

# **Brazil:** a new player in the global network of investment agreements

**International Investment Law and Policy Speaker Series**

Columbia Center on Sustainable Investment

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# Brazil and BITs: a failed experiment

- Negotiating history
- 14 BITs signed in the 1990s
- Key drivers
- However, Congress had a different view...
- Withdrawal or Rejection?

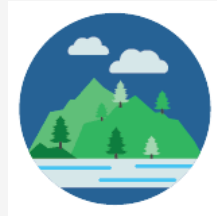
# (Lack of) BITs was **not an obstacle** for FDI attraction in Brazil

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Main **reasons** for investment attraction:



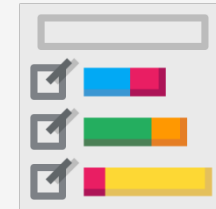
Size of the  
domestic market



Access to natural  
resources



Prospects for  
ROI

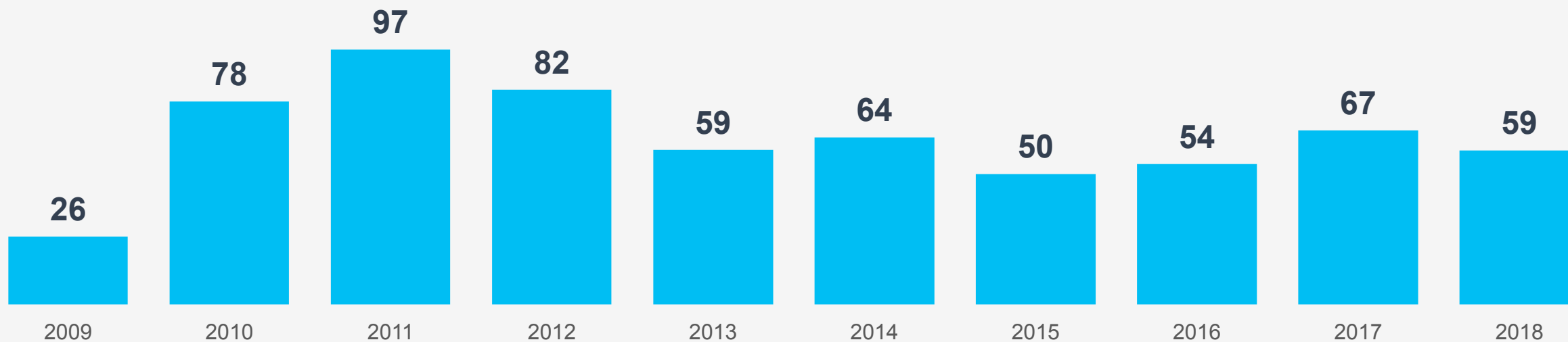


Complex Regulation  
and standards

# Brazil: a major force of FDI attraction

## FDI inflow evolution

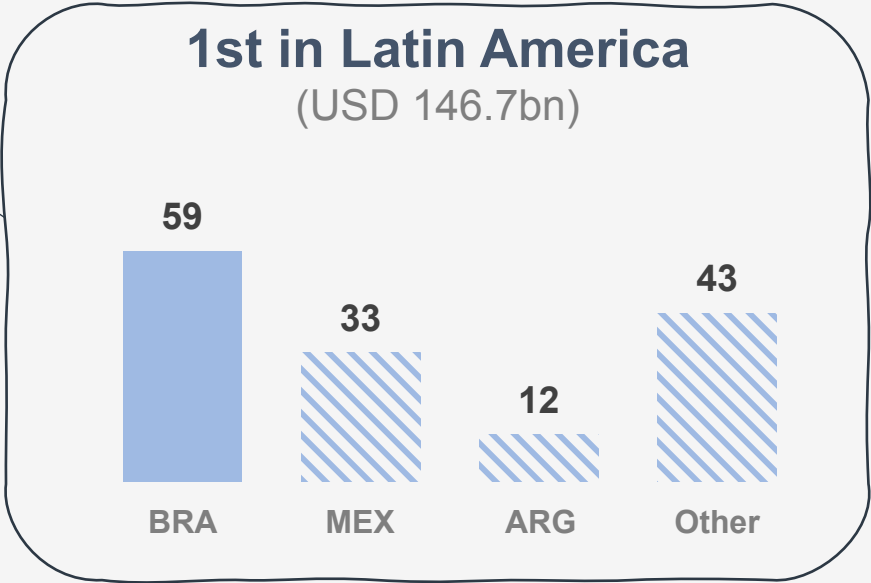
