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# Settlement of commercial disputes

## Transparency in treaty-based investor-State arbitration

## Compilation of comments by Governments

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# III. Comments received from Governments on transparency in treaty-based investor-State arbitration

## 1. Canada

[Original: English/French]

1. All of the documents referred to in Canada's response below are publicly available on the Internet.[1]

Question 1: Examples of publicity or transparency of arbitral proceedings; Access to documents or hearings

2. Canada is committed to ensuring that any treaty-based investor-State arbitration in which it is involved is as transparent and open to the public as possible. As it clearly expressed in its Statement on Open Hearings in NAFTA Chapter Eleven Arbitrations in October 2003, Canada makes every effort to ensure "that hearings in Chapter Eleven disputes [are] open to the public, except [as needed] to ensure the protection of confidential information, including business confidential information."

3. As such, in all of the cases in which it is a party, whether under the UNCITRAL Arbitration Rules, or the ICSID Additional Facility Rules,[2] Canada strives to ensure (a) that the public is given notice of the existence of the arbitration; (b) that documents submitted to the tribunal or issued by it are publicly availably; (c) that hearings are open to the public; and (d) that confidential or privileged information is adequately protected.

4. In total, 10 investor-State arbitrations have been submitted against Canada pursuant to Chapter 11 of NAFTA. Four of those arbitrations have been concluded[3] and the remaining six are currently pending at various stages.[4] Canada has also received an additional 14 Notices of Intent to Submit a Claim to Arbitration pursuant to Chapter 11 of NAFTA. Seven of those are

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[1] Note by the Secretariat: A "Book of Documents" containing documents referred to by the Government of Canada in its reply was attached to the comments received from the Government of Canada. Relevant excerpts can be found in part II of document A/CN.9/WG.II/WP.160 and its addendum.

[2] The investor-State dispute settlement provisions in Canada's investment treaties also typically provide for the submission of disputes pursuant to the ICSID Convention, provided that both the State in the dispute and the State of the investor are party to the ICSID Convention. At this time, Canada has signed but not yet ratified the ICSID Convention.

[3] *Ethyl Corporation v. Government of Canada; Pope & Talbot Inc. v. Government of Canada; S.D. Myers Inc. v. Government of Canada; and United Parcel Service of America, Inc. (UPS) v. Government of Canada.*

[4] *Chemtura Corp. v. Government of Canada; Clayton/Bilcon v. Government of Canada; GL Farms LLC and Carl Adams v. Government of Canada; Merrill & Ring Forestry L.P. v. Government of Canada; Mobil Investments Inc. and Murphy Oil Corporation v. Government of Canada; and V.G. Gallo v. Government of Canada.*

inactive or have been formally withdrawn.[5] In the remaining seven, the investor has yet to submit a Notice of Arbitration.[6]

5. Since approximately 2000, Canada has provided public notice of the existence of all of the above matters via the website of the Department of Foreign Affairs and International Trade.[7] This website contains a page listing all of the above matters and providing a link (titled "Archive of Legal Documents") to relevant documents and information for each case.

6. The specific documents which Canada is permitted to publish on its website vary pursuant to each Tribunal's Procedural Orders. In the earlier arbitrations brought against Canada pursuant to NAFTA, such as Ethyl Corporation (1997), S.D. Myers (1998), and Pope and Talbot (1999), the Tribunals permitted, subject to the protection of confidential information, the publication of the constitutive pleadings, including the Notice of Intent, Notice of Arbitration, Statement of Claim and Statement of Defence, as well as any decisions or awards of the Tribunal. In addition, in Pope and Talbot, following the submissions on damages, the Tribunal issued a revised order reflecting amendments agreed by the parties, which permitted the publication of the written and oral submissions of the parties and all the evidence submitted by the parties.

