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4
5 **INVESTMENT**

6
7 **SCOPE, COVERAGE AND DURATION**

8
9 MEX USA[1.This Chapter shall apply to investments (of investors of a
10 Party in the territory of another party) existing at the time of
11 entry into force as well as to (any such) investments made or
12 acquired thereafter.] USA[With respect to investments established
13 prior to the date of termination of this Agreement and to which
14 this Chapter otherwise applies, the provisions of all of this
15 Chapter shall thereafter continue to be effective for a further
16 period of ten years from such date of termination.]

17
18 1.CDA[This Part shall apply to any measure of a Party affecting
19 investors or service providers of any other Party in respect of:

- 20
21 a)the establishment;
22
23 b)the acquisition;
24
25 c)the conduct and operation; or
26
27 d)the sale;

28
29 of business enterprises in or into its territory.]

30
31 MEX CDA[2.This MEX[Chapter] CDA[Part] shall not apply to:

32
33 MEX[a] any measure taken pursuant to a restriction expressly
34 mandated by the Constitution of a Party.]

35
36 b)the provision of financial services or insurance CDA[except
37 as provided in Annex Y01.4(a)];

38
39 **U.S.: Note 1 -- While financial services will be covered in**
40 **the financial services chapter, certain provisions of the**
41 **investment chapter may apply to financial services by**
42 **cross-reference in the financial services chapter.**

43
44 c)government procurement CDA[except as provided in Part 3
45 (Internal Measures)];

46
47 CDA[d]services listed in Annex Y01.3(c)]

48
49 e) public entities, to the extent such entities conduct
50 activities:

51
52 (i)in pursuit of monetary, fiscal or exchange rate
53 policy; or

1
2 (ii)for the account or with the guarantee or using the
3 financial resources of the Party;
4
5 ^{CDA}[except when those activities are permitted to be carried
6 out by service providers in competition with such public
7 entities];
8
9 ^{CDA}[f) public or private entities in respect of their
10 activities forming part of a statutory system of social
11 security, health care, education, day care, or public
12 retirement plans;]
13
14 ^{CDA}[g) measures of a Party, imposed in connection with the
15 initial privatization of a state enterprise, that limit the
16 rights of an investor of another country to own or control
17 such enterprise;]
18
19 ^{CDA}[h) the specific measures of the Parties listed in Annex
20 Y01.3 (f); and]
21
22 ^{CDA}[i) subject to Article 106 (Nullification or Impairment of
23 Benefits), any subsidy.]
24
25 ^{CDA}[g) as between Canada, the United States of America, and
26 the United States of Mexico, cultural industries as defined
27 in article 2012 of the U.S.-Canada Free Trade Agreement.]]
28
29 ^{MEX}[3.Except as otherwise provided, the provisions of subparagraph
30 (c) of Article Y02 shall apply to any measure affecting investments
31 related to the provision of services if such services are covered
32 by Chapters ____.]
33
34 ^{CDA}[4. This Part shall apply to any measure of a self-regulatory
35 organization whose mandate is conferred by the Party, or by its
36 state, provincial or local governments.]

1 **ADDITIONAL CANADIAN EQUIVALENCES**

2
3 [From Canadian Protocol, Part 2: SPECIFIC COMMITMENTS AND
4 EXCEPTIONS

5
6 1. Notwithstanding any provision of the Agreement, Article 2005 of
7 the Canadian-United States Trade Agreement shall continue to apply
8 as between Canada and the United States.]

9
10 ^{CDA}**[Article 111: General Exceptions**

11
12 Nothing in this Agreement shall be construed to prevent the
13 adoption or enforcement by any Party of measures:

14
15 (a) necessary to protect public order, safety or public
16 morals;

17
18 (b) necessary to protect human, animal or plant life or
19 health or the environment in its territory, or to enforce
20 generally agreed international environmental or conservation
21 rules or standards;

22
23 (c) relating to the products or services of prison labor;

24
25 (d) imposed for the protection of national treasures of
26 artistic, historic or archaeological value;

27
28 (e) necessary for fiduciary or consumer protection
29 reasons;

30
31 (f) necessary to secure compliance with laws or
32 regulations which are not inconsistent with the provisions
33 of this Agreement, including those relating to the avoidance
34 of fraudulent or deceptive practices;

35
36 provided that such measure is:

37
38 (g) consistent with Article 106; and

39
40 (h) is the least trade-restrictive necessary for securing
41 the protection required.]

42
43 ^{CDA}**[Article 106: Nullification and Impairment of Benefits**

44
45 1. No measure shall be implemented or applied by any Party in a
46 manner that would:

47
48 (a) constitute a means of arbitrary or unjustifiable
49 discrimination between its goods, services and service

1 providers, investors and suppliers and those of any other
2 Party;

3
4 (b) ...

5
6 (c) otherwise nullify or impair any benefit reasonably
7 expected to accrue to one or more of the other Parties,
8 directly or indirectly, under this Agreement.]
9

10 ^{CDA} **[Article 103(2): Extent of Obligations**

11
12 Notwithstanding Article 103, paragraph 1 (Extent of
13 Obligations), except in respect of Part 2 (Border Impediments to
14 Free Trade) and as otherwise provided herein the obligations of
15 this Agreement shall not apply to:

16
17 a) a non-conforming provision of any existing measure;

18
19 b) the continuation or prompt renewal of a non-conforming
20 provision of any existing measure; or

21
22 c) an amendment to a non-conforming provision of any
23 existing measure to the extent that the amendment does not
24 decrease its conformity with the obligations of this
25 Agreement.]

1 TREATMENT OF INVESTMENTS

2
3 MEX USA[1. Each Party shall accord nondiscriminatory treatment¹ to
4 an investor of another Party in the establishment, acquisition,
5 expansion, management, conduct, operation and sale or other
6 disposition of investments in its territory. MEX USA[In particular,]
7 CDA[Further to Article 105 and for greater certainty] no Party shall

8
9 (a) impose on an investor of another Party a requirement
10 that a minimum level of equity in an business enterprise in
11 its territory be held by its nationals, other than nominal
12 qualifying shares for directors or incorporators of
13 corporations; or

14
15 (b) require an investor of another Party, by reason of its
16 nationality, to sell or otherwise dispose of an investment
17 in its territory CDA[and...(see para. 13 below on non-
18 establishment).]

