

No.	Draft Provision	<u>Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016)</u>	<u>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)</u>	<u>Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) and Annex 14-D</u>	<u>ICSID Convention and ICSID Arbitration Rules</u>	<u>UNCITRAL Arbitration Rules (UARs)</u> <u>UNCITRAL Expedited Arbitration Rules (EARs)</u> <u>UNCITRAL Transparency Rules</u>
Submission of a claim – conditions and limitations						
1.	Consultation and Negotiation	<p>Article 8.19 Consultations</p> <p>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. [...]</p> <p>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</p> <p>4. The investor shall submit to the other Party a request for consultations setting out:</p> <p>(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;</p> <p>(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;</p> <p>(c) the provisions of this Agreement alleged to have been breached;</p> <p>(d) the legal and the factual basis for the claim, including the measures at issue; and</p> <p>(e) the relief sought and the estimated amount of damages claimed.</p> <p>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.</p> <p>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 defense.</p> <p>6. A request for consultations must be submitted within:</p>	<p>Article 9.18 Consultation and Negotiation</p> <p>1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.</p> <p>2. The claimant shall deliver to the respondent a written request for consultations setting out a brief description of facts regarding the measure or measures at issue. 3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.</p> <p>3. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal</p>	<p>Article 14.D.2 Consultation and Negotiation</p> <p>1. In the event of a qualifying investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation, or c mediation.</p> <p>2. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.</p>	[no provision]	[no provision]

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		<p>(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</p> <p>(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.</p> <p>[...]</p> <p>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.</p>				
2.	Mediation	<p>Article 8.20 Mediation</p> <p>1. The disputing parties may at any time agree to have recourse to mediation.</p> <p>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).</p> <p>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.</p>	<p>Article 9.18 Consultation and Negotiation</p> <p>1. In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.</p> <p>[...]</p>	<p>Article 14.D.2 Consultation and Negotiation</p> <p>1. In the event of a qualifying investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures, such as good offices, conciliation, or mediation.</p> <p>[...]</p>	<p>[See ICSID Mediation Rules, available at https://icsid.worldbank.org/rules-regulations/mediation]</p>	<p>[See UNCITRAL Model Provisions on Mediation for International Investment Disputes]</p> <p>Provision 1 (Availability and commencement of mediation)</p> <p>1. “Mediation” means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (the “mediator”) lacking the authority to impose a solution upon the parties to the dispute.</p> <p>2. The parties should consider mediation to settle an international investment dispute amicably.</p>

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		<p>4. The disputing parties shall endeavour to reach a resolution of the dispute within 60 days from the appointment of the mediator.</p> <p>5. If the disputing parties agree to have recourse to mediation, Articles 8.19.6 and 8.19.8 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.</p>				<p>3. The parties may agree to engage in mediation at any time, including after the commencement of any other dispute resolution proceeding.</p> <p>4. A party may invite the other party in writing to engage in mediation in accordance with Provision 2 (the “invitation”).</p> <p>5. The other party should make all reasonable efforts to accept or reject the invitation in writing within 30 days of receipt of the invitation. If the inviting party does not receive an acceptance within 60 days of receipt of the invitation, that party may elect to treat it as a rejection of the invitation.</p> <p>6. The parties shall agree to conduct the mediation in accordance with these Provisions and:</p> <p>(a) The United Nations Commission on International Trade Law (UNCITRAL) Mediation Rules;</p> <p>(b) The International Centre for Settlement of Investment Disputes (ICSID) Mediation Rules;</p> <p>(c) The International Bar Association (IBA) Rules for Investor-State Mediation; or</p> <p>(d) Any other rules.</p> <p>7. Unless provided otherwise in the rules agreed by the parties pursuant to paragraph 6:</p> <p>(a) The mediation shall be deemed to have commenced on the day on which the other party accepts the invitation;</p> <p>(b) The parties shall appoint a mediator within 30 days of the commencement of the mediation. If a mediator is not appointed within that period of time, the parties shall agree on an institution or a person that shall assist them in appointing a mediator; and</p> <p>(c) The mediator shall convene a meeting with the parties within 15 days after the appointment and the parties shall attend that meeting.</p> <p>8. The parties may at any time agree to exclude or vary any of these Provisions.</p> <p>9. Where any of these Provisions is in conflict with a provision of the law</p>

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						<p>applicable to the mediation from which the parties cannot derogate, including any applicable instrument or court order, that provision of the law shall prevail.</p> <p>Provision 2 (Information required in an invitation)</p> <p>The invitation to engage in mediation referred to in Provision 1(4) shall contain at least the following information:</p> <p>(a) The name and contact details of the inviting party and its legal representative(s) and, if the invitation is made by a legal person, the place of its incorporation;</p> <p>(b) Government agencies and entities that have been involved in the matters giving rise to the invitation;</p> <p>(c) A description of the basis of the dispute sufficient to identify the matters giving rise to the invitation; and</p> <p>(d) A description of any prior steps taken to resolve the dispute, including information on any pending claim.</p> <p>Provision 3 (Relationship with arbitration and other proceedings to resolve the dispute)</p> <p>1. Upon the commencement of the mediation, a party shall not initiate or continue any other proceeding to resolve the dispute until the mediation is terminated.</p> <p>2. If the mediation commences while another proceeding to resolve the dispute is in progress, the parties shall request the suspension of that proceeding pursuant to the rules applicable to that proceeding.</p> <p>Provision 4 (Use of information in other proceedings)</p> <p>A party shall not rely in other proceedings on any positions taken, admissions or offers of settlement made, or views expressed by the other party or the mediator during the mediation.</p> <p>Provision 5 (Settlement agreement)</p> <p>The parties should consider whether the settlement agreement resulting from mediation meets the requirements set forth in the United Nations Convention on International Settlement Agreements</p>

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						Resulting from Mediation (New York, 2018).]
3.	Dispute resolution proceedings	<p>Article 8.23 Submission of a claim to the Tribunal</p> <p>1. If a dispute has not been resolved through consultations, a claim may be submitted under this Section by:</p> <p>(a) an investor of a Party on its own behalf; or</p> <p>(b) an investor of a Party, on behalf of a locally established enterprise which it owns or controls directly or indirectly.</p> <p>2. A claim may be submitted under the following rules:</p> <p>(a) the ICSID Convention and Rules of Procedure for Arbitration Proceedings;</p> <p>(b) the ICSID Additional Facility Rules if the conditions for proceedings pursuant to paragraph (a) do not apply;</p> <p>(c) the UNCITRAL Arbitration Rules; or</p> <p>(d) any other rules on agreement of the disputing parties.</p> <p>[...]</p>	<p>Article 9.19 Submission of a Claim to Arbitration</p> <p>[...]</p> <p>4. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:</p> <p>(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;</p> <p>(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;</p> <p>(c) the UNCITRAL Arbitration Rules; or</p> <p>(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.</p> <p>[...]</p>	<p>Article 14.D.3 Submission of a Claim to Arbitration</p> <p>[...]</p> <p>3. The claimant may submit a claim referred to in paragraph 1 under one of the following alternatives:</p> <p>(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;²⁴</p> <p>(b) the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;</p> <p>(c) the UNCITRAL Arbitration Rules; or</p> <p>(d) if the claimant and respondent agree, any other arbitral institution or any other arbitration rules.</p> <p>[...]</p>	[not applicable]	[not applicable]
4.	State-to-State dispute settlement	<p>Chapter 29 Dispute Settlement Section A</p> <p>Article 29.2 Scope</p> <p>Except as otherwise provided in this Agreement, this Chapter applies to any dispute concerning the interpretation or application of the provisions of this Agreement.</p> <p>[...]</p> <p>[Investor claims not covered]</p>	<p>Chapter 28 – Dispute Settlement</p> <p>Article 28.3 Scope</p> <p>1. Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:</p> <p>(a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;</p> <p>(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation under this Agreement; or</p> <p>(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textile and Apparel Goods), Chapter 5 (Customs Administration and Trade</p>	<p>Chapter 31 – Dispute Settlement</p> <p>Article 31.2 Scope</p> <p>Unless otherwise provided for in this Agreement, the dispute settlement provisions of this Chapter apply:</p> <p>(a) with respect to the avoidance or settlement of disputes between the Parties regarding the interpretation or application of this Agreement;</p> <p>(b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation of this Agreement; or</p> <p>(c) when a Party considers that a benefit it could reasonably have expected to accrue to it under Chapter 2 (National Treatment and Market Access for Goods), Chapter 3 (Agriculture), Chapter 4 (Rules of Origin), Chapter 5 (Origin Procedures), Chapter 6 (Textile and Apparel Goods), Chapter 7</p>	[not applicable]	[not applicable]

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			Facilitation), Chapter 8 (Technical Barriers to Trade), Chapter 10 (Cross-Border Trade in Services) or Chapter 15 (Government Procurement), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement. [...] [Investor claims not covered]	(Customs Administration and Trade Facilitation), Chapter 9 (Sanitary and Phytosanitary Measures), Chapter 11 (Technical Barriers to Trade), Chapter 13 (Government Procurement), Chapter 15 (Cross-Border Trade in Services), or Chapter 20 (Intellectual Property Rights), is being nullified or impaired as a result of the application of a measure of another Party that is not inconsistent with this Agreement. [Investor claims not covered]		
5.	Period for amicable settlement	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: [...] (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; [...]	Article 9.19 Submission of a Claim to Arbitration 1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation): (a) the claimant, on its own behalf, may submit to arbitration under this Section a claim: [...] (b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim: [...]	[no provision, but see Article 14.D.3 Submission of a Claim to Arbitration 1. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation: (a) the claimant, on its own behalf, may submit to arbitration under this Annex a claim: [...]]	[not applicable]	[not applicable]
6.	Recourse to Local Remedies	[no provision]	ANNEX 9-J SUBMISSION OF A CLAIM TO ARBITRATION 1. An investor of a Party may not submit to arbitration under Section B (Investor-State Dispute Settlement) a claim that Chile, Mexico, Peru or Viet Nam has breached an obligation under Section A either: (a) on its own behalf under Article 9.19.1(a) (Submission of a Claim to Arbitration); or (b) on behalf of an enterprise of Chile, Mexico, Peru, or Viet Nam, that is a juridical person that the investor owns or controls directly or indirectly under 9.19.1(b) (Submission of a Claim to Arbitration), if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam. 2. For greater certainty, if an investor of a Party elects to submit a claim of	Article 14.D.5 Conditions and Limitations on Consent 1. No claim shall be submitted to arbitration under this Annex unless: (a) the claimant (for claims brought under Article 14.D.3.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 14.D.3.1(b)) first initiated a proceeding before a competent court or administrative tribunal of the respondent with respect to the measures alleged to constitute a breach referred to in Article 14.D.3; (b) the claimant or the enterprise obtained a final decision from a court of last resort of the respondent or 30 months have elapsed from the date the proceeding in subparagraph (a) was initiated; [...]	ICSID Convention Article 26 [...] A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.	[not applicable]

