

**INVEST.805**

**Watergate Daily Update  
Investment**

**DRAFT**

**CONFIDENTIAL  
August 4, 1992**

**INVESTMENT**

**Article 2101: Scope and Coverage**

1. This Chapter shall apply to measures of the Parties affecting:

a) investments of investors of a Party in the territory of another Party existing at the time of entry into force of this Agreement as well as to investments made or acquired thereafter by such investors;

b) investors of a Party in the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in the territory of another Party; and

c) all investments in the territory of any Party as provided in Article 2109.

<sup>MEX</sup>[ 2. A Party (Mexico) has the right to perform exclusively the economic activities set forth in Annex I and to refuse to permit the establishment of investment in such activities.]

3. This Chapter shall not apply to:

a) [financial services except as provided in the Chapter on Financial Services;]<sup>1</sup>

b) <sup>CDA</sup>[except as provided in the Chapter on Government Procurement]; and

4. Nothing in this Chapter<sup>2</sup> shall be construed to prevent a Party from providing services or functions such as public welfare services and services forming part of a statutory system of social security, public health care, public education, and public retirement plans.

5. The requirement by a Party that a service provider of another Party post a bond or other form of financial security before providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter shall apply to that Party's treatment of

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<sup>1</sup> U.S. Note - Further coordination with financial services may be necessary.

<sup>2</sup> Canada doing redraft. A generic provision may be needed to address the subject matter of this provision.

the posted bond or financial security.

6. In the event of any inconsistency between the provisions of this Chapter and the Telecommunications Annex, the provisions of that Annex shall prevail to the extent of the inconsistency.<sup>3</sup>

7. Each Party reserves the right to deny to an enterprise of another Party the advantages of this Chapter if:

a) nationals of any non-Party own or control such enterprise and such enterprise has no substantial business activities in the territory of the Party under whose laws it is constituted; or

b) nationals of any non-Party own or control such enterprises and:

i) the denying Party does not maintain diplomatic relations with the non-Party; or

ii) the denying Party has imposed measures against the non-Party that prohibit transactions with such enterprise or that would be violated or circumvented by the activities of such enterprise.

8. Article \_\_\_\_\_ (national security) shall apply to the provisions of this Chapter. For greater clarity, any action a Party takes under Article \_\_\_\_\_ (national security) which restricts or prohibits acquisitions by investors or investments of another Party shall not be subject to Articles \_\_\_\_\_ (investor-state dispute settlement) or Chapter \_\_\_\_\_ (general dispute settlement).

**Article 2102: Environmental Measures<sup>4</sup>**

#### TREATMENT OF INVESTMENTS

**Article 2103: National Treatment**

1. Each Party shall accord to an investor of another Party treatment no less favorable than that which it accords, in like circumstances, to its own investors in respect of the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its

<sup>3</sup> Issues of overlap need to be addressed.

<sup>4</sup> This language is being negotiated in a separate group.

territory.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that which it accords, in like circumstances, to investments of its own investors <sup>USA</sup>[and in particular] in respect of the establishment, acquisition, expansion, management, conduct, and operation of such investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 shall mean, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded by such state or province in like circumstances to investors of the Party of which it forms a part.

4. Where a state enterprise of a Party competes with investments of investors of another Party in the territory of the Party, paragraphs 1 and 2 shall mean treatment no less favorable than that accorded, in like circumstances, to privately-owned investments of investors of that Party that also compete with the state enterprise.

5. For greater certainty, no Party shall:

a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the Party's territory be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in its territory.

<sup>CDA MEX</sup>[Article 2104: **Most-Favored-Nation Treatment**

1. Each Party shall accord to investments of an investor of another Party <sup>USA</sup> <sup>MEX</sup>[, and activities associated therewith,] treatment no less favorable than that which it accords, in like circumstances, to the investments of an investor of any other Party or of a non-Party.

2. Each Party shall accord to an investor of another Party treatment no less favorable than that which it accords, in like circumstances, to investors of any other Party or non-Party in respect of its establishment, acquisition, expansion, conduct, management, operation and sale or other disposition of its investment in its territory.]

