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CHAPTER 21 - INVESTMENT
Chapter XX - Investment
PART 4 - INVESTMENT AND CONDUCT OF BUSINESS OPERATIONS

Article 2101: Scope and Coverage

1. Subject to paragraphs 2, 3 and 4, this Chapter shall apply to any measure of a Party affecting investment in its territory by an investor of the other Parties.

Article XX12: Coverage and Post-termination Coverage

1. This Chapter shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. With respect to investments made prior to the date of termination of this Agreement and to which this Chapter otherwise applies, the provisions of all of this Chapter shall thereafter continue to be effective for a further period of ten years from such date of termination.

Article 401: SCOPE

1. This Part shall apply to any measure of a Party affecting investors, service providers, or other persons of any other Party in respect of:

- a) the establishment;
- b) the acquisition;
- c) the conduct and operation; or
- d) the sale;

of business enterprises in or into its territory.

2. This Part shall apply to any measure of a self-regulatory organization whose mandate is conferred by the Party, or by its state, provincial or local governments.

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2. This Chapter shall not apply to any measure taken pursuant to a restriction [expressly] mandated by the Constitution of a Party.

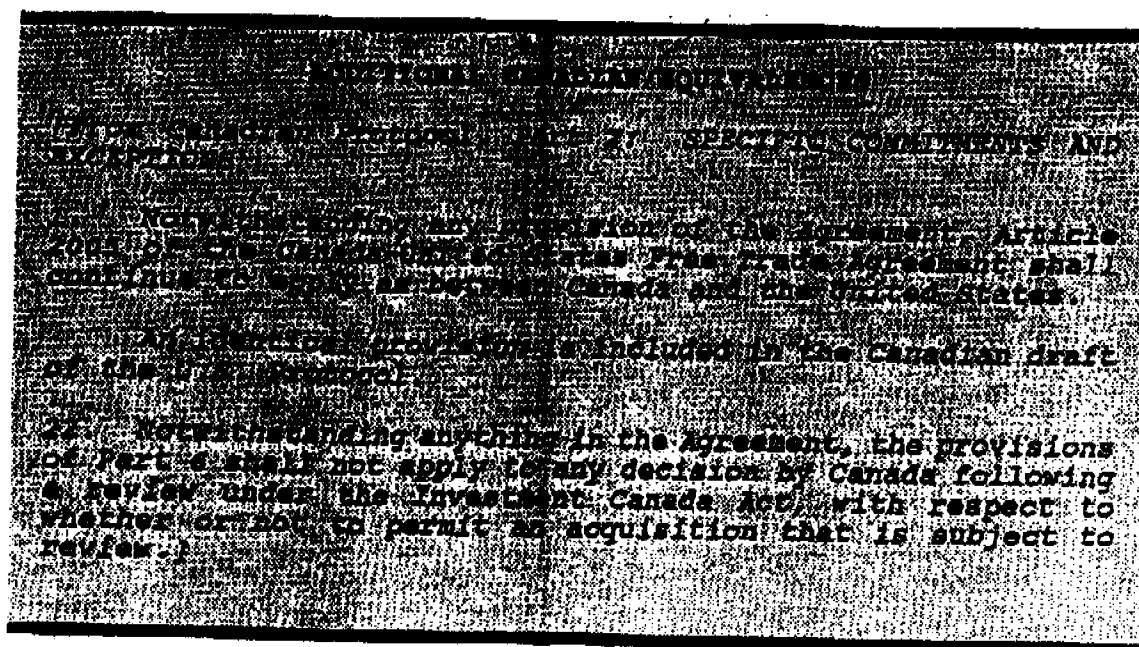
3. This Chapter shall not apply to any measure affecting investments related to:

[See U.S. Article XX01(3), (9) and (11), set out below.]

Article 403: SPECIFIC EXCEPTIONS

3. This Part shall not apply to:

- a) the provision of financial services or insurance; or *
- (b) financial services, except as provided in Annex 403.3(b);
- b) government procurement.
- (c) public procurement, except as provided in Part 3;



4. Except as otherwise provided, the provisions of subparagraph (c) of Article 2103 shall apply to any measure affecting investments related to the provision of services if such services are covered by Chapters [].

(a) services listed in Annex 403.3(a);

...