7. In UPS, the most recent NAFTA arbitration concluded against Canada, the Tribunal, in an April 2003 Procedural Order, permitted the public disclosure by either disputing party of the

> [p]leadings and submissions of any disputing party or NAFTA Party, together with their appendices and attached exhibits, including the notice of intent, notice of arbitration, amended statement of claim, statement of defence, memorials, affidavits, responses to tribunal questions, transcripts of public hearings, correspondence to or from the Tribunal, and any awards, including procedural orders, rulings, preliminary and final awards.

In order to ensure adequate protection of confidential information, each party was given the opportunity to designate information as confidential or restricted and to produce a public version of the submission with that information redacted.

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[5] *Albert Connolly v. Government of Canada; Contractual Obligation Productions, LLC, Charles Robert Underwood, Carl Paolino v. Government of Canada; Ketcham Investments, Inc. and Tysa Investments, Inc. v. Government of Canada; Peter Nikola Pesic v. Government of Canada; Trammer Crow Company v. Government of Canada; Signa S.A. de C.V. v. Government of Canada; Sun Belt Water, Inc. v. Government of Canada.*

[6] *Centurion Health Corporation v. Government of Canada; "David Bishop" v. Government of Canada; Dow AgroSciences LLC v. Government of Canada; Georgia Basin Holdings LLC v. Government of Canada; Gottlieb Investors Group v. Government of Canada; Janet Marie Broussard Shiell, William Shiell IV, and William Shiell V v. The Government of Canada; and William Jay Greiner and Malbaie River Outfitters Inc. v. Government of Canada.*

[7] See www.international.gc.ca/trade-agreements-accords-commerciaux/disp¬diff/gov.aspx?lang=en. Canada has yet to have an arbitration brought against it pursuant to any other of its investment treaties, but should such an arbitration be brought, it would likely publish relevant information and documents, to the extent permitted, on a similar website.

8. Subsequent to the UPS Order, NAFTA Tribunals have continued to further open investor-State arbitrations to the public. In Chemtura, the Tribunal followed the approach of UPS and ordered that either party could publicly disclose any pleadings or submissions to the Tribunal, together with any appendices thereto, all correspondence to or from the Tribunal, transcripts of public hearings, and any awards including orders, rulings and preliminary and final awards. In Merrill & Ring Forestry L.P., the Tribunal ordered, in addition to the above, that hearings be open to the public unless necessary to protect confidential business information. Similarly, in V.G. Gallo, the Tribunal left open the possibility of the disclosure of hearing transcripts despite the fact that the investor elected to proceed under the UNCITRAL Rules, and elected to have in camera hearings. In all of these cases, the Tribunal ensured that confidential information was protected by requiring that each party file a public version of all of its submissions with all information claimed to be confidential redacted.

9. Canada's experience over the past decade of NAFTA arbitrations is clear evidence that public and transparent investor-State arbitration proceedings are possible without delaying the proceedings, unduly burdening the parties or the process, or imposing excessive costs on the parties. Further, Canada's experience shows that transparency in treaty-based investor-State arbitration can be achieved without creating a danger that confidential business information will be disclosed. Indeed, Tribunals have become increasingly adept at ensuring that proceedings are transparent while at the same time ensuring that this transparency does not interfere with an orderly proceeding or jeopardize confidential or privileged information.

Question 2: Amicus curiae briefs or other interventions

10. In two arbitrations brought against Canada pursuant to Chapter 11 of NAFTA, amicus curiae submissions by public interest organizations have been submitted to the Tribunal.

11. In UPS, the Canadian Union of Postal Workers and the Council of Canadians, and subsequently the US Chamber of Commerce, petitioned the Tribunal for the right to participate in the arbitration, either as parties or as amicus curiae. The Tribunal decided that it had the power to accept amicus curiae submissions, but would do so only to the extent that it would not be unduly burdensome for the parties and would not unnecessarily complicate matters. In particular, the Tribunal explained that amicus curiae briefs were to provide assistance beyond that provided by the disputing parties and that they were to relate only to issues already raised by the disputing parties. Further, the Tribunal placed a number of important limits on the participation of amicus curiae, including that they could make only written submissions of not more than 20 pages in length, they could not call witness, and their submissions could only concern the merits of the dispute.