<sup>CDA MEX</sup>[Article 2105: **Non-Discriminatory Treatment**

**INVEST.805**

The treatment that a Party shall accord to investments <sup>USA</sup>  
<sup>MEX</sup>[and associated activities] of another Party and to investors of  
that Party shall be the better of the treatment required by  
Articles 2103 or 2104. ("Nondiscriminatory treatment")]

**Article 2106: Minimum Standard of Treatment**

1. Each Party shall accord at all times to the investments  
in its territory of investors of another Party full protection and  
security, fair and equitable treatment, and in all other respects  
as well, treatment in accordance with international law.

2. Without prejudice to paragraph 1, each Party shall  
accord investors of a Party, whose investments suffer losses in the  
territory of another Party owing to conflict or civil strife, at  
least [nondiscriminatory] treatment as regards any measures it  
adopts in relation to such losses.

**Article 2107: Senior Management and Boards of Directors**

1. <sup>MEX USA</sup>[Subject to Chapter \_\_\_\_ (Temporary entry), a Party  
shall not require that enterprises which are legally constituted  
under the applicable laws or regulations of one Party, and which  
are investments of investors of another Party, engage as top  
managerial personnel individuals<sup>5</sup> of any particular nationality.

2. <sup>CDA</sup>[With respect to an enterprise of a Party which is an  
investment of an investor of another Party, and subject to  
applicable immigration laws and regulations, a Party:

a) shall not require that individuals of any particular  
nationality be appointed to senior management positions;

b) may require a majority of the Board of Directors, or  
any committee thereof, be of any particular nationality, or  
resident in the territory of that Party, provided such a  
requirement would not materially impair the ability of that  
investor to control its investments.

<sup>USA</sup>[However, a Party may require that certain members of an  
enterprise's board of directors be nationals, provided such  
requirements do not materially impair the ability of investors  
of another Party to control their investments.]

<sup>MEX USA</sup>[3. For greater certainty, the provisions of this

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<sup>5</sup> Although the Lawyers' Group favors use of "national person" rather than  
"individual", that usage would appear awkward in these paragraphs.

paragraph are subject to the applicable immigration laws and regulations of a Party.]

**Article 2108: Exceptions**

1. Articles 2103, 2104, 2105, and 2107 shall not apply to:

a) a non-conforming provision of any existing measure which is maintained by a Party at the federal level and described in Annex A;

b) a non-conforming provision of any existing measure which is maintained by a state or province, and which a Party describes in Annex A within two years after the entry into force of this Agreement;

c) a non-conforming provision of any existing measure which is maintained by a local government; or

2. A Party may promptly renew such a non-conforming provision of any existing measure, or amend such a non-conforming provision of any existing measure, to the extent that the renewal or amendment does not decrease its conformity with the obligations of this Chapter. No such measure which has been renewed or amended may be further renewed or amended so as to decrease its conformity at the time of the renewal or amendment with the obligations of this Chapter.

2. A Party may continue or promptly renew any such non-conforming measures, and may amend any such measure to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 2103, 2104, 2105 and 2107.

Note: taken from the services chapter.

3. Articles 2103, 2104, 2105 2107 [, and 2109] shall not apply to measures a Party maintains or adopts with respect to the sectors or subjects inscribed by it in Annex B. <sup>MEX USA</sup>[However, any measure so maintained or adopted with respect to the sectors or subjects inscribed by it in Annex B may not require an investor of another Party to sell or otherwise dispose of investment existing at the time such measure becomes effective. The foregoing is without prejudice to the right of a Party designate a monopoly in a manner consistent with Article \_\_\_\_\_ (monopolies) and other obligations of the Agreement.]<sup>6</sup>

<sup>6</sup>Canada is still considering this provision in relation to its social services exception.

4. A Party may also maintain exceptions from the obligations of Articles 2103, 2104, 2105 and 2107 , which are specifically provided for in Article 2203 (of the Chapter on Intellectual Property).

<sup>CDA MEX</sup>[5. Notwithstanding Article 2104, a Party need not accord most-favored-nation treatment to investors of another Party or their investments with respect to advantages accorded by that Party pursuant to agreements or sectors listed in Annex [MFN].]

6. Nothing in this Chapter shall preclude a Party from prescribing special formalities, such as requirements that investors be residents of a Party or investments be legally constituted under the laws and regulations of a Party or a political subdivision thereof, in connection with the establishment of investments by investors of another Party, provided such formalities do not derogate from the substance [impair the benefits] of any of the provisions set forth in this Chapter.