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			the type described in paragraph 1 to a court or administrative tribunal of Chile, Mexico, Peru or Viet Nam, that election shall be definitive and exclusive, and the investor may not thereafter submit the claim to arbitration under Section B (Investor-State Dispute Settlement).			
7.	Waiver of rights to initiate dispute resolution proceeding	<p>Article 8.22 Procedural and other requirements for the submission of a claim to the Tribunal</p> <p>1. An investor may only submit a claim pursuant to Article 8.23 if the investor:</p> <p>[...]</p> <p>(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</p> <p>(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.</p> <p>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).</p> <p>[...]</p> <p>5. The waiver provided pursuant to subparagraph 1(g) or paragraph 2 as applicable shall cease to apply:</p> <p>(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;</p> <p>(b) if the Tribunal dismisses the claim pursuant to Article 8.32 or Article 8.33; or</p> <p>(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.</p>	<p>Article 9.21 Conditions and Limitations on Consent of Each Party</p> <p>[...]</p> <p>1. No claim shall be submitted to arbitration under this Section unless:</p> <p>[...]</p> <p>(b) the notice of arbitration is accompanied:</p> <p>(i) for claims submitted to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), by the claimant’s written waiver; and</p> <p>(ii) for claims submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration), by the claimant’s and the enterprise’s written waivers, of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration).</p> <p>[...]</p>	<p>Article 14.D.5 Conditions and Limitations on Consent</p> <p>1. No claim shall be submitted to arbitration under this Annex unless:</p> <p>...</p> <p>(e) the notice of arbitration is accompanied:</p> <p>(i) for claims submitted to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), by the claimant’s written waiver, and</p> <p>(ii) for claims submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration), by the claimant’s and the enterprise’s written waivers,</p> <p>of any right to initiate or continue before any court or administrative tribunal under the law of an Annex Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 14.D.3 (Submission of a Claim to Arbitration).</p>	<p>ICSID Convention</p> <p>Article 26</p> <p>Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy.</p> <p>[...]</p>	[no provision]
8.	Limitation period	Article 8.19 Consultations	Article 9.21 Conditions and Limitations on Consent of Each Party	Article 14.D.5 Conditions and Limitations on Consent	[no provision]	[not applicable]

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		<p>[...]</p> <p>6. A request for consultations must be submitted within:</p> <p>(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</p> <p>(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.</p> <p>[...]</p> <p>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.</p> <p>[...]</p> <p>Article 8.22 Procedural and other requirements for the submission of a claim to the Tribunal</p> <p>1. An investor may only submit a claim pursuant to Article 8.23 if the investor:</p> <p>[...]</p> <p>(b) allows at least 180 days to elapse from the submission of the request for consultations [...].</p>	<p>1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.19.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.19.1(a)) or the enterprise (for claims brought under Article 9.19.1(b)) has incurred loss or damage.</p> <p>[...]</p>	<p>1. No claim shall be submitted to arbitration under this Annex unless:</p> <p>[...]</p> <p>(c) no more than four years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 14.D.3.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 14.D.3.1(a)) or the enterprise (for claims brought under Article 14.D.3.1(b)) has incurred loss or damage;</p> <p>[...]</p>		
9.	Denial of benefits	Article 8.16 Denial of Benefits	Article 9.15 Denial of Benefits	Article 14.14 Denial of Benefits	[not applicable]	[not applicable]

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		<p>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:</p> <p>(a) an investor of a third country owns or controls the enterprise; and</p> <p>(b) the denying Party adopts or maintains a measure with respect to the third country that:</p> <p>(i) relates to the maintenance of international peace and security; and</p> <p>(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.</p> <p>Article 8.1 Definitions</p> <p>For the purposes of this Chapter:</p> <p>[...]</p> <p>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;</p> <p>For the purposes of this definition, an enterprise of a Party is:</p> <p>(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</p> <p>(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);</p> <p>[...]</p> <p>Article 8.18 Scope</p> <p>[...]</p> <p>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.</p> <p>[...]</p>	<p>1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:</p> <p>(a) is owned or controlled by a person of a non-Party or of the denying Party; and</p> <p>(b) has no substantial business activities in the territory of any Party other than the denying Party.</p> <p>2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.</p>	<p>1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if the enterprise:</p> <p>(a) is owned or controlled by a person of a non-Party or of the denying Party; and</p> <p>(b) has no substantial business activities in the territory of any Party other than the denying Party.</p> <p>2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of that other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.</p>		

No.	Draft Provision	<u>Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016)</u>	<u>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)</u>	<u>Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) and Annex 14-D</u>	<u>ICSID Convention and ICSID Arbitration Rules</u>	<u>UNCITRAL Arbitration Rules (UARs)</u> <u>UNCITRAL Expedited Arbitration Rules (EARs)</u> <u>UNCITRAL Transparency Rules</u>
10.	Shareholders claims	<p>Article 8.23 Submission of a claim to the Tribunal</p> <p>1. If a dispute has not been resolved through consultations, a claim may be submitted under this Section by:</p> <p>(a) an investor of a Party on its own behalf; or</p> <p>(b) an investor of a Party, on behalf of a locally established enterprise which it owns or controls directly or indirectly.</p> <p>[...]</p> <p>Article 8.39 Final award</p> <p>[...]</p> <p>2. Subject to paragraphs 1 and 5, if a claim is made under Article 8.23.1(b):</p> <p>(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the locally established enterprise;</p> <p>(b) an award of restitution of property shall provide that restitution be made to the locally established enterprise;</p> <p>(c) an award of costs in favour of the investor shall provide that it is to be made to the investor; and</p> <p>(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.</p> <p>[...]</p>	<p>Article 9.19 Submission of a Claim to Arbitration</p> <p>1. If an investment dispute has not been resolved within six months of the receipt by the respondent of a written request for consultations pursuant to Article 9.18.2 (Consultation and Negotiation):</p> <p>[...]</p> <p>(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim:</p> <p>(i) that the respondent has breached:</p> <p>(A) an obligation under Section A;</p> <p>(B) an investment authorisation; or</p> <p>(C) an investment agreement; and</p> <p>(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach,</p> <p>provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.</p> <p>Article 9.29 Awards</p> <p>[...]</p> <p>5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:</p> <p>(a) an award of restitution of property shall provide that restitution be made to the enterprise;</p> <p>(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and</p> <p>(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.</p>	<p>Article 14.D.3 Submission of a Claim to Arbitration</p> <p>1. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation:</p> <p>[...]</p> <p>(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Annex a claim:</p> <p>(i) that the respondent has breached:</p> <p>(A) Article 14.4 (National Treatment) or Article 14.5 (Most-Favored-Nation Treatment), except with respect to the establishment or acquisition of an investment, or</p> <p>(B) Article 14.8 (Expropriation and Compensation), except with respect to indirect expropriation, and</p> <p>(ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.</p> <p>[...]</p> <p>Article 14.D.13 Awards</p> <p>[...]</p> <p>5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration) and an award is made in favor of the enterprise:</p> <p>(a) an award of restitution of property shall provide that restitution be made to the enterprise;</p> <p>(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and</p> <p>(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.</p> <p>[...]</p>	[not applicable]	[not applicable]

No.	Draft Provision	<u>Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016)</u>	<u>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)</u>	<u>Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) and Annex 14-D</u>	<u>ICSID Convention and ICSID Arbitration Rules</u>	<u>UNCITRAL Arbitration Rules (UARs)</u> <u>UNCITRAL Expedited Arbitration Rules (EARs)</u> <u>UNCITRAL Transparency Rules</u>
			[...]			
11.	Counterclaim	<p>Article 8.40 Indemnification or other compensation</p> <p>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 [...].</p>	<p>Article 9.19 Submission of a Claim to Arbitration</p> <p>[...]</p> <p>2. When the claimant submits a claim pursuant to paragraph 1(a)(i)(B), 1(a)(i)(C), 1(b)(i)(B) or 1(b)(i)(C), the respondent may make a counterclaim in connection with the factual and legal basis of the claim or rely on a claim for the purpose of a set off against the claimant.</p> <p>[...]</p> <p>[See also Article 9.17 Corporate Social Responsibility</p> <p>The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognised standards, guidelines and principles of corporate social responsibility that have been endorsed or are supported by that Party.]</p>	<p>Article 14.D.7 Conduct of the Arbitration</p> <p>[...]</p> <p>8. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation [...].</p> <p>[See also Article 14.17 Corporate Social Responsibility</p> <p>The Parties reaffirm the importance of each Party encouraging enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate into their internal policies those internationally recognized standards, guidelines, and principles of corporate social responsibility that have been endorsed or are supported by that Party, which may include the OECD Guidelines for Multinational Enterprises. These standards, guidelines, and principles may address areas such as labor, environment, gender equality, human rights, indigenous and aboriginal peoples’ rights, and corruption.]</p>	<p>ICSID Arbitration Rules</p> <p>Rule 48 Ancillary Claims</p> <p>(1) Unless the parties agree otherwise, a party may file an incidental or additional claim or a counterclaim (“ancillary claim”) arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and the jurisdiction of the Centre.</p> <p>(2) An incidental or additional claim shall be presented no later than in the reply, and a counterclaim shall be presented no later than in the counter-memorial, unless the Tribunal decides otherwise.</p> <p>(3) The Tribunal shall fix time limits for submissions on the ancillary claim.</p>	<p>UARs</p> <p>Article 21 Statement of defence</p> <p>[...]</p> <p>2. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.</p> <p>[...]</p> <p>EARs</p> <p>Counterclaims or claims for the purpose of set-off</p> <p>Article 12</p> <p>1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.</p> <p>2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.</p>
12.	Right to regulate	<p>[...]</p> <p>RECOGNISING that the provisions of this Agreement preserve the right of the Parties to regulate within their territories and the Parties’ flexibility to achieve legitimate policy objectives, such as public health, safety, environment, public morals and the promotion and protection of cultural diversity;</p> <p>[...]</p> <p>Article 8.2 Scope</p> <p>[...]</p> <p>3. For the European Union, Sections B and C do not apply to a measure with respect to audio-visual services. For Canada, Sections</p>	<p>Article 9.2 Scope</p> <p>1. This Chapter shall apply to measures adopted or maintained by a Party relating to:</p> <p>[...]</p> <p>(c) with respect to Article 9.10 (Performance Requirements) and Article 9.16 (Investment and Environmental, Health and other Regulatory Objectives), all investments in the territory of that Party.</p> <p>Article 9.16 Investment and Environmental, Health and other Regulatory Objectives</p> <p>Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate</p>	<p>Article 14.2 Scope</p> <p>1. This Chapter applies to measures adopted or maintained by a Party relating to:</p> <p>[...]</p> <p>(c) with respect to Article 14.10 (Performance Requirements) and Article 14.16 (Investment and Environmental, Health, Safety, and other Regulatory Objectives), all investments in the territory of that Party.</p> <p>Article 14.16 Investment and Environmental, Health, Safety, and other Regulatory Objectives</p> <p>Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate</p>	[not applicable]	[not applicable]