12. Subsequent to the decisions of the Tribunal in UPS described above, the NAFTA Free Trade Commission (the "FTC"), the body charged with interpretation of NAFTA, issued a Statement on Non-Disputing Party participation. That Statement provided guidelines for Tribunal's considering amicus curiae briefs in Chapter 11 arbitrations similar to those established in

UPS: submissions are to be written, no longer than 20 pages and concern issues within the scope of the arbitration.

13. In Merrill & Ring Forestry, the Communication, Energy and Paperworkers Union of Canada, the United Steelworkers and the British Columbia Federation of Labour all filed petitions to submit amicus curiae briefs. The Tribunal expressly noted its discretion to accept amicus curiae submissions and requested that the petitioners file a formal application, along with their submission, in the form required by the 2003 Statement of the Free Trade Commission on Non-Disputing Party Participation. Petitioners filed their application and amicus curiae submissions on September 26, 2008. The Tribunal is currently considering the request.

14. Canada's experience with amicus curiae submissions establishes that public participation in treaty-based investor-State arbitration can be effectively managed by a Tribunal to ensure that it benefits rather than burdens the process.

15. It should also be noted that, in addition to the ability of third parties to participate as amicus curiae, Article 1128 of NAFTA (and similar provisions in Canada's other investment treaties) expressly permits the non-disputing States to make submissions on matters of treaty interpretation. As such submissions are expressly contemplated by treaty, they are not amicus curiae submissions. Such submissions are, however, common. In each of the Chapter 11 arbitrations to which Canada has been a party, there has been at least one such submission by either the United States or Mexico.

Question 3: Provision in treaties on transparency or publicity

16. Canada's Foreign Investment Promotion and Protection Agreements (FIPAs) and Free Trade Agreements (FTAs) contain provisions protecting and promoting investment. Over time, these treaties have included increasingly explicit provisions concerning the transparency of treaty-based investor-State arbitration.

17. Canada now has in force 23 FIPAs. In 2003 and 2004, Canada revised its FIPA model to update and modernize it with the goal of, in particular, bringing it into line with Canada's experience in treaty-based investor-State arbitration.

18. With respect to dispute settlement, the model was revised to promote transparency. Article 38 of the updated model requires that all documents submitted to or issued by the Tribunal, including hearing transcripts, be made public subject to redaction for confidential, privileged or third party business information. Further, all hearings are to be open to the public, subject only to closure when necessary to protect confidential business, privileged or third party information.

19. Specifically, Canada's FIPA model, Article 38: Public Access to Hearings and Documents, provides:

> 1. Hearings held under this Section shall be open to the public. To the extent necessary to ensure the protection of confidential information, including business confidential information, the Tribunal may hold portions of hearings in camera.

2. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

3. All documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information.

4. Notwithstanding paragraph 3, any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information.

5. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

6. The Parties may share with officials of their respective federal and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

7. As provided under Article 10 (4) and (5), the Tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

8. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

20. Canada's updated FIPA model was used for the FIPA signed with Peru in 2007, and is the basis for Canada's position in all of its FIPA negotiations initiated since 2003. Currently, Canada is involved in the negotiation of 7 FIPAs,[8] with 2 additional negotiations having just concluded.[9]

21. In addition to its FIPAs, Canada has four FTAs in force.[10] In 2008, it signed three more.[11] Of those FTAs, NAFTA, which came into force nearly 15 years ago, is the oldest agreement. Chapter 11 of NAFTA provides for the settlement of investor-State disputes by arbitration. Article 1127 of NAFTA requires that the non-disputing NAFTA Parties receive notice of any arbitration and that they receive copies of all pleadings. Further, Article 1129 provides that the non-disputing NAFTA parties also have the right to receive all of the

[8] United Republic of Tanzania, Indonesia, Madagascar, Viet Nam, Mongolia, China and Kuwait.
[9] India and Jordan.
[10] United States of America/Mexico (NAFTA), Costa Rica, Chile and Israel.
[11] Colombia, Peru, the European Free Trade Association.

evidence tendered to the Tribunal as well as the written arguments of the disputing parties.