19
20 MEX USA[2. A Party's failure to accord nondiscriminatory
21 treatment to an investment in its territory of an investor of
22 another Party, and activities associated therewith, shall be a
23 breach of that Party's obligation under paragraph 1.]

24
25 MEX USA[3. Investments of investors of a Party in the territory
26 of another Party shall at all times be accorded fair and equitable
27 treatment and shall enjoy full protection and security USA[, all in
28 accordance with international law.]

29
30 4 Without prejudice to paragraph 4, investors of a Party whose
31 investments suffer losses in the territory of another Party owing
32 to conflict or civil strife shall be accorded at least
33 nondiscriminatory treatment by such other Party as regards any
34 measures it adopts in relation to such losses.

35
36 MEX USA[5. A Party shall not require that entities which are
37 legally constituted under the applicable laws or regulations of one
38 Party, and which are investments of investors of another Party,
39 engage as top managerial personnel individuals of any particular
40 nationality.]

41
42 USA CAN[6. Each Party shall provide investors of another Party
43 with an effective means of asserting claims and enforcing rights

¹ "nondiscriminatory treatment" or "nondiscriminatory basis" means treatment, or treatment on a basis, no less favorable than the better of national treatment or most favored nation treatment.

1 with respect to investments], ^{USA}[investment agreements, and
2 investment authorizations.]

3
4 ^{MEX USA}[7. The most favored nation obligations of this Chapter
5 shall not apply to advantages accorded by a Party by virtue of the
6 Party's binding obligations under any multilateral international
7 agreement under the framework of the General Agreement on Tariffs
8 and Trade.]

9
10 ^{USA MEX}[8. Each Party reserves the right to deny to an entity of
11 another Party the advantages of this Chapter if:

12
13 a) nationals of any non Party own or control such entity
14 and such entity has no substantial business activities in
15 the territory of the Party under whose laws it is
16 constituted;] ^{USA}[or

17
18 b) such entity is owned or controlled by nationals of a
19 non Party with which the denying Party does not maintain
20 normal economic relations.]

21
22 ^{MEX}[9. The Parties are excepted from the obligations of this
23 Article as set forth in Annexes 2102.1 and 2012.2. Any such
24 exceptions shall not be a greater departure from the obligations of
25 this Article than required by or specified in domestic law in force
26 on the date of signature or this Agreement. In the event that the
27 relevant domestic law is liberalized to conform more closely to the
28 obligations of paragraphs 1 and 2, it may not thereafter be made
29 more restrictive. Where a Party takes an exception to national
30 treatment it shall nonetheless accord most favored treatment.]

31
32 ^{USA}[10. A Party may maintain existing measures, and impose measures
33 in the future, which depart from the obligations of paragraphs 1
34 and 2, but only in respect of the activities set out in Annex
35 _____. Any future departures from those obligations in respect of
36 those activities shall not apply to investments existing at the
37 time the measure becomes effective.]

38
39 ^{USA}[11. A Party may maintain existing measures departing from the
40 obligations of paragraphs 1 and 2 as set out in Annex _____. Such
41 measures shall either:

42
43 (a) not be a greater departure from such obligations than
44 required by or specified in domestic law in force on the
45 date of signature of this Agreement; and that law shall be
46 briefly described; or

47
48 (b) be described in detail in the Annex itself.

1 In the event that the relevant domestic law is liberalized to
2 conform more closely to the obligations of paragraphs 1 and 2, such
3 measures may not thereafter be made more restrictive.]

4
5 ^{USA}[12. Where a Party has or takes a measure covered in Annexes ____
6 and ____ it shall nonetheless accord most favored nation treatment
7 unless set forth in the respective Annex.]

8
9 ^{CDA}[13. No Party shall require the establishment of an investment or
10 a commercial presence by a person of another Party in its territory
11 as a condition for the provision of a service in a manner
12 inconsistent with Article 106.]

13
14 ^{CDA}[14. Further to Article 105, the Parties shall implement:

15
16 (a) the provisions of Annex 402.1 regarding
17 transportation;

18
19 [to be revisited in the light of transportation discussions,
20 to determine if these obligations are best placed in Part 3,
21 in connection with standards related measures]

22
23 (b) the provisions of Annex 402.2 regarding
24 telecommunications services;

25
26 (c) the provisions of Annex 402.3 regarding other measures
27 affecting services; and

28
29 (d) the provisions of Annex 402.4 regarding measures
30 affecting investors of the other Parties.]

31
32 ^{CDA}[**Article 403: Specific Exceptions**

33
34 15. Subject to prior notification and consultation in accordance
35 with Part 6, a Party may deny the benefits of this Part to
36 investors or service providers if it establishes that they
37 originate from a country which is not a Party to this Agreement.

38
39 16. The Party denying benefits pursuant to paragraph 15 shall
40 have the burden of establishing that such action is in accordance
41 with that paragraph.]

42
43 **ADDITIONAL MEXICAN EQUIVALENCES**

44
45 ^{MEX}[**Article 1310: Emergency Safeguard Measures**

46
47 1. If, as a result of the reduction or elimination of a
48 restriction provided for in this Chapter, or in the Sectoral
49 Chapters, a service is being imported into the territory of a Party

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1 or produced within its territory by providers of another Party in
2 such increased quantities, and under such conditions, as to
3 constitute a substantial cause of serious injury to domestic
4 industry providing a like or directly competitive service, the
5 Party may, to the extent directly necessary to remedy the injury:

6
7 (a) ...

8
9 (b) limit the establishment in its territory of providers
10 of such service not already established there; and

11
12 (c) ...

13
14 2. The following conditions and limitations shall apply to an
15 action taken pursuant to paragraph 1....]

16
17 **ADDITIONAL CANADIAN COMMENT AND EQUIVALENCES**

18
19 ^{CDA}[**Article 105: National Treatment**

20
21 1. Each Party shall accord to the goods, services and service
22 providers, investors and suppliers of the other Parties treatment
23 no less favorable than that accorded to its own like goods,
24 services and service providers, investors and suppliers in respect
25 of all matters covered by this Agreement, except as otherwise
26 provided in this Agreement.]

27
28 ^{CDA}[**Article 108: Most Favored Nation Treatment**

29
30 2. Subject to the specific exceptions listed in a Party's
31 instrument of ratification or accession, each Party shall,
32 immediately and unconditionally, accord to the goods, services and
33 service providers, investors and suppliers of all other Parties
34 treatment no less favorable than that accorded by it to the like
35 goods, services and service providers, investors and suppliers of
36 any other country or international entity, whether or not that
37 country or entity is a Party to this Agreement, in respect of all
38 matters covered by this Agreement.]