7. Notwithstanding Articles 2103, 2104, and 2105 , a Party may require, from an investor of another Party or its investment, routine business information, to be used solely for informational or statistical purposes, concerning that investment in its territory. Such Party shall protect such business information that is confidential from disclosure that would prejudice the investor's or the investment's competitive position. Nothing in this [Chapter]<sup>7</sup> shall preclude a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

8. <sup>USA</sup>[a) As a further exception to (provision on national treatment)<sup>8</sup>, and only in respect of sectors reserved for the state on the date of entry into force of this Agreement,

i) a Party, when privatizing an enterprise owned by it in such a sector, may sell all or a portion of its equity interests to its nationals; and

ii) a Party, when permitting private investment in such a sector, may require that a specified level of equity in enterprises in that sector be held by its nationals.

b) For state enterprises not in sectors reserved to the

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<sup>7</sup> Canada is considering use of "Chapter."

<sup>8</sup> This section would be inserted in the "treatment" section in a way which would capture the "ratchet."

state at the date of entry into force of this Agreement, but carrying on an activity on the date of entry into force of this Agreement, a Party may limit the initial acquisition of its interests in the enterprise to its nationals. However, once the Party's interests have been sold, the obligations of paragraph 1 (national treatment) shall apply.<sup>9]</sup><sup>10</sup>

9. <sup>CDA</sup>[ Notwithstanding paragraph 1,

a) a Party, when selling or disposing of its equity interest in a enterprise owned or controlled by the Party at the time of entry into force of this Agreement, may impose limitations on the ownership or control of such enterprise by an investor of another Party;

b) a Party, when selling or disposing of its equity interest in a enterprise established or acquired by the Party after the entry into force of this Agreement, may impose limitations on the initial acquisition of those interests by an investor of another Party. Once the Party's interests have been sold or disposed of, the provision of paragraph 1 shall apply to any subsequent sale or disposition;

c) a Party may impose limitations on the participation of investors or investments of another Party in the provision of a service delivered by a government or governmental entity<sup>11</sup> when such limitations are imposed at the time:

i) the Party privatizes the delivery of that service;

ii) the Party permits commercial participation of private enterprises , whether concurrently or not with the governmental entity, in the delivery of that service.]

10. Articles 2103, 2104, and 2105 shall not apply to:

<sup>USA MEX</sup>[a) federal government procurement of goods and services supplied by investments of investors of another Party

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<sup>9</sup> Requirements that equity interests be held by nationals -- for state enterprises not in sectors reserved to the state at the date of entry into force of this Agreement, but which a Party establishes or acquires subsequent to the date of entry into force of this Agreement -- would be governed by Annexes A or B.

<sup>10</sup> Mexico is considering joining the U.S. on this provision.

<sup>11</sup> Note that "entity" (rather than "enterprise") is retained here. Presumably it need not be defined.

if such investments are controlled by nationals of a non-Party;]

<sup>USA</sup>[b) procurement of goods and services by political subdivisions of a Party; and]

c) any subsidy or grant <sup>MEX USA</sup> [, insurance or loan program] provided by a Party or state enterprise thereof.

#### Article 2109: Performance Requirements

1. Except as provided in Annex \_\_\_\_\_, no Party shall impose the following requirements, or enforce any commitment <sup>USA</sup> [or undertaking] in <sup>CDA</sup> [relation thereto], in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of a Party or non-Party in its territory:

a) to export a given level or percentage of goods or services;

b) to achieve a given level or percentage of domestic content;

c) to purchase, use or accord a preference to goods or services produced in its territory, or to purchase goods or services from producers or service providers in its territory;

d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

e) to restrict sales of goods or services in its territory that such investment produces by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

f) <sup>USA MEX</sup> [to transfer technology, production process or other proprietary knowledge to a national or enterprise in its territory, except when the requirement is imposed by a court or administrative tribunal to remedy an alleged violation of competition laws.

g) <sup>USA MEX</sup> [to act as the exclusive supplier of the goods or services it produces to a specific region or world market.]

2. A requirement that an investment use a technology to meet generally applicable health, safety or environmental standards shall not be considered inconsistent with paragraph 1(f). For

greater clarity, Articles 2103, 2104, and 2105 shall apply to such requirements.