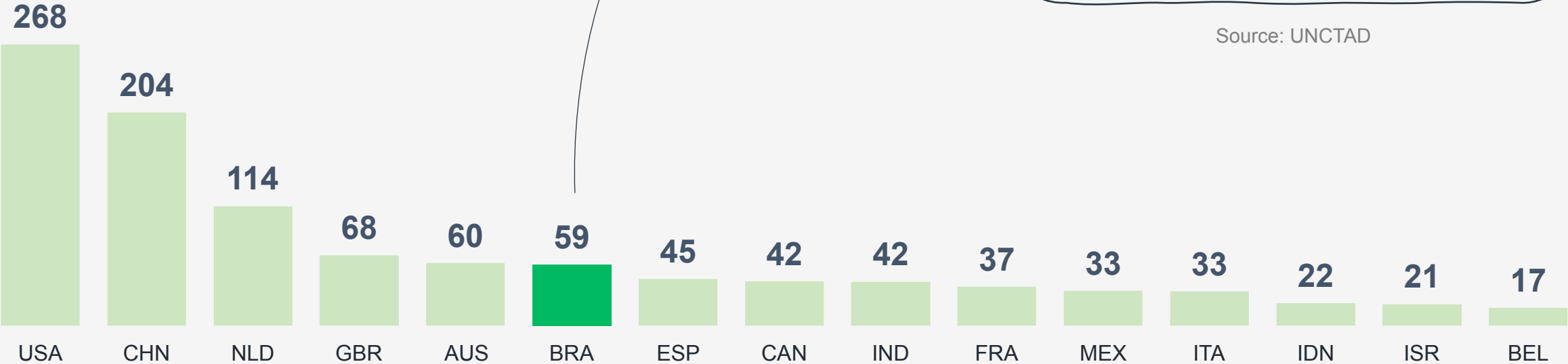
(USD bn)



Source: OECD

# Brazil: a major force of FDI attraction

Top 15 FDI destinations by inflow  
(USD bn, 2018)



## Brazilian Winter

Investment agreements became a **taboo** in Brazil

## Binary option

- BITs *or* Not to BITs?

## Results

- Paralysis
- Isolation

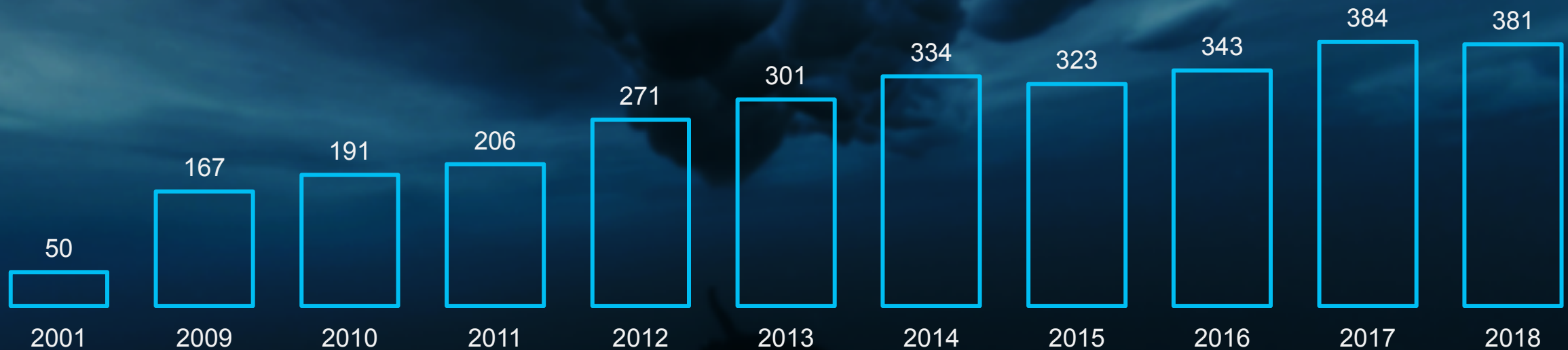
An underwater photograph showing a diver in the lower center, looking up towards a large, complex ice formation or ice cap that dominates the upper half of the frame. Sunlight rays filter through the water, creating a dramatic, blue-toned scene.

**Meanwhile, under the icecap...**

Meanwhile, under the icecap...

## Brazil emerged as a relevant foreign investor

Brazilian investment position (USD bn)



Source: Central Bank of Brazil



Meanwhile, under the icecap...

