

CHAPTER EIGHT

INVESTMENT

SECTION A

Definitions and scope

Article 8.1

Definitions

For the purposes of this Chapter:

activities carried out in the exercise of governmental authority means activities carried out neither on a commercial basis nor in competition with one or more economic operators;

aircraft repair and maintenance services means activities undertaken on an aircraft or a part of an aircraft while it is withdrawn from service and do not include so-called line maintenance;

airport operation services means the operation or management, on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems. For greater certainty, airport operation services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors. Airport operation services do not include air navigation services;

attachment means the seizure of property of a disputing party to secure or ensure the satisfaction of an award;

computer reservation system services means the supply of a service by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

confidential or protected information means:

- (a) confidential business information; or
- (b) information which is protected against disclosure to the public;
 - (i) in the case of information of the respondent, under the law of the respondent;
 - (ii) in the case of other information, under a law or rules that the Tribunal determines to be applicable to the disclosure of such information;

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covered investment means, with respect to a Party, an investment:

- (a) in its territory;
- (b) made in accordance with the applicable law at the time the investment is made;
- (c) directly or indirectly owned or controlled by an investor of the other Party; and
- (d) existing on the date of entry into force of this Agreement, or made or acquired thereafter;

disputing party means the investor that initiates proceedings pursuant to Section F or the respondent. For the purposes of Section F and without prejudice to Article 8, [14](#), an investor does not include a Party;

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disputing parties means both the investor and the respondent;

enjoin means an order to prohibit or restrain an action;

enterprise means an enterprise as defined in Article 1.1 (Definitions of general application) and a branch or representative office of an enterprise;

ground handling services means the supply of a service on a fee or contract basis for: ground administration and supervision, including load control and communications; passenger handling; baggage handling; cargo and mail handling; ramp handling and aircraft services; fuel and oil handling; aircraft line maintenance, flight operations and crew administration; surface transport; or catering services. Ground handling services do not include security services or the operation or management of centralised airport infrastructure, such as baggage handling systems, de-icing facilities, fuel distribution systems, or intra-airport transport systems;

ICSID means the International Centre for Settlement of Investment Disputes;

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

ICSID Convention means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States*, done at Washington on 18 March 1965;

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights; and, if such rights are provided by a Party's law, utility model rights. The [CETA](#) Joint Committee may, by decision, add other categories of intellectual property to this definition;

investment means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, which includes a certain duration and other characteristics such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise;
- (d) a loan to an enterprise;
- (e) any other kind of interest in an enterprise;
- (f) an interest arising from:
 - (i) a concession conferred pursuant to the law of a Party or under a contract, including to search for, cultivate, extract or exploit natural resources,
 - (ii) a turnkey, construction, production or revenue-sharing contract; or

- (iii) other similar contracts;
- (g) intellectual property rights;
- (h) other moveable property, tangible or intangible, or immovable property and related rights;
- (i) claims to money or claims to performance under a contract.

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For greater certainty, **claims to money** does not include:

- (i) claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party.
- (ii) the domestic financing of such contracts; or
- (iii) any order, judgment, or arbitral award related to [sub-subparagraph \(i\) or \(ii\)](#).

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Returns that are invested shall be treated as investments. Any alteration of the form in which assets are invested or reinvested does not affect their qualification as investment;

investor means a Party, a natural person or an enterprise of a Party, other than a branch or a representative office, that seeks to make, is making or has made an investment in the territory of the other Party;

For the purposes of this definition, an **enterprise of a Party** is:

- (a) an enterprise that is constituted or organised under the laws of that Party and has substantial business activities in the territory of that Party; or
- (b) an enterprise that is constituted or organised under the laws of that Party and is directly or indirectly owned or controlled by a natural person of that Party or by an enterprise mentioned under [paragraph \(a\)](#);

locally established enterprise means a juridical person that is constituted or organised under the laws of the respondent and that an investor of the other Party owns or controls directly or indirectly;

natural person means:

- (a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada; and
- (b) in the case of the European Union, a natural person having the nationality of one of the Member States of the European Union according to their respective [laws](#), and, for Latvia, also a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other state but who is entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.

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A natural person who is a citizen of Canada and has the nationality of one of the Member States of the European Union is deemed to be exclusively a natural person of the Party of his or her dominant and effective nationality.

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A natural person who has the nationality of one of the Member States of the European Union or is a citizen of Canada, and is also a permanent resident of the other Party, is deemed to be exclusively a natural person of the Party of his or her nationality or citizenship, as applicable;

New York Convention means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

non-disputing Party means Canada, if the European Union or a Member State of the European Union is the respondent, or the European Union, if Canada is the respondent;

respondent means Canada or, in the case of the European Union, either the Member State of the European Union or the European Union pursuant to Article 8.21;

returns means all amounts yielded by an investment or reinvestment, including profits, royalties and interest or other fees and payments in kind;

selling and marketing of air transport service means opportunity for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution, but does not include the pricing of air transport services or the applicable conditions;

third party funding means any funding provided by a natural or legal person who is not a party to the dispute but who enters into an agreement with a disputing party in order to finance part or all of the cost of the proceedings either through a donation or grant, or in return for remuneration dependent on the outcome of the dispute.

Tribunal means a tribunal established under Article 8.27 or 8.43;

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law;

UNCITRAL Transparency Rules means the *UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration*;

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Article 8.2

Scope

1. This Chapter applies to a measure adopted or maintained by a Party in its territory¹ relating to:
 - (a) an investor of the other Party;
 - (b) a covered investment; and
 - (c) with respect to Article 8.5, any investments in its territory.
2. With respect to the establishment or acquisition of a covered investment,² Sections B and C do not apply to a measure relating to:

¹ For greater certainty, the obligations of this Chapter apply to the Exclusive Economic Zones and Continental Shelves, as provided in the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982:

(a) of Canada as referred to in Article 1.3(a) (Geographical scope of application); and
(b) to which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied as referred to in Article 1.3(b) (Geographical scope of application).

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² For greater certainty, a Party may maintain measures with respect to the establishment or acquisition of a covered investment and continue to apply such measures to the covered investment after it has been established or acquired.

- (a) air services, or related services in support of air services and other services supplied by means of air transport³, other than:
- (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) ground handling services;
 - (v) airport operation services; or
- (b) activities carried out in the exercise of governmental authority.
3. For the European Union, Sections B and C do not apply to a measure with respect to audio-visual services. For Canada, Sections B and C do not apply to a measure with respect to cultural industries.
4. Claims may be submitted by an investor under this Chapter only in accordance with Article 8.18, and in compliance with the procedures set out in Section F. Claims in respect of an obligation set out in Section B are excluded from the scope of Section F. Claims under Section C with respect to the establishment or acquisition of a covered investment are excluded from the scope of Section F. Section D applies only to a covered investment and to investors in respect of their covered investment.
5. This Chapter does not affect the rights and obligations of the Parties under the *Agreement on Air Transport between Canada and the European Community and its Member States*, done at Brussels on 17 December 2009 and Ottawa on 18 December 2009.

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Article 8.3

Relation to other chapters

1. This Chapter does not apply to measures adopted or maintained by a Party to the extent that the measures apply to investors or to their investments covered by Chapter Thirteen (Financial Services).
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition for supplying a service in its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the supply of that cross-border service. This Chapter applies to measures adopted or maintained by the Party relating to the posted bond or financial security to the extent that such bond or financial security is a covered investment.

