

CETA's articles whose combined impact endanger human rights as described in the complaint

CHAPTER EIGHT - INVESTMENT

SECTION A Definitions and scope

ARTICLE 8.1 Definitions

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

"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"

SECTION D Investment protection

ARTICLE 8.9 Investment and regulatory measures

"1. For the purpose of this Chapter, the Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.

2. For greater certainty, the mere fact that a Party regulates, including through a modification to its laws, in a manner which negatively affects an investment or interferes with an investor's expectations, including its expectations of profits, does not amount to a breach of an obligation under this Section."

"4. For greater certainty, nothing in this Section shall be construed as preventing a Party from discontinuing the granting of a subsidy 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 or requiring that Party to compensate the investor therefor."

ARTICLE 8.10 Treatment of investors and of covered investments

"1. Each Party shall accord in its territory to covered investments of the other Party and to investors with respect to their covered investments fair and equitable treatment and full protection and security in accordance with paragraphs 2 through 7.

2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 if a measure or series of measures constitutes:

- (a) denial of justice in criminal, civil or administrative proceedings;
- (b) fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings;
- (c) manifest arbitrariness;
- (d) targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
- (e) abusive treatment of investors, such as coercion, duress and harassment; or
- (f) a breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 3 of this Article"

"4. When applying the above fair and equitable treatment obligation, the Tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.

5. For greater certainty, "full protection and security" refers to the Party's obligations relating to the physical security of investors and covered investments."

6. For greater certainty, a breach of another provision of this Agreement, or of a separate international agreement does not establish a breach of this Article.

7. For greater certainty, the fact that a measure breaches domestic law does not, in and of itself, establish a breach of

this Article. In order to ascertain whether the measure breaches this Article, the Tribunal must consider whether a Party has acted inconsistently with the obligations in paragraph 1"

ARTICLE 8.11 Compensation for losses

"Notwithstanding Article 8.15.5(b), each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to armed conflict, civil strife, a state of emergency or natural disaster in its territory, treatment no less favourable than that it accords to its own investors or to the investors of a third country, "

ARTICLE 8.12 Expropriation

"1. A Party shall not nationalise or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalisation or expropriation ("expropriation"), except:

- (a) for a public purpose;
- (b) under due process of law;
- (c) in a non-discriminatory manner; and
- (d) on payment of prompt, adequate and effective compensation.

For greater certainty, this paragraph shall be interpreted in accordance with Annex 8-A."

ANNEX 8-A EXPROPRIATION

"The Parties confirm their shared understanding that:

1. Expropriation may be direct or indirect:

(a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) indirect expropriation occurs if a measure or series of measures of a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures of a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that takes into consideration, among other factors:

(a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;

(b) the duration of the measure or series of measures of a Party;

(c) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and

(d) the character of the measure or series of measures, notably their object, context and intent.

3. For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures of 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."

ARTICLE 8.13 Transfers

"1. Each Party shall permit all transfers relating to a covered investment to be made without restriction or delay"

SECTION E Reservations and exceptions

ARTICLE 8.15 Reservations and exceptions

"1. Articles 8.4 through 8.8 do not apply to [...]"

(which means that while reservations and exceptions concern other articles on investment, they do not concern investment protection articles 8.10-8.14)

SECTION F Resolution of investment disputes between investors and states

ARTICLE 8.18 Scope

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

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

(b) Section D,

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

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

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

ARTICLE 8.29 Establishment of a multilateral investment tribunal and appellate mechanism

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

ARTICLE 8.31 Applicable law and interpretation

"1. When rendering its decision, the Tribunal established under this Section shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties

2. The Tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. For greater certainty, in determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party and any meaning given to domestic law by the Tribunal shall not be binding upon the courts or the authorities of that Party.

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

ARTICLE 8.39 Final award

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

(a) monetary damages and any applicable interest;

(b) restitution of property,"

CHAPTER TWENTY-THREE TRADE AND LABOUR

ARTICLE 23.2 Right to regulate and levels of protection

"Recognising the right of each Party to set its labour priorities, to establish its levels of labour protection and to adopt or modify its laws and policies accordingly in a manner consistent with its international labour commitments"

ARTICLE 23.3. Multilateral labour standards and agreements

"4. Each Party reaffirms its commitment to effectively implement in its law and practices in its whole territory the fundamental ILO Conventions that Canada and the Member States of the European Union have ratified respectively. The Parties shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so. "

ARTICLE 23.4 Upholding levels of protection

"1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their labour law and standards.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour law and standards to encourage trade or investment."

CHAPTER TWENTY-FOUR TRADE AND ENVIRONMENT

ARTICLE 24.3 Right to regulate and levels of protection

"The Parties recognise the right of each Party to set its environmental priorities, to establish its levels of environmental protection, and to adopt or modify its laws and policies accordingly and in a manner consistent with the multilateral environmental agreements to which it is party and with this Agreement. Each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve such laws and policies and their underlying levels of protection"

ARTICLE 24.4 Multilateral environmental agreements

"1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules, and measures.

2. Each Party reaffirms its commitment to effectively implement in its law and practices, in its whole territory, the multilateral environmental agreements to which it is party."

ARTICLE 24.5 Upholding levels of protection

"1. The Parties recognise that it is inappropriate to encourage trade or investment by weakening or reducing the levels of protection afforded in their environmental law.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental law, to encourage trade or the establishment, acquisition, expansion or retention of an investment in its territory.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its environmental law to encourage trade or investment. "

CHAPTER TWENTY-EIGHT EXCEPTIONS

ARTICLE 28.3 General exceptions

"2. For the purposes of [...] Sections B (Establishment of investments) and C (Non-discriminatory treatment) of Chapter Eight (Investment) nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures necessary: [...]

b) to protect human, animal or plant life or health"

ARTICLE 28.6 National security

"Nothing in this Agreement shall be construed:

[...]

(c) prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security"

ANNEX 8 -E

"JOINT DECLARATION ON ARTICLES 8.16, 9.8, AND 28.6

With respect to Articles 8.16, 9.8 (Denial of benefits) and 28.6 (National security), the Parties confirm their understanding that measures that are "related to the maintenance of international peace and security" include the protection of human rights"

CHAPTER THIRTY FINAL PROVISIONS

ARTICLE 30.6 Private rights

"1. Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.

2. A Party shall not provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement."

ARTICLE 30.9 Termination

"1. A Party may denounce this Agreement by giving written notice of termination to the General Secretariat of the Council of the European Union and the Department of Foreign Affairs, Trade and Development of Canada, or their respective successors. This Agreement shall be terminated 180 days after the date of that notice. The Party giving a notice of termination shall also provide the CETA Joint Committee with a copy of the notice.

2. Notwithstanding paragraph 1, in the event that this Agreement is terminated, the provisions of Chapter Eight (Investment) shall continue to be effective for a period of 20 years after the date of termination of this Agreement in respect of investments made before that date. "