# Brazilian companies started to expand worldwide

Brazil's multinationals geographic distribution (by subsidiaries)



Source: FDC (2018)

An underwater photograph showing a diver swimming towards a large, dark iceberg. The water is a deep blue, and the scene is dimly lit, creating a somber and mysterious atmosphere. The diver is positioned in the lower center of the frame, reaching out towards the iceberg which dominates the upper half of the image.

Meanwhile, under the icecap...

**Renewed interest** towards investments agreements...

... search for alternatives to **break the ice**.

**Cooperation and Facilitation Investment Agreements  
(CFIAs)**



A close-up photograph of a hammer with a wooden handle and a metal head, positioned as if about to strike or having just struck a piece of ice. The ice is shattered into many small, translucent fragments, creating a dynamic and textured scene. The background is dark, making the white and clear ice stand out.

## CFIAs: an attempt to break the ice

### Background

- Remarks from the business sector
  - What could make a difference?**
    - Greater institutional support
    - Focal point in the host state
    - Access to information
    - Reducing investment barriers
    - Positive business agendas
- Studies from International Organizations
- International best practices



A close-up photograph of a hammer with a wooden handle and a metal head, positioned as if about to strike or having just struck a piece of dark, jagged ice. The background is dark and textured, suggesting a rough surface or more ice. The lighting is dramatic, highlighting the hammer's head and the sharp edges of the ice.

**CFIAs:** an attempt to **break the ice**

## **Pillars**

- I) Risk mitigation and dispute prevention
- II) Enhanced institutional governance
- III) Agendas for investment cooperation and facilitation



A close-up photograph of a hammer with a wooden handle and a metal head, in the process of breaking a piece of clear, crystalline ice. The hammer is positioned diagonally from the top left, with its head striking the ice. Numerous sharp, translucent shards of ice are flying through the air, creating a dynamic and powerful scene. The background is dark and out of focus, emphasizing the action of the hammer and the resulting ice fragments.

## CFIAs: an attempt to break the ice

### Pillar 1

#### Risk mitigation and dispute prevention

- Provisions to mitigate investment risks
  - Non discrimination
  - Direct expropriation
  - Transparency and access to information
- Mechanisms to **prevent disputes** based on dialogue and bilateral consultations
- No **ISDS** or **indirect expropriation** clauses
- **State-to-State** dispute settlement



A close-up photograph of a hammer with a wooden handle and a metal head, positioned as if about to strike or having just struck a piece of ice. The background is dark and textured, possibly snow or crushed ice, with some light reflecting off the hammer's head and the ice fragments.

## CFIAs: an attempt to break the ice

### Pillar 2

#### Enhanced institutional governance

- Ombudsperson or Focal Points
  - Facilitator between investors and governments
  - Provides information on relevant aspects
  - Addresses specific complaints from investors
  - Acts to prevent disputes and improve FDI
- Joint Committee
  - Monitors the implementation of the agreement
  - Provides information on relevant aspects
  - Acts to prevent and solve disputes
  - Ad hoc working groups with business sector



A close-up photograph of a hammer with a wooden handle and a metal head, positioned as if it has just struck or is about to strike a piece of ice. The ice is dark and jagged, with many small shards and fragments scattered around. The background is dark and textured, suggesting a rough surface or a pile of broken ice. The lighting is dramatic, highlighting the hammer's head and the sharp edges of the ice.

