

3
4 INVESTMENT

4 Article 2101: Scope and Coverage

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

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

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

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

17 2. A Party has the right to perform exclusively the economic
18 activities set forth in Annex I and to refuse to permit the
19 establishment of investment in such activities.

20 3. This Chapter shall not apply to [financial services
21 except as provided in the Chapter on Financial Services.]¹

22 4. Nothing in this Chapter shall be construed to prevent a
23 Party from providing functions or services such as law enforcement,
24 correctional services, income security or insurance, social
25 security or insurance, social welfare, public education, public
26 training, health, and child care, in a manner that is not
27 inconsistent with this Chapter.

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

34 6. In the event of any inconsistency between the provisions
35 of this Chapter and another Chapter of this Agreement with respect
36 to a measure related to an investment, the provisions of the other
37 Chapter shall prevail to the extent of the inconsistency.²

38 ¹ U.S. Note - Further coordination with financial services is necessary.

39 ² Final language being resolved in investor-state discussions.

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

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

7 b) nationals of any non-Party own or control such enterprise
8 and:

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

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

15 8. For greater certainty, a decision by a Party to prohibit or
16 restrict the acquisition of an investment in its territory by an
17 investor or investment of another Party pursuant to Article XXX
18 (national security) shall not be subject to Articles _____
19 (investor-state dispute settlement) or Chapter _____ (general
20 dispute settlement).

21 9. A decision by Canada following a review under the Investment
22 Canada Act, with respect to whether or not to permit an acquisition
23 that is subject to review, shall not be subject to the dispute
24 settlement provisions of this Agreement.³

25 **Article 2102: Environmental Measures**

26 1. The Parties affirm that this Chapter shall not be construed to
27 prevent the adoption or enforcement of any measure, otherwise
28 consistent with this Chapter, that a Party deems appropriate to
29 ensure that investment activity in its territory is undertaken in
30 a manner sensitive to environmental concerns.

31 2. The Parties recognize that it is inappropriate to encourage
32 investment, including the establishment, acquisition, expansion, or
33 retention of investment, by relaxing domestic health, safety or
34 environmental measures. Accordingly, a Party should not waive or
35 otherwise derogate from, or offer to waive or otherwise derogate
36 from, such measures as an encouragement for the establishment,
37 acquisition, expansion, or retention in its territory of an

38 ³Placement to be decided. Should go in country-specific exceptions
39 (annexes)

1 investment of an investor. If a Party considers that another Party
2 has offered such an encouragement, the Party may request
3 consultations with the other Party and the two Parties shall
4 consult with a view to avoiding any such encouragement.

5 *****

6 (For Article 2119 on Dispute Settlement)

7 An arbitral tribunal may, at the request of one or more of the
8 disputing Parties or acting on its own initiative, and in
9 accordance with the applicable rules, appoint one or more experts
10 to report to it in writing on any factual issues concerning
11 environmental or other related scientific matters.⁴

12 TREATMENT OF INVESTMENTS

13 **Article 2103: National Treatment**

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

20 2. Each Party shall accord to investments of investors of
21 another Party treatment no less favorable than that which it
22 accords, in like circumstances, to investments of its own investors
23 in respect of such investments' establishment, acquisition,
24 expansion, management, conduct, and operation.

25 3. The treatment accorded by a Party under paragraphs 1 and
26 2 shall mean, with respect to a state or province, treatment no
27 less favorable than the most favorable treatment accorded by such
28 state or province in like circumstances to investors, and their
29 investments, of the Party of which it forms a part.

30 4. For greater certainty, no Party shall:

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

6 ⁴To be moved to Dispute Settlement and conformed with Chapter 23.

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

4 **Article 2104: Most-Favored-Nation Treatment**

5 1. Each Party shall accord to investments of an investor of
6 another Party treatment no less favorable than that which it
7 accords, in like circumstances, to the investments of an investor
8 of any other Party or of a non-Party in respect of such
9 investments' establishment, acquisition, expansion, management,
10 conduct, and operation.