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SECTION B

Establishment of investments

³ These services include services when an aircraft is being used to carry out specialised activities in sectors including agriculture, construction, photography, surveying, mapping, forestry, observation and patrol, or advertising, if the specialised activity is provided by the person that is responsible for the operation of the aircraft.

Article 8.4

Market access

1. A Party shall not adopt or maintain with respect to market access through establishment by an investor of the other Party, on the basis of its entire territory or on the basis of the territory of a national, provincial, territorial, regional or local level of government, a measure that:
 - (a) imposes limitations on:
 - (i) the number of enterprises that may carry out a specific economic activity whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;
 - (ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;⁴
 - (iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment; or
 - (v) the total number of natural persons that may be employed in a particular sector or that an enterprise may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test; or
 - (b) restricts or requires specific types of legal entity or joint venture through which an enterprise may carry out an economic activity.
2. For greater certainty, the following are consistent with paragraph 1:
 - (a) a measure concerning zoning and planning regulations affecting the development or use of land, or another analogous measure;
 - (b) a measure requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications;
 - (c) a measure restricting the concentration of ownership to ensure fair competition;
 - (d) a measure seeking to ensure the conservation and protection of natural resources and the environment, including a limitation on the availability, number and scope of concessions granted, and the imposition of a moratorium or ban;

⁴ Sub-subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural good.

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- (e) a measure limiting the number of authorisations granted because of technical or physical constraints, for example telecommunications spectrum and frequencies; or
- (f) a measure requiring that a certain percentage of the shareholders, owners, partners, or directors of an enterprise be qualified or practice a certain profession such as lawyers or accountants.

Article 8.5

Performance requirements

1. A Party shall not impose, or enforce the following requirements, or enforce a commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct, operation, and management of any investments in its territory to:
 - (a) export a given level or percentage of a good or service;
 - (b) achieve a given level or percentage of domestic content;
 - (c) purchase, use or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from natural persons or enterprises in its territory;
 - (d) relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;
 - (e) restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;
 - (f) transfer technology, a production process or other proprietary knowledge to a natural person or enterprise in its territory; or
 - (g) supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market.
2. A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct or operation of any investments in its territory, on compliance with any of the following requirements:
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use or accord a preference to a good produced in its territory, or to purchase a good from a producer in its territory;
 - (c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or
 - (d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

3. Paragraph 2 does not prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory.
4. Subparagraph 1(f) does not apply if the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy a violation of competition laws.
5. The provisions of:
- (a) subparagraphs 1(a), (b) and (c), and 2(a) and (b), do not apply to qualification requirements for a good or service with respect to participation in export promotion and foreign aid programs;
- (b) this Article does not apply to procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is “covered procurement” within the meaning of Article 19.2 (Scope and coverage).
6. For greater certainty, subparagraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of a good necessary to qualify for preferential tariffs or preferential quotas.
7. This Article is without prejudice to World Trade Organization commitments of a Party.

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SECTION C

Non-discriminatory treatment

Article 8.6

National treatment

1. Each Party shall accord to an investor of the other Party and to a covered investment, treatment no less favourable than the treatment it accords, in like situations to its own investors and to their investments with respect to the establishment, acquisition, expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.
2. The treatment accorded by a Party under paragraph 1 means, with respect to a government in Canada other than at the federal level, or, with respect to a government of or in a Member State of the European Union, treatment no less favourable than the most favourable treatment accorded, in like situations, by that government to investors of that Party in its territory and to investments of such investors.

Article 8.7

Most-favoured-nation treatment

1. Each Party shall accord to an investor of the other Party and to a covered investment, treatment no less favourable than the treatment it accords in like situations, to investors of a third [country](#) and to their investments with respect to the establishment, acquisition, expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.
2. For greater certainty, the treatment accorded by a Party under paragraph 1 means, with respect to a government in Canada other than at the federal level, or, with respect to a government of or in a Member State of the European Union, treatment accorded, in like situations, by that government to investors in its territory, and to investments of such investors, of a third [country](#).
3. Paragraph 1 does not apply to treatment accorded by a Party providing for recognition, including through an arrangement or agreement with a third [country](#) that recognises the accreditation of testing and analysis services and service suppliers, the accreditation of repair and maintenance services and service suppliers, as well as the certification of the qualifications of or the results of or work done by those accredited services and service suppliers.
4. For greater certainty, the “treatment” referred to in paragraphs 1 and 2 does not include [procedures for the resolution of investment disputes between investors and states](#) provided for in other international investment treaties and other trade agreements. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute “treatment”, and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.

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Article 8.8

Senior management and boards of directors

A Party shall not require that an enterprise of that Party, that is also a covered investment, appoint to senior management or board of director positions, natural persons of any particular nationality.

SECTION D

Investment protection

Article 8.9

Investment and regulatory measures

1. For the purpose of this Chapter, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.
2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Section.
3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy:
 - (a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or
 - (b) in accordance with any terms or conditions attached to the issuance, renewal or maintenance of the subsidy,does not constitute a breach of the provisions of this Section.
4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy⁵ or requesting its reimbursement where such measure is necessary in order to comply with international obligations between the Parties or has been ordered by a competent court, administrative tribunal or other competent authority⁶, or requiring that Party to compensate the investor therefor.

Article 8.10

Treatment of investors and of covered investments

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1. Each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 through 6.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:
 - (a) denial of justice in criminal, civil or administrative proceedings;
 - (b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;

⁵ In the case of the European Union, "subsidy" includes "state aid" as defined in its law.

⁶ In the case of the European Union, "competent authority" is the European Commission, in accordance with Article 108 of the Treaty on the Functioning of the European Union.

- (c) manifest arbitrariness;
 - (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
 - (e) abusive treatment of investors, such as coercion, duress and harassment; or
 - (f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article.
3. The Parties shall regularly, or upon request of a Party, review the content of the obligation to provide fair and equitable treatment. The Committee on Services and Investment, established under Article 26.2.1(b) (Specialised committees), may develop recommendations in this regard and submit them to the CETA Joint Committee for decision.
 4. When applying the above fair and equitable treatment obligation, a Tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.
 5. For greater certainty, “full protection and security” refers to the Party’s obligations relating to the physical security of investors and covered investments.
 6. For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.
 7. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of this Article. In order to ascertain whether the measure breaches this Article, a Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1.

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Article 8.11

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Compensation for losses

Notwithstanding Article 8.15, 5(b), each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to armed conflict, civil strife, a state of emergency or natural disaster in its territory, treatment no less favourable than that it accords to its own investors or to the investors of a third country, whichever is more favourable to the investor concerned, as regards restitution, indemnification, compensation or other settlement.

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Article 8.12

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Expropriation

1. A Party shall not nationalise or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalisation or expropriation (“expropriation”), except:
 - (a) for a public purpose;
 - (b) under due process of law;
 - (c) in a non-discriminatory manner; and
 - (d) on payment of prompt, adequate and effective compensation.For greater certainty, this paragraph shall be interpreted in accordance with Annex 8-A.
2. The compensation referred to in paragraph 1 shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay, to the country designated by the investor and in the currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.
4. The affected investor shall have the right, under the law of the expropriating Party, to a prompt review of its claim and of the valuation of its investment, by a judicial or other independent authority of that Party, in accordance with the principles set out in this Article.
5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights, to the extent that such issuance is consistent with the TRIPS Agreement.
6. For greater certainty, the revocation, limitation or creation of intellectual property rights, to the extent that these measures are consistent with the TRIPS Agreement and Chapter Twenty (Intellectual Property), do not constitute expropriation. Moreover, a determination that these measures are inconsistent with the TRIPS Agreement or Chapter Twenty (Intellectual Property) does not establish an expropriation.