No.	Draft Provision	<u>Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016)</u>	<u>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)</u>	<u>Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) and Annex 14-D</u>	<u>ICSID Convention and ICSID Arbitration Rules</u>	<u>UNCITRAL Arbitration Rules (UARs)</u> <u>UNCITRAL Expedited Arbitration Rules (EARs)</u> <u>UNCITRAL Transparency Rules</u>
		<p>B and C do not apply to a measure with respect to cultural industries.</p> <p>[...]</p> <p>Article 8.9 Investment and regulatory measures</p> <p>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.</p> <p>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.</p> <p>3. For greater certainty, a Party's decision not to issue, renew or maintain a subsidy:</p> <p>(a) in the absence of any specific commitment under law or contract to issue, renew, or maintain that subsidy; or</p> <p>(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.</p> <p>4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy (9) 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 authority (10), or requiring that Party to compensate the investor therefor.</p>	<p>to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.</p> <p>ANNEX 9-B</p> <p>EXPROPRIATION</p> <p>The Parties confirm their shared understanding that:</p> <p>[...]</p> <p>3. The second situation addressed by Article 9.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.</p> <p>[...]</p> <p>(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.</p>	<p>to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health, safety, or other regulatory objectives.</p> <p>ANNEX 14-B</p> <p>EXPROPRIATION</p> <p>The Parties confirm their shared understanding that:</p> <p>3. The second situation addressed by Article 14.8.1 (Expropriation and Compensation) is indirect expropriation, in which an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.</p> <p>[...]</p> <p>(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.</p> <p>[...]</p>		
Conduct of proceedings						
13.	Evidence	[no provision]	<p>Article 9.23 Conduct of the Arbitration</p> <p>[...]</p> <p>7. For greater certainty, if an investor of a Party submits a claim under this Section,</p>	<p>Article 14.D.7 Conduct of the Arbitration</p> <p>[...]</p> <p>7. For greater certainty, if an investor of an Annex Party submits a claim under this Annex,</p>	<p><u>ICSID Convention</u></p> <p>Article 43</p>	<p><u>UARs</u></p> <p>Article 27 Evidence</p>

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			<p>including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.</p> <p>[...]</p>	<p>the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.</p> <p>Article 14.D.13 Awards</p> <p>[...]</p> <p>2. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), it may recover only for loss or damage that is established on the basis of satisfactory evidence and that is not inherently speculative.</p> <p>[...]</p>	<p>Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,</p> <ul style="list-style-type: none"> (a) call upon the parties to produce documents or other evidence, and (b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate. <p>ICSID Arbitration Rules</p> <p>Rule 36 Evidence: General Principles</p> <p>(1) The Tribunal shall determine the admissibility and probative value of the evidence adduced.</p> <p>(2) Each party has the burden of proving the facts relied on to support its claim or defense.</p> <p>(3) The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding.</p> <p>Rule 37 Disputes Arising from Requests for Production of Documents</p> <p>In deciding a dispute arising out of a party's objection to the other party's request for production of documents, the Tribunal shall consider all relevant circumstances, including:</p> <ul style="list-style-type: none"> (a) the scope and timeliness of the request; (b) the relevance and materiality of the documents requested; (c) the burden of production; and (d) the basis of the objection. <p>Rule 38 Witnesses and Experts</p> <p>(1) A party intending to rely on evidence given by a witness shall file a written statement by that witness. The statement shall identify the witness, contain the evidence of the witness, and be signed and dated.</p> <p>(2) A witness who has filed a written statement may be called for examination at a hearing.</p>	<p>1. Each party shall have the burden of proving the facts relied on to support its claim or defence.</p> <p>2. Witnesses, including expert witnesses, who are resented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.</p> <p>3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.</p> <p>4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.</p> <p>Article 30 Default</p> <p>[...]</p> <p>3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.</p> <p>EARs</p> <p>Article 15 Evidence</p> <p>1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.</p> <p>2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.</p> <p>3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.</p>

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					<p>(3) The Tribunal shall determine the manner in which the examination is conducted.</p> <p>(4) A witness shall be examined before the Tribunal, by the parties, and under the control of the President. Any member of the Tribunal may put questions to the witness.</p> <p>(5) A witness shall be examined in person unless the Tribunal determines that another means of examination is appropriate in the circumstances.</p> <p>(6) Each witness shall make the following declaration before giving evidence: "I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth."</p> <p>(7) Paragraphs (1)-(5) shall apply, with necessary modifications, to evidence given by an expert.</p> <p>(8) Each expert shall make the following declaration before giving evidence: "I solemnly declare upon my honor and conscience that my statement will be in accordance with my sincere belief."</p>	
14.	Bifurcation	[no provision]	[no provision]	[no provision]	<p><u>ICSID Arbitration Rules</u></p> <p>Rule 42 Bifurcation</p> <p>(1) A party may request that a question be addressed in a separate phase of the proceeding ("request for bifurcation").</p> <p>(2) If a request for bifurcation relates to a preliminary objection, Rule 44 shall apply.</p> <p>(3) The following procedure shall apply to a request for bifurcation other than a request referred to in Rule 44:</p> <p>(a) the request for bifurcation shall be filed as soon as possible;</p> <p>(b) the request for bifurcation shall state the questions to be bifurcated;</p> <p>(c) the Tribunal shall fix time limits for submissions on the request for bifurcation;</p> <p>(d) the Tribunal shall issue its decision on the request for bifurcation within 30 days</p>	[no provision]

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					<p>after the last submission on the request; and</p> <p>(e) the Tribunal shall fix any time limit necessary for the further conduct of the proceeding.</p> <p>(4) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:</p> <p>(a) bifurcation would materially reduce the time and cost of the proceeding;</p> <p>(b) determination of the questions to be bifurcated would dispose of all or a substantial portion of the dispute; and</p> <p>(c) the questions to be addressed in separate phases of the proceeding are so intertwined as to make bifurcation impractical.</p> <p>(5) If the Tribunal orders bifurcation pursuant to this Rule, it shall suspend the proceeding with respect to any questions to be addressed at a later phase, unless the parties agree otherwise.</p> <p>(6) The Tribunal may at any time on its own initiative decide whether a question should be addressed in a separate phase of the proceeding.</p> <p>Rule 43 Preliminary Objections</p> <p>(1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal ("preliminary objection").</p> <p>(2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible.</p> <p>(3) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.</p> <p>(4) The Tribunal may address a preliminary objection in a separate phase of the proceeding or join the objection to the merits. It may do so upon request of a party pursuant to Rule 44 or at any time on its own initiative, in accordance with the procedure in Rule 44(2)-(4).</p>	

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					<p>Rule 44 Preliminary Objections with a Request for Bifurcation</p> <p>(1) The following procedure shall apply with respect to a request for bifurcation relating to a preliminary objection:</p> <p>(a) unless the parties agree otherwise, the request for bifurcation shall be filed:</p> <p>(i) within 45 days after filing the memorial on the merits;</p> <p>(ii) within 45 days after filing the written submission containing the ancillary claim, if the objection relates to the ancillary claim; or</p> <p>(iii) as soon as possible after the facts on which the preliminary objection is based become known to a party, if those facts were unknown to that party on the dates referred to in paragraph (1)(a)(i) and (ii);</p> <p>(b) the request for bifurcation shall state the preliminary objection to which it relates;</p> <p>(c) unless the parties agree otherwise, the proceeding on the merits shall be suspended until the Tribunal decides whether to bifurcate;</p> <p>(d) the Tribunal shall fix time limits for submissions on the request for bifurcation; and</p> <p>(e) the Tribunal shall issue its decision on a request for bifurcation within 30 days after the last submission on the request.</p> <p>(2) In determining whether to bifurcate, the Tribunal shall consider all relevant circumstances, including whether:</p> <p>(a) bifurcation would materially reduce the time and cost of the proceeding;</p> <p>(b) determination of the preliminary objection would dispose of all or a substantial portion of the dispute; and</p> <p>(c) the preliminary objection and the merits are so intertwined as to make bifurcation impractical.</p> <p>(3) If the Tribunal decides to address the preliminary objection in a separate phase of the proceeding, it shall:</p>	

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					<p>(a) suspend the proceeding on the merits, unless the parties agree otherwise;</p> <p>(b) fix time limits for submissions on the preliminary objection;</p> <p>(c) render its decision or Award on the preliminary objection within 180 days after the last submission, in accordance with Rule 58(1)(b); and</p> <p>(d) fix any time limit necessary for the further conduct of the proceeding if the Tribunal does not render an Award.</p> <p>(4) If the Tribunal decides to join the preliminary objection to the merits, it shall:</p> <p>(a) fix time limits for submissions on the preliminary objection;</p> <p>(b) modify any time limits for submissions on the merits, as required; and</p> <p>(c) render its Award within 240 days after the last submission in the proceeding, in accordance with Rule 58(1)(c).</p>	
15.	Consolidation of Proceedings	<p>Article 8.43 Consolidation</p> <p>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”).</p> <p>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.</p> <p>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</p>	<p>Article 9.28 Consolidation</p> <p>1. If two or more claims have been submitted separately to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.</p> <p>2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:</p> <p>(a) the names and addresses of all the disputing parties sought to be covered by the order;</p> <p>(b) the nature of the order sought; and</p> <p>(c) the grounds on which the order is sought.</p> <p>3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is</p>	<p>Article 14.D.12 Consolidation</p> <p>1. If two or more claims have been submitted separately to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.</p> <p>2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:</p> <p>a) the names and addresses of all the disputing parties sought to be covered by the order;</p> <p>(b) the nature of the order sought; and (c) the grounds on which the order is sought. 3. Unless the Secretary-General finds within a period of 30 days after the date of receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.</p>	<p>ICSID Arbitration Rules</p> <p>Rule 46 Consolidation or Coordination of Arbitrations</p> <p>(1) Parties to two or more pending arbitrations administered by the Centre may agree to consolidate or coordinate these arbitrations.</p> <p>(2) Consolidation joins all aspects of the arbitrations sought to be consolidated and results in one Award. To be consolidated pursuant to this Rule, the arbitrations shall have been registered in accordance with the Convention and shall involve the same Contracting State (or constituent subdivision or agency of the Contracting State).</p> <p>(3) Coordination aligns specific procedural aspects of two or more pending arbitrations, but the arbitrations remain separate proceedings and result in separate Awards.</p> <p>(4) The parties referred to in paragraph (1) shall jointly provide the Secretary-General with proposed terms for the conduct of the consolidated or</p>	[no provision]