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(d) public entities, to the extent such entities conduct activities:

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

(ii) for the account or with the guarantee or using the financial resources of the Party;

except when those activities are permitted to be carried out by service providers in competition with such public entities;

(e) public or private entities in respect of their activities forming part of a statutory system of social security, health care, education, day care, or public retirement plans;

(f) measures of a Party, imposed in connection with the initial privatization of a state enterprise, that limit the rights of an investor of another country to own or control such enterprise;

(g) the specific measures of the Parties listed in Annex 403.3(f); and

(h) subject to Article 106, any subsidy.

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Article 2102: National Treatment

Except as otherwise provided in this Chapter, each Party shall grant to investors of the other Parties treatment no less favourable than that granted in like circumstances to its investors with respect to measures affecting:

Article XX01: Establishment and Treatment of Investment

1. Each Party shall accord nondiscriminatory treatment¹ to nationals and companies of another Party in the making of investments in its territory, and in the management, control, operation, maintenance, or disposition of such investments...

Article 105: NATIONAL TREATMENT

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

Article XX01: Establishment and Treatment of Investment

1... In particular, no Party shall

(a) impose on a national or company of another Party a requirement that a minimum level of equity in an investment by such national or company (other than nominal qualifying shares for directors or incorporators of corporations) be held by nationals of such Party; or

Article 402: NATIONAL TREATMENT

1. Further to Article 105, and for greater certainty,

(a) no Party shall impose on an investor of another Party a requirement that a minimum level of equity, other than nominal qualifying shares for directors or incorporators of corporations be held by its nationals in a business enterprise located in its territory;

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.

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(b) require a national or company of another Party, by reason of its nationality, to sell or otherwise dispose of an investment (or any part thereof) in its territory.

(b) no Party shall require an investor of another Party by reason of nationality to sell or dispose of the whole or any part of an investment made in its territory; and...

2. Each Party shall accord nondiscriminatory treatment to investments in its territory of nationals or companies of another Party, and activities associated therewith.

(c) no Party shall introduce ~~any measure, including any measure requiring the establishment or commercial presence by a person of another Party in its territory, as a condition for the provision of a service, in a manner inconsistent with Article 106.~~

2. Further to Article 105, the Parties shall implement:

(a) the provisions of Annex 402.1 regarding transportation;

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

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

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

(d) the provisions of Annex 402.4 regarding measures affecting investors of the other Parties.

[Article 2102: National Treatment, continued]

a) the establishment of business enterprises in its territory;

[Article 401: SCOPE, continued]

1. This Part shall apply to any measure of a Party affecting:

a) the establishment; (of business enterprises in or into its territory).

b) the acquisition of business enterprises in its territory;

b) the acquisition; (of business enterprises in or into its territory).

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c) the conduct and operation of business enterprises in its territory; and

c) the conduct and operation; (of business enterprises in or into its territory) or.

d) the sale of business enterprises in its territory.

d) the sale; (of business enterprises in or into its territory).

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Article XX01: Establishment and Treatment of Investment

...
4. Investments of nationals and companies of a Party in the territory of another Party shall at all times be accorded fair and equitable treatment, shall enjoy full protection and security and shall in no case be accorded treatment less than that required by international law.

5. Without prejudice to paragraph 4, nationals or companies of a Party whose investments suffer losses in the territory of another Party owing to war or other armed conflict, revolution, insurrection or other similar events shall be accorded at least nondiscriminatory treatment by such other Party as regards any measures it adopts in relation to such losses.

6. [Temporary entry provision deleted; it will be addressed elsewhere in NAFTA]

7. A Party shall not require that companies which are legally constituted under the applicable laws or regulations of one Party, and which are investments of nationals or companies of another Party, engage as top managerial personnel individuals of any particular nationality.

8. Each Party shall provide nationals and companies of another Party with an effective means of asserting claims and enforcing rights with respect to investments, investment agreements, and investment authorizations.

9. The most favored nation provisions of this Chapter shall not apply to advantages accorded by a Party by virtue of the Party's binding obligations under any multilateral international agreement under the framework of the General Agreement on Tariffs and Trade.