Article 8.13,

Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made without restriction or delay in a freely convertible currency and at the market rate of exchange applicable on the date of transfer. Such transfers include:

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- (a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, or other forms of returns or amounts derived from the covered investment;
- (c) proceeds from the sale or liquidation of the whole or a part of the covered investment;
- (d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles 8.11 and 8.12;
- (f) earnings and other remuneration of foreign personnel working in connection with an investment; and
- (g) payments of damages pursuant to an award issued under Section F.

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2. A Party shall not require its investors to transfer, or penalise its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

3. Nothing in this Article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner and not in a way that would constitute a disguised restriction on transfers, its laws relating to:

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- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and
- (e) the satisfaction of judgments in adjudicatory proceedings.

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Article 8.14

Subrogation

If a Party, or an agency of a Party, makes a payment under an indemnity, guarantee or contract of insurance that it has entered into in respect of an investment made by one of its investors in the territory of the other Party, the other Party shall recognise that the Party or its agency shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. These rights may be exercised by the Party or an agency of the Party, or by the investor if the Party or an agency of the Party thereof so authorises.

SECTION E

Reservations and exceptions

Article 8.15

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Reservations and exceptions

1. Articles 8.4 through 8.8 do not apply to:

- (a) an existing non-conforming measure that is maintained by a Party at the level of:
 - (i) the European Union, as set out in its Schedule to Annex I;
 - (ii) a national government, as set out by that Party in its Schedule to Annex I;
 - (iii) a provincial, territorial, or regional government, as set out by that Party in its Schedule to Annex I; or
 - (iv) a local government.

(b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or

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(c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 8.4 through 8.8.

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2. Articles 8.4 through 8.8 do not apply to a measure that a Party adopts or maintains with respect to a sector, subsector or activity, as set out in its Schedule to Annex II.

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3. Without prejudice to Articles 8.10 and 8.12, a Party shall not adopt a measure or series of measures after the date of entry into force of this Agreement and covered by its Schedule to Annex II, that require, directly or indirectly, an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure or series of measures become effective.

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4. In respect of intellectual property rights, a Party may derogate from Articles 8.5.1(f), 8.6, and 8.7 if permitted by the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

5. Articles 8.4, 8.6, 8.7 and 8.8 do not apply to:

(a) procurement by a Party of a good or service purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of a good or service for commercial sale, whether or not that procurement is “covered procurement” within the meaning of Article 19.2 (Scope and coverage); or

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(b) subsidies, or government support relating to trade in services, provided by a Party.

Article 8.16

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Denial of benefits

A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

- (a) an investor of a third country owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the third country that:
 - (i) relates to the maintenance of international peace and security; and
 - (ii) prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

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Article 8.17

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Formal requirements

Notwithstanding Articles 8.6 and 8.7, a Party may require an investor of the other Party, or its covered investment, to provide routine information concerning that investment solely for informational or statistical purposes, provided that those requests are reasonable and not unduly burdensome. The Party shall protect confidential or protected information from any disclosure that would prejudice the competitive position of the investor or the covered investment. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

SECTION F

Resolution of investment disputes between investors and states

Article 8.18

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Scope

- 1. Without prejudice to the rights and obligations of the Parties under Chapter Twenty-Nine (Dispute Settlement), an investor of a Party may submit to the Tribunal constituted under this Section a claim that the other Party has breached an obligation under:

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- (a) Section C, with respect to the expansion, conduct, operation, management, maintenance, use, enjoyment and sale or disposal of its covered investment; or

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- (b) Section D;

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where the investor claims to have suffered loss or damage as a result of the alleged breach.

- 2. Claims under subparagraph 1(a) with respect to the expansion of a covered investment may be submitted only to the extent the measure relates to the existing business operations of a covered investment and the investor has, as a result, incurred loss or damage with respect to the covered investment.

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3. For greater certainty, an investor may not submit a claim under this Section if the investment has been made through fraudulent misrepresentation, concealment, corruption, or conduct amounting to an abuse of process.

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4. A claim with respect to restructuring of debt issued by a Party may only be submitted under this Section in accordance with Annex 8-B.

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5. A Tribunal constituted under this Section shall not decide claims that fall outside of the scope of this Article.

Article 8.19

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Consultations

1. A dispute should as far as possible be settled amicably. Such a settlement may be agreed at any time, including after the claim has been submitted pursuant to Article 8.23. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the request for consultations pursuant to paragraph 4.

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2. Unless the disputing parties agree otherwise, the place of consultation shall be:

- (a) Ottawa, if the measures challenged are measures of Canada;
- (b) Brussels, if the measures challenged include a measure of the European Union; or
- (c) the capital of the Member State of the European Union, if the measures challenged are exclusively measures of that Member State.

3. The disputing parties may hold the consultations through videoconference or other means where appropriate, such as in the case where the investor is a small or medium-sized enterprise.

4. The investor shall submit to the other Party a request for consultations setting out:

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- (a) the name and address of the investor and, if such request is submitted on behalf of a locally established enterprise, the name, address and place of incorporation of the locally established enterprise;
- (b) if there is more than one investor, the name and address of each investor and, if there is more than one locally established enterprise, the name, address and place of incorporation of each locally established enterprise;
- (c) the provisions of this Agreement alleged to have been breached;
- (d) the legal and the factual basis for the claim, including the measures at issue; and
- (e) the relief sought and the estimated amount of damages claimed.

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The request for consultations shall contain evidence establishing that the investor is an investor of the other Party and that it owns or controls the investment including, if applicable, that it owns or controls the locally established enterprise on whose behalf the request is submitted.

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5. The requirements of the request for consultations set out in paragraph 4 shall be met with sufficient specificity to allow the respondent to effectively engage in consultations and to prepare its defence.

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6. A request for consultations must be submitted within:

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(a) three years after the date on which the investor or, as applicable, the locally established enterprise, first acquired or should have first acquired, knowledge of the alleged breach and knowledge that the investor or, as applicable, the locally established enterprise, has incurred loss or damage thereby; or

(b) two years after an investor or, as applicable, the locally established enterprise, ceases to pursue claims or proceedings before a tribunal or court under the law of a Party, or when such proceedings have otherwise ended and, in any event, no later than 10 years after the date on which the investor or, as applicable, the locally established enterprise, first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby.

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7. A request for consultations concerning an alleged breach by the European Union or a Member State of the European Union shall be sent to the European Union.

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8. In the event that the investor has not submitted a claim pursuant to Article 8.23 within 18 months of submitting the request for consultations, the investor is deemed to have withdrawn its request for consultations and, if applicable, its notice requesting a determination of the respondent, and shall not submit a claim under this Section with respect to the same measures. This period may be extended by agreement of the disputing parties.

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Article 8.20

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Mediation

1. The disputing parties may at any time agree to have recourse to mediation.
2. Recourse to mediation is without prejudice to the legal position or rights of either disputing party under this Chapter and is governed by the rules agreed to by the disputing parties including, if available, the rules for mediation adopted by the Committee on Services and Investment pursuant to Article 8.44.3(c).
3. The mediator is appointed by agreement of the disputing parties. The disputing parties may also request that the Secretary-General of ICSID appoint the mediator.