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

17 **Article 2105: Non-Discriminatory Treatment**

18 The treatment that a Party shall accord to investments of
19 another Party and to investors of that Party shall be the better of
20 the treatment required by Articles 2103 or 2104.
21 ("Nondiscriminatory treatment")

22 **Article 2106: Minimum Standard of Treatment**

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

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

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

33 With respect to an enterprise of a Party which is an
34 investment of an investor of another Party, and subject to
35 applicable immigration laws and regulations, a Party:

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

38 b) may require a majority of the Board of Directors, or any
39 committee thereof, be of any particular nationality, or

1 resident in the territory of that Party , provided such a
2 requirement would not materially impair the ability of that
3 investor to control its investments.

4 Article 2108: Exceptions⁵

5 1. Articles 2103, 2104, 2105, 2107 and 2109 shall not
6 apply to:

7 a) a non-conforming provision of any existing measure that
8 is maintained by a Party at the federal level as described in
9 Annex A or I;

10 b) a non-conforming provision of any existing measure that
11 is maintained by a state or province, ~~and that a Party~~ AS
12 described by a Party in Annex A within two years after the
13 entry into force of this Agreement;

14 c) a non-conforming provision of any existing measure that
15 is maintained by a local government;

16 d) the continuation or prompt renewal of any such
17 nonconforming provision; or

18 e) an amendment to such nonconforming provision to the
19 extent that the amendment does not decrease the conformity of
20 the provision, as it existed immediately before the amendment,
21 with Articles 2103, 2104, 2105, 2107 and 2109.⁶

22 2. a) Articles 2103, 2104, 2105, 2107 and 2109 shall not
23 apply to measures a Party maintains or adopts with
24 respect to the sectors or subjects inscribed by it in
25 Annex B.

26 b) Notwithstanding paragraph (a), a Party shall not
27 require an investor of another Party, by reason of its
28 nationality, to sell or otherwise dispose of its
29 investment existing at the time such measure becomes
30 effective.⁷

31 3. A Party may also maintain exceptions from the obligations
32 of Articles 2103, 2104, 2105 and 2107, which are specifically

33 ⁵ Appropriate GATT XX and public order language to be developed and
34 placement to be determined.

35 ⁶Annex A to contain paramouncy clause for legal citation.

36 ⁷Canada is still considering this provision in relation to its social
7 services exception.

1 provided for in Article 2203 (of the Chapter on Intellectual
2 Property).⁸

3 5. Notwithstanding Article 2104, a Party need not accord
4 most-favored-nation treatment to investors of another Party or
5 their investments with respect to advantages accorded by that
6 Party pursuant to agreements or sectors listed in Annex ("MFN").

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

15 7. Notwithstanding Articles 2103, 2104, and 2105, a Party
16 may require, from an investor of another Party or its investment,
17 routine business information, to be used solely for informational
18 or statistical purposes, concerning that investment in its
19 territory. Such Party shall protect such business information that
20 is confidential from disclosure that would prejudice the investor's
21 or the investment's competitive position. Nothing in this
22 [Chapter]⁹ shall preclude a Party from otherwise obtaining or
23 disclosing information in connection with the equitable and good
24 faith application of its laws.

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

26 a) procurement of goods or services by a Party or by an
27 enterprise owned or controlled by a Party; and

28 [^{USA}b) government^d grants (including goods, services and
29 technology), cooperative agreements, research and development
30 contracts, and government-supported loans, guarantees, and
31 insurance.]

32 c) _____

33 ¹⁰Article 2109: Performance Requirements

34 ⁸ Consult with IPR group whether general inconsistency paragraph makes this
35 paragraph unnecessary.

36 ⁹ Related to question of general exceptions.

37 ¹⁰To be decided if general provisions are adequate or if this precise
38 language is correct.

