

Resolution 7
Regarding the Investor-State Dispute Resolution Provisions of the Revised Model
Bilateral Investment Treaty

Whereas, the judicial systems of the various states are recognized as mature, modern, fair and transparent; and

Whereas, the judgments of state trial courts are subject to an extensive appellate review process under well-established, recognized constitutional and legal standards; and

Whereas, the investor-state dispute resolution process as embodied in the newly Revised Model Bilateral Investment Treaty and similar provisions in other trade agreements create a procedure for foreign investors to challenge state court judgments that is not available to U.S. citizens and businesses; and

Whereas, these challenges can undermine the enforcement and finality of state court judgments; and

WHEREAS, the United States has agreed to an investor-state dispute resolution process in the Free Trade Agreement with Colombia that requires foreign investors to choose whether to pursue their claims in the courts or through international arbitration; and

WHEREAS, this alternative approach better recognizes the sovereignty of state judicial systems and provides foreign investors in the United States with no greater substantive and procedural rights than U.S. citizens and businesses, while still protecting the interests of U.S. investors in other nations;

Now, Therefore, BE IT RESOLVED that the Conference of Chief Justices urges the United States Trade Representative to adopt as its model for negotiating Bilateral Investment Treaties and Free Trade Agreements an investor-state dispute resolution clause that requires foreign investors to choose between pursuing claims in the courts or through international arbitration.

Adopted as proposed by the CCJ/COSCA Government Affairs Committee at the 2012 Annual Meeting on July 25, 2012.