<sup>CDA</sup>[2. Notwithstanding paragraph 1, a Party may nonetheless condition the establishment or acquisition of an investment, and its subsequent conduct or operation, on commitments to locate production, carry out research and development, train or employ workers, construct or expand particular facilities in its territory.]

3. Except as provided in Annex \_\_\_\_, no Party shall condition the receipt or continued receipt of an advantage, in connection with investments in its territory of investors of a Party or non-Party, on compliance with any of the following requirements:

- a) to purchase or use goods or <sup>USA</sup>[services] from investments controlled by their nationals<sup>12</sup>:
- b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- c) to achieve a given level or percentage of domestic content;
- d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- e) to restrict domestic sales of goods or services that such investment produces by limiting such sales in any way to the volume or value of its exports or foreign exchange earnings;
- f) <sup>USA MEX</sup>[to act as the exclusive supplier of the goods or services it produces to a specific, regional or world market.]

4. For greater clarity, the provisions of paragraph 3 do not apply to conditions related to the receipt of an advantage that an investor or investment locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. The provisions of:

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<sup>12</sup> U.S. proposes taking an exception for historically socially disadvantaged minority groups.

a) paragraphs 1(a)-(c), and 3(a)-(c) shall not apply in respect to export promotion and foreign aid programs;

b) paragraphs 1(b)-(c), 1(f), <sup>CDA</sup>[1(g)], and 3(a)-(c) shall not apply in respect to government procurement, including purchases by state enterprises;

<sup>USA</sup>[d] paragraph 3(b) shall not apply to conditions related to the content of goods to qualify for preferential tariffs or quotas..]

6. The provisions of paragraphs 1 or 3 shall not apply to any requirements other than those listed in paragraphs 1(a)-(g) and 3(a)-(f).

#### Article 2110: Transfers

1. Subject to paragraph 3 and paragraph 5<sup>13</sup> each Party shall permit all transfers and international payments (hereinafter "transfers") relating to an investment in its territory of an investor of another Party to be made freely and without delay. Such transfers include:

a) profits, dividends, interest, capital gains, royalty payments, management, technical assistance and other fees, returns in kind, and other amounts derived from an investment;

b) proceeds from the sale of all or any part of an investment or from the partial or complete liquidation of an investment;

c) payments made under a contract entered into by an investor, or its investment, including payments made pursuant to a loan agreement;

d) compensation pursuant to Article 2111 ; and

e) payments arising out of an investment dispute as defined in Article 2119 .<sup>14</sup>

2. Subject to paragraph 3, each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

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<sup>13</sup> It may be desirable to refer to the tax article.

<sup>14</sup> Canada agrees subject to overall agreement on dispute settlement.

3. A Party may, through the equitable and good faith application of its laws, prevent any transfer referred to in paragraph 1 if such transfer is inconsistent with any measure of general application relating to:

- a) bankruptcy, insolvency or the protection of the rights of creditors;
- b) issuing, trading or dealing in securities;
- c) criminal or penal offenses;
- d) reports of currency transfers; or
- e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Notwithstanding paragraphs 1, 2, and 3 of this Article, a Party may maintain or adopt restrictions on the transfer of "returns in kind" (goods and services) that are otherwise in conformity with this Agreement.

5. No Party shall require its investors to repatriate, or penalize its investors who fail to repatriate, the income, earnings or profits attributable to any investment in another Party <sup>MEX CDA</sup>[or to any businesses carried on in another Party either directly by the investors or indirectly through a business enterprise established in that other Party.]

6. <sup>USA</sup>[Paragraph 5 shall not be construed as preventing a Party from imposing any measure consistent with Articles 2103, 2104, and 2105, and relating to activities listed in paragraphs 3(a)-(e).]

#### **Article 2111: Expropriation and Compensation**

1. No Party shall directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take any measure or measures tantamount to expropriation or nationalization of such an investment ("expropriation"), except:

- a) for a public purpose;
- b) on a nondiscriminatory basis;
- c) in accordance with due process of law and the general principles of treatment provided in Article 2106 ; and

d) upon payment of compensation in accordance with paragraphs 2 to 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory taking ("date of expropriation"), and shall not reflect any change in value occurring because the expropriatory taking had become known earlier. Valuation criteria shall include going concern value, asset value (including declared tax value of tangible property), and other criteria, as appropriate to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment thereof.