1 1. A Party shall not impose the following requirements, or
2 enforce any commitment or undertaking in connection with the
3 establishment, acquisition, expansion, conduct or operation of an
4 investment of an investor of a Party or non-Party in its territory:

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

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

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

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

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

20 f) to transfer technology, production process or other
21 proprietary knowledge to a national or enterprise in its
22 territory, except when the requirement is imposed by a court
23 or administrative tribunal to remedy an alleged violation of
24 competition laws;

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

27 2. A requirement that an investment use a technology to meet
28 generally applicable health, safety or environmental standards
29 shall not be considered inconsistent with paragraph 1(f). For
30 greater clarity, Articles 2103, 2104, and 2105 shall apply to such
31 requirements.¹¹

32 3. A Party shall not condition the receipt or continued
33 receipt of an advantage, in connection with investments in its
34 territory of investors of a Party or non-Party, on compliance with
35 any of the following requirements:

36 a) to purchase, use or accord a preference to goods produced
37 in its territory, or to purchase goods from producers in its
38 territory;

39 ¹¹ To be reconsidered after morals clause (2108.a) is agreed upon.

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

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

6 d) to restrict domestic sales of goods or services that such
7 investment produces by limiting such sales in any way to the
8 volume or value of its exports or foreign exchange earnings;

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

14 5. The provisions of:

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

17 b) paragraphs 1(b)-(c), 1(f), ^{CDA}[1(g)], and 3(a)-(c)
18 shall not apply in respect to government procurement of
19 goods or services by a Party or by an enterprise owned or
20 controlled by a Party;

21 USA [d] paragraph 3(b) shall not apply to conditions related
22 to the content of goods to qualify for preferential tariffs or
23 quotas..]¹²

24 6. The provisions of paragraphs 1 or 3 shall not apply to
25 any requirements other than those listed in paragraphs 1(a)-(g) and
26 3(a)-(e).

27 **Article 2110: Transfers**

28 1. Subject to paragraphs 3 and 5 each Party shall permit all
29 transfers and international payments (hereinafter "transfers")
30 relating to an investment in its territory of an investor of
31 another Party to be made freely and without delay. Such transfers
32 include:

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

36 ¹²Advantages provided by waivers of border measures, such as tariffs and
37 quotas, should be disciplined by market access rules.

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

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

7 d) compensation pursuant to Article 2111 ; and

8 e) payments arising out of an investment dispute as defined
9 in Article 2119 .

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

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

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

20 b) issuing, trading or dealing in securities;

21 c) criminal or penal offenses;

22 d) reports of currency transfers; or

23 e) ensuring the satisfaction of judgments in adjudicatory
24 proceedings.

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

29 5. No Party shall require its investors to repatriate, or
30 penalize its investors who fail to repatriate, the income, earnings
31 or profits attributable to any investment in another Party.

32 6. Paragraph 5 shall not be construed as preventing a Party
33 from imposing any measure consistent with Articles 2103, 2104, and
34 2105, and relating to activities listed in paragraph 3.

35 Article 2111: Expropriation and Compensation

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

6 a) for a public purpose;

7 b) on a nondiscriminatory basis;

8 c) in accordance with due process of law and the general
9 principles of treatment provided in Article 2106 ; and

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

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

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

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

26 5. If a Party elects to pay in a currency other than a G7
27 currency, the amount paid shall be no less than the equivalent of
28 the amount of compensation owed on the date of expropriation
29 converted into a G7 currency at the market rate of exchange
30 prevailing on that date, plus accrued interest at a commercially
31 reasonable rate for that G7 currency from the date of expropriation
32 until the date of actual payment.

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

35 7. The provisions of this Article do not apply to the
36 issuance of compulsory licenses granted in relation to intellectual
37 property rights, or the revocation, limitation or creation of

1 intellectual property rights to the extent that it is consistent
2 with the provisions of Chapter _____ (Intellectual Property).¹³

3 **Article 2115: State Enterprises¹⁴**

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

6 2. Each Party, through regulatory control, administrative
7 supervision or the application of other measures, shall ensure that
8 any state enterprise and any other enterprise¹⁵ owned or controlled
9 through ownership interest by a Party acts in a manner that is not
10 inconsistent with the Party's obligations under this Chapter,
11 whenever such ~~state~~ enterprise exercises any regulatory
12 administrative or other governmental authority that the Party has
13 delegated to it, such as the power to expropriate, grant licenses,
14 approve commercial transactions, or impose quotas, fees or other
15 charges; and

16 3. Each Party shall ensure that a state enterprise that it
17 maintains or establishes accords nondiscriminatory treatment to
18 investments in the Party's territory of investors of another Party
19 in the ^{MEX}[purchase and] sale of its goods or services¹⁶.

