichi Teramura, Luke Nottage and Bruno Jetin, "Towards a More Harmonised Asian Approach to Corruption and Illegality in Investment Arbitration", in ibid (eds), Corruption, Illegality and Asian Investment Arbitration (Springer) 423-446

2023

- "International Arbitration and Society at Large" in Stefan Kroell, Andrea Bjorkland and Franco Ferrari (eds) Cambridge Compendium of International Commercial and Investment Arbitration: Volume I (Cambridge University Press) 389-423
  - Manuscript version at: https://ssrn.com/abstract=3116528

2022

- "Mixing Methodologies in Empirically Investigating Investor-State Arbitration" (with Shiro Armstrong), in Daniel Behn, Ole Kristian Fauchald and Malcolm Langford (eds) The Legitimacy of Investment Arbitration: Empirical Perspectives (Cambridge University Press) 315-364
  - Extract as: Sydney Law School Research Paper No 16/74, http://ssrn.com/abstract=2824090
  - Summarised also in: http://kluwerarbitrationblog.com/2016/10/14/tpp-and-foreign-investment-does-isds-promote-fdi/ and http://afia.asia/2016/11/does-isds-promote-fdi-asia-pacific-insights-from-and-for-australia-and-india/

2021

- Ana Ubilava and Luke Nottage, "Novel and Noteworthy Aspects of Australia's recent Investment Agreements and ISDS Policy: The CPTPP, Hong Kong, Indonesia and Mauritius Transparency Treaties" in Nottage et al (eds) New Frontiers in Asia-Pacific International Arbitration and Dispute Resolution (Wolters Kluwer) 115-140
  - Manuscript version at: https://ssrn.com/abstract=3548358
- Luke Nottage and Bruno Jetin, "New Frontiers in Asia-Pacific Trade, Investment and International Business Dispute Resolution" in Nottage et al (eds) New Frontiers in Asia-Pacific International Arbitration and Dispute Resolution (Wolters Kluwer) 1-38
  - Manuscript version at: https://ssrn.com/abstract=3635795
- "Rebalancing Investment Treaties and Arbitration in the Asian Region", in Mahdev Mohan and Chester Brown (eds) The Asian Turn in International Investment (Cambridge University Press) 379-398
  - Updating and expanding JWIT article (2016) at http://ssrn.com/abstract=2685941

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2020

- "International Investment Agreements and Investor-State Arbitration in Asia" (with Vivienne Bath) in Julien Chaisse, Leila Choukroune and Sufian Jusoh (eds) New Handbook of International Investment Law (Berlin: Springer)
  - Longer version at: https://ssrn.com/abstract=3544458

2018

- "Investment Treaty Arbitration Claims Over Tobacco Plain Packaging: Running Out of Puff?" (with Jarrod Hepburn) in Puja Kapai and Hughes Tang (eds) The Flow of Change: Celebrating Twenty Years of the Hochelaga Lectures (Faculty of Law, University of Hong Kong) 159-82
  - expanding Hepburn and Nottage, "A Procedural Win for Public Health Measures" [Casenote on Philip Morris Asia v Australia] 18 Journal of World Investment and Trade (2017) 307-19, manuscript at http://ssrn.com/abstract=2842065

2017

- "Asian Investment and the Growth of Regional Investment Agreements" (with Vivienne Bath) in Christoph Antons (ed) Routledge Handbook of Asian Law (London: Routledge) 182-99

2016

- "Investor-State Arbitration Policy and Practice in Australia" in Armand de Mestral (ed), Second Thoughts: Investor-State Arbitration Between Developed Democracies (Waterloo: Centre for International Governance Innovation, 2017) 377-430
  - Updating IGI Investor-State Arbitration Series, Paper No 6, https://www.cigionline.org/publications/investor-state-arbitration-policy-and-practice-australia
  - Sydney Law School Research Paper 15/97, http://ssrn.com/abstract=2685941

2015

- Luke Nottage and Simon Butt, "Recent International Commercial Arbitration and Investor-State Arbitration Developments Impacting on Australia's Investments in the Resources Sector" in Philip Evans and Gabriel Moens (eds) Arbitration and Dispute Resolution in the Resources Sector: An Australian Perspective (Berlin: Springer) 153-79
  - Also Sydney Law School Research Paper No. 13/17 (2013), http://ssrn.com/author=488525
- "The ASEAN Comprehensive Investment Agreement and 'ASEAN Plus' – The Australia-New Zealand Free Trade Area (AANZFTA) and the PRC–ASEAN Investment Agreement" (with Vivienne Bath) in Marc Bungenberg, Joern Griebel, Stephan Hobe & August Reinisch (eds) International Investment Law (Baden-Baden et al: Nomos / Beck / Hart) 283-303

- Also Sydney Law School Research Paper No. 13/69 (2013), http://ssrn.com/abstract=2331714