5. If payment is made in a currency other than a G7 currency, the amount paid shall be no less than the equivalent of the amount of compensation owed on the date of expropriation converted into a G7 currency at the market rate of exchange prevailing on that date, plus accrued interest at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of actual payment.

6. Upon payment, compensation shall be freely transferable at the prevailing market rate of exchange on the date of transfer.

7. The provisions of this Article do not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or the revocation, <sup>CDA MEX</sup>[limitation or creation] of intellectual property rights to the extent that it is consistent with the provisions of Chapter \_\_\_\_ (Intellectual Property).

**Article 2115: State Enterprises<sup>15</sup>**

1. Nothing in this Agreement shall prevent a Party from maintaining or establishing a state enterprise.

2. Each Party through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes:

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<sup>15</sup> Canadian proposal and paragraph 2 of U.S. proposal would be placed with generic monopolies provision.

a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement, whenever such state enterprise exercises any regulatory administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees or other charges;

b) accords nondiscriminatory treatment to investments in the Party's territory of investors of another Party in the sale of its goods or services; and

<sup>CDA</sup>[c) where engaged in non-regulated commercial activities in competition, in the relevant market within the territory of the Party, with investments of investors of another Party, does not engage in anti-competitive practices that adversely affect investments of investors of another Party.]

<sup>USA</sup>[1. This Chapter, and in particular the obligation to accord nondiscriminatory treatment to investments in the territory of a Party of investors of another Party, shall apply to the state enterprises of a Party.<sup>16</sup>

2. Where a Party owns and controls, at the federal level, state enterprises that are not monopolies, it shall not by provision of subsidies or otherwise, take measures to support such state enterprises in conduct that results in serious prejudice to investors of another Party, contrary to such investors' reasonable expectations. This provision shall not apply where such conduct is authorized by law to fulfill a public purpose and is reasonably related thereto. The term "public purpose" does not include the deliberate disadvantaging of investors of another Party or country.]

**Article 2116: Monopolies<sup>17</sup>**

[SEE SUBGROUP TEXT]

**Article 2117: Technology Consortia**

<sup>MEX CDA</sup>[1. No Party shall maintain or introduce any measure that

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<sup>16</sup> Mexico can agree to this provision if placed outside the Investment Chapter and only in respect of non-discriminatory treatment when buying and selling goods or services..

<sup>17</sup> U.S. proposal would be placed outside the investment chapter.

limits or prevents an investor of another Party from participating in a technology consortium or other group of business enterprises with respect to the development of or access to technology (in a manner inconsistent with Articles 2103, 2104 and 2105.

2. For greater certainty, the terms and conditions for participation in a technology consortia including financial and technology resources shall be determined by the members of the consortia.]

**Article 2119: Dispute Settlement**

[SEE SUBGROUP TEXT]

**DEFINITIONS**

For purposes of this Chapter:

<sup>MEX USA</sup>[**enterprise** of a Party means an enterprise constituted or organized under the laws and regulations of a Party or a political subdivision thereof.]<sup>18</sup>

**G7 Currency** means the currency of Canada, Germany, France, Italy, Japan, the United States of America, or the United Kingdom of Great Britain and Northern Ireland.

**investment** of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party, and <sup>USA MEX</sup>[means the following:

- a) an enterprise;
- b) equity or debt securities of an enterprise, or any interest in such enterprise that entitles the owner to share in the income or profits or to share in the assets on dissolution;
- c) real estate or other property (tangible or intangible) acquired in the expectation or used for the purpose of economic benefit or other business purposes;
- d) a loan to an enterprise made <sup>USA</sup>[or guaranteed] by an enterprise that is not a financial institution as defined in Chapter \_\_\_\_ (financial services);<sup>19</sup>

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<sup>18</sup> We are checking this definition with the Lawyers' Group.

<sup>19</sup> This language must be coordinated with the Financial Services Group, which may wish to include as "investments" a loan by a Bank to provide capital to its subsidiary.

e) interests arising from the commitment of capital or other resources in or into the territory of another Party to economic activity in such territory, such as under (i) contracts involving the presence of the investor's property in the territory of another Party (e.g., concession agreements, turnkey or construction contracts), or (ii) contracts where the remuneration depends substantially on the production, revenues or profits of an enterprise.