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4. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days from the appointment of the mediator.

5. If the disputing parties agree to have recourse to mediation, Articles 8, [19.6](#) and [19.8](#) shall not apply from the date on which the disputing parties agreed to have recourse to mediation to the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of a letter to the mediator and the other disputing party.

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Article 8, [21](#)

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Determination of the respondent for disputes with the European Union or its Member States

1. If the dispute cannot be settled within 90 days of the submission of the request for consultations, the request concerns an alleged breach of the Agreement by the European Union or a Member State of the European Union and the investor intends to [submit a claim](#) pursuant to Article 8, [23](#), the investor shall deliver to the European Union a notice requesting a determination of the respondent.

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2. The notice [under paragraph 1](#) shall identify the measures in respect of which the investor intends to [submit a claim](#).

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3. The European Union shall, after having made a determination, inform the investor as to whether the European Union or a Member State of the European Union shall be the respondent.

4. In the event that the investor has not been informed of the determination within 50 days of delivering its notice requesting such determination:

(a) if the measures identified in the notice are exclusively measures of a Member State of the European Union, the Member State shall be the respondent.

(b) if the measures identified in the notice include measures of the European Union, the European Union shall be the respondent.

5. The investor may submit a claim [pursuant to Article 8.23](#) on the basis of the determination made pursuant to paragraph 3, and, if no such determination has been communicated to the investor, on the basis of the application of paragraph 4.

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6. If the European Union or a Member State of the European Union is the respondent, pursuant to paragraph 3 or 4, neither the European Union, nor the Member State [of the European Union](#) may assert the inadmissibility of the claim, lack of jurisdiction of the Tribunal or otherwise object to the claim or award on the ground that the respondent was not properly determined pursuant to paragraph 3 or identified on the basis of the application of paragraph 4.

7. The Tribunal shall be bound by the determination made pursuant to paragraph 3 and, if no such determination has been communicated to the investor, the application of paragraph 4.

Article 8.22

Procedural and other requirements for the submission of a claim to the Tribunal

1. An investor may only submit a claim pursuant to Article 8.23 if the investor:
 - (a) delivers to the respondent, with the submission of a claim, its consent to the settlement of the dispute by the Tribunal in accordance with the procedures set out in this Section;
 - (b) allows at least 180 days to elapse from the submission of the request for consultations and, if applicable, at least 90 days to elapse from the submission of the notice requesting a determination of the respondent;
 - (c) has fulfilled the requirements of the notice requesting a determination of the respondent;
 - (d) has fulfilled the requirements related to the request for consultations;
 - (e) does not identify a measure in its claim that was not identified in its request for consultations;
 - (f) withdraws or discontinues any existing proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim; and
 - (g) waives its right to initiate any claim or proceeding before a tribunal or court under domestic or international law with respect to a measure alleged to constitute a breach referred to in its claim.
2. If the claim submitted pursuant to Article 8.23 is for loss or damage to a locally established enterprise or to an interest in a locally established enterprise that the investor owns or controls directly or indirectly, the requirements in subparagraphs 1(f) and (g) apply both to the investor and the locally established enterprise).
3. The requirements of subparagraphs 1(f) and (g) and paragraph 2 do not apply in respect of a locally established enterprise if the respondent or the investor's host state has deprived the investor of control of the locally established enterprise, or has otherwise prevented the locally established enterprise from fulfilling those requirements.
4. Upon request of the respondent, the Tribunal shall decline jurisdiction if the investor or, as applicable, the locally established enterprise, fails to fulfil any of the requirements of paragraphs 1 and 2.
5. The waiver provided pursuant to subparagraph 1(g) or paragraph 2, as applicable, shall cease to apply:

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(ii) it has withdrawn any such claim or proceeding; ¶
the declaration shall contain, as applicable, proof that a final award, judgment or decision has been made or proof of the withdrawal of any such claim or proceeding; and¶

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- (a) if the Tribunal rejects the claim on the basis of a failure to meet the requirements of paragraph 1 or 2 or on any other procedural or jurisdictional grounds;
- (b) if the Tribunal dismisses the claim pursuant to Article 8.32 or Article 8.33; or
- (c) if the investor withdraws its claim, in conformity with the applicable rules under Article 8.23.2, within 12 months of the constitution of the division of the Tribunal.

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Article 8.23

Submission of a claim to the Tribunal

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1. If a dispute has not been resolved through consultations, a claim may be submitted under this Section by:

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- (a) an investor of a Party on its own behalf; or
- (b) an investor of a Party, on behalf of a locally established enterprise which it owns or controls directly or indirectly.

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2. A claim may be submitted under the following rules:

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- (a) the ICSID Convention and Rules of Procedure for Arbitration Proceedings;
- (b) the ICSID Additional Facility Rules if the conditions for proceedings pursuant to paragraph (a) do not apply;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other rules on agreement of the disputing parties.

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3. In the event that the investor proposes rules pursuant to subparagraph 2(d), the respondent shall reply to the investor's proposal within 20 days of receipt. If the disputing parties have not agreed on such rules within 30 days of receipt, the investor may submit a claim under the rules provided for in subparagraph 2(a), (b) or (c).

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4. For greater certainty, a claim submitted under subparagraph 1(b) shall satisfy the requirements of Article 25(1) of the ICSID Convention.

5. The investor may, when submitting its claim, propose that a sole Member of the Tribunal should hear the claim. The respondent shall give sympathetic consideration to that request, in particular if the investor is a small or medium-sized enterprise or the compensation or damages claimed are relatively low.

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6. The rules applicable under paragraph 2 that are in effect on the date that the claim or claims are submitted to the Tribunal under this Section, subject to the specific rules set out in this Section and supplemented by rules adopted pursuant to Article 8.44.3(b).

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7. A claim is submitted for dispute settlement under this Section when:

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	(a) the request under Article 36(1) of the ICSID Convention is received by the Secretary-General of ICSID;	Deleted: for arbitration
	(b) the request under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretariat of ICSID;	Deleted: for arbitration
	(c) the notice under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent; or	Deleted: of arbitration
	(d) the request or notice <u>initiating proceedings</u> is received by the respondent in accordance with the <u>rules agreed upon pursuant to subparagraph 2(d)</u> .	Deleted: of arbitration pursuant to other arbitration rules
8.	Each Party shall notify the other Party of the place of delivery of notices and other documents by the investors pursuant to this Section. Each Party shall ensure this information is made publicly available.	Deleted: arbitration Deleted: -
	<i>Article 8.24</i>	Deleted: 23
	Proceedings under <u>another</u> international agreement	Deleted: different
	Where <u>a claim is</u> brought pursuant to this Section and another international agreement and:	Deleted: s
	(a) there is a potential for overlapping compensation; or	Deleted: are
	(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Section,	
	<u>the</u> Tribunal shall, as soon as possible after hearing the disputing parties, stay its proceedings or otherwise ensure that proceedings brought pursuant to another international agreement are taken into account in its decision, order or award.	Deleted: a Deleted: constituted under this Section
	<i>Article 8.25</i>	Deleted: 4
	Consent to <u>the settlement of the dispute by the Tribunal</u>	Deleted: arbitration
1.	The respondent consents to the <u>settlement of the dispute by the Tribunal</u> in accordance with the procedures set out <u>in this Section</u> .	Deleted: submission of a claim to arbitration under this Section
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	(a) Article 25 of the ICSID Convention and Chapter II of the ICSID Additional Facility Rules regarding written consent of the disputing parties; and,	
	(b) Article II of the New York Convention for an agreement in writing.	

