

Ishikawa, Tomoko; Olifirenko, Alla

Research Report

Host states' unilateral climate-change sanctions may be justified: But so may be investors' objections

Columbia FDI Perspectives, No. 414

Provided in Cooperation with:

Columbia Center on Sustainable Investment (CCSI) - A joint center of Columbia Law School and the Earth Institute, Columbia University

Suggested Citation: Ishikawa, Tomoko; Olifirenko, Alla (2025) : Host states' unilateral climate-change sanctions may be justified: But so may be investors' objections, Columbia FDI Perspectives, No. 414, Columbia University, Columbia Center on Sustainable Investment (CCSI), New York, NY

This Version is available at:

<https://hdl.handle.net/10419/323907>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



Columbia FDI Perspectives

Perspectives on topical foreign direct investment issues

Editor-in-Chief: Karl P. Sauvant (karlsauvant@gmail.com)

Managing Editor: Chioma Menankiti (clm2249@columbia.edu)

The Columbia FDI Perspectives are a forum for public debate. The views expressed by the authors do not reflect the opinions of CCSI or our partners and supporters.

No. 414 July 21, 2025

Host states' unilateral climate-change sanctions may be justified—but so may be investors' objections

by

Tomoko Ishikawa and Alla Olifirenko*

The current multilateral framework on climate change, centered on the UNFCCC and the [Paris Agreement](#), adopts a territory-based approach. Additionally, as is the case with the current international environmental and human rights law frameworks, it does not provide mechanisms to oblige non-state actors to act. However, the importance of mobilizing MNEs to meet the Paris goals is undeniable. [157 large MNEs reportedly account for more than 60% of global industrial greenhouse gas emissions](#). Simultaneously, they have a unique potential to [contribute to decarbonization](#) through good practices and technologies.

Meanwhile, [attention is increasingly being paid](#) to the use of targeted unilateral sanctions, that is, sanctions directed at certain activities of foreign persons and entities contributing to climate change. A recent attempt to operationalize this policy option was the US bill *Targeting Environmental and Climate Recklessness Act*, which was introduced in [2019](#) (reintroduced in [2021](#) and [2024](#)). In 2021, [four US Senators called on the Biden Administration](#) to, among others, “apply [Global Magnitsky sanctions](#) to ... corporations linked to climate-related corruption and human rights abuses.”

In [the current US political environment](#), the chances of success of similar attempts are

slim. Climate-change economic sanctions are extreme climate policies that have not yet been practically implemented. However, the following tendencies in general economic sanctions practice suggest that states may consider targeted climate-change sanctions as one option, in addition to carbon taxes and emission-trading systems:

- The increased use of “smart” sanctions targeting private persons, rather than comprehensive sanctions against states.
- Expanded aims and topics, extending beyond peace and security, to include such values as human rights and environmental protection.
- Secondary sanctions have been widely practiced despite [controversies about their extraterritoriality](#).

Generally speaking, sanction measures consist of various restrictive measures and penalties, including investment prohibitions, asset freezes, cancellations of contracts and permits, expropriations of assets, restrictions on access to financial systems, and limitations on funds transfers.

[These measures interfere with the targeted persons’ property rights](#). When sanctions affect the property or interests of targeted foreign entities located within the sanctioning state, issues of consistency with international obligations for investment protection may arise. Insofar as there is an applicable international investment agreement (IIA), the affected investors may challenge the sanctions before investment arbitration tribunals, arguing that they amount to [a breach of certain IIA obligations](#), including:

- National treatment and most-favored-nation treatment.
- Fair-and-equitable treatment and full protection and security.
- Indirect expropriation.
- Free transfer of capital.

It is [argued](#), for example, that a “(lengthy) asset freeze” could establish an indirect expropriation. If a sanctions program lacks an effective review mechanism, it may

constitute a denial of due process that can establish a breach of fair-and-equitable treatment and indirect expropriation obligations. Unilateral economic sanctions have resulted in several investment arbitration cases (e.g., [*beIN Corporation v. Kingdom of Saudi Arabia*](#)). Assessing the consistency between sanctions programs and IIA obligations requires case and IIA-specific analyses, including the applicable [standard of review](#) under the relevant IIAs.