## CFIAs: an attempt to break the ice

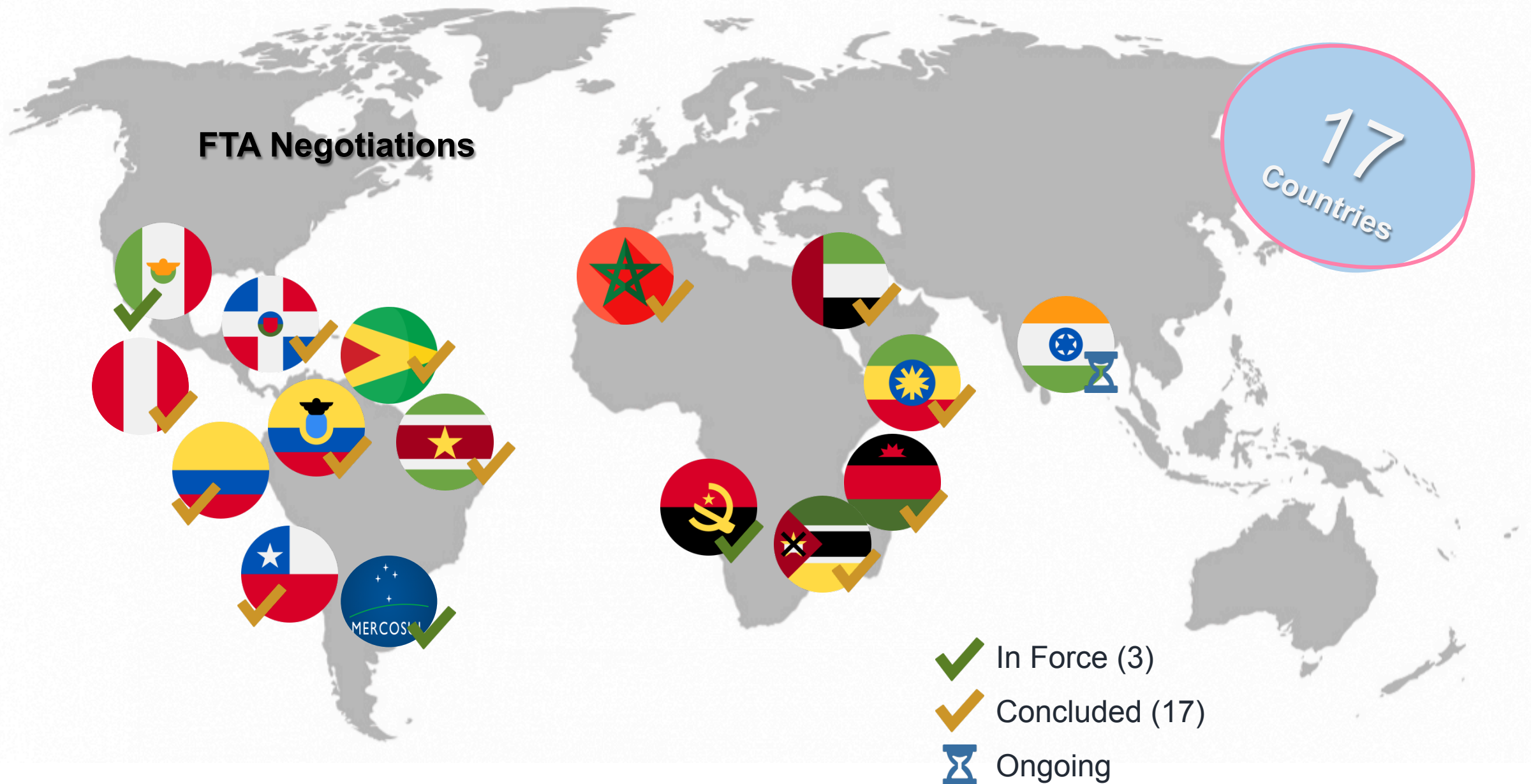
### Pillar 3

#### Agendas for investment cooperation and facilitation

- Agendas to facilitate investments
  - Business visas
  - Domestic regulations
  - Corporate Social Responsibility
- **Living agreement:** can be gradually expanded by continuous negotiations



# Brazil: a new player in the global network of IAs





## Brazil: a new player in the global network of IAs

Country	Investment agreement?
United States	✗
Argentina	✓
Mexico	✓
Colombia	✓
Uruguay	✓
Chile	✓
Peru	✓
China	✗
United Kingdom	✗
Paraguay	✓
United Arab Emirates	✓
India	⌚

Network covers **7 out of the 10 main destinations** for Brazilian companies



# Global Spillovers

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WTO discussions on investment facilitation

## SCOPE

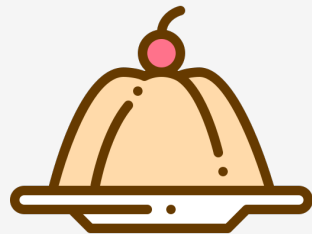
**Excludes:** Investment protection and dispute settlement

**Includes:** FDI for production of goods and services

## GOALS

- ✓ Enhance **transparency** and predictability
- ✓ Make investment procedures more **efficient**
- ✓ Strengthen international **cooperation**
- ✓ Promote a **friendlier environment** for investments
- ✓ Stimulate **capacity building** and technical assistance

## Next Steps: proof of the pudding...



- Agreements are means not end
- Need to put the agreement and its pieces into work
- Structure and good use of JC/FPs
- Engage the business sector
- Channel requests to the JC/FPs
- Negotiate practical IF agendas
- Expand the network

# Thanks!

Abrão Neto

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