Article 8.26

Third party funding

1. Where there is third party funding, the disputing party benefiting from it shall disclose to the other disputing party and to the Tribunal the name and address of the third party funder.
2. The disclosure shall be made at the time of the submission of a claim, or, if the financing agreement is concluded or the donation or grant is made after the submission of a claim, without delay as soon as the agreement is concluded or the donation or grant is made.

Article 8.27

Constitution of the Tribunal

1. The Tribunal established under this Section shall decide claims submitted pursuant to Article 8.23.
2. The CETA Joint Committee shall, upon the entry into force of this Agreement, appoint fifteen Members of the Tribunal. Five of the Members of the Tribunal shall be nationals of a Member State of the European Union, five shall be nationals of Canada⁷ and five shall be nationals of third countries.
3. The CETA Joint Committee may decide to increase or to decrease the number of the Members of the Tribunal by multiples of three. Additional appointments shall be made on the same basis as provided for in paragraph 2.
4. The Members of the Tribunal shall possess the qualifications required in their respective countries for appointment to judicial office, or be jurists of recognised competence. They shall have demonstrated expertise in public international law. It is desirable that they have expertise in particular, in international investment law, in international trade law and the resolution of disputes arising under international investment or international trade agreements.
5. The Members of the Tribunal appointed pursuant to this Section shall be appointed for a five-year term, renewable once. However, the terms of seven of the 15 persons appointed immediately after the entry into force of the Agreement, to be determined by lot, shall extend to six years. Vacancies shall be filled as they arise. A person appointed to replace a Member of the Tribunal whose term of office has not expired shall hold office for the remainder of the predecessor's term. In principle, a Member of the Tribunal serving on a division of the Tribunal when his or her term expires may continue to serve on the division until a final award is issued.

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⁷ Either Party may instead propose to appoint up to five Members of the Tribunal of any nationality. In this case, such Members of the Tribunal shall be considered to be nationals of the Party that proposed his or her appointment for the purposes of this Article.

6. The Tribunal shall hear cases in divisions consisting of three Members of the Tribunal, of whom one shall be a national of a Member State of the European Union, one a national of Canada and one a national of a third country. The division shall be chaired by the Member of the Tribunal who is a national of a third country.
7. Within 90 days of the submission of a claim pursuant to Article 8.23, the President of the Tribunal shall appoint the Members of the Tribunal composing the division of the Tribunal hearing the case on a rotation basis, ensuring that the composition of the divisions is random and unpredictable, while giving equal opportunity to all Members of the Tribunal to serve.
8. The President and Vice-President of the Tribunal shall be responsible for organisational issues and will be appointed for a two-year term and shall be drawn by lot from among the Members of the Tribunal who are nationals of third countries. They shall serve on the basis of a rotation drawn by lot by the Chair of the CETA Joint Committee. The Vice-President shall replace the President when the President is unavailable.
9. Notwithstanding paragraph 6, the disputing parties may agree that a case be heard by a sole Member of the Tribunal to be appointed at random from the third country nationals. The respondent shall give sympathetic consideration to a request from the claimant to have the case heard by a sole Member of the Tribunal, in particular where the claimant is a small or medium-sized enterprise or the compensation or damages claimed are relatively low. Such a request shall be made before the constitution of the division of the Tribunal.
10. The Tribunal may draw up its own working procedures.
11. The Members of the Tribunal shall ensure that they are available and able to perform the functions set out under this Section.
12. In order to ensure their availability, the Members of the Tribunal shall be paid a monthly retainer fee to be determined by the CETA Joint Committee.
13. The fees referred to in paragraph 12 shall be paid equally by both Parties into an account managed by the ICSID Secretariat. In the event that one Party fails to pay the retainer fee the other Party may elect to pay. Any such arrears by a Party will remain payable, with appropriate interest.
14. Unless the CETA Joint Committee adopts a decision pursuant to paragraph 15, the amount of the fees and expenses of the Members of the Tribunal on a division constituted to hear a claim, other than the fees referred to in paragraph 12, shall be those determined pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of the submission of the claim and allocated by the Tribunal among the disputing parties in accordance with Article 8.39.5.

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15. The CETA Joint Committee may, by decision, transform the retainer fee and other fees and expenses into a regular salary, and decide applicable modalities and conditions.
16. The ICSID Secretariat shall act as Secretariat for the Tribunal and provide it with appropriate support.
17. If the CETA Joint Committee has not made the appointments pursuant to paragraph 2 within 90 days from the date that a claim is submitted for dispute settlement, the Secretary General of ICSID shall, at the request of either disputing party appoint a division consisting of three Members of the Tribunal, unless the disputing parties have agreed that the case is to be heard by a sole Member of the Tribunal. The Secretary General of ICSID shall make the appointment by random selection from the existing nominations. The Secretary-General of ICSID may not appoint as chair a national of either Canada or a Member State of the European Union unless the disputing parties agree otherwise.

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Article 8.28

Appellate Tribunal

1. An Appellate Tribunal is hereby established to review awards rendered under this Section.
2. The Appellate Tribunal may uphold, modify or reverse a Tribunal's award based on:
 - (a) errors in the application or interpretation of applicable law;
 - (b) manifest errors in the appreciation of the facts, including the appreciation of relevant domestic law;
 - (c) the grounds set out in Article 52(1) (a) through (e) of the ICSID Convention, in so far as they are not covered by paragraphs (a) and (b).
3. The Members of the Appellate Tribunal shall be appointed by a decision of the CETA Joint Committee at the same time as the decision referred to in paragraph 7.
4. The Members of the Appellate Tribunal shall meet the requirements of Articles 8.27.4 and comply with Article 8.30.
5. The division of the Appellate Tribunal constituted to hear the appeal shall consist of three randomly appointed Members of the Appellate Tribunal.

Deleted: Unless the disputing parties have agreed to appoint a sole arbitrator, the Tribunal shall be composed of three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who will be the presiding arbitrator, shall be appointed by agreement of the disputing parties. If the disputing parties agree to appoint a sole arbitrator, the disputing parties shall seek to agree on the sole arbitrator.¶

2. If a Tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration, or if the disputing parties have agreed to appoint a sole arbitrator and have failed to do so within 90 days from the date the respondent agreed to submit the dispute to a sole arbitrator, the Secretary-General of ICSID shall, at the request of either disputing party, appoint the arbitrator or arbitrators not yet appointed in accordance with paragraph 3.¶

3. . The Secretary-General of ICSID shall appoint the remaining arbitrators from the list established pursuant to paragraph 4. If the list has not been established on the date a claim is submitted to arbitration, the Secretary-General of ICSID shall make the appointment at his or her discretion taking into consideration nominations made by either Party and, to the extent practicable, in consultation with the disputing parties. The Secretary-General of ICSID shall not appoint as presiding arbitrator a national of Canada or a Member State of the European Union unless all disputing parties agree otherwise.¶

4. Pursuant to Article 8.42.2(a), the Committee on Services and Investment shall establish and maintain a list of individuals who are willing and able to serve as arbitrators and who meet the qualifications set out in paragraph 5. The Committee on Services and Investment shall ensure that the list includes at least 15 individuals but may decide to increase that number. The list shall be composed of three sub-lists each comprising at least five individuals: one sub-list for each Party, and one sub-list of individuals who are neither nationals of Canada nor the Member States of the European Union to act as presiding arbitrators.¶

5. . Arbitrators appointed pursuant to this Section shall have expertise or experience in public international law, in particular international investment law. It is desirable that they have expertise or experience in international trade law and the resolution of disputes arising under international investment or international trade agreements.¶

6. Arbitrators shall be independent of, and not be affiliated with or take instructions from, a disputing party or the government of a Party with regard to trade and investment matters. ...