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		<p>for the establishment of a separate division of the Tribunal and a consolidation order pursuant to this Article.</p> <p>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:</p> <p>(a) the names and addresses of the disputing parties sought to be covered by the order;</p> <p>(b) the claims, or parts thereof, sought to be covered by the order; and</p> <p>(c) the grounds for the order sought.</p> <p>5. A request for consolidation involving more than one respondent shall require the agreement of all such respondents.</p> <p>6. The rules applicable to the proceedings under this Article are determined as follows:</p> <p>(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;</p> <p>(b) if the claims for which a consolidation order is sought have not been submitted to dispute settlement under the same rules:</p> <p>(i) the investors may collectively agree on the rules pursuant to Article 8.23.2; or</p> <p>(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.</p> <p>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.</p> <p>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</p>	<p>manifestly unfounded, a tribunal shall be established under this Article.</p> <p>4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:</p> <p>(a) one arbitrator appointed by agreement of the claimants;</p> <p>(b) one arbitrator appointed by the respondent; and</p> <p>(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of a Party of any claimant.</p> <p>5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.</p> <p>6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:</p> <p>(a) assume jurisdiction over, and hear and determine together, all or part of the claims;</p> <p>(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or</p> <p>(c) instruct a tribunal previously established under Article 9.22 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:</p> <p>(i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and</p>	<p>4. Unless all the disputing parties sought to be covered by the order agree otherwise, a tribunal established under this Article shall comprise three arbitrators:</p> <p>(a) one arbitrator appointed by agreement of the claimants;</p> <p>(b) one arbitrator appointed by the respondent; and</p> <p>(c) the presiding arbitrator appointed by the Secretary-General, provided that the presiding arbitrator is not a national of the respondent or of the Party of the claimants.</p> <p>5. If, within a period of 60 days after the date when the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on request of any disputing party sought to be covered by the order, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.</p> <p>6. If a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:</p> <p>(a) assume jurisdiction over, and hear and determine together, all or part of the claims;</p> <p>(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or</p> <p>(c) instruct a tribunal previously established under Article 14.D.6 (Selection of Arbitrators) to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that:</p> <p>(i) that tribunal, on request of a claimant that was not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5, and</p> <p>(ii) that tribunal shall decide whether a prior hearing shall be repeated.</p>	<p>coordinated arbitrations and consult with the Secretary-General to ensure that the proposed terms are capable of being implemented.</p> <p>(5) After the consultation referred to in paragraph (4), the Secretary-General shall communicate the proposed terms agreed by the parties to the Tribunals constituted in the arbitrations. Such Tribunals shall make any order or decision required to implement these terms</p>	

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		<p>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.</p> <p>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</p>	<p>(ii) that tribunal shall decide whether a prior hearing shall be repeated. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 9.19.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph</p> <p>6. The request shall specify:</p> <p>(a) the name and address of the claimant;</p> <p>(b) the nature of the order sought; and</p> <p>(c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.</p> <p>8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.</p> <p>9. A tribunal established under Article 9.22 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.</p> <p>10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 9.22 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.</p>	<p>7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:</p> <p>(a) the name and address of the claimant;</p> <p>(b) the nature of the order sought; and</p> <p>(c) the grounds on which the order is sought. The claimant shall deliver a copy of its request to the Secretary-General.</p> <p>8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Annex.</p> <p>9. A tribunal established under Article 14.D.6 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.</p> <p>10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 14.D.6 (Selection of Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.</p>		
16.	Interim/Provisional measures	<p>Article 8.34 Interim measures of protection</p> <p>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.</p>	<p>Article 9.23 Conduct of the Arbitration</p> <p>[...]</p> <p>9. 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 may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 9.19 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.</p>	<p>Article 14.D.7 Conduct of the Arbitration</p> <p>[...]</p> <p>9. 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 may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in Article 14.D.3 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.</p>	<p>ICSID Convention</p> <p>Article 47</p> <p>Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party.</p> <p>ICSID Arbitration Rules</p> <p>Rule 47 Provisional Measures</p> <p>(1) A party may at any time request that the Tribunal recommend provisional measures to preserve that party's rights, including measures to:</p>	<p>UARs</p> <p>Article 26</p> <p>1. The arbitral tribunal may, at the request of a party, grant interim measures.</p> <p>2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:</p> <p>(a) Maintain or restore the status quo pending determination of the dispute;</p>

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			[...]	[...]	<p>(a) prevent action that is likely to cause current or imminent harm to that party or prejudice to the arbitral process;</p> <p>(b) maintain or restore the status quo pending determination of the dispute; or</p> <p>(c) preserve evidence that may be relevant to the resolution of the dispute.</p> <p>(2) The following procedure shall apply:</p> <p>(a) the request shall specify the rights to be preserved, the measures requested, and the circumstances that require such measures;</p> <p>(b) the Tribunal shall fix time limits for submissions on the request;</p> <p>(c) if a party requests provisional measures before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and</p> <p>(d) the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.</p> <p>(3) In deciding whether to recommend provisional measures, the Tribunal shall consider all relevant circumstances, including:</p> <p>(a) whether the measures are urgent and necessary; and</p> <p>(b) the effect that the measures may have on each party.</p> <p>(4) The Tribunal may recommend provisional measures on its own initiative. The Tribunal may also recommend provisional measures different from those requested by a party.</p> <p>(5) A party shall promptly disclose any material change in the circumstances upon which the Tribunal recommended provisional measures.</p> <p>(6) The Tribunal may at any time modify or revoke the provisional measures, on its own initiative or upon a party's request.</p> <p>(7) A party may request any judicial or other authority to order provisional</p>	<p>(b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or</p> <p>(ii) prejudice to the arbitral process itself;</p> <p>(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or</p> <p>(d) Preserve evidence that may be relevant and material to the resolution of the dispute.</p> <p>3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:</p> <p>(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and</p> <p>(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.</p> <p>4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.</p> <p>5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.</p> <p>6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.</p> <p>7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.</p> <p>8. The party requesting an interim measure may be liable for any costs and damages</p>

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					measures if such recourse is permitted by the instrument recording the parties' consent to arbitration.	caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings. 9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.
17.	Code of Conduct	<p>Article 8.30 Ethics</p> <p>1. The Members of the Tribunal shall be independent. They shall not be affiliated with any government. 12 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.</p> <p>2. If a disputing party considers that a Member of the Tribunal has a conflict of interest, it may invite the President of the International Court of Justice to issue a decision on the challenge to the appointment of such Member. Any notice of challenge shall be sent to the President of the International Court of Justice 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.</p> <p>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 may, after</p>	<p>Article 9.22 Selection of Arbitrators</p> <p>[...]</p> <p>6. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 28 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.</p> <p>Article 28.9 Composition of Panels</p> <p>[...]</p> <p>10. If a disputing Party believes that a panellist is in violation of the code of conduct referred to in Article 28.10.1(d) (Qualifications of Panellists), the disputing Parties shall consult and, if they agree, the panellist shall be removed and a new panellist shall be selected in accordance with this Article.</p> <p>Article 28.10 Qualifications of Panellists</p> <p>1. All panellists shall:</p> <p>(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements;</p> <p>(b) be chosen strictly on the basis of objectivity, reliability and sound judgment;</p>	<p>Article 14.D.6 Selection of Arbitrators</p> <p>5. Arbitrators appointed to a tribunal for claims submitted under Article 14.D.3.1 shall: (a) comply with the International Bar Association Guidelines on Conflicts of Interest in International Arbitration, including guidelines regarding direct or indirect conflicts of interest, or any supplemental guidelines or rules adopted by the Annex Parties; (b) not take instructions from any organization or government regarding the dispute; and 14-D-7 (c) not, for the duration of the proceedings, act as counsel or as party-appointed expert or witness in any pending arbitration under the annexes to this Chapter. 6. Challenges to arbitrators shall be governed by the procedures in the UNCITRAL Arbitration Rules.</p>	[no provision]	<p>UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution and accompanying commentary</p> <p>UNCITRAL Code of Conduct for Judges in International Investment Dispute Resolution with and accompanying commentary</p>

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		<p>receiving submissions from the disputing parties and after providing the Member of the Tribunal an opportunity to submit any observations, issue a decision on the challenge. The President of the International Court of Justice shall endeavour to issue the decision and to notify the disputing parties and the other Members of the division within 45 days of receipt of the notice of challenge. A vacancy resulting from the disqualification or resignation of a Member of the Tribunal shall be filled promptly.</p> <p>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.</p>	<p>(c) be independent of, and not affiliated with or take instructions from, any Party; and</p> <p>(d) comply with the code of conduct in the Rules of Procedure.</p>			
18.	Transparency	<p>Article 8.36 Transparency of Proceedings</p> <p>1. The UNCITRAL Transparency Rules, as modified by this Chapter, shall apply in connection with proceedings under this Section.</p> <p>2. The request for consultations, the notice requesting a 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.</p> <p>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.</p> <p>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</p>	<p>Article 9.23 Conduct of the Arbitration</p> <p>[...]</p> <p>2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.</p> <p>3. After consultation with the disputing parties, the tribunal may accept and consider written <i>amicus curiae</i> submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.</p>	<p>Article 14.D.7 Conduct of the Arbitration</p> <p>[...]</p> <p>2. The non-disputing Annex Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.</p> <p>3. After consultation with the disputing parties, the tribunal may accept and consider written <i>amicus curiae</i> submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or indirect, with any disputing party; and identify any person, government, or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.</p>	<p>ICSID Arbitration Rules</p> <p>Rule 62 Publication of Awards and Decisions on Annulment</p> <p>(1) With consent of the parties, the Centre shall publish every Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment.</p> <p>(2) The parties may consent to publication of the full text or to a jointly redacted text of the documents referred to in paragraph (1).</p> <p>(3) Consent to publish the documents referred to in paragraph (1) shall be deemed to have been given if no party objects in writing to such publication within 60 days after the dispatch of the document.</p> <p>(4) Absent consent of the parties pursuant to paragraphs (1)-(3), the Centre shall publish excerpts of the documents referred to in paragraph (1). The following procedure shall apply to publication of excerpts:</p> <p>(a) the Secretary-General shall propose excerpts to the parties within 60 days after the date upon which either party objects to publication or notifies the</p>	<p>UARs</p> <p>Article 1 Scope of application</p> <p>[...]</p> <p>4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration “Rules on Transparency”), subject to article 1 of the Rules on Transparency.</p> <p>[...]</p> <p>UNCITRAL Transparency Rules</p> <p>Article 1. Scope of application</p> <p>Article 2. Publication of information at the commencement of arbitral proceedings</p> <p>Article 3. Publication of documents</p> <p>Article 4. Submission by a third person</p> <p>Article 5. Submission by a non-disputing Party to the treaty</p> <p>Article 6. Hearings</p> <p>Article 7. Exceptions to transparency</p> <p>Article 8. Repository of published information</p>