20 **Article 2117: Technology Consortia**

21 MEX CDA [1. No Party shall maintain or introduce any measure that
22 limits or prevents an investor of another Party from participating
23 in a technology consortium or other group of business enterprises
24 with respect to the development of or access to technology (in a
25 manner inconsistent with Articles 2103, 2104 and 2105.

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

30 **Article 2119: Dispute Settlement**

31 [SEE SUBGROUP TEXT]

32 ¹³Consult with IPR group whether general inconsistency paragraph makes this
33 paragraph unnecessary.

34 ¹⁴ Paragraph 2b could be placed with generic monopolies provision.

35 ¹⁵Includes government monopolies. May need to be cross-referenced with other
36 Chapters. Subject to investor-state dispute settlement.

37 ¹⁶this provision not subject to investor-state dispute settlement. Canada
8 limits this paragraph to Crowns and provincial equivalents.

DEFINITIONS

For purposes of this Chapter:

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

enterprise of a Party means an enterprise constituted or organized under the laws and regulations of a Party or a political subdivision thereof.¹⁷

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

investment means the following:

a) an enterprise;

b) equity or debt securities of an enterprise, or any interest in such enterprise that entitles the owner to share in the income or profits or to share in the assets on dissolution;

c) real estate or other property (tangible or intangible) acquired in the expectation or used for the purpose of economic benefit or other business purposes;

d) a loan (to be completed by financial services);¹⁸

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

For greater clarity,

a) claims to money which arise solely from:

¹⁷ We are checking this definition with the Lawyers' Group.

¹⁸ This language must be coordinated with the Financial Services Group, which may wish to include as "investments" a loan by a Bank to provide capital to its subsidiary.

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

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ii) the extension of credit in connection with a commercial transaction (e.g., trade financing) other than a loan covered by subparagraph (d) of the preceding paragraph¹⁹; or

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b) any other claim to money;

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

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investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party.²⁰

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investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such Party, that makes or has made an investment.²¹

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

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

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owned or controlled means²²

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state enterprise means ^{CDA}[for Canada a Crown Corporation within the meaning of the Financial Administration Act (Canada) or a Crown corporation within the meaning of any comparable provincial legislation or that is incorporated under other applicable provincial legislation; and for the U.S. and Mexico....] ^{USA}[an enterprise of a Party that is owned, or controlled through ownership interests, directly or indirectly, by such Party or any agency or instrumentality thereof.]

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¹⁹ "Sentence" could also be used here.

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32
²⁰Text needs to be conformed to ensure that, where appropriate, references to "investment" become references to investments of investor of a Party.

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²¹The Parties will explore a means of ensuring that this definition does not create obligations contrary to national laws governing foreign missions.

35
²²to be defined if necessary

1 PROVISIONS TO BE PLACED OUTSIDE OF INVESTMENT CHAPTER

2 Article 2113: National Security

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

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

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

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

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

18 iii) relating to the implementation of national policies
19 or international agreements relating to the non-
20 proliferation of nuclear weapons or other nuclear
21 explosive devices; or

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

25 Article 2114: Competition ²³

26 1. Each Party shall adopt or maintain measures to proscribe
27 anti-competitive business conduct, and shall take appropriate
28 action with respect thereto, recognizing that such measures will
29 enhance the fulfillment of the objects and purposes of this
30 Agreement. To this end the Parties ^{USA}[Parties' authorities] shall
31 consult from time to time about the effectiveness of measures
32 undertaken by each Party.

33 2. Each Party recognizes the importance of cooperation and
34 coordination among their authorities to further effective
35 competitive law enforcement in the Free Trade Area. The Parties
36 ^{USA}[Parties' authorities] shall also cooperate on issues of

37 ²³ The U.S. proposes that this Article be placed outside this investment
38 chapter in the final text.

1 competition law enforcement and consult on issues of common concern
2 which may include mutual legal assistance, notification,
3 consultation and exchange of information relating to the
4 enforcement of competition laws and policies in the Free Trade
5 Areas.