6. Articles 8.36 and 8.38 shall apply to the proceedings before the Appellate Tribunal.
7. The CETA Joint Committee shall promptly adopt a decision setting out the following administrative and organisational matters regarding the functioning of the Appellate Tribunal:
- (a) administrative support;
 - (b) procedures for the initiation and the conduct of appeals, and procedures for referring issues back to the Tribunal for adjustment of the award, as appropriate;
 - (c) procedures for filling a vacancy on the Appellate Tribunal and on a division of the Appellate Tribunal constituted to hear a case;
 - (d) remuneration of the Members of the Appellate Tribunal;
 - (e) provisions related to the costs of appeals;
 - (f) the number of Members of the Appellate Tribunal; and
 - (g) any other elements it determines to be necessary for the effective functioning of the Appellate Tribunal.
8. The Committee on Services and Investment shall periodically review the functioning of the Appellate Tribunal and may make recommendations to the CETA Joint Committee. The CETA Joint Committee may revise the decision referred to in paragraph 7, if necessary.
9. Upon adoption of the decision referred to in paragraph 7:
- (a) a disputing party may appeal an award rendered pursuant to this Section to the Appellate Tribunal within 90 days after its issuance;
 - (b) a disputing party shall not seek to review, set aside, annul, revise or initiate any other similar procedure as regards an award under this Section;
 - (c) an award rendered pursuant to Article 8.39 shall not be considered final and no action for enforcement of an award may be brought until either:
 - (i) 90 days from the issuance of the award by the Tribunal has elapsed and no appeal has been initiated;
 - (ii) an initiated appeal has been rejected or withdrawn; or
 - (iii) 90 days have elapsed from an award by the Appellate Tribunal and the Appellate Tribunal has not referred the matter back to the Tribunal;
 - (d) a final award by the Appellate Tribunal shall be considered as a final award for the purposes of Article 8.41; and

(e) Article 8.41.3 shall not apply.

Article 8.29

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Establishment of a multilateral investment tribunal and appellate mechanism

The Parties shall pursue with other trading partners the establishment of a multilateral investment tribunal and appellate mechanism for the resolution of investment disputes. Upon establishment of such a multilateral mechanism, the CETA Joint Committee shall adopt a decision providing that investment disputes under this Section will be decided pursuant to the multilateral mechanism and make appropriate transitional arrangements.

Article 8.30

Ethics

1. The Members of the Tribunal shall be independent. They shall not be affiliated with any government.⁸ They shall not take instructions from any organisation, or government with regard to matters related to the dispute. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest. They shall comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration or any supplemental rules adopted pursuant to Article 8.44.2. In addition, upon appointment, they shall refrain from acting as counsel or as party-appointed expert or witness in any pending or new investment dispute under this or any other international agreement.
2. If a disputing party considers that a Member of the Tribunal has a conflict of interest, it shall send to the President of the International Court of Justice a notice of challenge to the appointment. The notice of challenge shall be sent within 15 days of the date on which the composition of the division of the Tribunal has been communicated to the disputing party, or within 15 days of the date on which the relevant facts came to its knowledge, if they could not have reasonably been known at the time of composition of the division. The notice of challenge shall state the grounds for the challenge.
3. If, within 15 days from the date of the notice of challenge, the challenged Member of the Tribunal has elected not to resign from the division, the President of the International Court of Justice shall, after hearing the disputing parties and after providing the Member of the Tribunal an opportunity to submit any observations, issue a decision within 45 days of receipt of the notice of challenge and notify the disputing parties and the other Members of the division. A vacancy resulting from the disqualification or resignation of a Member of the Tribunal shall be filled promptly.

⁸ For greater certainty, the fact that a person receives remuneration from a government does not in itself make that person ineligible.

4. Upon a reasoned recommendation from the President of the Tribunal, or on their joint initiative, the Parties, by decision of the CETA Joint Committee, may remove a Member from the Tribunal where his or her behaviour is inconsistent with the obligations set out in paragraph 1 and incompatible with his or her continued membership of the Tribunal.

Article 8.31

Applicable law and interpretation

1. When rendering its decision, the Tribunal established under this Section shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.
2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of the disputing Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of the disputing Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

3. Where serious concerns arise as regards matters of interpretation that may affect investment, the Committee on Services and Investment may, pursuant to Article 8.44.3(a), recommend to the CETA Joint Committee the adoption of interpretations of this Agreement. An interpretation adopted by the CETA Joint Committee shall be binding on a Tribunal established under this Section. The CETA Joint Committee may decide that an interpretation shall have binding effect from a specific date.

Article 8.32

Claims manifestly without legal merit

1. The respondent may, no later than 30 days after the constitution of the division of the Tribunal, and in any event before its first session, file an objection that a claim is manifestly without legal merit.
2. An objection shall not be submitted under paragraph 1 if the respondent has filed an objection pursuant to Article 8.33.
3. The respondent shall specify as precisely as possible the basis for the objection.
4. On receipt of an objection pursuant to this Article, the Tribunal shall suspend the proceedings on the merits and establish a schedule for considering such an objection consistent with its schedule for considering any other preliminary question.

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Agreement to the appointment of arbitrators¶

For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on a ground other than nationality:¶

- (a) the respondent agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules; and¶
- (b) an investor may submit a claim to arbitration or continue a claim under the ICSID Convention or, as the case may be, the ICSID Additional Facility Rules only if the investor agrees in writing to the appointment of each member of the Tribunal.¶

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Place of arbitration¶

The disputing parties may agree on the place of arbitration under the applicable arbitration rules provided it is in the territory of a party to the New York Convention. If the disputing parties fail to agree on the place of arbitration, the Tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that it shall be in the territory of a Party or of a third Party that is a party to the New York Convention.¶

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5. The Tribunal, after giving the disputing parties an opportunity to present their observations, shall at its first session or promptly thereafter, issue a decision or award stating the grounds therefor. In doing so, the Tribunal shall assume the alleged facts to be true.
6. This Article shall be without prejudice to the Tribunal's authority to address other objections as a preliminary question or to the right of the respondent to object, in the course of the proceeding, that a claim lacks legal merit.

Article 8.33

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Claims unfounded as a matter of law

1. Without prejudice to a Tribunal's authority to address other objections as a preliminary question or to a respondent's right to raise any such objections at an appropriate time, the Tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim, or any part thereof, submitted pursuant to Article 8.23 is not a claim for which an award in favour of the claimant may be made under this Section, even if the facts alleged were assumed to be true.
2. An objection under paragraph 1 shall be submitted to the Tribunal no later than the date the Tribunal fixes for the respondent to submit its counter-memorial.
3. If an objection has been submitted pursuant to Article 8.32, the Tribunal may, taking into account the circumstances of that objection, decline to address, under the procedures set out in this Article, an objection submitted pursuant to paragraph 1.
4. On receipt of an objection under paragraph 1, and, if appropriate, after rendering a decision pursuant to paragraph 3, the Tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

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Article 8.34

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Interim measures of protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 8.23. For the purposes of this Article, an order includes a recommendation.