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ADDITIONAL CANADIAN COMMITMENTS AND EQUIVALENCES

Derogations from MFN treatment are provided in the Protocol of the Canadian Draft. For example:

PART 2: SPECIFIC COMMITMENTS AND EXCEPTIONS

2. Regarding Article 108 of the Agreement, the most-favoured-nation treatment set out therein shall not apply to:

- (a) bilateral air agreements to which Canada is a party;
- (b) maritime cabotage legislation providing a Commonwealth preference;
- (c) Canada-United States reciprocal trade rights;
- (d) goods benefiting from tariff preferences accorded by the Canada-United States Free Trade Agreement;
- (e) goods benefiting from tariff preferences accorded by the Generalized Preference Arrangements by the Economic and Trade Development Assistance Program for the countries of the Commonwealth Caribbean;
- (f) as negotiated.

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10. ...

11. Each Party reserves the right to deny to a company of another Party the advantages of this Chapter if:

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

b) such company is owned or controlled by nationals of a non-Party with which the denying Party does not maintain normal economic relations.

Article 403: SPECIFIC EXCEPTIONS

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

2. The Party denying benefits pursuant to paragraph 1 shall have the burden of establishing that such action is in accordance with that paragraph.

Article 2103: Provincial and State Measures

The provisions of this Chapter regarding the treatment of investors shall mean, with respect to a province or state, treatment no less favorable than that granted by such province or state to any investor of that province or state.

Article XX11: Application to Political Subdivisions

1. The obligations of this Chapter shall apply to the political subdivisions of the Parties.

2. The treatment accorded by a Party

a) under Article XX01.1 with respect to nationals and companies of another Party; and

b) under Article XX02.2 with respect to the investments (and associated activities of those nationals and companies)

shall, in any state or political subdivision, be no less favorable than the treatment accorded by such state or political subdivision to its residents, or companies legally constituted under its laws, or their investments in its territory.

Article 103: EXTENT OF OBLIGATIONS

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

Article 105: NATIONAL TREATMENT

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

Article 2104: Performance Requirements

1. Except as provided in Annex 2104.1, no Party shall impose on an investor of the other Parties, as a term or condition of permitting an investment in its territory, or in connection with the regulation of the conduct or operation of a business enterprise located in its territory, a requirement to:

Article XX02: Trade-Related Performance Requirements

1. No Party shall apply, or condition the receipt of an incentive on, any trade-related performance requirement connected with the making, maintenance, or operation of investments of nationals and companies of a Party or a non-Party. Trade-related performance requirements include requirements or commitments to:

Article 404: PERFORMANCE REQUIREMENTS

1. No Party shall impose on an investor of another Party, as a term or condition of permitting an investment in its territory, or in connection with the regulation of the conduct or operation of a business enterprise located in its territory, a requirement to:

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

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

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

b) substitute goods or services from the territory of such Party for imported goods or services;

b) substitute goods or services from the territory of such Party for imported goods or services;

(b) substitute goods or services from the territory of such Party for imported goods or services;

c) purchase goods or services used by the investor in the territory of such Party or from suppliers located in such territory or grant a preference to goods or services produced in such territory; or

c) purchase goods or services in the territory of such Party or from suppliers located in such territory, or accord a preference to goods or services located in such territory;

(c) purchase goods or services used by the investor in the territory of such Party or from suppliers located in such territory or accord a preference to goods or services produced in such territory;

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- d) achieve a given level or percentage of domestic content.
- d) achieve a given level or percentage of domestic content; or ...
- (d) achieve a given level or percentage of domestic content; or ...

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e) require that an investment's imports be related to the volume, value or proportion of its exports, or that an investment's exports be related to the volume, value or proportion of its import.

(e) relate the volume or value of its purchases of imported products or services to the volume or value of its products or services sold for export.

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2. Further to Article 106, no Party shall impose on an investor of a non-Party, as a term or condition of permitting an investment in its territory, or in connection with the regulation of the conduct or operation of a business enterprise located in its territory, a commitment to meet any of the requirements described in paragraph 1 where meeting such a requirement could have a significant impact on trade between two or more of the Parties.

3. Nothing in this Part shall prevent a Party from imposing requirements on an investor of another Party in connection with the grant of a subsidy to such investor.

Article 2105: Monitoring

1. Each Party may require investors of the other Parties who make or have made an investment in its territory to submit to it routine information respecting such investment. The Parties shall protect such business information that is confidential from disclosure that would prejudice the investor's competitive position.