6 3. ^{CDA}[In the enforcement of their respective competition
7 laws and policies in those cases involving persons, assets, or
8 practices located, or occurring, in the territory of any of the
9 other Parties, each Party shall assess, and, if requested by a
10 Party, be prepared to advise that Party of the results of its
11 assessment of, the following factors:

12 a) the relative significance of the anti-competitive
13 activities involved of conduct within the enforcing Party's
14 territory as compared to conduct within the other Party's
15 territory;

16 b) the presence or absence of a purpose on the part of those
17 engaged in the anti-competitive activities to affect
18 consumers, suppliers, or competitors within the enforcing
19 Party's territory;

20 c) the relative significance of the effects of the
21 enforcement activities on the enforcing Party's interests as
22 compared to the effects on the other Party's interests;

23 d) the existence or absence of reasonable expectations that
24 would be furthered or defeated by the enforcement activities;

25 e) the degree of conflict or consistency between the
26 enforcement activities and the other Party's law or
27 articulated economic policies; and

28 f) the extent to which enforcement activities of such other
29 Party with respect to the same persons, including judgements
30 or undertakings resulting from such activities, may be
31 affected.]

32 4. The obligations of this Article shall not be subject to
33 ^{USA}[review or] dispute settlement pursuant to Chapter 23 (General
34 Dispute Settlement) or Article 2119

35 5. Article xxxx: Trade and Competition Committee. The
36 Commission shall establish a Working Group on Trade and
37 Competition, comprising representatives of the Parties, to report,
38 and to make recommendations on further work as appropriate, to the
39 Commission within five years after the entry into force of the
40 Agreement on relevant issues concerning the relationship between
41 copmetition laws and policies and trade in the free trade area.

1 6.²⁴The Parties further agree to consult on:

2 (a) the potential to develop more effective rules and
3 disciplines concerning the use of government subsidies; and

4 (b) the potential for reliance on a substitute system of
5 rules for dealing with unfair transborder pricing practices
6 and government subsidization.

7 Chapter _____ (General Provisions)

8 Article _____ : TAXATION

9 1. GENERAL EXCLUSION

10 Except as provided for in this Article, nothing in this
11 Agreement shall apply to taxes of the Parties. In the event
12 of an ambiguity or conflict between this Article and any other
13 provision of this Agreement, the provisions of this Article
14 shall prevail.¹

15 2. TAX CONVENTIONS

16 Without limiting the application of Paragraph 1, nothing in
17 this Agreement shall affect the rights and obligations under
18 any convention for the avoidance of double taxation (in this
19 Article referred to as a "tax convention") or other
20 international agreement or arrangement, or domestic
21 legislation implementing such agreement or arrangement,
22 related wholly or mainly to taxes, and, in the event of an
23 inconsistency between the provisions of this Agreement and any
24 such convention, agreement, arrangement or legislation, the
25 provisions of the convention, agreement, arrangement or
26 legislation shall prevail to the extent of the inconsistency.

27 3. APPLICATION OF PROVISIONS RELATING TO TRADE IN GOODS

28 (a) Subject to those provisions of Annex 407 (Market
29 Access) that relate to taxation measures, Article
30 401 of this Agreement incorporating by reference
31 rights and obligations of the Parties relating to
32 trade in goods under Article III of the General
33 Agreement on Tariffs and Trade, and such other
34 provisions of this Agreement as are necessary to
35 give effect to Article 401, shall apply to the
36 taxes of the Parties to the same extent as does
37 Article III of the General Agreement on Tariffs and
38 Trade; and

29 ²⁴To be included in a new paragraph Article XX06.2 (trade remedies text)

1 (b) Article 413 of this Agreement relating to export taxes
2 shall apply to taxes of the Parties.