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Article 8.35

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Discontinuance

If, following the submission of a claim under this Section, the investor fails to take any steps in the proceeding during 180 consecutive days or such periods as the disputing parties may agree, the investor is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal shall, at the request of the respondent, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered the authority of the Tribunal shall lapse.

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Article 8.36

Transparency of proceedings

1. The UNCITRAL Transparency Rules, as modified by this Chapter, shall apply in connection with proceedings under this Section.
2. The request for consultations, the notice requesting a determination of the respondent, the notice of determination of the respondent, the agreement to mediate, the notice of intent to challenge a Member of the Tribunal, the decision on challenge to a Member of the Tribunal and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.
3. Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.
4. Notwithstanding Article 2 of the UNCITRAL Transparency Rules, prior to the constitution of the Tribunal, Canada or the European Union, as the case may be, shall make publicly available in a timely manner relevant documents pursuant to paragraph 2, subject to the redaction of confidential or protected information. Such documents may be made publicly available by communication to the repository.
5. Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements to facilitate public access to such hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring such protection.
6. Nothing in this Chapter requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should apply those laws in a manner sensitive to protecting from disclosure information that has been designated as confidential or protected information.

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Article 8.37

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Information sharing

1. A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the disputing

party shall ensure that those persons protect the confidential or protected information contained in those documents.

2. This Agreement does not prevent a respondent from disclosing to officials of, as applicable, the European Union, Member States of the European Union and sub-national governments, such unredacted documents as it considers necessary in the course of proceedings under this Section. However, the respondent shall ensure that those officials protect the confidential or protected information contained in those documents.

Article 8.38

Non-disputing Party

1. The respondent shall, within 30 days after receipt or promptly after any dispute concerning confidential or protected information has been resolved, deliver to the non-disputing Party:

- (a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the respondent, a claim submitted pursuant to Article 8.23, a request for consolidation, and any other documents that are appended to such documents;

- (b) on request:

- (i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;
 - (ii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;
 - (iii) minutes or transcripts of hearings of the Tribunal, if available; and
 - (iv) orders, awards and decisions of the Tribunal; and

- (c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.

2. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of the Agreement. The non-disputing Party may attend a hearing held under this Section.

3. The Tribunal shall not draw any inference from the absence of a submission pursuant to paragraph 2.

4. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party to this Agreement.

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Article 8.39

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Final award

1. If the Tribunal makes a final award against the respondent, the Tribunal may only award, separately or in combination:

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- (a) monetary damages and any applicable interest;
- (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages representing the fair market value of the property at the time immediately before the expropriation, or impending expropriation became known, whichever is earlier, and any applicable interest in lieu of restitution, determined in a manner consistent with Article 8.12.

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2. Subject to paragraphs 1 and 5, if a claim is made under Article 8.23.1(b):

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- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the locally established enterprise;
- (b) an award of restitution of property shall provide that restitution be made to the locally established enterprise;
- (c) an award of costs in favour of the investor shall provide that it is to be made to the investor; and
- (d) the award shall provide that it is made without prejudice to a right that a person, other than a person which has provided a waiver pursuant to Article 8.22, may have in monetary damages or property awarded under a Party's law.

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3. Monetary damages shall not be greater than the loss suffered by the investor or, as applicable, the locally established enterprise, reduced by any prior damages or compensation already provided. For the calculation of monetary damages, the Tribunal shall also reduce the damages to take into account any restitution of property or repeal or modification of the measure.

4. The Tribunal shall not award punitive damages.

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5. The Tribunal shall order that the costs of the proceedings be borne by the unsuccessful disputing party. In exceptional circumstances, the Tribunal may apportion costs between the disputing parties if it determines that apportionment is appropriate in the circumstances of the claim. Other reasonable costs, including costs of legal representation and assistance, shall be borne by the unsuccessful disputing party, unless the Tribunal determines that such apportionment is unreasonable in the circumstances of the claim. If only parts of the claims have been successful the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

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6. The CETA Joint Committee shall consider supplemental rules aimed at reducing the financial burden on claimants who are natural persons or small and medium-sized

enterprises. Such supplemental rules may, in particular, take into account the financial resources of such claimants and the amount of compensation sought.

7. The Tribunal and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within 24 months of the date the claim is submitted pursuant to Article 8.23. If the Tribunal requires additional time to issue its final award, it shall provide the disputing parties the reasons for the delay.

Article 8.40

Indemnification or other compensation

A respondent shall not assert, and a Tribunal shall not accept a defence, counterclaim, right of setoff, or similar assertion, that an investor or, as applicable, a locally established enterprise, has received or will receive indemnification or other compensation pursuant to an insurance or guarantee contract in respect of all or part of the compensation sought in a dispute initiated pursuant to this Section.

Article 8.41

Enforcement of awards

1. An award issued pursuant to this Section shall be binding between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3, a disputing party shall recognise and comply with an award without delay.
3. A disputing party shall not seek enforcement of a final award until:
 - (a) in the case of a final award issued under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) enforcement of the award has been stayed and revision or annulment proceedings have been completed.
 - (b) in the case of a final award under the ICSID Additional Facility Rules the UNCITRAL Arbitration Rules, or any other rules applicable pursuant to Article 8.23.2(d):
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or

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Fees and expenses of the arbitrators¶
The fees and expenses of the arbitrators pursuant to Regulation 14(1) of the Administrative and Financial Regulations of the ICSID Convention in force on the date of initiation of the arbitration shall apply.¶

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- (ii) enforcement of the award has been stayed and a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Execution of the award shall be governed by the laws concerning the execution of judgments or awards in force where the execution is sought.

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5. A final award issued pursuant to this Section is an arbitral award, that is, deemed to relate to claims arising out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

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6. For greater certainty, if a claim has been submitted pursuant to Article 8.23.2(a), a final award issued pursuant to this Section shall qualify as an award under Section 6 of the ICSID Convention.

Article 8.42

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Role of the Parties

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1. A Party shall not bring an international claim, in respect of a claim submitted pursuant to Article 8.23, unless the other Party has failed to abide by and comply with the award rendered in that dispute.

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2. Paragraph 1 shall not exclude the possibility of dispute settlement under Chapter Twenty-Nine (Dispute Settlement) in respect of a measure of general application even if that measure is alleged to have breached this Agreement as regards a specific investment in respect of which a claim has been submitted pursuant to Article 8.23 and is without prejudice to Article 8.38.

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3. Paragraph 1 does not preclude informal exchanges for the sole purpose of facilitating a settlement of the dispute.

Article 8.43

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Consolidation

1. When two or more claims that have been submitted separately pursuant to Article 8.23 have a question of law or fact in common and arise out of the same events or circumstances, a disputing party or the disputing parties, jointly, may seek the establishment of a separate division of the Tribunal pursuant to this Article and request that such division issue a consolidation order ("request for consolidation").

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2. The disputing party seeking a consolidation order shall first deliver a notice to the disputing parties it seeks to be covered by this order.