39
40 3. Derogations from MFN treatment are provided in the Protocols
41 of the Canadian draft. For example:

42
43 **SPECIFIC COMMITMENTS AND EXCEPTIONS**

44
45 ^{CDA}[2. Regarding Article 108 of the Agreement, the
46 most-favoured-nation treatment set out therein shall not apply to:

47
48 (a) bilateral air agreements to which Canada is a party;

49 (b) maritime cabotage regulations providing a Commonwealth

- 1 preference;
- 2 (c) Canada-United States reciprocal salvage rights;]
- 3 (d) (to be negotiated)

1 PROVINCIAL AND STATE MEASURES

2
3 MEX USA[1. The obligations of this Chapter shall apply to the
4 USA[political subdivisions] of the Parties.]

5
6 MEX USA[2. The treatment accorded by a Party

7
8 a) under Article ____ with respect to nationals and
9 entities of another Party; and

10
11 b) under Article ____ with respect to the investments
12 (and associated activities of those nationals and companies)

13
14 shall, in any state ^{USA}[or political subdivision], be no less
15 favorable than the treatment accorded by such state ^{USA}[or political
16 subdivision] to its residents, or entities legally constituted
17 under its laws, or their investments in its territory.]

18
19 **ADDITIONAL CANADIAN COMMENT AND EQUIVALENCES**

20
21 ^{CDA}[**Article 103: Extent of Obligations**

22
23 4. The Parties shall ensure that all necessary measures are
24 taken in order to give effect to the provisions of this Agreement,
25 including their observance, except as otherwise provided in this
26 Agreement, by state, provincial and local governments.]

27
28 ^{CDA}[**Article 105: National Treatment**

29
30 2. The provisions of this Article shall mean, with respect to
31 measures of a province or state, treatment no less favorable than
32 the most favorable treatment accorded by such province or state to
33 any like goods, services and service providers, investors and
34 suppliers, as the case may be, of the Party of which it forms a
35 part.]

1 PERFORMANCE REQUIREMENTS

2
3 1. ^{MEX}[Except as provided in Annex____,] no Party shall ^{MEX USA}[apply]
4 ^{CDA}[impose] ^{MEX USA}[, or condition the receipt of an incentive on,] any
5 of the following requirements in connection with the establishment,
6 acquisition, expansion, conduct or operation of investments in its
7 territory of investors of ^{USA}[a Party or a non-Party]^{CDA} ^{MEX}[another
8 Party]:
9

10 a) achieve a given level or percentage of domestic
11 content; substitute domestic goods or services for imported
12 goods or services; or otherwise favor the purchase or use
13 of goods or services of domestic origin or from domestic
14 sources;

15
16 b) relate in any way the volume or value of imports to
17 the volume or value of exports or to the amount of foreign
18 exchange inflows associated with such investment;

19
20 c) restrict domestic sales of goods or services that such
21 investment produces by limiting such sales in any way to
22 volume or value of its exports or foreign exchange
23 earnings;

24
25 ^{USA MEX}[d) transfer, import or use a particular technology,
26 production process or other proprietary knowledge; or]

27
28 ^{USA MEX}[e) act as the exclusive supplier of the goods or
29 services it produces to a specific market or region].
30

31 ^{MEX USA}[With respect to paragraph 1(a), benefits associated with
32 government procurement or export promotion programs shall not be
33 considered "incentives".]
34

35 2. No Party shall require, in connection with the establishment,
36 acquisition, expansion, conduct or operation of investments in its
37 territory of an investor of ^{USA}[a Party or a non-Party]^{MEX CDA}[another
38 Party], that such investment export a given level or percentage of
39 goods or services.
40

41 ^{MEX CDA}[3. No Party shall prohibit or otherwise restrict an
42 investor established in the territory of another Party from:
43

44 a) exporting goods and services from such territory to a
45 non-party country;

46
47 b) importing to such territory goods and services from a
48 non-party country; or
49

1 c) using goods and services originating in a non-party
2 country.]
3

4 ^{CDA}[4. For purposes of this Article, a Party "imposes" a
5 requirement on an investor when it requires particular action of an
6 investor or when, after the date of the entry into force of this
7 Agreement for that Party, it enforces any undertaking or commitment
8 described in this Part given to that Party after the date this
9 Agreement enters into force for that Party.]

10
11 ^{CDA}[5. Further to Article 106 (Nullification and Impairment), no
12 Party shall impose on an investor of a nonParty, as a term or
13 condition of permitting an investment in its territory, or in
14 connection with the regulation of the conduct or operation of a
15 business enterprise located in its territory, a commitment to meet
16 any of the requirements described in paragraph 1 where meeting such
17 a requirement could have a significant impact on trade between two
18 or more of the Parties.]

19
20 ^{CDA}[6. Nothing in this Part shall prevent a Party from imposing
21 requirements on an investor of another Party in connection with the
22 grant of a subsidy to such investor.]

23
24 ^{MEX CDA}[7. Nothing in this Agreement shall prevent a Party from
25 imposing requirements on an investor of another Party in respect of
26 activities not listed in paragraph 1.]

1 MONITORING

2
3 1. Notwithstanding Article (on national treatment), a Party may
4 require an investor of another Party ^{MEX USA}[or its investments] ^{CDA}[or
5 a service provider of another Party] to submit to it routine
6 information ^{MEX USA}[respecting such investment] solely for
7 information or statistical purposes.¹ Such Party shall protect
8 such business information that is confidential from disclosure that
9 would prejudice the investor's competitive position.

10
11 2. Nothing in paragraph 1 shall preclude a Party from otherwise
12 obtaining or disclosing information in connection with the
13 equitable and good faith application of its laws.

¹ The U.S. suggests the following substitute sentence,
"Notwithstanding Article (on national treatment), a Party may
require routine information, to be used solely for informational or
statistical purposes, concerning an investment of an investor of
another Party in its territory."