No.	Draft Provision	<u>Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016)</u>	<u>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)</u>	<u>Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) and Annex 14-D</u>	<u>ICSID Convention and ICSID Arbitration Rules</u>	<u>UNCITRAL Arbitration Rules (UARs)</u> <u>UNCITRAL Expedited Arbitration Rules (EARs)</u> <u>UNCITRAL Transparency Rules</u>
		<p>be made publicly available by communication to the repository.</p> <p>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.</p> <p>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.</p> <p>Article 8.37 Information sharing</p> <p>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.</p> <p>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 subnational 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</p> <p>Article 8.38 Non-disputing Party</p> <p>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:</p> <p>(a) a request for consultations, a notice requesting a determination of the respondent, a notice of determination of the</p>	<p>[...]</p> <p>11. In the event that an appellate mechanism for reviewing awards rendered by investor-State dispute settlement tribunals is developed in the future under other institutional arrangements, the Parties shall consider whether awards rendered under Article 9.29 (Awards) should be subject to that appellate mechanism. The Parties shall strive to ensure that any such appellate mechanism they consider adopting provides for transparency of proceedings similar to the transparency provisions established in Article 9.24 (Transparency of Arbitral Proceedings).</p> <p>Article 9.24 Transparency of Arbitral Proceedings</p> <p>1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public:</p> <p>(a) the notice of intent;</p> <p>(b) the notice of arbitration;</p> <p>(c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.23.2 (Conduct of the Arbitration) and Article 9.23.3 and Article 9.28 (Consolidation);</p> <p>(d) minutes or transcripts of hearings of the tribunal, if available; and</p> <p>(e) orders, awards and decisions of the tribunal.</p> <p>2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.</p> <p>3. Nothing in this Section, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the</p>	<p>Article 14.D.8 Transparency of Arbitral Proceedings</p> <p>1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Annex Party and make them available to the public:</p> <p>(a) the notice of intent;</p> <p>(b) the notice of arbitration;</p> <p>(c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 14.D.7.2 and 14.D.7.3 (Conduct of the Arbitration), and Article 14.D.12 (Consolidation);</p> <p>(d) minutes or transcripts of hearings of the tribunal, if available; and</p> <p>(e) orders, awards, and decisions of the tribunal.</p> <p>2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.</p> <p>3. Nothing in this Annex, including paragraph 4(d), requires a respondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 32.2 (Essential Security) or Article 32.7 (Disclosure of Information).²⁶</p> <p>4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:</p> <p>(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to the non-disputing Annex Party or to the public any protected information if the disputing party that provided the information</p>	<p>Secretary-General that the parties disagree on redaction of the document;</p> <p>(b) the parties may send comments on the proposed excerpts to the Secretary-General within 60 days after their receipt, including whether any information in the proposed excerpts is confidential or protected as defined in Rule 66; and</p> <p>(c) the Secretary-General shall consider any comments received on the proposed excerpts and publish such excerpts within 30 days after the expiry of the time limit referred to in paragraph (4)(b).</p> <p>Rule 63 Publication of Orders and Decisions</p> <p>(1) The Centre shall publish orders and decisions, with any redactions agreed to by the parties and jointly notified to the Secretary-General within 60 days after the order or decision is issued.</p> <p>(2) If either party notifies the Secretary-General within the 60-day period referred to in paragraph (1) that the parties disagree on any proposed redactions, the Secretary-General shall refer the order or decision to the Tribunal to decide any disputed redactions. The Centre shall publish the order or decision in accordance with the decision of the Tribunal.</p> <p>(3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.</p> <p>Rule 64 Publication of Documents Filed in the Proceeding</p> <p>(1) With consent of the parties, the Centre shall publish any written submission or supporting document filed by a party in the proceeding, with any redactions agreed to by the parties and jointly notified to the Secretary-General.</p> <p>(2) Absent consent of the parties pursuant to paragraph (1), a party may refer to the Tribunal a dispute regarding the redaction of a written submission, excluding supporting documents, that it filed in the proceeding. The Tribunal shall decide any disputed redactions and</p>	<p>[...]</p>

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		<p>respondent, a claim submitted pursuant to Article 8.23, a request for consolidation, and any other documents that are appended to such documents;</p> <p>(b) on request:</p> <p>(i) pleadings, memorials, briefs, requests and other submissions made to the Tribunal by a disputing party;</p> <p>(ii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;</p> <p>(iii) minutes or transcripts of hearings of the Tribunal, if available; and</p> <p>(iv) orders, awards and decisions of the Tribunal; and</p> <p>(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.</p> <p>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.</p> <p>3. The Tribunal shall not draw any inference from the absence of a submission pursuant to paragraph 2.</p> <p>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.</p>	<p>hearing, protected information, or to furnish or allow access to information that it may withhold in accordance with Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information).³³</p> <p>4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:</p> <p>(a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information if the disputing party that provided the information clearly designates it in accordance with subparagraph (b);</p> <p>(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;</p> <p>(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and</p> <p>(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:</p> <p>(i) withdraw all or part of its submission containing that information; or</p> <p>(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).</p> <p>In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.</p> <p>5. Nothing in this Section requires a respondent to withhold from the public</p>	<p>clearly designates it in accordance with subparagraph (b);</p> <p>(b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information according to any schedule set by the tribunal;</p> <p>(c) a disputing party shall, according to any schedule set by the tribunal, submit a redacted version of the document that does not contain the protected information. Only the redacted version shall be disclosed in accordance with paragraph 1; and</p> <p>(d) the tribunal, subject to paragraph 3, shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that the information was not properly designated, the disputing party that submitted the information may:</p> <p>(i) withdraw all or part of its submission containing that information, or</p> <p>(ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c).</p> <p>In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under subparagraph (d)(i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under subparagraph (d)(ii) of the disputing party that first submitted the information.</p> <p>5. Nothing in this Annex requires a respondent to withhold from the public information required to be disclosed by its laws. The respondent should endeavor to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.</p>	<p>the Centre shall publish the written submission in accordance with the decision of the Tribunal.</p> <p>(3) In deciding a dispute pursuant to paragraph (2), the Tribunal shall ensure that publication does not disclose any confidential or protected information as defined in Rule 66.</p> <p>Rule 65 Observation of Hearings</p> <p>(1) The Tribunal shall allow persons in addition to the parties, their representatives, witnesses and experts during their testimony, and persons assisting the Tribunal, to observe hearings, unless either party objects.</p> <p>(2) The Tribunal shall establish procedures to prevent the disclosure of confidential or protected information as defined in Rule 66 to persons observing the hearings.</p> <p>(3) Upon request of a party, the Centre shall publish recordings or transcripts of hearings, unless the other party objects.</p> <p>Rule 66 Confidential or Protected Information</p> <p>For the purposes of Rules 62-65, confidential or protected information is information which is protected from public disclosure:</p> <p>(a) by the instrument of consent to arbitration;</p> <p>(b) by the applicable law or applicable rules;</p> <p>(c) in the case of information of a State party to the dispute, by the law of that State;</p> <p>(d) in accordance with the orders and decisions of the Tribunal;</p> <p>(e) by agreement of the parties;</p> <p>(f) because it constitutes confidential business information or protected personal information;</p> <p>(g) because public disclosure would impede law enforcement;</p>	

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			information required to be disclosed by its laws. The respondent should endeavour to apply those laws in a manner sensitive to protecting from disclosure information that has been designated as protected information.		(h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests; (i) because public disclosure would aggravate the dispute between the parties; or (j) because public disclosure would undermine the integrity of the arbitral process.	
19.	Early dismissal See A/CN.9/WG.III/WP.192 - Security for cost and frivolous claims and A/CN.9/WG.III/WP.219 - Draft provisions on procedural reform	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. 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 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	Article 9.23 Conduct of Arbitration (4)-(6) [...] 4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards) or that a claim is manifestly without legal merit. (a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment. (b) On receipt of an objection under this paragraph, 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. (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.29 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment 9-26 thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of	Article 14.D.7 Conduct of Arbitration (4)-(6) [...] 4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal's jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 14.D.13 (Awards) or that a claim is manifestly without legal merit. (a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment. (b) On receipt of an objection under this paragraph, 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. (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 14.D.13 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant	Rule 41 Manifest lack of legal merit (1) A party may object that a claim is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal. (2) The following procedure shall apply: (a) a party shall file a written submission no later than 45 days after the constitution of the Tribunal; (b) the written submission shall specify the grounds on which the objection is based and contain a statement of the relevant facts, law and arguments; (c) the Tribunal shall fix time limits for submissions on the objection; (d) if a party files the objection before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the objection, so that the Tribunal may consider the objection promptly upon its constitution; and (e) the Tribunal shall render its decision or Award on the objection within 60 days after the later of the constitution of the Tribunal or the last submission on the objection. (3) If the Tribunal decides that all claims are manifestly without legal merit, it shall render an Award to that effect. Otherwise, the Tribunal shall issue a decision on the objection and fix any time limit necessary for the further conduct of the proceeding. (4) A decision that a claim is not manifestly without legal merit shall be without prejudice to the right of a party to file a preliminary objection pursuant to	UNCITRAL Notes on Organizing Arbitral Proceedings adopted in 2016 (with an additional note on early dismissal and preliminary determination adopted by the Commission in 2023) See A/78/17, Annex VII