22. NAFTA also contains additional provisions providing for further publicity. Annex 1137.4 provides that "either Canada or a disputing investor that is a party to the arbitration may make an award public." Moreover, in 2001, the FTC released binding Notes of Interpretation which affirmed the commitment of the NAFTA governments to the principle of transparency generally and created a presumption of public disclosure and openness. In 2003, Canada and the United States both issued Statements supporting open hearings in NAFTA Arbitration. In 2004, the FTC again affirmed the NAFTA parties' commitment to transparency and welcomed Mexico's support of open hearings.

23. The above-described NAFTA approach towards transparency in investor-State arbitration was followed, including the Notes of Interpretation, in Canada's FTA with Chile, in force as of July 5, 1997.

24. In Canada's more recent FTAs, the model language of the FIPA has been used as the basis for negotiations concerning transparency in investor-State arbitration. For example, in the Investment chapter of the FTA with Peru, signed earlier this year, on May 29, 2008, Article 835: Public Access to Hearings and Documents, provides:

> 1. Hearings held under this Section shall be open to the public. To the extent necessary to ensure the protection of confidential information, the Tribunal may hold portions of hearings in camera.
>
> 2. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.
>
> 3. All documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information.
>
> 4. Notwithstanding paragraph 3, any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information.
>
> 5. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.
>
> 6. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.
>
> 7. As provided under Article 2202 (Exceptions — National Security) and Article 2204 (Exceptions — Disclosure of Information), the Tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary

to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

8. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

25. Similarly, the Investment chapter of the FTA Canada signed with Colombia just over one month ago, on November 21, 2008, provides in Article 830: Public Access to Hearings and Documents that:

1. Any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information. A disputing party providing information that it claims is confidential has the burden of designating it as confidential.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings in camera to the extent necessary to ensure the protection of confidential information. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Agreement, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section requires a disputing Party to disclose, furnish or allow access to information that it may withhold in accordance with Article 2202 (Exceptions — National Security) or Article 2205 (Exceptions — Disclosure of Information).

26. Canada's recent experience with drafting and negotiating treaty provisions providing for transparency in investor-State arbitration establishes that such provisions need not be complicated. Transparency in treaty-based investor-State arbitration can be provided for in a relatively simple manner consisting of only several paragraphs.

Question 4: Provision in treaties on third parties' involvement

27. Canada's more recent FIPAs and FTAs specifically provide for the participation of third parties as amicus curiae. NAFTA does not address submissions by such third parties in the text of the treaty. However, in 2003, the FTC issued a statement clarifying that nothing in NAFTA prohibited submissions by non-parties as amicus curiae, and that the decision whether or not to accept any such submission was a matter within the Tribunal's discretion. The FTC statement also provided detailed procedural guidelines for the submissions of any amicus curiae materials.

28. Canada's model FIPA provides that third parties are permitted to submit amicus curiae briefs in investor-State arbitrations. Specifically, Article 39, Submissions by a Non-Disputing Party, of the updated model FIPA provides:

> 1. Any non-disputing party that is a person of a Party, or has a significant presence in the territory of a Party, that wishes to file a written submission with a Tribunal (the "applicant") shall apply for leave from the Tribunal to file such a submission, in accordance with Annex C.39. The applicant shall attach the submission to the application.
>
> 2. The applicant shall serve the application for leave to file a non-disputing party submission and the submission on all disputing parties and the Tribunal.
>
> 3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave to file a non-disputing party submission.
>
> 4. In determining whether to grant leave to file a non-disputing party submission, the Tribunal shall consider, among other things, the extent to which:
>
> (a) The non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
>
> (b) The non-disputing party submission would address a matter within the scope of the dispute;
>
> (c) The non-disputing party has a significant interest in the arbitration; and
>
> (d) There is a public interest in the subject-matter of the arbitration.