3. If the disputing parties notified pursuant to paragraph 2 have reached an agreement on the consolidation order to be sought, they may make a joint request for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article. If the disputing parties notified pursuant to paragraph 2 have

not reached agreement on the consolidation order to be sought within 30 days of the notice, a disputing party may make a request for the establishment of a separate [division of the](#) Tribunal and a consolidation order pursuant to this Article.

4. The request shall be delivered, in writing, to the [President of the Tribunal](#) and to all the disputing parties sought to be covered by the order, and shall specify:

- (a) the names and addresses of the disputing parties sought to be covered by the order;
- (b) the claims, or parts thereof, sought to be covered by the order; and
- (c) the grounds for the order sought.

5. A request for consolidation involving more than one respondent shall require the agreement of all such respondents.

6. The [rules](#) applicable to the proceedings under this Article are determined as follows:

- (a) if all of the claims for which a consolidation order is sought have been submitted to [dispute settlement](#) under the same [rules](#) pursuant to Article 8.23, these [rules](#) shall apply;
- (b) if the claims for which a consolidation order is sought have not been submitted to [dispute settlement](#) under the same [rules](#):
 - (i) the investors may collectively agree on the [rules](#) pursuant to Article 8.23.2; or
 - (ii) if the investors cannot agree on the [applicable](#) rules within 30 days of the [President of the Tribunal](#) receiving the request for consolidation, the UNCITRAL Arbitration Rules shall apply.

7. [The President of the Tribunal shall, after receipt of a consolidation request and in accordance with the requirements of Article 8.27.7 constitute a new division \("consolidating division"\) of the Tribunal which shall have jurisdiction over some or all of the claims, in whole or in part, which are the subject of the joint consolidation request.](#)8. If, after hearing the disputing parties, a [consolidating division](#) is satisfied that claims submitted [pursuant](#) to Article 8.23 have a question of law or fact in common and arise out of the same events or circumstances, and consolidation would best serve the interests of fair and efficient resolution of the claims including the interest of consistency of awards, [the consolidating division of](#) the Tribunal may, by order, assume jurisdiction over some or all of the claims, in whole or in part.

9. If a [consolidating division of the](#) Tribunal has assumed jurisdiction pursuant to paragraph 8, an investor that has submitted a claim [pursuant](#) to Article 8.23 and whose claim has not been consolidated may make a written request to the Tribunal that it be included in such order provided that the request complies with the requirements set out in paragraph 4. The [consolidating division of the](#) Tribunal shall grant such order where it is satisfied that the conditions of paragraph 8 are met and that granting such a request would not unduly burden or unfairly prejudice the

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Deleted: A Tribunal established under this Article shall be composed of three arbitrators: one arbitrator appointed by the respondent, one arbitrator appointed by agreement of the investors, and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. If the respondent or the investors fail to appoint an arbitrator within 45 days after the Secretary-General of ICSID receives a request for consolidation, or if the disputing parties have not agreed to a presiding arbitrator within 60 days after the Secretary-General of ICSID receives a request for consolidation, a disputing party may request the Secretary-General of ICSID to appoint the arbitrator or arbitrators not yet appointed in accordance with Article 8.25.3.

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disputing parties or unduly disrupt the proceedings. Before consolidating division of the Tribunal issues that order, it shall consult with the disputing parties.

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10. On application of a disputing party, a consolidating division of the Tribunal established under this Article, pending its decision under paragraph 8, may order that the proceedings of a Tribunal appointed under Article 8.27.7 be stayed unless the latter Tribunal has already adjourned its proceedings.

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11. A Tribunal appointed under Article 8.27.7 shall cede jurisdiction in relation to the claims, or parts thereof, over which a consolidating division of the Tribunal established under this Article has assumed jurisdiction.

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12. The award of a consolidating division of the Tribunal established under this Article in relation to those claims, or parts thereof, over which it has assumed jurisdiction is binding on a Tribunal appointed under Article 8.27.7 as regards those claims, or parts thereof.

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13. An investor may withdraw a claim under this Section that is subject to consolidation and such claim shall not be resubmitted pursuant to Article 8.23. If it does so no later than 15 days after receipt of the notice of consolidation, its earlier submission of the claim shall not prevent the investor's recourse to dispute settlement other than under this Section.

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14. At the request of an investor, a consolidating division of the Tribunal may take such measures as it sees fit in order to preserve the confidential or protected information of that investor in relation to other investors. Those measures may include the submission of redacted versions of documents containing confidential or protected information to the other investors or arrangements to hold parts of the hearing in private.

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Article 8.44

Committee on Services and Investment

1. The Committee on Services and Investment shall provide a forum for the Parties to consult on issues related to this Chapter, including:

- (a) difficulties which may arise in the implementation of this Chapter;
- (b) possible improvements of this Chapter, in particular in the light of experience and developments in other international fora and under the Parties' other agreements.

2. The Committee on Services and Investment shall, on agreement of the Parties, and after completion of their respective internal requirements and procedures, adopt a code of conduct for the Members of the Tribunal to be applied in disputes arising out of this Chapter, which may replace or supplement the rules in application, and may address topics including:

Deleted: (c) whether, and if so, under what conditions, an appellate mechanism could be created under the Agreement to review, on points of law, awards rendered by a Tribunal under this Section, or whether awards rendered under this Section could be subject to an appellate mechanism developed pursuant to other institutional arrangements. Such consultations shall take into account the following issues, among others:¶
 (i) . the nature and composition of an appellate mechanism;¶
 (ii) the applicable scope and standard of review;¶
 (iii) . transparency of proceedings of an appellate mechanism;¶
 (iv) the effect of decisions by an appellate mechanism;¶
 (v) . the relationship of review by an appellate mechanism to the arbitration rules that may be selected under Article 8.22; and¶
 (vi) the relationship of review by an appellate mechanism to domestic laws and international law on the enforcement of arbitral awards.¶

- (a) disclosure obligations;
- (b) the independence and impartiality of the Members of the Tribunal; and
- (c) confidentiality.

The Parties shall make best efforts to ensure that the code of conduct is adopted no later than the first day of the provisional application or entry into force of this Agreement, as the case may be, and in any event no later than two years after such date.

3. The Committee Services and Investment may, on agreement of the Parties, and after completion of their respective internal requirements and procedures:

- (a) recommend to the CETA Joint Committee the adoption of interpretations of this Agreement pursuant to Article 8.31.3;
- (b) adopt and amend rules supplementing the applicable dispute settlement rules, and amend the applicable rules on transparency. These rules and amendments are binding on a Tribunal established under this Section;
- (c) adopt rules for mediation for use by disputing parties as referred to in Article 8.20;
- (d) recommend to the CETA Joint Committee the adoption of any further elements of the fair and equitable treatment obligation pursuant to Article 8.10.4; and
- (e) make recommendations to the CETA Joint Committee on the functioning of the Appellate Tribunal pursuant to Article 8.28.8.

Article 8.45

Exclusion

The dispute settlement provisions of this Section and of Chapter Twenty-Nine (Dispute Settlement) do not apply to the matters referred to in Annex 8-C.

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(a) establish and maintain the list of arbitrators pursuant to Article 8.25.3;¶
(b) . adopt a code of conduct for arbitrators to be applied in disputes arising out of this Chapter, which may replace or supplement the rules in application, and may address topics including:¶
(i) disclosure obligations;¶
(ii) . the independence and impartiality of arbitrators; and¶
(iii) confidentiality.

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