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		<p>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.</p> <p>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.</p> <p>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.</p> <p>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. In doing so, the Tribunal shall assume the alleged facts to be true.</p> <p>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.</p>	<p>the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.</p> <p>(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.</p> <p>5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.</p> <p>6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.</p>	<p>article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.</p> <p>(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.</p> <p>5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.</p> <p>6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.</p>	<p>Rule 43 or to argue subsequently in the proceeding that a claim is without legal merit. Rule 43 (Preliminary Objections) (1) A party may file a preliminary objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or for other reasons is not within the competence of the Tribunal ("preliminary objection"). (2) A party shall notify the Tribunal and the other party of its intent to file a preliminary objection as soon as possible. (3) The Tribunal may at any time on its own initiative consider whether a dispute or an ancillary claim is within the jurisdiction of the Centre or within its own competence.</p>	
20.	<p>Security for Costs</p> <p>See also A/CN.9/WG.III/WP.192 - Security for cost and frivolous claims and A/CN.9/WG.III/WP.219 - Draft provisions on procedural reform</p>	[no explicit provision]	[no explicit provision]	[no explicit provision]	<p>ICSID Arbitration Rules</p> <p>Rule 53 Security for Costs</p> <p>1. Upon request of a party, the Tribunal may order any party asserting a claim or counterclaim to provide security for costs.</p> <p>2. The following procedure shall apply:</p>	<p>UARs</p> <p>Article 26 Interim measures</p> <p>1. The arbitral tribunal may, at the request of a party, grant interim measures.</p> <p>[...]</p>

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					<p>a. the request shall include a statement of the relevant circumstances and the supporting documents;</p> <p>b. the Tribunal shall fix time limits for submissions on the request;</p> <p>c. if a party requests security for costs before the constitution of the Tribunal, the Secretary-General shall fix time limits for written submissions on the request so that the Tribunal may consider the request promptly upon its constitution; and</p> <p>d. the Tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.</p> <p>3. In determining whether to order a party to provide security for costs, the Tribunal shall consider all relevant circumstances, including:</p> <p>a. that party's ability to comply with an adverse decision on costs;</p> <p>b. that party's willingness to comply with an adverse decision on costs;</p> <p>c. the effect that providing security for costs may have on that party's ability to pursue its claim or counterclaim; and</p> <p>d. the conduct of the parties.</p> <p>4. The Tribunal shall consider all evidence adduced in relation to the circumstances in paragraph (3), including the existence of third-party funding.</p> <p>5. The Tribunal shall specify any relevant terms in an order to provide security for costs and shall fix a time limit for compliance with the order.</p> <p>6. If a party fails to comply with an order to provide security for costs, the Tribunal may suspend the proceeding. If the proceeding is suspended for more than 90 days, the Tribunal may, after consulting with the parties, order the discontinuance of the proceeding.</p> <p>7. A party shall promptly disclose any material change in the circumstances upon which the Tribunal ordered security for costs.</p>	

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					8. The Tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request.	
21.	<p>Third-Party Funding</p> <p>See A/CN.9/WG.III/WP.157 A/CN.9/WG.III/WP.172 - Third-party funding and A/CN.9/WG.III/WP.219 - Draft provisions on procedural reform A/CN.9/WG.III/WP.231- Draft provisions on procedural and cross-cutting issues</p>	<p>Article 8.1 Definitions</p> <p>[...] 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.</p> <p>[...]</p> <p>Article 8.26 Third-Party Funding</p> <p>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.</p> <p>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.</p>	[no provision]	[no provision]	<p>ICSID Arbitration Rules</p> <p>Rule 14 Notice of Third-Party Funding</p> <p>(1) A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding (“third-party funding”). <u>If the non-party providing funding is a juridical person, the notice shall include the names of the persons and entities that own and control that juridical person.</u></p> <p>(2) A party shall file the notice referred to in paragraph (1) with the Secretary-General upon registration of the Request for arbitration, or immediately upon concluding a third-party funding arrangement after registration. The party shall immediately notify the Secretary-General of any changes to the information in the notice.</p> <p>(3) The Secretary-General shall transmit the notice of third-party funding and any notification of changes to the information in such notice to the parties and to any arbitrator proposed for appointment or appointed in a proceeding for purposes of completing the arbitrator declaration required by Rule 19(3)(b).</p> <p>(4) The Tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding pursuant to Rule 36(3).</p>	[no provision]
22.	<p>Suspension and Termination of the Proceedings</p>	<p>Article 8.24 Proceedings under another international agreement</p> <p>Where a claim is brought pursuant to this Section and another international agreement and:</p> <p>(a) there is a potential for overlapping compensation; or</p>	<p>Article 9.28 Consolidation</p> <p>[...]</p> <p>10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 9.22 (Selection of</p>	<p>Article 14.D.7.11 Conduct of the Proceedings</p> <p>[...]</p> <p>11. Following the submission of a claim to arbitration under this Annex, if the disputing parties fail to take any steps in the proceedings for more than 150 days, or such period as they</p>	<p>ICSID Arbitration Rules</p> <p>Rule 54 Suspension of the Proceeding</p> <p>1. The Tribunal shall suspend the proceeding by agreement of the parties.</p> <p>2. The Tribunal may suspend the proceeding upon the request of either party or on its own initiative, except as</p>	<p>UARs</p> <p>Article 36 Settlement or other grounds for termination</p> <p>1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral</p>

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		<p>(b) the other international claim could have a significant impact on the resolution of the claim brought pursuant to this Section, the 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.</p> <p>Article 8.35 Discontinuance</p> <p>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.</p>	<p>Arbitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.</p> <p>Article 28.16 Suspension or Termination of Proceedings</p> <p>1. The panel may suspend its work at any time at the request of the complaining Party or, if there is more than one complaining Party, at the joint request of the complaining Parties, for a period not to exceed 12 consecutive months. The panel shall suspend its work at any time if the disputing Parties request it to do so. In the event of a suspension, the time frames set out in this Chapter and in the Rules of Procedure shall be extended by the amount of time that the work was suspended. If the work of the panel is suspended for more than 12 consecutive months, the panel proceedings shall lapse unless the disputing Parties agree otherwise.</p> <p>2. The panel shall terminate its proceedings if the disputing Parties request it to do so.</p>	<p>may agree with the approval of the tribunal, the tribunal shall notify the disputing parties that they shall be deemed to have discontinued the proceedings if the parties fail to take any steps within 30 days after the notice is received. If the parties fail to take any steps within that time period, the tribunal shall take note of the discontinuance in an order. If a tribunal has not yet been constituted, the Secretary-General shall assume these responsibilities.</p> <p>[...]</p>	<p>otherwise provided in the ICSID Administrative and Financial Regulations or these Rules.</p> <p>3. The Tribunal shall give the parties the opportunity to make observations before ordering a suspension pursuant to paragraph (2).</p> <p>4. In its order suspending the proceeding, the Tribunal shall specify:</p> <p>a. the period of the suspension;</p> <p>b. any relevant terms; and</p> <p>c. a modified procedural calendar to take effect on resumption of the proceeding, if necessary.</p> <p>5. The Tribunal shall extend the period of a suspension prior to its expiry by agreement of the parties.</p> <p>6. The Tribunal may extend the period of a suspension prior to its expiry, on its own initiative or upon a party's request, after giving the parties an opportunity to make observations.</p> <p>7. The Secretary-General shall suspend the proceeding pursuant to paragraph (1) or extend the suspension pursuant to paragraph (5) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal. The parties shall inform the Secretary-General of the period of the suspension and any terms agreed to by the parties.</p> <p>Rule 55 Settlement and Discontinuance by Agreement of the Parties</p> <p>(1) If the parties notify the Tribunal that they have agreed to discontinue the proceeding, the Tribunal shall issue an order taking note of the discontinuance.</p> <p>(2) If the parties agree on a settlement of the dispute before the Award is rendered, the Tribunal:</p> <p>(a) shall issue an order taking note of the discontinuance of the proceeding, if the parties so request; or</p> <p>(b) may record the settlement in the form of an Award, if the parties file the complete and signed text of their</p>	<p>proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.</p> <p>2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.</p> <p>3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.</p>

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					<p>settlement and request that the Tribunal embody such settlement in an Award.</p> <p>(3) The Secretary-General shall issue the order referred to in paragraphs (1) and (2)(a) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.</p> <p>Rule 56 Discontinuance at Request of a Party</p> <p>(1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note of the discontinuance of the proceeding.</p> <p>If any objection in writing is made within the time limit, the proceeding shall continue.</p> <p>(2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.</p> <p>Rule 57 Discontinuance for Failure of Parties to Act</p> <p>(1) If the parties fail to take any steps in the proceeding for more than 150 consecutive days, the Tribunal shall notify them of the time elapsed since the last step taken in the proceeding.</p> <p>(2) If the parties fail to take a step within 30 days after the notice referred to in paragraph (1), they shall be deemed to have discontinued the proceeding and the Tribunal shall issue an order taking note of the discontinuance.</p> <p>(3) If either party takes a step within 30 days after the notice referred to in paragraph (1), the proceeding shall continue.</p> <p>(4) The Secretary-General shall issue the notice and the order referred to in paragraphs (1) and (2) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.</p>	

