



INVESTMENT PROTECTION

Investment protection represents an important chapter in Canada and EU's Agreement. In 2011, Canadian direct investment in the EU totaled \$172.5 billion dollars, and EU's foreign direct investment in Canada totaled \$160.7 billion.

1. How CETA defines "investment"

CETA defines "investments" very broadly, encompassing "any kind of asset". Using the negative list approach, a subject matter must be specifically excluded by the parties to escape the scope of the agreement.

New sectors and services open to investment include telecommunication, dredging activities and uranium investment for Canada and, for the EU, information technology, research and development and mining activities.

However, not all foreign investments shall be liberalized.

The Canadian federal government, for example, shall maintain its ability to review high-value foreign investments to either ensure they will likely to be of "net benefit" to Canada, or for national security reasons. Such ministerial decisions are not subject to CETA's dispute settlement provision.

EU investors are therefore not exempted, in certain case, from the notification and decision-making procedure of the Canadian government regarding their investments.

Nonetheless, Canada has agreed to raise the review threshold to \$1.5 billion (instead of \$1 billion in enterprise value). Also, Canada commits to render uranium investment less restrictive (exempted from requirement of first finding a Canadian partner).

2. Investment protection rules

Canadian and EU investors may not be granted a less advantageous treatment than that granted to domestic investors, or to other foreign investors. This is provided for by the *national treatment* clause and the *most favored-nation treatment* clause.

Investors and their investments benefit from *fair and equitable treatment* and be treated in a *non-discriminatory* manner. They will be guaranteed, at the very least, a *minimal standard treatment*.

The CETA rules also provide for protection against governments arbitrary actions and sets *compensation for expropriation*, which includes indirect expropriation. It shall however be

specified that governments may take good faith and non-discriminatory measures to protect public safety, health and the environment.

3. Investment dispute settlement mechanism

Should an investors' rights be violated under CETA, the dispute may be settled in an arbitration proceeding in the host state.

CETA seeks to promote resolution of investor-state disputes through an efficient and transparent process. As such, consultations will be enhanced and submissions to the arbitral panel shall be public.

Also, as a party to the ICSID Convention, Canada will adopt the ICSID arbitral rules, allowing for a structured legal framework to regulate Investor-State Dispute Settlements (ISDS). According to these rules a locally established, foreign-owned company may initiate a claim.

The ICSID tribunal may order an award for damages or restitution of property, as well as costs, though it cannot repeal the host state's measures that have been affecting the foreign investor's investments.

To avoid abuse of this arbitration process, provisions of the agreement shall guard against frivolous claims.