

Draft Provision 22 – Joint Interpretation

Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016) Article 8.31 (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.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018) Article 9.25

A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) Article 14.D.9 (2)

A decision of the Commission on the interpretation of a provision of this Agreement under Article 30.2 (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) (2004) Article 10.22 (3)

A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 19.1.3(c) (The Free Trade Commission) shall be binding on a tribunal established under this Section, and any decision or award issued by the tribunal must be consistent with that decision.

The Japan-Mexico Economic Partnership Agreement (EPA) (2004)

Article 165

1. The Joint Committee composed of representatives of the Governments of the Parties shall be established under this Agreement.

2. The functions of the Joint Committee shall be:

- (a) reviewing the implementation and operation of this Agreement and, when necessary, making appropriate recommendations to the Parties;*
- (b) considering and recommending to the Parties any amendments to this Agreement;*
- (c) by mutual consent of the Parties, serving as a forum for consultations referred to in Article 152;*
- (d) supervising the work of all Sub-Committees established under this Agreement;*
- (e) adopting: (i) modifications to Annexes referred to in Articles 8 and; (ii) the Uniform Regulations referred to in Article 10; (iii) an interpretation of a provision of this Agreement referred to in Articles 84 and 89; (iv) the Rules of Procedure referred to in Article 159; and (v) any necessary decisions; and*
- (f) carrying out other functions as the Parties may agree.*

3. The Joint Committee may:

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(a) establish and delegate its responsibilities to Sub-Committees for the purposes of the effective implementation and operation of this Agreement; and

(b) take such other action in the exercise of its functions as the Parties may agree.

4. *The following Sub-Committees shall be established on the date of entry into force of this Agreement:*

(a) Sub-Committee on Trade in Goods. (b) Sub-Committee on Sanitary and Phytosanitary Measures. (c) Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures. (d) Sub-Committee on Rules of Origin, Certificate of Origin and Customs Procedures. (e) Sub-Committee on Cross-Border Trade in Services. (f) Sub-Committee on Entry and Temporary Stay. (g) Sub-Committee on Government Procurement. (h) Sub-Committee on Cooperation in the Field of Trade and Investment Promotion. 129 (i) Sub-Committee on Cooperation in the Field of Agriculture. (j) Sub-Committee on Cooperation in the Field of Tourism. Other Sub-Committees may be established as the Parties may agree.

5. *The Joint Committee shall establish its rules and procedures.*

6. *The Joint Committee shall meet alternately in Japan and Mexico at the request of either Party.”*

Agreement between the Government of the People’s Republic of China and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments (China-Mexico BIT) (2008) Article 19 (2)

An interpretation jointly formulated and agreed upon by the Contracting Parties with regard to any provision of this Agreement shall be binding on any tribunal established under this Section.

Agreement Between Canada and the Czech Republic for the Promotion and Protection of Investments (Canada-Czech Republic BIT) (2009) Article X (6)

An interpretation of this Agreement agreed between the Contracting Parties shall be binding on a Tribunal established under this Article.

ASEAN Comprehensive Investment Agreement (ACIA) (2012) Article 40 (3)

The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Member States shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to paragraph 3, if the Member States fail to issue such a decision within 60 days, any interpretation submitted by a Member State shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account. 3. A joint decision of the Member States, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Agreement between the Government of Canada and the Government of the People’s Republic of China for the Promotion and Reciprocal Protection of Investments (Canada - China BIT) (2012) Article 30 (2)

Where a disputing Contracting Party asserts as a defense that the measure alleged to be a breach is within the scope of the reservations and exceptions set out in Article 8(1), (2) and (3), on request of the disputing Contracting Party, the Tribunal shall request the interpretation of the Contracting Parties on the issue. The Contracting Parties, within 60 days of delivery of the request, shall submit in writing their joint interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Contracting Parties fail to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Canada-Honduras Free Trade Agreement (2013) Article 10.37 (3)

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The Commission's interpretation of a provision of this Agreement shall be binding on a Tribunal established under this Section and an award under this Section shall be consistent with that interpretation.

Australia-China Free Trade Agreement (2015) Article 9.18 (2)

A joint decision of the Parties, acting through the Committee on Investment, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

Treaty between the Republic of Belarus and the Republic of India on Investments (Belarus - India BIT) (2018) Article 24 (1)

Interpretations of specific provisions and decisions on application of this Treaty issued subsequently by the Parties in accordance with this Treaty shall be binding on tribunals established under this Treaty upon issuance of such interpretations or decisions.

Agreement for the Reciprocal Promotion and Protection of Investments between the Argentine Republic and the United Arab Emirates (Argentina - United Arab Emirates BIT) (2018) Article 30 (2)

An interpretation jointly formulated and agreed upon by the State Parties with regard to any provision of this Agreement shall be binding on any Arbitral Tribunal established thereunder.

Brazil - India Investment Cooperation and Facilitation Treaty (2020) Article 13

13.1 For the purpose of this Treaty, the Parties hereby establish a Joint Committee for the administration of this Treaty (hereinafter referred as "Joint Committee").

13.2 This Joint Committee shall be composed of government representatives of both Parties designated by their respective Governments.

13.3 The Joint Committee shall meet at such times, in such places and through such means as the Parties may agree. Meetings shall be held at least once a year and co-chaired by the Parties.

13.4 The Joint Committee shall have the following functions and responsibilities:

- a) supervise the implementation and execution of this Treaty;*
- b) discuss and make known opportunities for the expansion of mutual investment;*
- c) coordinate the implementation of the mutually agreed cooperation and facilitation agendas;*
- d) consult with investors and relevant stakeholders, when applicable, on their views on specific issues related to the work of the Joint Committee;*
- e) discuss issues and seek to resolve disputes concerning investments of investors of a Party in an amicable manner; and*
- f) supplement the rules for arbitral dispute settlement between the Parties.*

13.5 The Joint Committee may establish ad hoc working groups, which shall meet jointly or separately from the Joint Committee. The ad hoc working groups may invite participation from investors.