3 4. APPLICATION OF PROVISIONS RELATING TO INVESTMENT AND TRADE IN
4 SERVICES

5 Subject to paragraph 2,

6 (a) provisions imposing national treatment obligations in
7 Chapters ----- and ----- of this Agreement relating to
8 Cross Border Trade in Services and Financial Services,
9 respectively, shall apply to taxes of the Parties on
10 income or capital gains or on the taxable capital of
11 corporations, including the Assets Tax established by the
12 Assets Tax Law of Mexico, that relate to the purchase or
13 consumption of particular services; and

14 (b) provisions imposing national treatment obligations or
15 most favoured nation obligations in Chapters -----, -----
16 - and ----- of this Agreement relating to Cross Border
17 Trade in Services, Financial Services, and Investment,
18 respectively, shall apply to all other taxes of the
19 Parties;

20 except that nothing in those Chapters shall apply to

21 (c) impose most favoured nation obligations with respect to
22 advantages accorded by a party pursuant to a tax
23 convention or any other agreement or arrangement relating
24 wholly or mainly to taxation;

25 (d) a non-conforming provision of any existing taxation
26 measure;

27 (e) the continuation or prompt renewal of a non-conforming
28 provision of any existing taxation measure;

29 (f) an amendment to a non-conforming provision of any
30 existing taxation measure to the extent that the
31 amendment does not decrease its conformity with any of
32 the provisions of this Agreement;

33 (g) an excise tax on insurance premiums introduced by Mexico
34 to the extent that the tax would, if levied by Canada or
35 the United States of America, be excluded from the
36 application of the above mentioned Chapters by reason of
37 subparagraph (d), (e) or (f); or

38 (h) any new taxation measure aimed at ensuring the equitable
39 and effective imposition or collection of taxes except
40 where the measure arbitrarily discriminates between

1 persons, goods or services of the Parties or arbitrarily
2 restricts benefits accorded under this Agreement.

3 5. APPLICATION OF PROVISIONS RELATING TO PERFORMANCE REQUIREMENTS

4 Subject to paragraph 2, paragraphs 3, 4, and 5 of Article
5 _____ [performance requirements] of the Investment Chapter
6 shall apply to taxes of the Parties except that, in applying
7 that Article to a taxation measure, that Article shall be read
8 without prejudice to any rights and obligations of the Parties
9 under paragraph 3 of this Article and Article 401 of this
10 Agreement.

11 6. EXPROPRIATION

12 Article ____ of the Investment Chapter (Expropriation) shall
13 apply to a claim by a Party or an investor of a Party that a
14 measure expressed as a taxation measure constitutes an
15 expropriation [as defined in paragraph 1 of that Article]
16 except where, in the case of a claim made by such an investor,
17 it has been determined pursuant to this paragraph that the
18 measure is not an expropriation. Before an investor of a
19 Party may bring such a claim, the issue of whether the measure
20 is not an expropriation shall be referred, for determination,
21 to the competent authorities described in the tax convention,
22 if any, between the relevant Parties. If there is no such tax
23 convention or if the competent authorities do not agree to
24 consider the issue or, having agreed to consider it, fail to
25 agree that the measure is not an expropriation within a period
26 of six months after the referral, the investor may bring the
27 claim under Article _____ (Investor-State Arbitration) that
28 the measure is an expropriation.²

29 7. WITHHOLDING TAX

30 Without limiting the application of the foregoing, and for
31 greater certainty, Article ____ (Transfers) shall not limit the
32 right of a party to impose or collect a tax by withholding or
33 other means.

34
35 ^[1] Provisions concerning forced repatriations in the transfers
36 section vis-a-vis taxation are rendered redundant by reason of
37 this provision. This provision should take precedence over
38 paragraph 2 of the provisions headed "Scope" in Chapter/Annex

- 1 XX - Financial Services and any other similar provisions.
- 2 This provision assumes that tariffs and customs duties are not
- 3 considered to be taxes within the ambit of this Article.

- 4 [2] A cross-reference to this provision may be required in the
- 5 expropriation provision in the Investment Chapter.

- 6 [3] FTA transitional rules required. It is contemplated by Canada
- 7 and USA that this Agreement is to override FTA vis-a-vis tax.

- 8 [4] It is not intended that existing non-conforming tax measures
- 9 be listed.

10 **Article 2116: Monopolies**

11 [SEE SUBGROUP TEXT]

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4. [Nothing in this Chapter shall be construed to prevent a Party from providing functions or services such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is ~~otherwise~~ consistent with this Chapter.]

not

subject to
the annexes