1 TRANSFERS

2
3 1. Subject to paragraph 3 ^{MEX CDA}[and paragraphs 4 and 5] a Party
4 shall permit all transfers and international payments (hereinafter
5 "transfers") relating to an investment in ^{CDA}[or provision of a
6 service in or into] its territory of an investor ^{CDA}[or service
7 provider] of another Party to be made freely and without delay.
8 Such transfers include:

9
10 (a) profits, dividends, interest, capital gains, royalty
11 payments, management, technical assistance and other fees,
12 ^{USA MEX}[returns in kind,] and other amounts derived from an
13 investment ^{CDA}[or service];

14
15 (b) proceeds from the sale of all or any part of an
16 investment ^{CDA}[or service] or from the partial or complete
17 liquidation of an investment ^{CDA}[or service];

18
19 (c) payments made under a contract entered into by an
20 investor, ^{MEX USA}[or investment,] ^{CDA}[or service provider],
21 including payments made pursuant to a loan agreement;

22
23 (d) compensation pursuant to {Article on expropriation};
24 and

25
26 (e) payments arising out of an investment dispute ^{USA}[as
27 defined in {Article on dispute settlement}.]

28
29 ^{USA}[2. Except as provided in paragraph 2 of {Article on
30 expropriation} and] subject to paragraph 3, a Party shall permit
31 transfers to be made in a freely usable currency at the market rate
32 of exchange prevailing on the date of transfer with respect to spot
33 transactions in the currency to be transferred.

34
35 3. A Party may, through the equitable and good faith
36 application of its laws, prevent any transfer referred to in
37 paragraph 1 if such transfer is inconsistent with any measure of
38 general application relating to:

39
40 ^{CDA}[(a) restrictions applied by a Party to persons of
41 another Party on the making of payments and transfers for
42 current international transactions which conform with
43 Article VIII of the Articles of Agreement of the
44 International Monetary Fund;]

45
46 (b) bankruptcy, insolvency or the protection of the rights
47 of creditors;

48
49 (c) issuing, trading or dealing in securities;

- 1
2 (d) criminal or penal offenses;
3
4 (e) reports of currency transfers;
5
6 (f) imposing ^{USA}[income] taxes by such means as a
7 withholding tax ^{USA}[applicable to dividends or other
8 transfers;] or
9
10 (g) ensuring the satisfaction of judgments in adjudicatory
11 proceedings.
12
13 4. ^{MEX CDA}[No Party shall require its investors to repatriate, or
14 penalize its investors who fail to repatriate, the income, earnings
15 or profits attributable to any investment in another Party or to
16 any businesses carried on in another Party either directly by the
17 investors or indirectly through a business enterprise established
18 in that other Party.]
19
20 5. ^{MEX CDA}[Paragraph 4 shall not be construed as preventing a
21 Party from taxing its investors on their share of any income,
22 earnings or profits attributable to a business carried on or an
23 investment made in another Party, provided that the tax so charged
24 does not exceed the tax that would be so charged if such income,
25 earnings or profits were repatriated, without any further tax on
26 the repatriation, to its investors.]

1 STATE ENTERPRISES

2
3 ^{CDA}[Article 410: State Enterprises

4
5 Each Party shall ensure that state enterprises engaged in
6 non-regulated commercial activities in competition with private
7 enterprises:

8
9 (a) be subject to domestic competition law and policies in
10 respect of such activities; and

11
12 (b) be given the same treatment under domestic competition
13 law and policies as such private enterprises in respect of
14 such activities.]

15
16 ^{USA}[1. The provisions of this Chapter, and in particular the
17 obligation to accord nondiscriminatory treatment to investments in
18 the territory of a Party of investors of another Party, shall apply
19 to the state enterprises of a Party.

20
21 2. Further to Article (concerning nondiscriminatory treatment),
22 where a state enterprise of a Party is in competition, within the
23 territory of such Party, with an investment of an investor of
24 another Party, and where there are no other investments of
25 investors of that Party which are not state enterprises in
26 competition with the state enterprise, that Party shall accord the
27 investment of the investor of the other Party treatment no less
28 favorable than that which it provides its state enterprise. Where
29 investments of investors of that Party which are not state
30 enterprises also compete with the state enterprise, the investment
31 of the investor of the other Party shall be accorded treatment no
32 less favorable than that provided such other investments.]

1 EXPROPRIATION AND COMPENSATION

2
3 1. No Party shall directly or indirectly nationalize or
4 expropriate an investment of an investor of another Party in its
5 territory or take any measure or series of measures tantamount to
6 expropriation or nationalization of such an investment
7 ("expropriation"), except:

8
9 (a) for a public purpose;

10
11 (b) on a nondiscriminatory basis;

12
13 (c) in accordance with due process of law ^{USA}[and the
14 general principles of treatment provided for in Article
15 ----]; and

16
17 (d) upon payment of ^{USA CDA}[prompt, adequate and effective]
18 compensation.

19
20 2. Compensation shall be equivalent to the fair market value
21 of the expropriated investment immediately before the expropriatory
22 action was taken or became known, whichever is earlier. Valuation
23 criteria shall include going concern value, asset value (including
24 declared tax value of tangible property), and other criteria, as
25 appropriate to determine fair market value. Compensation shall be
26 paid without delay; include interest at a commercially reasonable
27 rate from the date of expropriation; be fully realizable; and be
28 freely transferable at the prevailing market rate of exchange on
29 the date of ^{USA}[expropriation.] ^{MEX CDA}[transfer].

30
31 **Mexican Note 1 -- Mexico considers that the concerns expressed by**
32 **the U.S. and Canada delegations on compensation are covered by the**
33 **new draft proposal on paragraph 2. On that basis Mexico will only**
34 **accept this paragraph if the U.S. and Canada delegations drop the**
35 **actual bracketed text in paragraph 1(c) and (d).**

1 DISPUTE SETTLEMENT

2
3 ^{MEX}[Article ____ : Dispute Settlement

4
5 1. (Definition of an investment dispute)

6
7 2. In the event of an investment dispute, the investor may send
8 written notice to the Party with which it has the dispute ("the
9 host government"), setting forth the provision or provisions of
10 this Chapter which it believes has been breached and the facts on
11 which its assertion is based. The investor shall simultaneously
12 send a copy of this written notice to the Party of which it is a
13 national ("the home government"). The two Parties shall thereupon
14 immediately refer the matter to dispute resolution under Chapter
15 23.]

16
17 ^{MEX}[Article ____ : Domestic Judicial Enforcement of the Rights of
18 Investors

19
20 1. Each Party shall provide investors of the other Parties
21 access to an impartial judicial system with authority to enforce
22 the rights of investors established under this Agreement.]

