

**INVESTMENT TREATY
ARBITRATION AND
INTERNATIONAL LAW**

Ian A. Laird
Borzu Sabahi
Frédéric G. Sourgens
Todd J. Weiler
Editors

Kabir Duggal
Associate Editor

Volume 6

JURIS

Questions About This Publication

For assistance with shipments, billing or other customer service matters,
please call our Customer Services Department at:

1-631-350-2100

To obtain a copy of this book, call our Sales Department:

1-631-351-5430

Fax: 1-631-351-5712

Toll Free Order Line:

1-800-887-4064 (United States & Canada)

See our web page about this book:
www.arbitrationlaw.com

COPYRIGHT © 2013
by JurisNet, LLC

All Rights Reserved.

Printed in the United States of America
ISBN: 978-1-937518-28-8

JurisNet, LLC
71 New Street
Huntington, New York 11743
USA

www.arbitrationlaw.com

TABLE OF CONTENTS

Introduction	
<i>Free Trade à l'Americaine – NAFTA, DR-CAFTA and Beyond</i>	
<i>Frédéric G. Sourgens</i>	vii
Profiles	xxxv
Chapter 1	
Enhancing the Dispute Settlement System or Much Ado About Nothing	
<i>Hugo Perezcano Díaz</i>	1
PART I	
PROCEDURAL DEVICES FOR EARLY RESOLUTION: SUCCESS OR FAILURE?	
CHAPTER 2	
Preliminary Objections Under CAFTA-DR: The Placebo Effect	
<i>Heather L. Bray</i>	13
CHAPTER 3	
The Benefits of Early Case Resolution in Investor-State Arbitration	
<i>Devin Bray</i>	29
CHAPTER 4	
Procedural Devices for Early Resolution: Success or Failure?	
<i>Marco Schnabl</i>	
<i>John Crook</i>	
<i>Natali Sequeira</i>	
<i>Alex de Gramont</i>	
<i>Claudia Frutos-Peterson</i>	
<i>Mark Clodfelter</i>	
PANEL DISCUSSION	53

PART II
SHOULD THERE BE AN AMERICAS INVESTMENT COURT?

CHAPTER 5
Rethinking International Investment Disputes: A Proposal for an Investment Court and Tenured Judges

Ashley R. Riveira83

CHAPTER 6
Enemy of the Good: The Case Against Abolishing Party Appointments in Investment Arbitration

Hugh Carlson103

CHAPTER 7
Should There Be an Americas Investment Court?

Alexander Bělohávek
David Gantz
Marinn Carlson
Charles N. Brower
Mark H. O'Donoghue

PANEL DISCUSSION125

PART III
HAS AUTHORITATIVE INTERPRETATION PERVERTED THE TREATMENT STANDARD IN NAFTA?

CHAPTER 8
More Than Ten Years Later, the Note of Interpretation Has Proven its Efficiency

Philippe Charest-Beaudry153

CHAPTER 9
FTC Interpretation on the Standard of Treatment: A Perspective from Applicable Sources of International Law and Substantive Rights of Investors

José Antonio Rivas177

CHAPTER 10**Has Authoritative Interpretation Perverted the Treatment Standard in NAFTA?**

Joseph Profaizer
Andrea Bjorklund
Chris Ryan
Stephen Schwebel
Don Wallace

PANEL DISCUSSION193

PART IV**INVESTMENT, TRADE, HEALTH AND ENVIRONMENT.
IS NAFTA/CAFTA MORE THAN A TRADE AGREEMENT?****CHAPTER 11****Should Investment Treaties Be Revised to Better Protect States' Public Interest Regulatory Activities?**

Justin M. Jacinto219

CHAPTER 12**Investment Protection and Public Regulation: The Critical Balancing Act of Investment Treaty Arbitration**

Matthew Hodgson249

CHAPTER 13**Investment, Trade, Health and Environment. Is NAFTA/CAFTA More Than a Trade Agreement?**

Matthew Slater
Andrea Menaker
Anthea Roberts
Alvaro Galindo
Mark Kantor
Andrew D. Mitchell

PANEL DISCUSSION283

TABLE OF CASES309

INDEX.....313

