
STATEMENT

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Investment agreements aim to provide a stable and predictable environment for investors and investments, including access to fair, independent and transparent mechanisms for settling disputes. Where an investor alleges a breach of an agreement's obligations, such procedures enable the investor to seek compensation through arbitration.

At the same time, these agreements must ensure that the State retains the right to regulate so as to protect certain public interests. However, debate on the efficacy of investor-State dispute settlement has become increasingly heated. Amongst other concerns, critics continue to argue that investor-State dispute settlement undermines policy areas such as health, environmental protection, and human rights.

Since NAFTA (1994), Canada has been a strong proponent of precision in treaty text, particularly with respect to the balance between protecting foreign investment and preserving the right to regulate in the public interest. For example, Canada's investment agreements provide for:

- Reservations for existing and future non-conforming measures;
- The exclusion of most taxation-related measures;
- A general exception for measures intended to protect human, animal or plant life or health, and for the conservation of natural resources;
- Prudential exceptions to maintain the integrity and stability of the financial system; and
- The ability for the Parties to jointly adopt binding interpretations of the Agreement.

I invite you to see page 111 of World Investment Report 2016, which refers to Canada's reform record on international investment agreements.

Nevertheless, Canada is always open to considering ways to improve our approach. As new investment law decisions have emerged, Canada has adapted by pursuing more precision in the statement of obligations, notably by confirming the boundaries of indirect expropriation. Recent investment agreements also seek to promote responsible investment through clauses on corporate social responsibility and "not lowering of standards".

Earlier this year, Canada was delighted to partner with the European Union on new and progressive provisions on investment in the Comprehensive Economic and Trade Agreement (CETA). One key feature is the stronger

reaffirmation of the right to regulate. For example, there is an exhaustive list of State obligations under

“fair and equitable treatment” and “full protection and security”. This will enhance predictability and prevent expansive interpretations that would constrain regulatory prerogatives.

Another key feature is the establishment of a permanent investment dispute settlement mechanism, consisting of a first instance tribunal and an appeal tribunal, both composed of individuals appointed by the contracting Parties and subject to strict ethical standards. The mechanism is designed to improve legitimacy and impartiality while enhancing the coherency and predictability of investment trade law.

Looking to the future, the CETA commits Canada and the European Union to work with other countries toward the development of an international investment tribunal. This work is already underway, as just this afternoon I co-chaired with the European Union a meeting of interested parties to discuss key considerations in the development of such a mechanism.

To conclude, Canada believes it is important to respond to concerns that have been raised by our citizens and stakeholders with respect to international investment agreements, as we have done with the European Union. In this respect, Canada was very pleased to join other G20 member countries in endorsing the non-binding Guiding Principles on Global Investment Policymaking at the G20 Trade Ministers Meeting earlier this month in Shanghai. The consensus around these Guiding Principles, which include key elements like non-discrimination, a reaffirmation of governments’ right to regulate in the public interest, and investor access to effective dispute settlement mechanisms, sends a strong signal to the broader investment community.

It is Canada’s hope that these will serve as a foundation for future consideration of ways to improve the regime of international investment agreements, in this forum and others.