Ministry of Justice

Press release

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The Secret Behind Korea's Three Consecutive ISDS Successes Garners International Attention

- Seminar held in Vienna, to present Korea's ISDS response system and recent successes
- Delegations from 20+ countries show keen interest in Korea's ISDS response system
- Showcasing Korea's fairness in law enforcement and capabilities to the global community

The International Legal Affairs Department of the Ministry of Justice, Republic of Korea (Deputy Minister KANG Junha) hosted a dedicated seminar at <u>12:40 p.m. CEST on Thursday, March 26</u>, at the United Nations Office in Vienna, Austria. In the presence of delegations from more than 20 countries–including the United States, the United Kingdom, China, Japan and Singapore–as well as representatives from international arbitral institutions, the seminar showcased ▲ <u>the fairness and reasonableness of Korea's law enforcement</u> and ▲ <u>the excellence of the Ministry of Justice-led ISDS response system</u>, as demonstrated by <u>Korea's three consecutive ISDS wins.</u>

The seminar, titled <u>"Institutional Responses to ISDS Claims Insights from Recent ISDS* Cases of Korea,"</u> was held from 12:40 to 13:40 p.m. on Thursday, March 26, in Room C-229 at the UN Office in Vienna, Austria.

* Investor-State Dispute Settlement (ISDS): A mechanism whereby foreign investors who have suffered losses due to measures taken by a host state may seek compensation through international arbitration under an investment treaty. The Government of Korea has recently prevailed in the annulment proceedings of the Lone Star ISDS case (November 2025), the set-aside proceedings of the Elliott ISDS case before the English court (February 2026), and the Schindler ISDS case (March 2026).

The event was moderated by Director CHO A-ra of the International Dispute Settlement Division. Approximately 45 participants attended, including delegations from more than 20 countries—among them the United States, the United Kingdom, China, Japan, and Singapore—as well as representatives from the International Centre for Settlement of Investment Disputes (ICSID)** and the Organisation for Economic Co-operation and Development (OECD), who were attending the 54th Session of UNCITRAL Working Group III*** (March 23 - 27)

** An international investment dispute arbitration institution under the World Bank, handling approximately 70% of all ISDS cases worldwide.

*** An intergovernmental working body under the UN that deliberates on reform measures for the ISDS regime.

Prosecutor YOUM Hoyoung of the International Dispute Settlement Division presented Korea's approach at the seminar, stating that the Government of Korea has established **a three-tier system for ISDS response**, consisting of: ▲ an inter-ministerial high-level meeting for macro strategy decisions; ▲the International Investment Dispute Response Task Force for inter-agency operational collaboration; and ▲the International Dispute Settlement Division of the International Legal Affairs Department, responsible for conducting the cases.

Prosecutor YOUM further emphasized the fairness of Korea's law enforcement, noting that *"in the recent Schindler Case, the tribunal unanimously recognized that the measures taken by the relevant Korean government agencies were neither arbitrary, discriminatory, nor in bad faith, but rather* ***constituted the legitimate exercise of regulatory authority****."*

OECD Policy Analyst Anne-Charlotte CERVELLO, who participated as a discussant, underscored the importance of safeguarding states' right to regulate in the context of ISDS, and commended that '**Korea is making a valuable contribution by sharing its ISDS response know-how.**'

Attendees expressed strong interest in Korea's law enforcement system and ISDS response framework, which have been pivotal to achieving notable outcomes across a wide range of cases. In particular, 「**the Bill on Prevention of and Response to International Investment Disputes**」, introduced by Representative PARK Kyun-taek to the National Assembly on March 17, drew significant attention.

Questions and responses from the floor covered a range of topics, including: ▲the possibility of resolving investor-state disputes through mediation; ▲**the chilling effect**—whereby ISDS claims by foreign investors may deter governments from exercising their regulatory authority—and the potential for alleviating such effects through government wins; and ▲the principle of assigning budget responsibility for ISDS costs and damage awards to the relevant administrative agency.

Policy Analyst CERVELLO and delegations from various countries, along with ICSID representatives, congratulated the Ministry of Justice on the successful seminar upon its conclusion and pledged to continue close **cooperation toward the improvement of the ISDS regime and the development of response systems**.