13.6 The Joint Committee shall establish its own rules of procedure.”

Agreement between the Government of the Republic of Angola and the Government of the People's Republic of China on the Promotion and Reciprocal Protection of Investments (Angola - China BIT) (2023) Article 29 (3)

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“A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision”.

China - Nicaragua Free Trade Agreement (2023) Article 11.23 (3)

A joint decision of the Parties declaring their interpretation of a provision of this Agreement shall be binding on a tribunal of any ongoing or subsequent dispute, and any decision or award issued by such a tribunal must be consistent with that joint decision.

Bilateral Investment Treaty between the Government of the Republic of India and the Government of the United Arab Emirates (India - United Arab Emirates BIT) (2024) Article 26 (1)

Joint interpretations of specific provisions and decisions on application of this Treaty issued subsequently by the Parties in accordance with this Treaty shall be binding on tribunals established under this Chapter upon issuance of such interpretations or decisions.

Brazil - India Investment Cooperation and Facilitation Treaty (2020) Article 13

13.1 For the purpose of this Treaty, the Parties hereby establish a Joint Committee for the administration of this Treaty (hereinafter referred as "Joint Committee").

13.2 This Joint Committee shall be composed of government representatives of both Parties designated by their respective Governments.

13.3 The Joint Committee shall meet at such times, in such places and through such means as the Parties may agree. Meetings shall be held at least once a year and co-chaired by the Parties.

13.4 The Joint Committee shall have the following functions and responsibilities:

- a) supervise the implementation and execution of this Treaty;*
- b) discuss and make known opportunities for the expansion of mutual investment;*
- c) coordinate the implementation of the mutually agreed cooperation and facilitation agendas;*
- d) consult with investors and relevant stakeholders, when applicable, on their views on specific issues related to the work of the Joint Committee;*
- e) discuss issues and seek to resolve disputes concerning investments of investors of a Party in an amicable manner; and*
- f) supplement the rules for arbitral dispute settlement between the Parties.*

13.5 The Joint Committee may establish ad hoc working groups, which shall meet jointly or separately from the Joint Committee. The ad hoc working groups may invite participation from investors.

13.6 The Joint Committee shall establish its own rules of procedure.

Draft provision 22: Submission by a non-disputing Treaty Party

Article 8.38 of CETA (2016)

1. ...

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 this 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.*

Article 9.23 (2) of CPTPP (2018)

1. ...

2. *A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.*

Article 14.D.7 (2) of the USCMA (2018)

The non-disputing Annex Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

Australia–Chile Free Trade Agreement (2008) Article 10.21 (2)

On written notice to the disputing parties, the non-disputing Party may make a submission to a tribunal on any question of interpretation of this Agreement.

Treaty between the Government of the United States of America and the Government of the Republic of Rwanda Concerning the Encouragement and Reciprocal Protection of Investment (Rwanda - United States of America BIT) (2008) Article 28 (2)

The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Treaty.

Agreement between the Government of Canada and the Government of the Czech Republic for the Promotion and Protection of Investments (Canada–Czech Republic FIPA) (2012) ANNEX B. II (1)

Upon the request of the Tribunal or both disputing parties, the non-disputing Contracting Party may make written submissions to the Tribunal, but only on a question of interpretation of this Agreement. All pleadings submitted to the Tribunal shall be made available to the non-disputing Contracting Party provided that it makes such a submission to the Tribunal. The non-disputing Contracting Party receiving information under this paragraph shall treat the information as if it were a disputing Contracting Party.

Agreement between the Government of Canada and the Government of the United Republic of Tanzania for the Promotion and Reciprocal Protection of Investments (Canada–Tanzania FIPA) (2013) Article 28(2)

The other Party to this Agreement shall have the right to attend any hearings held under Section C. Upon written notice to the disputing parties, the other Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, Article 5. Submission by a non-disputing Party to the treaty

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1. *The arbitral tribunal shall, subject to paragraph 4, allow, or, after consultation with the disputing parties, may invite, submissions on issues of treaty interpretation from a non-disputing Party to the treaty.*
2. *The arbitral tribunal, after consultation with the disputing parties, may allow submissions on further matters within the scope of the dispute from a non-disputing Party to the treaty. In determining whether to allow such submissions, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant, the factors referred to in article 4, paragraph 3, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection.*
3. *The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs 1 or 2.*
4. *The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.*
5. *The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing Party to the treaty.*

2022 ICSID Arbitration Rules, Rule 68 Participation of Non-Disputing Treaty Party

- (1) *The Tribunal shall permit a Party to a treaty that is not a party to the dispute ("non-disputing Treaty Party") to make a submission on the interpretation of the treaty at issue in the dispute and upon which consent to arbitration is based. The Tribunal may, after consulting with the parties, invite a non-disputing Treaty Party to make such a submission.*
- (2) *The Tribunal shall ensure that non-disputing Treaty Party participation does not disrupt the proceeding or unduly burden or unfairly prejudice either party. To this end, the Tribunal may impose conditions on the making of the submission by the non-disputing Treaty Party, including with respect to the format, length, scope or publication of the submission, and the time limit to file the submission.*
- (3) *The Tribunal shall provide the non-disputing Treaty Party with relevant documents filed in the proceeding, unless party objects.*
- (4) *The parties shall have the right to make observations on the submission of the non-disputing Treaty Party.*