



# CAFTA-DR Facts

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## FIVE FACTS ABOUT THE CAFTA-DR AND INVESTMENT

**The investment provisions in the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) do not provide foreign investors with greater substantive rights than domestic investors in the United States.**

The obligations of the CAFTA-DR investment chapter are fully consistent with U.S. laws on the treatment of investments in U.S. territory. The investment chapter thus accords with the guidance of the 2002 Trade Act that foreign investors in the United States should receive “no greater substantive rights” than U.S. investors in the United States. For example, the CAFTA-DR directs international arbitral panels to determine whether an indirect expropriation (or, “regulatory taking” in U.S. law) has occurred by examining the factors set forth by the U.S. Supreme Court in *Penn Central*, the seminal Supreme Court case on regulatory takings.

**The government parties to the CAFTA-DR may review and comment on arbitral awards and may issue binding interpretations of the agreement.**

The CAFTA-DR includes provisions that allow governments to review and comment on draft arbitral decisions before they are issued in final form. The agreement also expressly authorizes the governments to issue interpretations of the agreement that are binding on arbitral tribunals. These authorities help protect governments from the possibility that an arbitral tribunal will improperly interpret or apply the provision of the CAFTA-DR.

**Investment dispute settlement proceedings under the CAFTA-DR and other FTAs, known as “investor-state arbitration,” are open and transparent.**

Under the CAFTA-DR, the public will have access to investor-state arbitration documents and hearings. Amicus curiae submissions from the public are expressly allowed.

**The CAFTA-DR allows arbitral tribunals to dismiss frivolous claims by foreign investors.**

The CAFTA-DR includes safeguards to ensure that investors cannot abuse the arbitration process, including provisions (based on U.S. court rules) that allow tribunals to dismiss frivolous claims at an early stage of the proceedings or to award attorneys’ fees and costs as a deterrent to such claims.

**The CAFTA-DR does not jeopardize the right of U.S. state and local governments to regulate in the public interest.**

Nothing in the CAFTA-DR interferes with a state or local government's right to regulate for health, safety, consumer protection, or any other aspect of the public welfare. An investor cannot seek, nor can an arbitral tribunal grant, a motion to enjoin regulatory action under the CAFTA-DR.

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The standards of treatment in the investment chapter of the CAFTA-DR and in other U.S. FTAs are already provided for under U.S. law. It is not surprising, therefore, that the United States has never lost a single arbitration under its investment agreements, nor has it ever paid to settle a case. Moreover, if an arbitral tribunal ever did rule against the United States, it would have no authority to order the U.S. Government to modify any law, regulation, or practice.