Minister of Justice JUNG Sung-ho stated: *"The Ministry of Justice will continue to promote the rational and fair exercise of regulatory authority by the Government of Korea, and will further develop its ISDS prevention and response system to advance international legal affairs in the best interest of the nation."* ▨

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【Annexes】 Photos from the event and the brochure distributed by Korean delegation

Annex1 Photos from the Seminar

Photo1. Presentation by Korean delegation 1

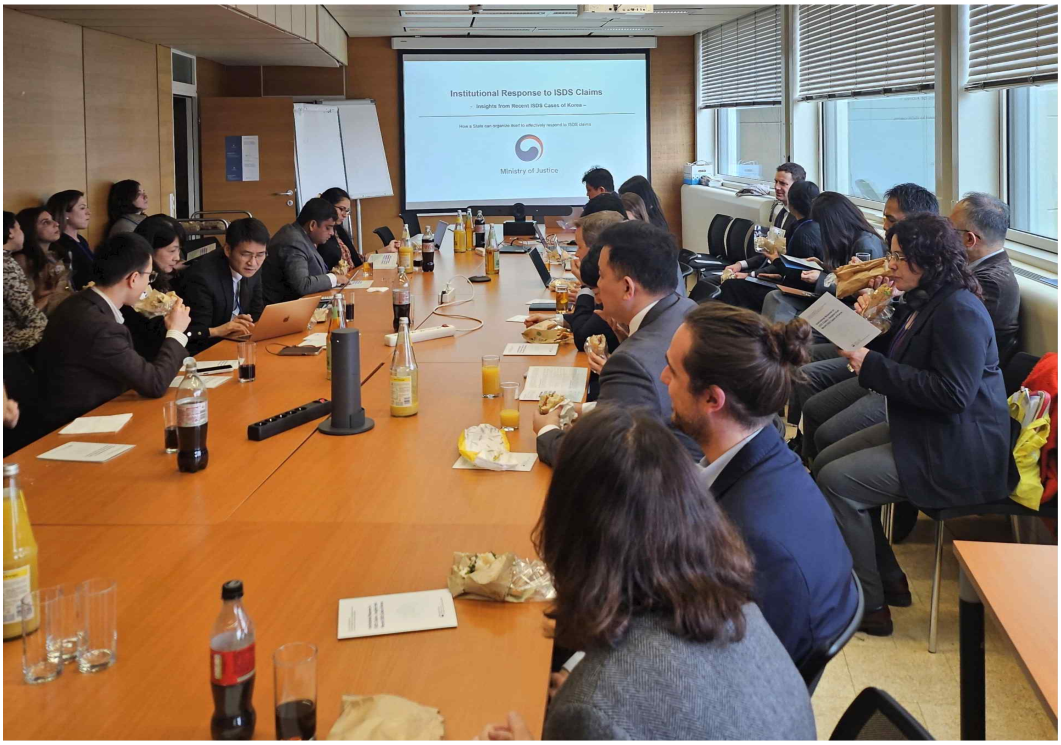

Photo2. Presentation by Korean delegation 2

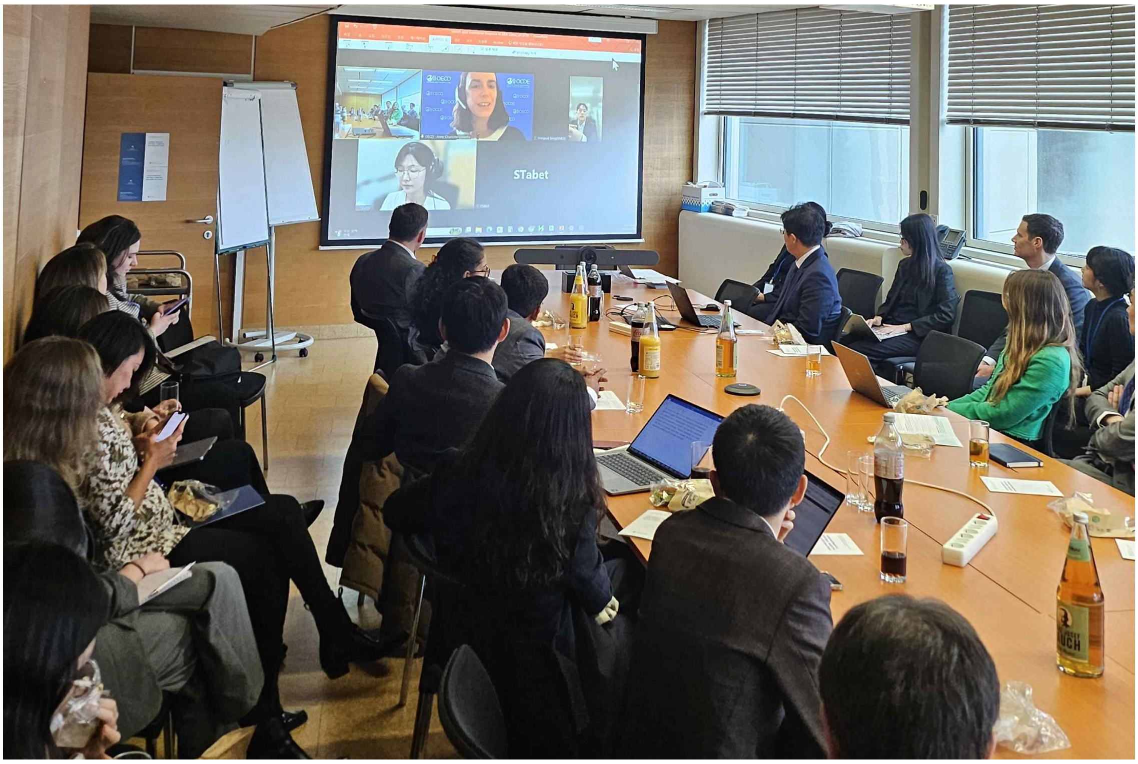

Photo3. OECD Discussant session

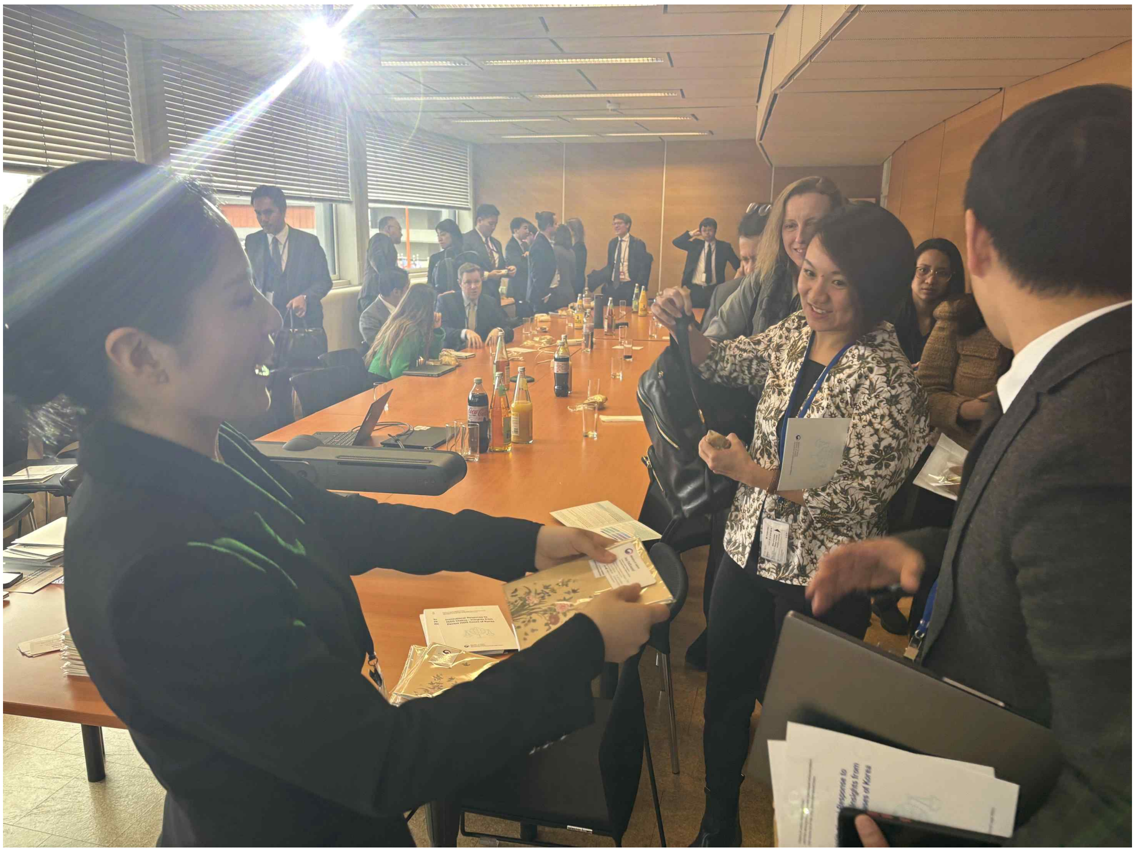

Photo4. Exchanging Congratulatory Remarks after the Presentation

Annex 2 Brochure Distributed by Korean Delegation

Republic of Korea
Ministry of Justice
Department of International Legal Affairs

Institutional Response to ISDS Claims
- Insights from Recent ISDS Cases of Korea

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Ministry of Justice, Republic of Korea
UNCITRAL Working Group III : Investor-State Dispute Settlement Reform
54th Session 23-27 Mar 2026, Vienna International Centre

Institutional Response to ISDS Claims - Insights from Recent ISDS Cases of Korea

Republic of Korea
Ministry of Justice
Department of International Legal Affairs

Why Effective ISDS Response Matters

Investor-State Dispute Settlement proceedings involve complex legal, financial, and policy considerations.
Without coordinated framework among ministries, fragmented decision-making may lead to inconsistent positions, inefficiencies, and increased exposure to legal and financial risk.