23
24 **CANADA ADDITIONAL EQUIVALENCES**

25
26 (From Canadian Protocol, Part 2: Specific Commitments and
27 Exceptions):

28
29 [22. Notwithstanding anything in the Agreement, the provisions of
30 Part 6 shall not apply to any Decision by Canada following a review
31 under the Investment Canada Act, with respect to whether or not to
32 permit an acquisition that is subject to review.]

33
34 ^{USA}[Article XX07: Settlement of Disputes between a Party and a
35 National or Company of Another Party

36
37 1. For purposes of this Article, an investment dispute is a
38 dispute between a Party and a national or company of another Party
39 arising out of or relating to (a) an investment agreement between
40 that Party and such national or company; (b) an investment
41 authorization granted by that Party's foreign investment authority
42 (if any such authorization exists) to such national or company; or
43 (c) an alleged breach of any right conferred or created by this
44 Chapter with respect to an investment.

45
46 2. In the event of an investment dispute, the parties to the
47 dispute should initially seek a resolution through consultation and
48 negotiation. If the dispute cannot be settled amicably, the
49 national or company concerned may choose to submit the dispute for

1 resolution:

- 2
3 a) to the courts or administrative tribunals of the Party
4 that is a party to the dispute;
5
6 b) in accordance with any applicable previously agreed
7 dispute settlement procedures; or
8
9 c) in accordance with the terms of paragraph 3.

10
11 3. a) Provided that the national or company concerned has
12 not submitted the dispute for resolution under paragraph 2
13 (a) or (b) and that six months have elapsed from the date on
14 which the dispute arose, the national or company concerned
15 may choose to consent in writing to the submission of the
16 dispute for settlement by binding arbitration:

17
18 i) to the International Centre for the Settlement of
19 Investment Disputes ("Centre") established by the
20 Convention on the Settlement of Investment Disputes
21 between States and Nationals of other States, done at
22 Washington, March 18, 1965 ("ICSID Convention"),
23 provided that the Party is a party to such Convention;

24
25 ii) to the Additional Facility of the Centre, if the
26 Centre is not available;

27
28 iii) in accordance with the Arbitration Rules of the
29 United Nations Commission on International Trade Law;
30 or

31
32 iv) to any other arbitration institution, or in
33 accordance with any other arbitration rules, as may be
34 mutually agreed between the parties to the dispute.

35
36 b) Once the national or company concerned has so
37 consented, either party to the dispute may initiate
38 arbitration in accordance with the choice so specified in
39 the consent.

40
41 4. Each Party hereby consents to the submission of any
42 investment dispute for settlement by binding arbitration in
43 accordance with the choice specified in the written consent of the
44 national or company under paragraph 3. Such consent, together with
45 the written consent of the national or company when given under
46 paragraph 3, shall satisfy the requirement for:

47
48 a) written consent of the parties to the dispute for
49 purposes of Chapter II of the ICSID Convention (Jurisdiction

1 of the Centre) and for purposes of the Additional Facility
2 Rules; and
3

4 b) an "agreement in writing" for purposes of Article II
5 of the United Nations Convention on the Recognition and
6 Enforcement of Foreign Arbitral Awards, done at New York,
7 June 10, 1958 ("New York Convention").
8

9 5. Any arbitration under paragraph 3(a)(ii), (iii) or (iv) of
10 this Article shall be held in a state that is a party to New York
11 Convention.
12

13 6. Any arbitral award resulting from an arbitration under
14 paragraphs 3(a)(ii), (iii) or (iv) of this Article shall be final
15 and binding on the parties to the dispute. Each Party undertakes to
16 carry out without delay the provisions of any such award and to
17 provide in its territory for its enforcement.
18

19 7. In any proceeding involving an investment dispute, a Party
20 shall not assert, as a defense, counterclaim, right of set off or
21 otherwise, that the national or company concerned has received or
22 will receive, pursuant to an insurance or guarantee contract,
23 indemnification or other compensation for all or part of its
24 alleged damages.
25

26 8. For purposes of an arbitration held under paragraph 3 of
27 this Article, any company legally constituted under the applicable
28 laws and regulations of a Party or a political subdivision thereof
29 but that, immediately before the occurrence of the event or events
30 giving rise to the dispute, was an investment of nationals or
31 companies of another Party, shall be treated as a national or
32 company of such other Party, including in accordance with Article
33 25(2)(b) of the ICSID Convention.]
34

35 ^{USA}[**Article XX08: Settlement of Disputes Between Parties**
36

37 1. Any dispute between Parties concerning the interpretation or
38 application of this Chapter which is not resolved through
39 consultations or other diplomatic channels, shall be submitted,
40 upon the request of a Party, for binding decision in accordance
41 with the applicable rules of international law to an arbitral
42 tribunal composed of three arbitrators.
43

44 2. In the absence of an agreement by the Parties to the
45 contrary, the arbitration rules of the United Nations Commission on
46 International Trade Law (UNCITRAL) shall apply. The appointing
47 authority referenced in those rules shall be the Secretary General
48 of the Centre.
49

1 3. Fees and expenses of the arbitrators and appointing
2 authority, and other costs of the proceedings, shall be borne
3 equally by the Parties. Each Party shall bear the cost of its legal
4 representation.]

1 NATIONAL SECURITY

2
3 ^{MEX}[Article 2109: National Security

4
5 1. A Party may deny the application of this Chapter to
6 investors of the other Parties for reasons of national security.]

7
8 ^{USA}[1. Nothing in this Chapter shall preclude the application by a
9 Party of measures necessary for the maintenance of public order,
10 the fulfillment of its obligations under the United Nations Charter
11 with respect to the maintenance or restoration of international
12 peace or security, or the protection of its own essential security
13 interests.

14
15 Note: This provision is self-judging.]

16
17 ^{CDA}[Article 110: National Security

18
19 1. Nothing in this Agreement shall be construed to prevent:

20
21 a) any Party from refusing to furnish or allow access to
22 any information the disclosure of which it determines to be
23 contrary to its essential security interests;

24
25 b) any Party from imposing any measure affecting goods,
26 services, service providers, suppliers or investors of a
27 Party which it determines is directly related and essential
28 to:

29
30 i) supplying a military establishment of a Party
31 with arms, ammunition or implements of war, or
32 enabling fulfillment of a critical defence contract of
33 a Party;

34
35 ii) responding to a situation of armed conflict
36 involving the Party taking the measure;

37
38 iii) implementing international agreements relating
39 to the nonproliferation of nuclear, chemical or
40 biological weapons, other nuclear explosive devices,
41 or chemical or biological agents;

42
43 iv) responding to direct threats of disruption in
44 the supply of nuclear materials for defence purposes.