Article XX01: Establishment and Treatment of Investment

10. Nothing in this Chapter shall preclude a Party from:

a) prescribing special formalities in connection with the making of investments by nationals or companies of another Party, or

b) requiring nationals or companies of another Party to provide routine information respecting such investments for informational and statistical purposes, provided

such formalities and requirements do not impair the substance of any of the rights set forth in this Chapter.

Article 402: NATIONAL TREATMENT

4. Notwithstanding the provisions of Article 105, a Party may require an investor, service provider, ~~or other person~~ of another Party to submit to it routine information solely for information or for statistical purposes. Such Party shall protect such business information from disclosure that would prejudice the investor's competitive position.

2. Nothing in paragraph 1 shall preclude a Party from otherwise obtaining or disclosing information in connection with the non-discriminatory and bona fide application of its laws.

Article 2106: Transfers

1. Subject to paragraph 2, a Party shall not prevent an investor of another Party from transferring:

- a) any profits from an investment, including dividends;
- b) any royalties, fees, interest and other earnings from an investment; or
- c) any proceeds from the sale of all or any part of an investment or from the partial or complete liquidation of such investment.

Article XX05: Transfers Relating to Investments

1. Each Party shall permit all transfers related to investments in its territory of nationals and companies of another Party to be made freely and without delay. Such transfers include:

- a) returns²;
- b) compensation pursuant to Article XX04;
- c) payments arising out of an investment dispute as defined in Article XX07;
- d) payments made under a contract entered into by an investment, including payments made pursuant to a loan agreement; and
- e) proceeds from the sale or liquidation of all or any part of an investment.

2. Except as provided in Article XX04.2, a Party shall permit transfers to be made in a freely usable currency at the prevailing market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred.

Article 406: TRANSFERS

1. Subject to Article 505 and paragraphs 2 and 4, no Party shall prevent an investor or service provider of another Party from transferring the returns on an investment or service or from otherwise making international payments and transfers.

². "Return" means an amount derived from an investment of nationals or companies of a Party, including profit, dividend, interest, capital gain, royalty payment, management fee, technical assistance or other fee, or returns in kind.

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2. A Party may, through the equitable, non-discriminatory and bona fide 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:

3. Notwithstanding the provisions of paragraphs 1 and 2, a Party may adopt and enforce laws and regulations (a) requiring reports of currency transfer; and (b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers. Furthermore, a Party may protect the rights of creditors, or ensure the satisfaction of judgments in adjudicatory proceedings, through the equitable and good faith application of its law.

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

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- a) exchange controls or preferential exchange rates arrangements;
- b) bankruptcy, insolvency or the protection of the rights of creditors;

... protect the rights of creditors ...

(a) bankruptcy, insolvency or the protection of the rights of creditors;

c) issuing, trading or dealing in securities;

(b) issuing, trading or dealing in securities;

d) criminal or penal offences;

(c) criminal or penal offenses;

e) reports of currency transfers;

(a) requiring reports of currency transfer;

(d) reports of currency transfers;

f) withholding taxes; or

(b) imposing income taxes by such means as a withholding tax applicable to dividends or other transfers.

(e) withholding taxes; (or)

g) ensuring the satisfaction of judgments in judicial proceedings.

... ensure the satisfaction of judgments in adjudicatory proceedings ...

(f) ensuring the satisfaction of judgments in adjudicatory proceedings.

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[Article XX03: State Enterprises]

[Provisions to be provided; may be included elsewhere in the NAFTAtext.]

Article 410: STATE ENTERPRISES

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

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

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

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Article XX04: Expropriation and Compensation

1. Investments of nationals or companies of a Party in the territory of another Party shall not be expropriated or nationalized either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose, in a nondiscriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article XX01.

Article 405: EXPROPRIATION

No Party shall directly or indirectly nationalize or expropriate an investment in its territory by an investor of another Party or take any measure or series of measures tantamount to an expropriation of such an investment, except:

- (a) for a public purpose;
- (b) in accordance with due process of law;
- (c) on a non-discriminatory basis; and
- (d) upon payment of prompt, adequate and effective compensation at fair market value.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known, whichever is earlier; be paid without delay; include interest at a commercially reasonable rate from the date of expropriation; be fully realizable; and be freely transferable at the prevailing market rate of exchange on the date of expropriation.