Sanctioning states may rely on IIAs' non-precluded measure (NPM) clause (if any), whose function is to exempt host states from their otherwise applicable obligations when certain permissible objectives exist. In the context of climate-change sanctions—and given the growing recognition of climate change as both a [human](#) and [national](#) security issue—states might invoke NPM clauses to justify sanctions as a measure necessary to protect their essential security interests. A successful invocation of an NPM clause depends on a variety of legal questions, including whether or not the ([increasingly found](#)) non-precluded-measure clause employs [self-judging wording](#) (i.e., the state may take measures “which it considers necessary”).

Regarding defenses, the customary international law defense of necessity is difficult to assert for climate-change sanctions. This is because, although climate-change considerations may fall under a wide interpretation of the “essential interest against a grave and imminent peril”, proving that unilateral economic sanctions are the “only way for the State to safeguard an essential interest” as per Article 25 of the [ILC Articles on Responsibility of States for Internationally Wrongful Acts](#) would be extremely challenging.

This underscores the importance of incorporating considerations of IIA-consistency into the design of any sanctions program. It also addresses the likely “green protectionism” concern, which has already been raised over [CBAM](#) by some countries, namely that climate-change measures can be used for protectionist purposes amid geo-economic competition over the energy transition. Therefore, a sanctions program should, among others, be based on the non-discrimination principle between domestic and foreign entities, and, if discriminatory elements exist, the sanctioning state must provide clear criteria and reasons for such a differentiation. It should also provide procedural protection (such as prior notice) to allow affected investors to prepare for the impact.

Targeted sanctions may deter free-riders from undermining collective climate action by

addressing certain climate-harming activities conducted in jurisdictions with less stringent climate measures. In this sense, economic sanctions may potentially advance collective international efforts to combat climate change. However, to serve this purpose, sanctions programs should be designed with careful consideration of conformity with investment-protection obligations.

* Tomoko Ishikawa (ishikawa@gsid.nagoya-u.ac.jp) is a professor at the Graduate School of International Development, Nagoya University (Japan); Alla Olifirenko (olifirenko.alla.h8@f.mail.nagoya-u.ac.jp) is an assistant professor at the Graduate School of International Development, Nagoya University. This work was supported by JSPS Topo-Setting Program to Advance Cutting-Edge Humanities and Social Sciences Research (Grant Number 5323JA423c). The authors wish to thank Martin Dietrich Brauch, N. Jansen Calamita and Giorgi Sacerdoti for their helpful feedback.

The material in this Perspective may be reprinted if accompanied by the following acknowledgment: "Tomoko Ishikawa and Alla Olifirenko, 'Host states' unilateral climate-change sanctions may be justified—but so may be investors' objections,' Columbia FDI Perspectives, No. 414, July 21, 2025. Reprinted with permission from the Columbia Center on Sustainable Investment (<http://ccsi.columbia.edu>). " A copy should kindly be sent to the Columbia Center on Sustainable Investment at ccsi@law.columbia.edu.

For further information, including information regarding submission to the *Perspectives*, please contact: Columbia Center on Sustainable Investment, Charles Denis, at cd3427@columbia.edu.

The Columbia Center on Sustainable Investment (CCSI), Columbia Climate School, Columbia University, is a leading applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop and disseminate practical approaches and solutions, as well as to analyze topical policy-oriented issues, in order to maximize the impact of international investment for sustainable development. The Center undertakes its mission through interdisciplinary research, advisory projects, multi-stakeholder dialogue, educational programs, and the development of resources and tools. For more information, visit us at <http://ccsi.columbia.edu>.

Most recent Columbia FDI Perspectives

- No. 413, Błażej Kuźniacki, '[How best to minimize conflicts between the Global Anti-Base Erosion tax rules and international investment agreements](#),' *Columbia FDI Perspectives*, July 7, 2025.
- No. 412, Robert Perkuhn, '[Mine closure and FDI: a long-term challenge](#),' *Columbia FDI Perspectives*, June 23, 2025.
- No. 411, Sergio Mariotti, '[Preventing the misuse of antitrust against FDI: key action points](#),' *Columbia FDI Perspectives*, June 9, 2025.
- No. 410, Nicolò Andreotti, '[How can governments and investors successfully invoke positive human rights obligations in international investment law and arbitration?](#)' *Columbia FDI Perspectives*, May 26, 2025.
- No. 409, Nandita Dasgupta, '[Flipping and reverse flipping transactions: a concern for host economies](#),' *Columbia FDI Perspectives*, May 12, 2025.