For greater clarity,

a) claims to money which arise solely from:

i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of one Party to an enterprise in the territory of another Party; or

ii) the extension of credit in connection with a commercial transaction (e.g., trade financing) other than a loan covered by subparagraph (c) of the preceding paragraph<sup>20</sup>; or

b) any other claim to money;

which do not involve the kinds of interests in the preceding paragraph shall not be considered investments.

**equity or debt securities** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants.

**investor of a Party** means a national or an enterprise of such Party, that makes or has made an investment.

**investor of a non-Party** means an investor other than an investor of a Party, that makes or has made an investment.

**most-favored-nation treatment** shall mean the treatment accorded pursuant to Article 2104.

**state enterprise** means <sup>CDA</sup>[for Canada a Crown Corporation within the meaning of the Financial Administration Act (Canada) or a Crown corporation within the meaning of any comparable provincial legislation or this is incorporated under other applicable provincial legislation; and for the U.S. and Mexico....] <sup>USA</sup>[an

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<sup>20</sup> "Sentence" could also be used here.

enterprise of a Party that is owned, or controlled through ownership interests, directly or indirectly, by such Party or any agency or instrumentality thereof.] <sup>CDA</sup>[except a state enterprise designated as a governmental monopoly.]

PROVISIONS TO BE PLACED OUTSIDE OF INVESTMENT CHAPTER

**Article 2113: National Security**

1. Subject to Articles \_\_\_\_ (Energy) and \_\_\_\_ (Government Procurement), nothing in this Agreement shall be construed:

a) to require any Party from refusing to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests:

i) relating to the traffic in arms, ammunition, and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

ii) taken in time of war or other emergency in international relations; or

iii) relating to the implementation of national policy or international agreements relating to the non-proliferation of nuclear weapons or other nuclear explosive devices; or]

c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

**Article 2114: Competition** <sup>21</sup>

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct, and shall take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objects and purposes of this Agreement. To this end the Parties <sup>USA</sup>[Parties' authorities] shall consult from time to time about the effectiveness of measures undertaken by each Party.

2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competitive law enforcement in the Free Trade Area. The Parties

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<sup>21</sup> The U.S. proposes that this Article be placed outside this investment chapter in the final text.

<sup>USA</sup>[Parties' authorities] shall also cooperate on issues of competition law enforcement and consult on issues of common concern which may include mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the Free Trade Areas.

3. <sup>CDA</sup>[In the enforcement of their respective competition laws and policies in those cases involving persons, assets, or practices located, or occurring, in the territory of any of the other Parties, each Party shall assess, and, if requested by a Party, be prepared to advise that Party of the results of its assessment of, the following factors:

- a) the relative significance of the anti-competitive activities involved of conduct within the enforcing Party's territory as compared to conduct within the other Party's territory;
- b) the presence or absence of a purpose on the part of those engaged in the anti-competitive activities to affect consumers, suppliers, or competitors within the enforcing Party's territory;
- c) the relative significance of the effects of the enforcement activities on the enforcing Party's interests as compared to the effects on the other Party's interests;
- d) the existence or absence of reasonable expectations that would be furthered or defeated by the enforcement activities;
- e) the degree of conflict or consistency between the enforcement activities and the other Party's law or articulated economic policies; and
- f) the extent to which enforcement activities of such other Party with respect to the same persons, including judgements or undertakings resulting from such activities, may be affected.]

4. The obligations of this Article shall not be subject to <sup>USA</sup>[review or] dispute settlement pursuant to Chapter 23 (General Dispute Settlement) or Article 2119

<sup>CDA MEX</sup> [5. The Commission shall establish a Competition Policy Committee to consider and make recommendations (no later than \_\_\_\_)  
on:

- a) the impact of competition law and policy on trade within the Free Trade Area;

b) the impact of trade law and regulation on competition within the Free Trade Area;]

c) the potential for reliance on competition laws and policies to discipline anti-competitive transborder pricing practices and market segmentation.]<sup>22</sup>

**Article 2118: Taxation**

[SEE SUBGROUP TEXT]

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<sup>22</sup> The US has proposed a similar concept to (c) in Trade Remedies Working Group.