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Article 2107: Existing Legislation and Transition Measures

1. The provisions of Articles 2102, 2103, 2104 and 2106 of this Chapter shall not apply to:

Article 103: EXTENT OF OBLIGATIONS

2. Notwithstanding paragraph 1, except in respect of Part 2 and as otherwise provided herein the obligations of this Agreement shall not apply to:

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

(a) a non-conforming provision of any existing measure;

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

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

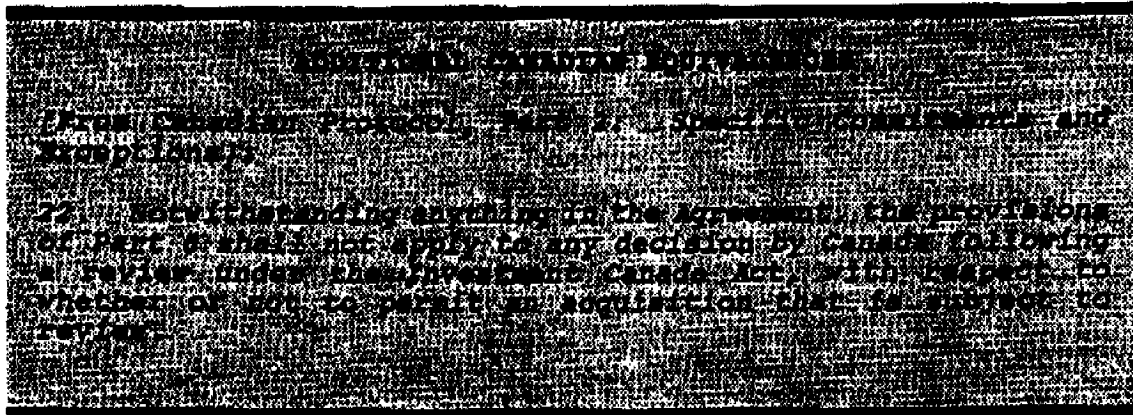
c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with any of the provisions of Articles 2102, 2103, 2104 or 2106.

(c) an amendment to a non-conforming provision of any existing measure to the extent that the amendment does not decrease its conformity with the obligations of this Agreement.

2. During the transition period of this Agreement, a Party may establish, on a case by case basis, limits on foreign equity ownership of a business enterprise in its territory with respect to an acquisition made (on or after June 12, 1991) by an acquirer of another Party with which the business enterprise has a technical assistance or transfer of technology agreement.

Article 2108: Disputes

Disputes arising from the interpretation and application of this Chapter shall not be subject to the dispute settlement provisions of this Agreement.

**Article XX07: Settlement of Disputes between a Party and a National or Company of Another Party**

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

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

- a) to the courts or administrative tribunals of the Party that is a party to the dispute;
- b) in accordance with any applicable previously^_agreed dispute settlement procedures; or
- c) in accordance with the terms of paragraph 3.

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

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

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

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

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

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

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

a) written consent of the parties to the dispute for purposes of Chapter II of the ICSID Convention (Jurisdiction of the Centre) and for purposes of the Additional Facility Rules; and

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

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

6. Any arbitral award resulting from an arbitration under paragraphs 3(a)(ii), (iii) or (iv) of this Article shall be final and binding on the parties to the dispute. Each Party undertakes to

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Article XX06: Transparency

1. Each Party shall make public promptly all laws, regulations, procedures and administrative rulings of general application, and adjudicatory decisions that pertain to or affect investments.

[See also Article XX03: Notification [Institutional Provisions.]

Article 603: PUBLICATION

Each Party shall ensure that any measures of general application respecting any matter covered by this Agreement shall be published promptly or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. Each Party shall, to the extent possible, publish in advance and allow opportunity for comment on, any law, regulation, procedure, or administrative ruling of general application that it proposes to adopt respecting the matters covered by this Chapter.

Article 604: NOTIFICATION

1. Each Party shall, to the maximum extent practicable, with respect to any proposed or actual measure that might materially affect the operation of this Agreement:

(a) publish a notice in its official journal at an early stage in such a manner as to enable interested persons and Parties to become acquainted with the measure;

(b) provide written notice to the other Parties as far in advance as possible of the implementation of the measure;

(c) provide upon the request of any Party information and respond to questions pertaining to the measure, whether or not previously notified; and

(d) allow reasonable time between publication and entry into force of the measure to permit interested persons and other Parties to make comments in writing, discuss these comments upon request of any Party, and take the comments and the results of the discussions into account.