45
46 (c) any Party from taking action in pursuance of its
47 obligations under the United Nations Charter for the
48 maintenance of international peace and security.
49

1 2. The Party relying on paragraphs a) - c) shall ensure that
2 its action or measure is that which least infringes the rights or
3 any reasonable expectations of the other Parties under this
4 Agreement, and is no broader in scope or duration than necessary.
5

6 3. Any determination made under paragraph 1(b) shall be
7 published promptly in the official journal of that Party. Any
8 determination made under paragraph 1(a) or action taken under
9 paragraph 1(c) shall, where appropriate, be similarly published.
10

11 4. Except in cases of emergency, the Party proposing to impose
12 any measure under paragraph 1(b), or proposing to take action under
13 1(c) shall consult with the other Parties prior to imposing such
14 measure or taking such action.
15

16 5. If a Party considers that any action or measure taken by
17 another Party under this Article constitutes a disguised
18 restriction on trade or investment or otherwise nullifies or
19 impairs any benefit reasonably expected under this Agreement, it
20 may request consultations. Such consultations shall be held
21 promptly. The Party whose action or measure is the subject of the
22 consultations shall give full and sympathetic consideration to the
23 view of the complaining Party and shall explain, in as much detail
24 as is consistent with its assessment of its security interests, the
25 reasons for the measure. Where appropriate following such
26 consultations, such Party shall re-consider whether its action or
27 the application of its measure could be altered in any way, in
28 order to minimize the infringement of rights and benefits otherwise
29 secured by this Agreement.
30

31 6. No Party may invoke the provisions of this Article to
32 derogate from the requirement to pay compensation for an
33 expropriation in accordance with Article ____ or to permit the
34 transfer of an investment and returns, in accordance with Article
35 ____.

1 TAXATION

2
3 ^{USA}[1. Issues of nondiscrimination arising under Article XX01 of
4 this Chapter and involving taxation shall be resolved under the
5 criteria and procedures of the convention for the avoidance of
6 double taxation between the Parties involved.]

7
8 ^{CDA}[**Article 112: Taxation**

9
10 1. Subject to Article 106 and except as otherwise provided in
11 this Agreement, nothing in this Agreement shall affect the right of
12 any Party to adopt or maintain any taxation measure.

13
14 2. Nothing in this Agreement shall affect:

15
16 (a) the right of any Party to adopt or maintain any
17 measure designed to prevent the avoidance of tax by
18 producers, service providers, investors and suppliers of any
19 other Party or to impose nonresident withholding taxes on
20 payments made to producers, service providers, investors and
21 suppliers of any other Party; or

22
23 (b) rights and obligations under any international
24 taxation agreement, as may be specified in a Party's
25 instrument of ratification or accession.]

1 EXTRA-TERRITORIALITY

2
3 ^{CDA}[Article 407: Extra-territoriality
4 ...
5 2. No Party may prescribe new laws or enforce existing laws so
6 as to require investors or service providers to act, in the
7 territory of another Party, in a manner that conflicts with the
8 laws of such other Party.]

1 MONOPOLIES

2
3 ^{CDA}[Article 408: Monopolies

4
5 1. Subject to Article 106, nothing in this Agreement shall
6 prevent a Party from maintaining or designating a monopoly.

7
8 2. A Party maintaining or designating a monopoly shall ensure
9 that the monopoly will not, in providing the monopoly goods or
10 service in the relevant market, behave in a manner which could
11 nullify or impair benefits to which producers or service providers
12 of any other Party is entitled.

13
14 3. Prior to designating a monopoly, a Party shall:

15 a) notify the other Parties;

16 b) upon request, engage in consultations; and

17 c) endeavour to minimize or eliminate any nullification
18 or impairment of benefits under this Agreement that might
19 otherwise be caused by the designation.

20
21 4. Each Party shall ensure that, where it permits the monopoly
22 supply of goods or services, the monopoly does not in its
23 territory, either directly or through an affiliated company engage
24 in anti-competitive practices in areas outside its monopoly.]
25
26
27

1 TECHNOLOGY CONSORTIA

2
3 ^{CDA}[Article 409: Technology Consortia

4
5 1. No Party shall maintain or introduce any measure that limits
6 or prevents an investor of another Party from participating in a
7 technology consortium or other group of business enterprises
8 respecting the development of or access to technology (in a manner
9 that would violate Article 105 or Article 106).

10
11 2. Any measure imposed by a Party on a global basis that would
12 be consistent with this Agreement but for paragraph 1 of this
13 Article, including those imposed in accordance with the national
14 security provisions of this Agreement, that limits or prevents such
15 participation, shall not apply to the investors of the other
16 Parties unless the other Parties are specifically named as being
17 included in the measure. Any Party proposing to implement such
18 measure that places a restriction or limitation on the investors of
19 the other Parties shall consult with the other parties prior to its
20 implementation.]

1 COMPETITION POLICY

2
3 ^{CDA}[Article 411: Competition

4
5 1. The Parties recognize the contribution that competition laws
6 and policies can make to the fulfillment of the object and purpose
7 of this Agreement.

8
9 2. To that end, each Party agrees to:

10
11 a) enact and enforce, within [] years of the entry
12 into force of this Agreement for that Party, transparent
13 competition laws, policies and procedures consistent with
14 the governing principles of this Agreement, that have as
15 their objective the control of anti-competitive agreements,
16 mergers, monopolies, pricing practices and abuse of dominant
17 position; and

18
19 b) pursue negotiations with the other Parties to expand
20 and enhance international agreements and arrangements for
21 mutual legal assistance, notification, consultation, and
22 exchange of information relating to the enforcement of
23 competition laws and policies in the free trade area.