5. The Tribunal shall ensure that:

(a) Any non-disputing party submission does not disrupt the proceedings; and

(b) Neither disputing party is unduly burdened or unfairly prejudiced by such submissions.

6. The Tribunal shall decide whether to grant leave to file a non-disputing party submission. If leave to file a non-disputing party submission is granted, the Tribunal shall set an appropriate date for the disputing parties to respond in writing to the non-disputing party submission. By that date, the non-disputing Party may, pursuant to Article 34 (Participation by the Non-Disputing Party), address any issues of interpretation of this Agreement presented in the non-disputing party submission.

7. The Tribunal that grants leave to file a non-disputing party submission is not required to address the submission at any point in the arbitration, nor is the non-disputing party that files the submission entitled to make further submissions in the arbitration.

8. Access to hearings and documents by non-disputing parties that file applications under these procedures shall be governed by the provisions pertaining to public access to hearings and documents under Article 38 (Public Access to Hearings and Documents).

29. This provision was incorporated into Canada's FIPA with Peru as Article 39 of that FIPA.

30. It has also been incorporated into certain FTAs. For example, in Canada's FTA with Peru, Article 836: Submissions by Other Persons, provides:

1. Any person, other than a disputing party, that wishes to file a written submission with a Tribunal (the "applicant") shall apply for leave from the Tribunal to file such a submission, in accordance with Annex 836.1. The applicant shall attach the submission to the application.

2. The applicant shall serve its application for leave to file a submission, as well as its submission, on all disputing parties and the Tribunal.

3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave.

4. In determining whether to grant the leave the Tribunal shall consider, among other things, the extent to which:

(a) The applicant's submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;

(b) The applicant's submission would address a matter within the scope of the dispute;

(c) The applicant has a significant interest in the arbitration; and

(d) There is a public interest in the subject-matter of the arbitration.

5. The Tribunal shall ensure that:

(a) Any applicant's submission does not disrupt the proceedings; and

(b) Neither disputing party is unduly burdened or unfairly prejudiced by such submissions.

6. The Tribunal shall decide whether to grant leave to an applicant to file a submission. If the Tribunal grants leave, it shall set an appropriate date for the disputing parties to respond in writing to the submission. By that date, the non-disputing Party may, pursuant to Article 832, address any issues of interpretation of this Agreement presented in the submission.

7. The Tribunal that grants leave to file a submission to an applicant is not required to address the submission at any point in the arbitration, nor is the person that files the submission entitled to make further submissions in the arbitration.

8. Access to hearings and documents by persons that file applications under these procedures shall be governed by the provisions pertaining to public access to hearings and documents under Article 835.

31. Canada's FTA with Colombia follows an overall substantively similar approach, though it provides less detail than the FTA with Peru, including with respect to the factors that are to guide the Tribunal in determining whether to accept an amicus curiae submission. Specifically, Article 831: Submissions by a Non-Disputing Party, of the FTA with Colombia provides:

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any non-disputing party submission does not disrupt the proceedings and that neither disputing party is unduly burdened or unfairly prejudiced by it.

2. An application to the Tribunal for leave to file a non-disputing party submission, and the filing of a submission, if allowed by the Tribunal, shall be made in accordance with Annex 831.

32. Similar to Canada's experience drafting and negotiating provisions to make investor-State arbitration transparent, Canada's experience also shows that provisions allowing for public participation in investor-State arbitration can be drafted without unnecessary complication.

Question 5: Any other comment

33. Canada strives to make transparency in investor-State arbitration a foundational principle of any treaties into which it enters and an indispensable part of any arbitration in which it is involved. In all of its practices, Canada

seeks to achieve the greatest openness to the public possible, while recognizing the legitimate needs of the parties to protect certain types of information and to proceed to resolve disputes quickly and efficiently.

34. Canada believes that UNCITRAL must somehow provide for transparency in investor-State arbitration, and that it must do so as soon as possible. These views have been clearly expressed in Canada's previous submissions to UNCITRAL, particularly in UN Doc. A/CN.9/662, and need not be repeated here.