2. Paragraph 1 shall not apply in urgent circumstances, provided that the Party:

(a) immediately notifies the other Parties of the measure, together with a brief indication of the objective and rationale of the measure, including the nature of the urgency;

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(b) provides to other Parties upon request copies of the measure in its final form; and

(c) allows the other Parties to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

3. The provisions of this Article shall not require any Party to provide confidential information, the disclosure of which would prejudice legitimate commercial interests.

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Article 2109: National Security

A Party may deny the application of this Chapter to investors of the other Parties for reasons of national security.

Article XX09: Public Order and National Security

Nothing in this Chapter shall preclude the application by a Party of measures necessary for the maintenance of public order, the fulfillment of its obligations under the United Nations Charter with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

[Note: This provision is self-judging.]

Article 110: NATIONAL SECURITY

1. Nothing in this Agreement shall be construed:

(a) to prevent 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 imposing any measure which it determines is directly related and essential to:

(i) supplying a military establishment of a Party with arms, ammunition or implements of war, or enabling fulfilment of a critical defence contract of a Party;

(ii) responding to a situation of armed conflict involving the Party taking the measure;

(iii) implementing international agreements relating to the non-proliferation of nuclear, chemical or biological weapons, other nuclear explosive devices, or chemical or biological agents;

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

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

2. Any determination made under paragraph 1(b) shall be published promptly in the official journal of that Party.

3. The Party refusing to furnish or allow access to any information under paragraph 1(a) or imposing any measure under paragraphs 1(b) or (c) shall ensure that such action constitutes the means that

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least infringes on the rights and reasonable expectations of the Parties under this Agreement and is no broader in scope or duration than necessary.

4. Except in cases of emergency, the Party proposing to take any measure under paragraphs 1(b) or (c) shall consult with the other Parties prior to taking such measure, and in any event shall consult upon request in accordance with the provisions of Part 6.

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Article XX10: Taxation

Issues of non-discrimination arising under Article XX01 of this Chapter and involving taxation shall be resolved under the criteria and procedures of the convention for the avoidance of double taxation between the Parties involved.

Article 112: TAXATION

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

2. Nothing in this Agreement shall affect:

(a) the right of any Party to adopt or maintain any measure designed to prevent the avoidance of tax by producers, service providers, investors and suppliers of any other Party or to impose non-resident withholding taxes on payments made to producers, service providers, investors and suppliers of any other Party; or

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

International Double Tax Avoidance

Administrative Arrangements

3. If a Party shall require its investors to repatriate, or penalize its investors who fail to repatriate, its income, earnings or profits attributable to any investment in another Party or to any business carried on in another Party either directly by the investors or indirectly through a business enterprise established in that other Party.

4. Paragraph 3 shall not be construed as preventing a Party from taxing its investors on their share of any income, earnings or profits attributable to a business carried on or an investment made in another Party, provided that the tax so charged does not exceed the tax that would be so charged if such income, earnings or profits were repatriated, without any further tax on the repatriation, to its investors.

Article 408: MONOPOLIES

1. Subject to Article 106, nothing in this Agreement shall prevent a Party from maintaining or designating a monopoly.
2. A Party maintaining or designating a monopoly shall ensure that the monopoly will not, in providing the monopoly goods or service in the relevant market, behave in a manner which could nullify or impair benefits to which producers or service providers of any other Party is entitled.
3. Prior to designating a monopoly, a Party shall:
 - a) notify the other Parties;
 - b) upon request, engage in consultations; and
 - c) endeavour to minimise or eliminate any nullification or impairment of benefits under this Agreement that might otherwise be caused by the designation.
4. Each Party shall ensure that, where it permits the monopoly supply of goods or services, the monopoly does not in its territory, either directly or through an affiliated company engage in anti-competitive practices in areas outside its monopoly.

ADDITIONAL MEXICAN AND U.S. EQUIVALENCES

Article 2403: Monopolies and Other Practices Affecting Competition

1. Subject to Article 2402, nothing in this Agreement shall prevent a Party from maintaining or designating a monopoly.

2. Prior to designating a monopoly, and where the designation may affect interests of persons of the other Parties, a Party shall:

- a) i) notify the other Parties, and
- ii) at the request of another Party, engage in consultations prior to the designation; and
- b) endeavor to introduce such conditions on the operation of the monopoly as will minimize or eliminate any distortion or impairment of benefits under this Agreement.

