

## Mitigating Political Risk in Uncertain Times

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Feb. 23, 2017

# Trade Wars = Heightened Political Risk



# Uncertainty Abounds Over TPP Reject, NAFTA Future

- “Opening Salvos in President Trump’s Trade War” (NY Times 1/23/17)
- “Japanese Fear Trade Wars as U.S. Rejects Pacific Pact (NY Times 1/26/17)
- “Mexico Considers Playing Its Own Wild Card Against Trump: Leaving Nafta” (NY Times 1/25/17)
- “The Dangers of a U.S. – Mexico Trade War (WSJ, 1/26/17)
- “Trump is Starting a Trade War We Don’t Need” (Wash Post 1/26/17)
- “A Trump Trade War Would Backfire, Mexicans Say” (Chic. Tri. 12/1/16)
- “America, China and the Risk of a Trade War” (Economist 1/28/17)
- “Trump Injects High Risk Into Relations With China” (NY Times 1/25/17)

# Political Risk Implications of NAFTA Renegotiation

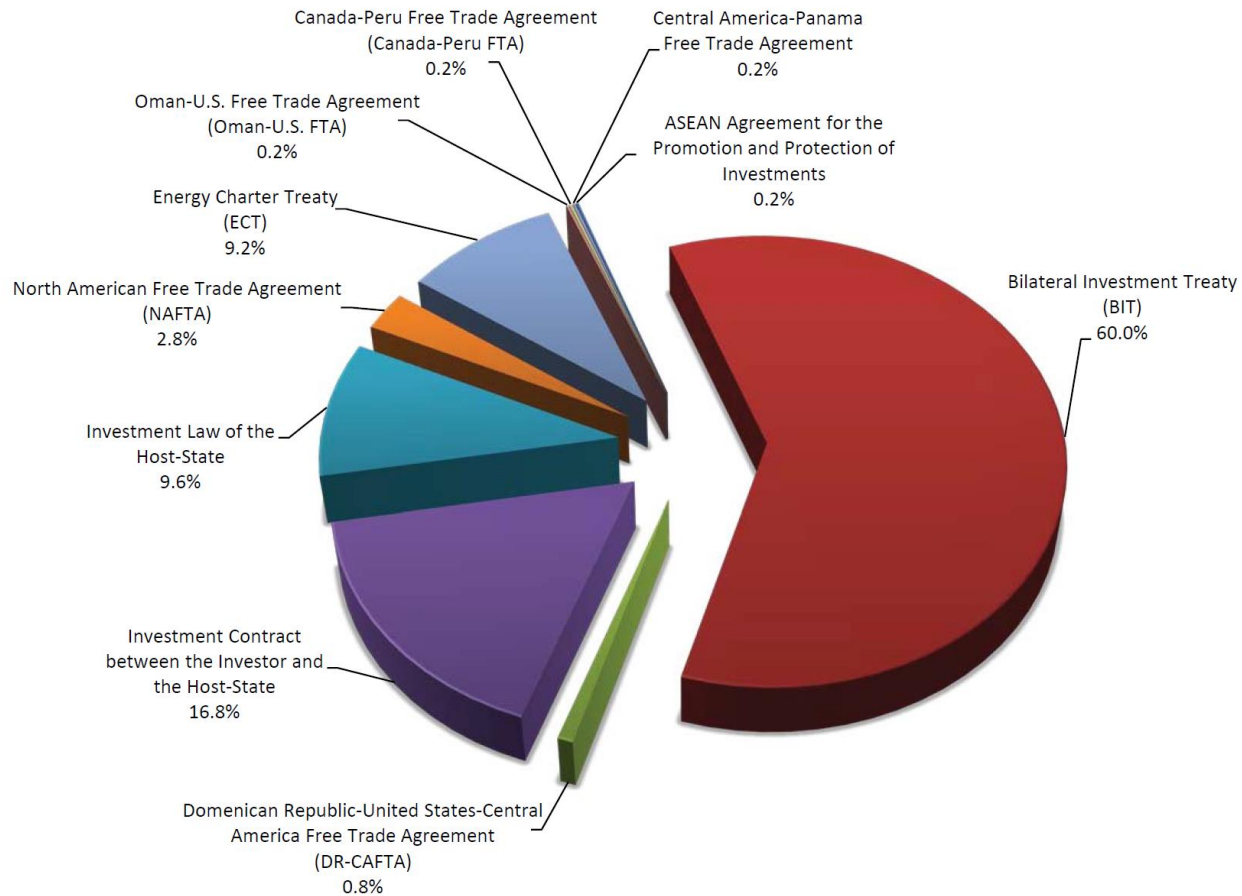


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# Key Political Risk Tool for U.S. Investors in Jeopardy

- Investor-State arbitration one of few tools for mitigating political risk.
- NAFTA contains investor-state arbitration
- Mexico consents to international arbitration for claims by U.S./Canada investors
- NAFTA Art. 1122 Consent to Arbitration:
  - “1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.”
  - Allows U.S. investors to bring claims directly against government
  - Avoids Mexican courts
- No U.S. BITs with Mexico
- TPP contains investor-state for U.S./Mexico
- Options for U.S. investors in Mexico (or other possibly volatile areas)?