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Decision by the Tribunal						
23.	Assessment of damages and compensation	<p>Article 8.39 Final award</p> <p>1. If the Tribunal makes a final award against the respondent, the Tribunal may only award, separately or in combination:</p> <p>(a) monetary damages and any applicable interest;</p> <p>(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.</p> <p>2. Subject to paragraphs 1 and 5, if a claim is made under Article 8.23.1(b):</p> <p>(a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the locally established enterprise;</p> <p>(b) an award of restitution of property shall provide that restitution be made to the locally established enterprise;</p> <p>(c) an award of costs in favour of the investor shall provide that it is to be made to the investor; and</p> <p>(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.</p> <p>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.</p> <p>4. The Tribunal shall not award punitive damages.</p> <p>[...]</p> <p>6. The CETA Joint Committee shall consider supplemental rules aimed at</p>	<p>Article 9.29 Awards</p> <p>1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:</p> <p>(a) monetary damages and any applicable interest; and</p> <p>(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.</p> <p>2. For greater certainty, if an investor of a Party submits a claim to arbitration under Article 9.19.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage that it has incurred in its capacity as an investor of a Party.</p> <p>[...]</p> <p>4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous, the tribunal may award to the respondent reasonable costs and attorney's fees.</p> <p>5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 9.19.1(b) (Submission of a Claim to Arbitration) and an award is made in favour of the enterprise:</p> <p>(a) an award of restitution of property shall provide that restitution be made to the enterprise;</p> <p>(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and</p> <p>(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.</p>	<p>Article 14.D.13 Awards</p> <p>1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:</p> <p>(a) monetary damages and any applicable interest; and</p> <p>(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.</p> <p>2. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), it may recover only for loss or damage that is established on the basis of satisfactory evidence and that is not inherently speculative.</p> <p>3. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage incurred in its capacity as an investor of an Annex Party.</p> <p>[...]</p> <p>5. Subject to paragraph 1, if a claim is submitted to arbitration under Article 14.D.3.1(b) (Submission of a Claim to Arbitration) and an award is made in favor of the enterprise:</p> <p>(a) an award of restitution of property shall provide that restitution be made to the enterprise;</p> <p>(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and</p> <p>(c) the award shall provide that it is made without prejudice to any right that any person may have under applicable domestic law with respect to the relief provided in the award.</p> <p>6. A tribunal shall not award punitive damages.</p> <p>[...]</p> <p>Appendix 2 Public Debt</p> <p>1. For greater certainty, no award shall be made in favor of a claimant for a claim under Article 14.D.3.1 (Submission of a Claim to</p>	[no provision]	[no provision]

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		<p>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.</p> <p>[...]</p> <p>Article 8.12 Expropriation</p> <p>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:</p> <p>(a) for a public purpose;</p> <p>(b) under due process of law;</p> <p>(c) in a non-discriminatory manner; and</p> <p>(d) on payment of prompt, adequate and effective compensation.</p> <p>For greater certainty, this paragraph shall be interpreted in accordance with Annex 8-A.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>6. A tribunal shall not award punitive damages.</p> <p>[...]</p> <p>Article 9.8: Expropriation and Compensation</p> <p>1. No Party shall expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (expropriation), except:</p> <p>(a) for a public purpose;17, 18</p> <p>(b) in a non-discriminatory manner;</p> <p>(c) on payment of prompt, adequate and effective compensation in accordance with paragraphs 2, 3 and 4; and</p> <p>(d) in accordance with due process of law.</p> <p>2. Compensation shall:</p> <p>(a) be paid without delay;</p> <p>(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);</p> <p>(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and</p> <p>(d) be fully realisable and freely transferable.</p> <p>3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.</p> <p>4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:</p> <p>(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus</p> <p>(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from</p>	<p>Arbitration) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non- payment constitutes a breach of a relevant obligation in the Chapter.</p> <p>[...]</p> <p>Article 14.8: Expropriation and Compensation</p> <p>1. No Party shall expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (expropriation), except:</p> <p>(a) for a public purpose;</p> <p>(b) in a non-discriminatory manner;</p> <p>(c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2, 3, and 4; and</p> <p>(d) in accordance with due process of law.</p> <p>2. Compensation shall:</p> <p>(a) be paid without delay;</p> <p>(b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);</p> <p>(c) not reflect any change in value occurring because the intended expropriation had become known earlier; and</p> <p>(d) be fully realizable and freely transferable.</p> <p>3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.</p> <p>4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment⁸ – shall be no less than:</p> <p>(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date; plus</p>		

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		<p>other independent authority of that Party, in accordance with the principles set out in this Article. [...]</p> <p>Article 8.40 Indemnification or other compensation</p> <p>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</p>	<p>the date of expropriation until the date of payment. [...]</p> <p>Article 9.23: Conduct of the Arbitration [...]</p> <p>8. A respondent may not assert as a defence, counterclaim, right of set-off or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract. [...]</p>	<p>(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.</p> <p>Article 14.D.7: Conduct of the Arbitration [...]</p> <p>8. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason, that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract. [...]</p>		
24.	Period of time for making the final decision	<p>Article 8.39 Final award [...]</p> <p>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.</p>	<p>Article 9.23 Conduct of the Arbitration [...]</p> <p>10. In any arbitration conducted under this Section, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.</p>	<p>Article 14.D.7 Conduct of the Arbitration [...]</p> <p>12. In any arbitration conducted under this Annex, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.</p>	<p>ICSID Arbitration Rules</p> <p>Rule 58 Timing of the Award</p> <p>(1) The Tribunal shall render the Award as soon as possible, and in any event no later than:</p> <p>(a) 60 days after the later of the Tribunal constitution or the last submission, if the Award is rendered pursuant to Rule 41(3);</p> <p>(b) 180 days after the last submission if the Award is rendered pursuant to Rule 44(3)(c); or</p> <p>(c) 240 days after the last submission in all other cases.</p> <p>(2) A statement of costs and submission on costs filed pursuant to Rule 51 shall not be considered a submission for the purposes of paragraph (1).</p>	<p>EARs</p> <p>Article 16 Period of time for making the award</p> <p>1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.</p> <p>2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.</p> <p>3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.</p> <p>4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to</p>

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						conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.
25.	<p>Allocation of costs</p> <p>See A/CN.9/WG.III/WP.219 - Draft provisions on procedural reform A/CN.9/WG.III/WP.231 - Draft provisions on procedural and cross-cutting issues</p>	<p>Article 8.39 Final award</p> <p>[...]</p> <p>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.</p> <p>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.</p>	<p>Article 9.23 Conduct of the Arbitration</p> <p>[...]</p> <p>6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.</p> <p>Article 9.29 Awards</p> <p>[...]</p> <p>3. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceeding and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Section and the applicable arbitration rules.</p> <p>[...]</p>	<p>Article 14.D.7 Conduct of the Arbitration</p> <p>[...]</p> <p>6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the respondent's objection was frivolous and shall provide the disputing parties a reasonable opportunity to comment.</p> <p>[...]</p> <p>Article 14.D.13 Awards</p> <p>[...]</p> <p>4. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceedings and shall determine how and by whom those costs and attorney's fees shall be paid, in accordance with this Annex and the applicable arbitration rules.</p> <p>[...]</p>	<p>ICSID Arbitration Rules</p> <p>Rule 52 Decisions on Costs</p> <p>(1) In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including:</p> <p>(a) the outcome of the proceeding or any part of it;</p> <p>(b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal;</p> <p>(c) the complexity of the issues; and</p> <p>(d) the reasonableness of the costs claimed.</p> <p>(2) If the Tribunal renders an Award pursuant to Rule 41(3), it shall award the prevailing party its reasonable costs, unless the Tribunal determines that there are special circumstances justifying a different allocation of costs.</p> <p>(3) The Tribunal may make an interim decision on costs at any time, on its own initiative or upon a party's request.</p> <p>(4) The Tribunal shall ensure that all decisions on costs are reasoned and form part of the Award.</p>	<p>UARs</p> <p>Article 42 Allocation of costs</p> <p>1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.</p> <p>2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.</p>
	Applicable law	<p>Article 8.31 Applicable law and interpretation</p> <p>1. When rendering its decision, the Tribunal established under this Section shall apply this Agreement as interpreted in accordance with the <i>Vienna Convention on the Law of Treaties</i>, and other rules and principles of international law applicable between the Parties.</p> <p>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</p>	<p>Article 9.25 Governing Law</p> <p>1. Subject to paragraph 3, when a claim is submitted under Article 9.19.1(a)(i)(A) (Submission of a Claim to Arbitration) or Article 9.19.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.</p> <p>2. Subject to paragraph 3 and the other provisions of this Section, when a claim is submitted under Article 9.19.1(a)(i)(B) (Submission of a Claim to Arbitration), Article 9.19.1(a)(i)(C), Article 9.19.1(b)(i)(B) or Article 9.19.1(b)(i)(C), the tribunal shall apply:</p>	<p>Article 14.D.9 Governing Law</p> <p>1. Subject to paragraph 2, when a claim is submitted under Article 14.D.3.1 (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.</p> <p>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.</p>	<p>ICSID Convention</p> <p>Article 42</p> <p>(1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.</p> <p>(2) The Tribunal may not bring in a finding of non liquet on the ground of silence or obscurity of the law. (3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to</p>	<p>UARs</p> <p>Article 35 Applicable law, amiable compositeur</p> <p>1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute.</p> <p>Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.</p> <p>2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.</p> <p>3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the</p>

No.	Draft Provision	<u>Comprehensive Trade and Economic Agreement between Canada and the European Union (CETA) (2016)</u>	<u>Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018)</u>	<u>Agreement between the United States of America, the United Mexican States, and Canada (USMCA) (2018) and Annex 14-D</u>	<u>ICSID Convention and ICSID Arbitration Rules</u>	<u>UNCITRAL Arbitration Rules (UARs)</u> <u>UNCITRAL Expedited Arbitration Rules (EARs)</u> <u>UNCITRAL Transparency Rules</u>
		<p>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.</p> <p>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.</p>	<p>(a) the rules of law applicable to the pertinent investment authorisation or specified in the pertinent investment authorisation or investment agreement, or as the disputing parties may agree otherwise; or</p> <p>(b) if, in the pertinent investment agreement the rules of law have not been specified or otherwise agreed:</p> <p>(i) the law of the respondent, including its rules on the conflict of laws; and</p> <p>(ii) such rules of international law as may be applicable.</p> <p>3. 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.</p>		<p>decide a dispute ex aequo et bono if the parties so agree.</p>	<p>contract, if any, and shall take into account any usage of trade applicable to the transaction.</p>
	<p>Treaty Interpretation</p>	<p>Article 8.31 Applicable law and interpretation</p> <p>1. When rendering its decision, the Tribunal established under this Section shall apply this Agreement as interpreted in accordance with the <i>Vienna Convention on the Law of Treaties</i>, and other rules and principles of international law applicable between the Parties.</p> <p>[...]</p> <p>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.</p> <p>[...]</p> <p>Article 8.38 Non-disputing Party</p> <p>[...]</p> <p>2. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the</p>	<p>Article 9.23 Conduct of the Arbitration</p> <p>[...]</p> <p>2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.</p> <p>[...]</p> <p>Article 9.25 Governing Law</p> <p>[...]</p> <p>3. 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.</p> <p>[...]</p> <p>Article 9.26 Interpretation of Annexes</p> <p>1. If a respondent asserts as a defence that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the</p> <p>Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 27.2.2(f)</p>	<p>Article 14.D.7 Conduct of the Arbitration</p> <p>[...]</p> <p>2. The non-disputing Annex Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.</p> <p>[...]</p> <p>Article 14.D.9 Governing Law</p> <p>[...]</p> <p>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.</p> <p>[...]</p> <p>Article 14.D.10 Interpretation of Annexes</p> <p>1. If a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a non-conforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision on its interpretation under Article 30.2 (Functions of the Commission) to the tribunal within 90 days of delivery of the request.</p>	<p>ICSID Arbitration Rules</p> <p>Rule 68 Participation of Non-Disputing Treaty Party</p> <p>(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.</p> <p>[...]</p>	<p>UNCITRAL Transparency Rules</p> <p>Article 5 Submission by a non-disputing Party to the treaty</p> <p>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.</p> <p>[...]</p>