Korea's Institutional Framework

Korean ISDS Response Framework

Inter-Ministerial Committee on ISDS (Vice-Ministerial level)	☐ Strategic Determination ☐ Inter-Agency Coordination
ISDS Response Task Force (Senior Official Level)	☐ Detailed Decision-Making on ISDS Response
International Dispute Settlement Division	☐ ISDS Case Conduyct ☐ Task Force Operation

Korean Government has developed a structured, whole-of-government approach to ISDS response.
When a claim is initiated, the government promptly establishes an inter-ministrial task force involving all relevant authorities, with Ministry of Justice as the central coordinating body. Through close consultation, the task force determines strategic direction and ensures consistency across legal and policy considerations.
This coordination is supported by a dedicated institutional structure within the Ministry of Justice, including the Department of International Legal Affairs and its International Dispute Settlement Division. These units provide continuity, preserve institutional knowledge, and implement the agreed strategy at the working level.
The system is further strengthened by in-house legal capacity within the government. Public prosecutors with international legal qualifications and training form its core, complemented by lawyers specialized in international law.
To ensure continuity and long-term capacity building, the International Dispute Settlement Division maintains comprehensive internal case records for every concluded dispute. These records document legal strategies, evidentiary approaches, procedural lessons, and outcomes — creating an institutional knowledge base that informs the government's response to future claims and its positions in ongoing treaty negotiations.

Delivering Consistent Outcomes

Korea's coordinated approach has contributed to consistent outcomes in international investment disputes involving the government, as follows.
These outcomes reflect strength of Korea's institutional ISDS response framework.

- Lone Star(US private equity fund) case - Award worth approx. $216m fully annulled by ICSID Annulment Committee (18 Nov 2025)
  → Established that reliance on third-party arbitral awards, to which the respondent State was not a party, constitutes a serious departure from due process.
- Elliott(US hedge fund) case - Award worth approx. $48m set-aside and remitted to arbitration by England & Wales High Court (23 Feb 2026)
  → Reaffirmed that state-affiliated pension funds do not automatically constitute "state organs" for the purposes of investment treaty jurisdiction.
- Schindler(Swiss elevator manufacturer) case – Claim worth approx. $230m dismissed in full by Permanent Court of Arbitration (14 Mar 2026)
  → Confirmed that good-faith regulatory enforcement, free from arbitrariness or discrimination, does not breach the FET standard.

Engagement and Cooperation

The Republic of Korea remains committed to sharing its experience and engaging in constructive dialogue on ISDS response frameworks. We would welcome opportunities to exchange views and best practices with other delegations.
Please do not hesitate to contact us using the details on the back.