# BITs Establish Jurisdiction in Most Cases



# Shopping for BIT to Mitigate Political Risk

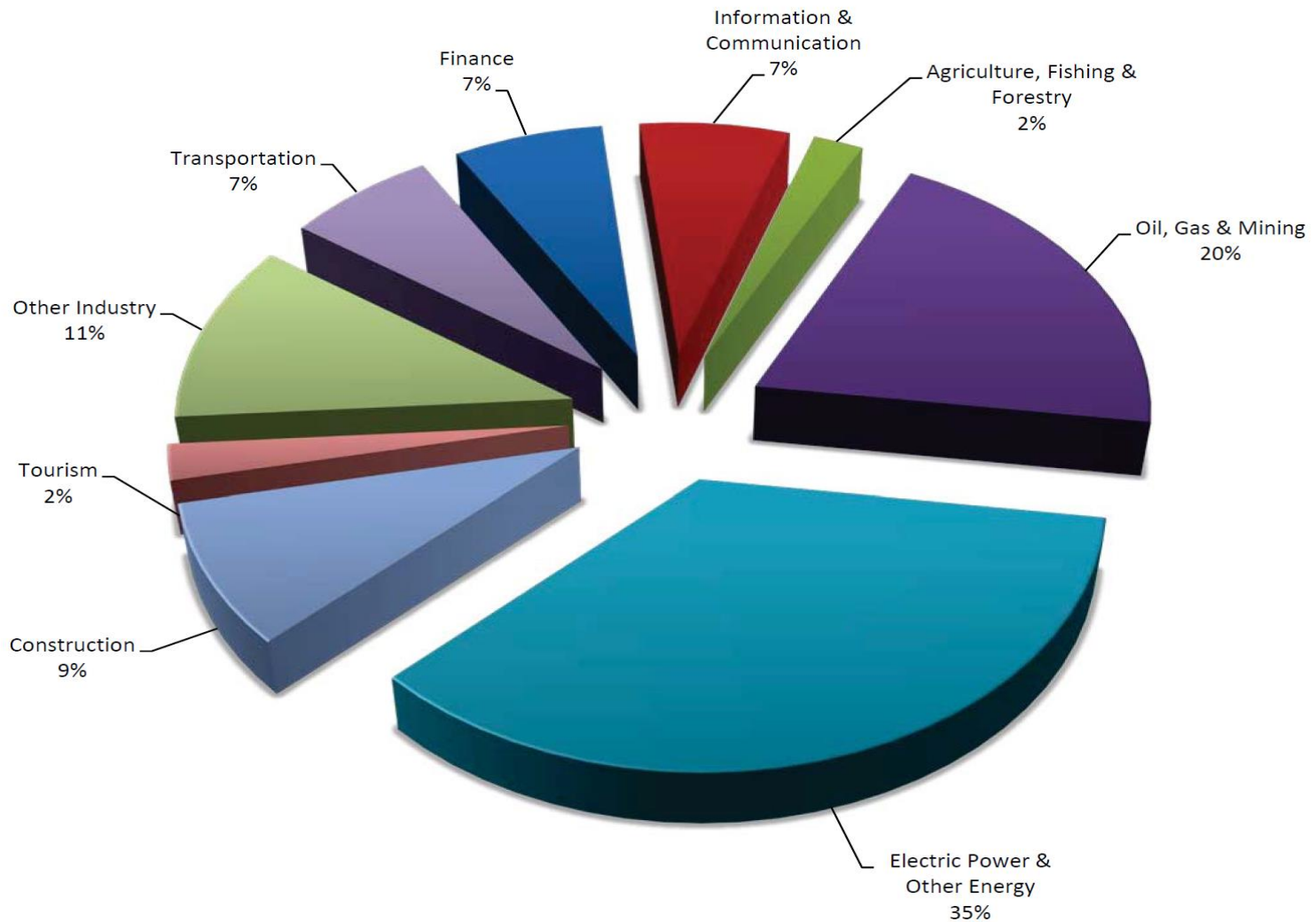


# BIT Options

- Mexico – 33 BITs in force (not with U.S.)
  - Including Belgium/Luxembourg, Netherlands, Panama, France, Switzerland
  - Belgium/Mexico BIT: “Each Contracting Party consents to the submission of a claim to arbitration...”
  - “A national of a Contracting Party, either on its own or on behalf of an enterprise ..., may submit a claim to arbitration based on the fact that the other Contracting Party has breached an obligation under this Agreement...”
- Japan – 20 BITs in force
  - Including Iraq, Peru, Turkey, Russia, China, Vietnam
- China – 110 BITS in force (not with U.S.)
  - Including Belgium/Luxembourg, Netherlands, Switzerland, France, Germany



# Energy Cases are Majority of Investor-State Disputes



# Investments in Iraq Protected by ICSID



- Iraq joined ICSID
- Only 2 active BITs but several are pending ratification
  - Netherlands, others
- All Iraq BITs have ICSID arbitration
- First ICSID claim brought against Iraq through Kuwait BIT

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