24
25 3. In the enforcement of their respective competition laws and
26 policies in those cases involving persons, assets, or practices
27 located, or occurring, in the territory of any other Party, each
28 Party shall, upon request, advise such other Party of the results
29 of its assessment of the following factors:

30
31 a) the relative significance of the anti-competitive
32 activities involved and of conduct within the enforcing
33 Party's territory as compared to conduct within such other
34 Party's territory;

35
36 b) the presence or absence of a purpose on the part of
37 those engaged in the anti-competitive activities to affect
38 consumers, suppliers, or competitors within the enforcing
39 Party's territory;

40
41 c) the related significance of the effects of the
42 enforcement activities on the enforcing Party's interests as
43 compared to the effects on the other Party's interests;

44
45 d) the existence or absence of reasonable expectations
46 that would be furthered or defeated by the enforcement
47 activities;

48
49 e) the degree of conflict or consistency between the

1 enforcement activities and the other Party's law or
2 articulated economic policies; and
3

4 f) the extent to which enforcement activities of such
5 other Party with respect to the same persons, including
6 judgments or undertakings resulting from such activities,
7 may be affected.
8

9 4. The Commission shall establish a Competition Policy
10 Committee to consider and make recommendations [no later than] on:
11

12 a) the impact of competition law and policy on trade
13 within the free trade area;
14

15 b) the impact of trade law and regulation on competition
16 within the free trade area; and
17

18 c) the potential for reliance on competition laws and
19 policies to discipline anti-competitive transborder pricing
20 practices and market segmentation.]

1 DEFINITIONS

2
3 **USA DEFINITIONS WITHOUT MEXICAN EQUIVALENTS**

4
5 4. **National** means a natural person who is a national of a
6 country under its applicable law.

7
8 5. **National of a Party** means a natural person who is a national
9 of a Party under its applicable law.

10
11 8. **State enterprise** means a company of a Party that is owned,
12 or controlled through ownership interests, directly or indirectly,
13 by such Party or any agency or instrumentality thereof.

14
15 9. **National treatment** means treatment no less favorable than
16 that accorded by a Party, in like circumstances, to nationals or
17 companies of such Party or to investments of such nationals or
18 companies, as the case may be.

19
20 10. **Most favored nation treatment** means treatment no less
21 favorable than that accorded by a Party, in like circumstances, to
22 nationals or companies of any other party or to investments of such
23 nationals or companies.

24
25 11. **Nondiscriminatory treatment or nondiscriminatory basis** means
26 treatment, or treatment on a basis, no less favorable than the
27 better of national treatment or most favored nation treatment.

28
29 **CANADIAN DEFINITIONS WITHOUT MEXICAN EQUIVALENTS**

30
31 **enterprises** means any juridical entity involving a financial
32 commitment for the purpose of commercial gain;

33
34 **monopoly** means a sole provider of a good or service;
35 service provider of a Party means any business enterprise legally
36 constituted or organized under the law of that Party;

37
38 **DEFINITIONS**

39
40 ^{MEX}[For purposes of this Chapter;]

41
42 ^{USA}[As used in this Chapter, the following terms shall have the
43 following meanings:]

44
45 ^{CDA}[For the purposes of this Part,]

46
47 ^{MEX CDA}[**acquisition** with respect to:

48
49 (a) a business enterprise carried on by an entity, means

1 an acquisition, as a result of one or more transactions, of
2 the ultimate direct or indirect control of the entity
3 through the acquisition of the ownership of voting
4 interests; or

5
6 (b) any business enterprise, means an acquisition, as a
7 result of one or more transactions, of the ownership of all
8 or substantially all of the assets of the business
9 enterprise used in carrying on the business;]

10
11 ^{MEX}[agency]

12
13 ^{MEX CDA}[**business enterprise** means a business that has, or in the case
14 of an establishment thereof will have:

15
16 (a) a place of business;

17
18 (b) an individual or individuals employed or self-employed
19 in connection with the business; and

20
21 (c) assets used in carrying on the business;

22
23 NOTE: A part of a business enterprise that is capable of being
24 carried on as a separate business enterprise is itself a business
25 enterprise;]

26
27 ^{MEX}[**Constitution of a Party**]

28
29 ^{MEX CDA}[**control or controlled**, with respect to:

30
31 (a) a business enterprise carried on by an entity, means

32
33 (i) the ownership of all or substantially all of the
34 assets used in carrying on the business enterprise;
35 and

36
37 (ii) includes, with respect to an entity that controls
38 a business enterprise in the manner described in
39 subparagraph (i), the ultimate direct or indirect
40 control of such entity through the ownership of voting
41 interests; and

42
43 (b) a business enterprise other than a business enterprise
44 carried on by an entity, means the ownership of all or
45 substantially all of the assets used in carrying on the
46 business enterprise;]

47
48 ^{CDA}[**entity** means a corporation, partnership, trust or joint
49 venture;]

1
2 MEX USA [**Entity** means any kind of corporation, company, association,
3 partnership, sole proprietorship or other organization whether or
4 not organized for pecuniary gain.

5
6 MEX USA [**Entity of a Party** means a entity legally constituted under
7 the laws and regulations of a Party or a political subdivision
8 thereof.]

9
10 MEX CDA [**establishment** means a startup of a new business enterprise
11 and the activities related thereto;]

12
13 CDA [**investment** means:

14 (a) the establishment of a new business enterprise; or

15
16 (b) the acquisition of a business enterprise; and
17 includes:

18
19 (c) as carried on, the new business enterprise so
20 established or the business enterprise so acquired, and
21 controlled by the investor who has made the investment; and
22

23
24 (d) the share or other investment interest in such
25 business enterprise owned by the investor provided that such
26 business enterprise continues to be controlled by such
27 investor or the investor continues to own a significant
28 minority interest in such business enterprise.]