2014

- "In/formalization and Glocalization of International Commercial Arbitration and Investment Treaty Arbitration in Asia" in Joachim Zekoll, Moritz Baelz and Iwo Amelung (eds) Formalisation and Flexibilisation in Dispute Resolution (Leiden: Martinus Nijhoff / Brill) 211-49
  - Manuscript version at https://ssrn.com/abstract=2987674

2013

- "Investor-State Arbitration Policy and Practice after Philip Morris Asia v Australia", in Leon Trakman and Nicola Ranieri (eds) Regionalism in International Investment Law (Oxford: Oxford University Press) 452-74
  - earlier version in (2012) 5 Transnational Dispute Management, http://www.transnational-dispute-management.com/article.asp?key=1880
  - with a shorter version in the 22 Australian Product Liability Reporter 154-58 and the ACICA Newsletter (August 2011), also Sydney Law School Research Paper No. 12/26, http://ssrn.com/abstract=2041680
- "Japan" (with Shotaro Hamamoto) in Chester Brown (ed) Commentaries on Selected Model Investment Treaties (Oxford: Oxford University Press) 347-91
  - with a longer version as: "Foreign Investment In and Out of Japan: Economic Backdrop, Domestic Law, and International Treaty-Based Investor-State Dispute Resolution", Transnational Dispute Management 5 (2011); Sydney Law School Research Paper No. 10/145, http://ssrn.com/abstract=1724999

2012

- "Free Trade Agreement and Investment Treaty Innovations to Promote More Sustainable Financial Markets for Consumers" in Claudia Lima Marques et al (eds) The Global Financial Crisis and the Need for Consumer Regulation (Porto Alegre: Orquestra Editora) 493-500
  - SCIL Working Paper No. 31

2011

- "Foreign Investment and Dispute Resolution Law and Practice in Asia: An Overview" (with Vivienne Bath) in Vivienne Bath & Luke Nottage (eds) Foreign Investment and Dispute Resolution Law and Practice in Asia (London: Routledge) 1-24
  - also: Sydney Law School Research Paper No. 11/20, http://ssrn.com/abstract=1789306

D. Refereed Articles

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2026 (forthcoming)

- "Evolving Antipodean, Asian and European Ambivalence Around ISDS Arbitration: A Compromise Way Forward?" 36 Griffith Law Review 1-22 https://doi.org/10.1080/10383441.2026.2732469

2025

- "Cross-Fertilisation in International Commercial Arbitration, Investor-State Arbitration and Mediation: The Good, the Bad and the Ugly?" 50(3) Monash University Law Review 369-405 (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4872129
- Nobumichi Teramura and Luke Nottage "Corruption and Illegality Provisions in East and South Asian Investment Agreements: An Empirical Analysis" 28 Journal of International Economic Law https://academic.oup.com/jiel/advance-article/doi/10.1093/jiel/jgaf013/8142422
- "Australia's Ambivalence Again Around Investor-State Arbitration: Comparisons with Europe and Implications for Asia", 39(2) ICSID Review – Foreign Investment Law Journal 320–346 https://academic.oup.com/icsidreview/article/39/2/320/7749344
    - With shorter version of Part 1 in: ACICA Review (June 2023) 50-55

2024

- Luke Nottage and Robert Stendel "Concurrent Investor-State Disputes Before Domestic Courts and Investment Arbitration Tribunals: Philip Morris, Vattenfall and Beyond" 64(3) Virginia Journal of International Law 1-42
    - Also: MPIL Research Paper Series 2023-17, https://ssrn.com/abstract=4530150

2023

- Luke Nottage and Nobumichi Teramura, "Japan's International Investment, Evolving Treaty Practice and Arbitration Related to Corruption and Illegality", 55 Journal of Japanese Law 63-99
    - Also: "Foreign Investment, Treaties, Arbitration and Bribery: Comparing Japan" in Nobumichi Teramura, Luke Nottage and Bruno Jetin (eds), Corruption, Illegality and Asian Investment Arbitration (Springer, 2024) https://ssrn.com/abstract=4475053

2021

- James Claxton, Luke Nottage and Ana Ubilava, "Mandatory Investor-State Conciliation Before Arbitration in Asia-Pacific Treaties: New Developments and Implications for India and Australia" XIII Indian Journal of International Economic Law 209-217 (via https://ijiel.in/)

2020

- Chiara Giorgetti, Steven Ratner, Jeffrey Dunoff, Shotaro Hamamoto, Luke Nottage, Stephan Schill and Michael Waibel "Independence and Impartiality of Adjudicators in Investment Dispute Settlement: Assessing Challenges and Reform Options" 21(2-3) Journal of World Investment and Trade, 441-74
  - Earlier ACFI concept paper via https://www.cids.ch/academic-forum-concept-papers
- "Mediating Japan-Korea Trade and Investment Tensions" (with James Claxton and Brett Williams), 54(4) Journal of World Trade 591-614
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