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		<p>non-disputing Party regarding the interpretation of the Agreement. The non-disputing Party may attend a hearing held under this Section.</p> <p>[...]</p>	<p>(Functions of the Commission) to the tribunal within 90 days of delivery of the request.</p> <p>2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.</p>	<p>2. A decision issued by the Commission under paragraph 1 shall be binding on the tribunal, and any decision or award issued by the tribunal must be consistent with that decision. If the Commission fails to issue such a decision within 90 days, the tribunal shall decide the issue.</p>		

AGREEMENT IN PRINCIPLE ON THE MODERNISATION OF THE ENERGY CHARTER TREATY		
No.	Draft Provision in A/CN.9/WG.III/WP.231	Provision in the Agreement in Principle
9	Denial of benefits	<p>ARTICLE 17: NON-APPLICATION OF PART III AND ARTICLE 26 IN CERTAIN CIRCUMSTANCES</p> <p>(1) Each Contracting Party may, no later than the date a tribunal or court determines for the submission of arguments on preliminary questions, deny the application of this Part and of Article 26 of this Treaty to an Investor or to an Investment of an Investor of another Contracting Party, if the denying Contracting Party establishes that such Investment or Investor is owned or controlled by a natural or juridical person of a third state with or as to which the denying Contracting Party:</p> <p>(i) does not maintain diplomatic relations; or</p> <p>(ii) adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, in line with the UN Charter and its international commitments, that:</p> <p>(A) prohibits transactions with respect to that Investor or Investment; or</p> <p>(B) would be violated or circumvented if the benefits of this Part and Article 26 were accorded to that Investor or Investment, including where the measures prohibit transactions with a natural or juridical person who owns or controls such Investor or Investment.</p> <p>(2) A Contracting Party may deny such benefits pursuant to this Article without any prior publicity or other additional formality related to its intention to exercise the right conferred by this Article.</p>
12	Right to regulate	<p>NEW ARTICLE: RIGHT TO REGULATE</p> <p>The Contracting Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of the environment, including climate change mitigation and adaptation, protection of public health, safety or public morals.</p> <p>ARTICLE 13: EXPROPRIATION</p> <p>[...]</p> <p>(4) Except in rare circumstances when the impact of a measure or series of measures is so severe in light of its purpose that it is manifestly excessive, non-discriminatory measures by a Contracting Party that are designed and applied to protect legitimate policy objectives, such as public health, safety and the environment (including with respect to climate change mitigation and adaptation), do not constitute indirect expropriations.</p> <p>[...]</p>
18.	Transparency	<p>ARTICLE 26: SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY</p> <p>[...]</p> <p>(6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law. The tribunal shall apply the UNCITRAL Rules on Transparency in Treaty-based Investor State arbitration of 1 April 2014 (UNCITRAL Transparency Rules) with the following additions: Nothing in this paragraph requires a Contracting Party to make available to the public or otherwise disclose during or after the proceedings, including the hearing, confidential or protected information within the meaning of Article 7(2) of the UNCITRAL Transparency Rules, or information the disclosure of which is protected under its domestic law or which it considers to be contrary to its essential security interests. Without prejudice to Article 3 of the UNCITRAL Transparency Rules, a disputing party may also make available to the public a request for amicable settlement, an agreement to mediate, a notice of challenge or a decision on challenge of a member of the tribunal, as well, as a request for consolidation, subject to Article 7 of the UNCITRAL Transparency Rules and after redaction of confidential or protected information done in consultation with the other disputing party.</p> <p>[...]</p>
19.	Early dismissal	<p>NEW ARTICLE: FRIVOLOUS CLAIMS</p> <p>(1) (a) A disputing Contracting Party may, no later than 45 days after the constitution of a tribunal established under Article 26(4) or before the first meeting, whichever is the earlier, file an objection that the claim or any part thereof, is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction or the competence of the tribunal. A disputing Contracting Party may also file such an objection no later than 30 days after it became aware of facts on which the objection is based where, owing to exceptional circumstances, it was not aware of those facts earlier.</p> <p>(b) The party shall specify as precisely as possible the basis for the objection. The tribunal, after giving the parties to the dispute an opportunity to present their observations on the objection, shall, at its first meeting or promptly thereafter, issue a decision or award on the objection, stating the grounds therefor. If the objection is received later than 45 days after the constitution of the tribunal, the tribunal shall issue such decision or award as soon as possible, and no later than 120 days after the objection was filed. The tribunal shall assume the facts alleged by the claimant to be true and may also consider any relevant facts not in dispute.</p> <p>(c) On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits and fix any time limit necessary for considering the objection and the further conduct of the proceeding. If the tribunal decides that all claims are manifestly without legal merit, it shall render an award to that effect. Otherwise, the tribunal shall issue a decision on the objection.</p>

		<p>Such a decision shall be without prejudice to the right of a disputing Contracting party to object, in the course of the proceeding, to the legal merits of a claim and without prejudice to the tribunal's authority to address other objections as a preliminary question.</p> <p>(2) (a) Without prejudice to the authority of a tribunal established under Article 26(4) to address other objections as a preliminary question or to the right of the disputing Contracting Party to raise any such objections at any appropriate time, the tribunal shall address and decide as a preliminary question any objection by the disputing Contracting Party that, as a matter of law, the claim or any part thereof, is not a claim in respect of which an award in favour of the Investor may be made, even if the facts alleged by the Investor were assumed to be true. The tribunal may also consider any relevant facts not in dispute.</p> <p>(b) Such an objection shall be submitted as soon as possible and no later than the date fixed for the filing of the disputing Contracting Party's reply to the claim. A disputing Contracting Party may also file such an objection no later than 30 days after it became aware of facts on which the objection is based where, owing to exceptional circumstances, it was not aware of those facts earlier.</p> <p>(c) On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits, and shall set a timetable for considering the objection consistent with any timetable it has set for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.</p> <p>(3) An objection shall not be submitted under paragraph (1) if the disputing Contracting Party has filed an objection under paragraph (2). If an objection has been submitted pursuant to paragraph (1), the tribunal may, taking into account the circumstances of that objection, decline to address an objection submitted under paragraph (2).</p> <p>(4) For greater certainty, the tribunal shall issue an award declining jurisdiction if the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the Investment subject to the dispute and the tribunal determines, on the basis of the facts of the case, that the acquisition of such ownership or control of the Investment was for the main purpose of submitting a claim under Article 26(4). The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the tribunal.</p>
20.	Security for Costs	<p>NEW ARTICLE: SECURITY FOR COSTS</p> <p>(1) At the request of the respondent, and following consultation in writing with the disputing parties, a tribunal established under Article 26(4) may order a claimant to post security for all or part of the costs of the proceedings. The following procedure shall apply:</p> <p>(a) the request shall specify the circumstances that require security for costs;</p> <p>(b) the tribunal shall fix time limits for submissions on the request;</p> <p>(c) the tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.</p> <p>(2) In determining whether to order the claimant to provide security for costs, the tribunal shall consider all relevant circumstances, including:</p> <p>a) whether the claimant risks not being able or willing to honour a possible decision on costs issued against it.</p> <p>b) the effect that providing security for costs may have on the claimant's ability to pursue its claim; and</p> <p>c) conduct of the parties.</p> <p>(3) If the security for costs is not posted in full within 30 days after the issuance of an order pursuant to paragraph 1 or within any other time period set by the tribunal, the tribunal shall so inform the parties to the dispute. The tribunal, after consulting with the parties, may order the suspension or termination of the proceedings.</p> <p>(4) The Investor shall promptly disclose any material change in the circumstances upon which the tribunal ordered security for costs. The tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request, after hearing the disputing parties.</p>
21.	Third-Party Funding	<p>ARTICLE 1: DEFINITIONS</p> <p>[...]</p> <p>(15) "Third-Party Funding" means any funding provided by a natural or legal person who is not a party to the dispute, to finance, directly or indirectly, the pursuit or defence of the arbitral proceedings under Article 26(4) through a donation or grant or through an agreement in return for a remuneration dependent upon the outcome of the dispute.</p> <p>[...]</p> <p>NEW ARTICLE: THIRD PARTY FUNDING</p> <p>(1) Each disputing party shall disclose in writing to the other disputing party and a tribunal established under Article 26(4) the name and address, the ultimate beneficial owner and corporate structure as applicable, of any natural or legal person who provides the Third Party Funding.</p> <p>(2) Such disclosure shall be made at the time of the submission of the dispute or without delay as soon as the funding agreement is concluded or the donation or grant is made after the submission of the dispute. Any changes in the information disclosed shall be immediately notified to the other disputing party and the arbitral tribunal.</p> <p>(3) The information disclosed may be considered, in addition to any other relevant information, for assessing an arbitrator's impartiality and independence.</p> <p>(4) The tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding, if it deems it necessary at any stage of the proceeding.</p>
23.	Assessment of damages and compensation	<p>ARTICLE 26: SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY</p> <p>[...]</p> <p>(9) An arbitral tribunal may award:</p>

		<p>(a) monetary damages and any applicable interest; and</p> <p>(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages determined in accordance with article 13(1) and any applicable interest in lieu of restitution.</p> <p>(10) Monetary damages shall not be greater than the loss suffered by the Investor, as a result of the breach of the provisions referred to in Part III, reduced by any prior damages or compensation already provided by the Contracting Party concerned. The tribunal shall not award punitive damages.</p> <p>[...]</p> <p>ARTICLE 13: EXPROPRIATION</p> <p>(1) Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be the subject of direct or indirect expropriation (hereinafter referred to as “Expropriation”) except:</p> <p>[...]</p> <p>(d) accompanied by the payment of prompt, adequate and effective compensation.</p> <p>Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation took place or the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment, whichever is the earlier (hereinafter referred to as the “Valuation Date”).</p> <p>Such fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.</p> <p>[...]</p>
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