35. Canada's support for transparency in investor-State arbitration is borne of principle, but shaped and guided by experience — experience both drafting treaties based on the principles of open and transparent investor-State arbitration and in participating in investor-State arbitrations governed by such principles. Canada's experience makes it clear that increased openness and transparency is a significant benefit and, if effectively managed, imposes little cost or burden on either the process or the parties.

### 2. China

[Original: Chinese]

Question 1: Examples of publicity or transparency of arbitral proceedings; Access to documents or hearings

China acceded to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States in 1992, and has the obligation under the treaty to solve the above-mentioned disputes in accordance with the Convention. However, so far there has been no treaty-based arbitration of investment disputes, and therefore no such cases in evidence to publicity or transparency in respect of treaty-based investor-State arbitration proceedings.

Question 2: Amicus curiae briefs or other interventions

There has been no case of treaty-based investor-State arbitration in China where third parties have presented their statements or become involved in the proceedings.

Question 3: Provision in treaties on transparency or publicity

There is no provision on transparency or publicity regarding treaty-based investment arbitration in bilateral or multi-lateral treaties entered into by China.

Question 4: Provision in treaties on third parties' involvement

There is no provision on third-party involvement in treaty-based investment arbitration in bilateral or multi-lateral treaties entered into by China.

Question 5: Any other comment

There is currently no such practice of treaty-based investor-State arbitration in China. Given the confidentiality of arbitration, we do not consider it appropriate to impose provisions of publicity and transparency on treaty-based settlement of investor-State investment disputes.

### 3. Czech Republic

[Original: English]

Question 1: Examples of publicity or transparency of arbitral proceedings; Access to documents or hearings

There is only one case where information regarding the existence of the arbitral proceedings between the Czech Republic and a foreign investor is publicly available — the arbitration between Phoenix Action Ltd. and the Czech Republic under the Rules of Arbitration of the International Centre for Settlement of Investment (ICSID Case No. ARJB/06/5). With respect to the treaty-based arbitration between a foreign investor and the Czech Republic, there is no example of the arbitral proceedings where the public or specific interest groups would have possibility to obtain access to documents used in the proceedings or to be present at hearings.

Question 2: Amicus curiae briefs or other interventions

In the Czech Republic, there are no examples of cases where third parties have presented statements in the course of treaty-based investment arbitration or have otherwise intervened in the proceedings.

Question 3: Provision in treaties on transparency or publicity

In the bilateral investment treaties concluded by the Czech Republic, there are no provisions concerning transparency or publicity in relation to the treaty-based investment arbitration.

Question 4: Provision in treaties on third parties' involvement

In the bilateral investment treaties concluded by the Czech Republic, there are no provisions for third parties to become involved in treaty-based investment arbitration.

Question 5: Any other comment

With respect to the current Czech Republic's practice regarding publicity or transparency in treaty-based investment arbitration, it is possible to add that the Czech State has published several arbitral awards on the websites of the Ministry of Finance (e.g. final award in the UNCITRAL arbitration between Ronald S. Lauder and the Czech Republic, partial award in the UNCITRAL arbitration between CME Czech Republic B.V. and the Czech Republic, final award in the UNCITRAL arbitration between SALUKA Investments B.V. and the Czech Republic). In accordance with the principle of confidentiality, the publication of these awards is possible only with the approval of the other party in the dispute.

## 4. Denmark

[Original: English]

Question 1: Examples of publicity or transparency of arbitral proceedings; Access to documents or hearings

No. There have been no such cases in Denmark to our knowledge.

Question 2: Amicus curiae briefs or other interventions

Not to our knowledge.

Question 3: Provision in treaties on transparency or publicity

No.

Question 4: Provision in treaties on third parties' involvement

The Danish Bilateral Investment Treaties (BIT) do not have any special provision for third parties to become involved in arbitration proceedings.

The Danish BIT contain provisions relating to disputes between a Contracting Party and an investor and disputes between the Contracting Parties.

Question 5: Any other comment

No comments because we are not aware that Denmark has been involved in such cases.