3. Where a Party designates a monopoly, that Party shall ensure, whether through regulatory supervision, administrative controls, or the application of other measures, that the monopoly shall not:

- a) in the monopolized market, engage in discrimination in its sales or purchases against persons or companies of the other Parties contrary to the principles of this Agreement; or
- b) in any other market, either directly or through its dealings with an affiliated enterprise, use its monopoly position to engage in anticompetitive practices that adversely affect a person of the other Parties, whether through the discriminatory provision of the monopoly good or covered service, through cross subsidization, or through predatory conduct.

4. A Party shall not adopt or condone such conduct, nor shall it enforce or implement laws to encourage anticompetitive conduct in the market of another Party.

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Article 409: TECHNOLOGY CONSORTIA

No Party may enact or apply any measure in respect of participation in or treatment of any combination, consortium, or other group of business enterprises including respecting access to technology, in a manner that would violate Article 105 or Article 106.

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Article 411: COMPETITION

1. The Parties recognise the contribution that competition laws and policies can make to the fulfilment of the object and purpose of this Agreement.

2. To that end, each Party agrees to:

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

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

3. 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 other Party, each Party shall, upon request, advise such other Party of the results of its assessment of the following factors:

a) the relative significance of the anti-competitive activities involved and of conduct within the enforcing Party's territory as compared to conduct within such 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 related 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

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

4. 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; and

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

USA Definitions Without Mexican Equivalents

2. "Company" means any kind of corporation, company, association, partnership, sole proprietorship or other organization whether or not organized for pecuniary gain.

3. "Company of a Party" means a company legally constituted under the laws and regulations of a Party or a political subdivision thereof.

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

5. "National of a Party" means a natural person who is a national of a Party under its applicable law.

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

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

10. "Most favored nation treatment" means treatment no less favorable than that accorded by a Party, in like circumstances, to nationals or companies of any third party or to investments of such nationals or companies.

11. "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.

12. "Return" means an amount derived from an investment of nationals or companies of a Party, including profit, dividend, interest, capital gain, royalty payment, management fee, technical assistance or other fee, or returns in kind.

13. "Activities associated with an investment" or "associated activities" include the making, management, control, operation, maintenance and disposition of investments; the making, performance and enforcement of contracts; the acquisition, use, protection, enforcement and disposition of property of all kinds including intellectual property rights; the borrowing of funds; and the purchase, issuance, and sale of equity shares and other securities.

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CANADIAN DEFINITIONS WITHOUT MEXICAN EQUIVALENTS

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

monopoly means a sole provider of a good or service;

service provider of a Party means any business enterprise legally constituted or organised under the law of that Party;

Article 2110: Definitions

For purposes of this Chapter;

As used in this Chapter, the following terms shall have the following meanings:

DEFINITIONS

For the purposes of this Part,

acquisition with respect to:

acquisition with respect to:

a) a business enterprise carried on by an entity, means an acquisition, as a result of one or more transactions, of the ultimate direct or indirect control of the entity through the acquisition of the ownership of voting interests; or

(a) a business enterprise carried on by an entity, means an acquisition, as a result of one or more transactions, of the ultimate direct or indirect control of the entity through the acquisition of the ownership of voting interests; or

b) any business enterprise, means an acquisition, as a result of one or more transactions, of the ownership of all or substantially all of the assets of the business enterprise used in carrying on the business.

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

agency

business enterprise means a business that has, or in the case of an establishment thereof, will have:

business enterprise means a business that has, or in the case of an establishment thereof will have:

a) a place of business;

(a) a place of business;

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

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

c) assets used in carrying on the business.

(c) assets used in carrying on the business;

NOTE: A part of a business enterprise that is capable of being carried on as a separate business enterprise is itself a business enterprise.

NOTE: A part of a business enterprise that is capable of being carried on as a separate business enterprise is itself a business enterprise;

Constitution of a Party

control or controlled, with respect to:

control or controlled, with respect to:

a) a business enterprise carried on by an entity, means

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

i) the ownership of all or substantially all of the assets used in carrying on the business enterprise, and

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

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

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

b) a business enterprise other than a business enterprise carried on by an entity, means the ownership of all or substantially all of the assets used in carrying on the business enterprise.

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

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entity means a corporation, partnership, trust or joint venture.

entity means a corporation, partnership, trust or joint venture;