

October 7, 2016

CETA: The draft “Interpretative Declaration” of October 5, 2016

As an addendum to our opinion of October 4, 2016, this offers a brief comment on a document purporting to be a “Joint Interpretative Declaration on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States” that began circulating publicly on October 5, 2016.

We will limit our comments to that part of the document that concerns “investment protection”, but they would apply equally to most of the “declaration”.

You will know from our opinion that we distinguished between a “qualified” and “mere” declaration. The former requires the parties to clearly identify the declaration as a condition precedent to their approval of a treaty. That question is moot in the present circumstances because, notwithstanding its title, the document could not in fact be considered an “interpretative declaration” under international law for the simple reason it doesn’t even offer the pretext of interpreting CETA provisions on investor protection.

To not put too fine a point a point on it, the comments about investor protection are akin to a press release touting the virtues, as the authors perceive them, of the investor protection rules CETA would entrench.

In our opinion, no party could credibly present such a document as an “interpretative declaration” to a Tribunal called upon to determine an investor rights dispute. Moreover, in the unlikely event that should occur, a Tribunal that gave it any consideration would risk its own credibility.



Steven Shrybman
SS/cope 343