29
30 USA [1. **Investment** includes the following kinds of interest in a
31 business enterprise, whether or not sufficient to control the
32 enterprise:

33
34 a) an ownership interest or related property right in the
35 assets used in carrying on the business enterprise,
36 including any right to the proceeds from the sale of the
37 assets upon the dissolution or liquidation of the
38 enterprise;

39
40 b) an ownership of equity or debt securities of a business
41 enterprise including e.g. voting or non-voting shares,
42 bonds, convertible debentures or stock options;

43
44 c) a right to share the income or profits of a business
45 enterprise;

46
47 d) in combination of any of the foregoing, a loan to a
48 business enterprise or claim to perform by the business
49 enterprise;

1
2 e) a loan to a business enterprise guaranteed by an
3 investor, provided such investor has a controlling interest
4 in the business enterprise; and
5

6 f) a claim to money secured by an interest in the assets of
7 a business enterprise.
8

9 2. Investment also includes the following kinds of interests,
10 whether or not in a business enterprise:
11

12 a) interest in real estate or other property, tangible or
13 intangible, acquired in the expectation or used for the
14 purpose of economic benefit;
15

16 b) rights conferred by law or under contract or any license
17 or permit pursuant to law, to undertake any economic
18 activity; and
19

20 c) interests arising from the commitment of capital or other
21 resources by an investor of a Party to economic activity in
22 the territory of another Party, such as in connection with
23 concession agreements, construction projects, infrastructure
24 improvement projects, or long-term service contracts
25 involving the presence of the investors property within the
26 territory.
27

28 3. Claims to money arising solely from the sale of goods or
29 services by a national or entity of one Party to a business
30 enterprise in the territory of another Party shall not be consider
31 an investment in such enterprise.
32

33 **NOTE:** National treatment is accorded for the establishment,
34 acquisition, expansion, management, conduct, operation, and sale of
35 any investment (including business enterprises controlled by NAFTA
36 investors). All chapter rights attach with respect to all
37 investments, but chapter rights attach to enterprises only if NAFTA
38 investors control them.]
39

40 ^{MEX}[**Investment** means any interest in a commercial undertaking
41 (including tangible and intangible property) in the territory of
42 one Party owned or controlled directly or indirectly by a national
43 or company of another Party whether equity or other ownership
44 share, or through debt securities (other than those held as part of
45 an investment portfolio).]
46

47 ^{USA}[**Investments of nationals or companies of a Party** means
48 investments owned or controlled directly or indirectly by nationals
49 or companies of such Party.]

1
2 ^{USA}[Investor of a Party means a national or company of such party.]
3

4 ^{MEX CDA}[investor of a Party means:
5

6 (a) such Party or agency thereof;
7

8 (b) a province or state of such Party or agency thereof;
9

10 (c) a national of such Party;
11

12 (d) an entity ultimately controlled directly or indirectly
13 through the ownership of voting interests by:
14

15 (i) such Party or one or more agencies thereof;
16

17 (ii) one or more provinces or states of such Party or
18 one or more agencies thereof;
19

20 (iii) one or more nationals of such Party;
21

22 (iv) one or more entities described in paragraph (e);
23 or
24

25 (v) any combination of persons or entities described
26 in (i), (ii), (iii) and (iv); or
27

28 (e) an entity that is not ultimately controlled directly
29 or indirectly through the ownership of voting interests
30 where a majority of the voting interests of such entity are
31 owned by:
32

33 (i) persons described in subparagraphs (d) (i), (ii)
34 and (iii);
35

36 (ii) entities incorporated or otherwise duly
37 constituted in the territory of such Party and, in the
38 case of entities that carry on business, carrying on a
39 business enterprise located in the territory of such
40 Party, other than any such entity in respect of which
41 it is established that nationals of a third country
42 control such entity or own a majority of the voting
43 interests of such entity; or
44

45 (iii) any combination of persons or entities
46 described in (i) and (ii);
47

48 that makes or has made an investment;
49

NOTE: For purposes of paragraph (e), in respect of individuals each

1 of whom holds not more than one percent of the total number of the
2 voting interests of an entity the voting interests of which are
3 publicly traded, it shall be presumed, in the absence of evidence
4 to the contrary, that those voting interests are owned by nationals
5 of such Party on the basis of a statement by a duly authorized
6 officer of the entity that, according to the records of the entity,
7 those individuals have addresses in the territory of such Party and
8 that the signatory to the statement has no knowledge or reason to
9 believe that those voting interests are owned by individuals who
10 are not nationals of such Party;]

11
12 ^{MEX CDA}[**investor of a non-party country** means an investor other than
13 an investor of a Party, that makes or has made an investment;]

14
15 ^{MEX CDA}[**joint venture** means an association of two or more persons or
16 entities where the relationship among those associated persons or
17 entities does not, under the laws in force in the territory of the
18 Party in which the investment is made, constitute a corporation, a
19 partnership or a trust and where all those associated persons or
20 entities own or will own assets of a business enterprise, or
21 directly or indirectly own or will own voting interests in an
22 entity that carries on a business enterprise;]

23
24 ^{MEX}[**law**]

25
26 ^{MEX CDA}[**located in the territory of a Party** means, with respect to a
27 business enterprise, a business enterprise that is, or in the case
28 of an establishment will be, carried on in the territory of such
29 Party and has, or in the case of an establishment will have
30 therein:

31
32 (a) a place of business;

33
34 (b) an individual or individuals employed or self-employed
35 in connection with the business; and

36
37 (c) assets used in carrying on the business;]

38
39 ^{MEX CDA}[**measure** ^{MEX}[shall have the same meaning as in article 201,
40 except that it shall also include] ^{CDA}[includes any law, regulation,
41 procedure, requirement or practice, including] any published
42 policy;]

43
44 ^{MEX CDA}[**ownership** means beneficial ownership and with respect to
45 assets also includes the beneficial ownership of a leasehold
46 interest in such assets;]

47
48 ^{MEX CDA}[**person** means a Party or agency thereof, a province or state
49 of a Party or agency thereof, or] a national of a Party.]

INVEST.403

1
2 voting interest with respect to

3
4 (a) a corporation with share capital, means a voting
5 share;

6
7 (b) a corporation without share capital, means an
8 ownership interest in the assets thereof that entitles the
9 owner to rights similar to those enjoyed by the owner of a
10 voting share; and

11
12 (c) a partnership, trust, joint venture or other
13 organization means an ownership interest in the assets
14 thereof that entitles the owner to receive a share of the
15 profits and to share in the assets on dissolution; and]

16
17 ^{CDA}[**significant minority interest** means the interest of an investor
18 who:

19 (a) owns at least 10% of the voting interests in the
20 business enterprise; and

21
22 (b) has a right to influence, or does in fact influence,
23 the direction, management or conduct of the business
24 enterprise beyond those rights ordinarily conferred on the
25 owners of voting interests by law.

26
27 ^{MEX CDA}[**voting share** means a share in the capital of a corporation to
28 which is attached a voting right ordinarily exercisable at meetings
29 of shareholders of the corporation and to which is ordinarily
30 attached a right to receive a share of the profits, or to share in
31 the assets of the corporation on dissolution, or both.]