

## Investment

This initial consolidation of texts has been done by the Mexican delegation to the NAFTA Working Group on Investment, on the basis of the proposed texts that were tabled by each of the Parties. Without prejudice as to the final structure of this and other Chapters of the Agreement, this consolidation has been ordered according to Mexico's proposed text.

Note: When an Article, heading, or paragraph number is bracketed, at least one Party did not submit that Article or paragraph. The Party (or Parties) who submitted that Article or paragraph is indicated with the annotations "US" (for United States), "CAN" (for Canada) and "MEX" (for Mexico). Brackets within the text indicate differences between the proposed texts of two or more of the Parties.

Text which is underlined indicates additional wording offered by the Mexican delegation.

### Article Y01 : Scope [and Post Termination Coverage]<sup>US</sup>

1. [Subject to paragraphs 3, 4 and 5,]<sup>MEX</sup> this Chapter 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.]<sup>CAN</sup>

[2]<sup>US</sup> This Chapter shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter. 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.

[3]<sup>MEX</sup> This Chapter shall not apply to any measure taken pursuant to a restriction expressly mandated by the Constitution of a Party.

[4]MEX CAN This Chapter shall not apply to any measure affecting investments related to:

a) the provision of financial services or insurance [except as provided in Annex Y01.4(a)]CAN;

b) government procurement [except as provided in Part 3 (Internal Measures)]CAN;

[c]CAN services listed in Annex Y01.3(c)

[d]CAN 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]CAN 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]CAN 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]CAN the specific measures of the Parties listed in Annex Y01.3(f); and

[h]CAN subject to Article 106 (Nullification or Impairment of Benefits), any subsidy.

[5]MEX Except as otherwise provided, the provisions of subparagraph (c) of Article Y02 shall apply to any measure affecting investments related to the provision of services if such services are covered by Chapters \_\_\_\_.

[6]CAN 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.

#### Article Y02: National Treatment

1. [Except as otherwise provided in this Chapter,]MEX each Party shall grant to investors [and service providers]CAN of

the other Parties [with respect to existing investments and the making of new investments]<sup>US</sup> [treatment no less favorable than that granted in like circumstances to its investors]<sup>MEX</sup> CAN [non-discriminatory treatment, i.e. treatment no less favorable than the better of national treatment or most favored nation treatment]<sup>US</sup> [with respect to measures affecting:

- a) the establishment of business enterprises in its territory;
- b) the acquisition of business enterprises in its territory;
- c) the conduct and operation of business enterprises in its territory; and
- d) the sale of business enterprises in its territory]<sup>MEX</sup>.

[2]<sup>USCAN</sup> In particular, no Party shall:

a) impose on an [investor]<sup>CAN</sup> [a national or company]<sup>US</sup> 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]<sup>CAN</sup>;

b) require an [investor]<sup>CAN</sup> [a national or company]<sup>US</sup> of another Party by reason of nationality to sell or dispose of the whole or any part of an investment made in its territory.

[3]<sup>US</sup> Each Party shall accord nondiscriminatory treatment to investments in its territory of nationals or companies of another Party, and activities associated therewith.

[4]<sup>CAN</sup> No Party shall introduce any measure, including any measure requiring the establishment of 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 (Nullification or Impairment of Benefits).

[5]<sup>CAN</sup> The Parties shall implement:

- a) the provisions of Annex Y02.1 regarding transportation;  
(to be revisited in the light of transportation discussions, to determine if these obligations are best placed in Part 3 (Internal Measures), in connection with standards-related measures)
- b) the provisions of Annex Y02.2 regarding telecommunications services;

c) the provisions of Annex Y02.3 regarding other measures affecting services; and

d) the provisions of Annex Y02.4 regarding measures affecting investors of the other Parties.

[6]<sup>US</sup> With the approval of all other Parties, a Party may maintain limited exceptions to the obligations of paragraphs 1, 2 and 3 provided that any exception to national treatment, other than in the maritime sector, shall not be a greater departure from such obligations than required by or specified in domestic law in force on the date of signature of this Agreement. In the event that the relevant domestic law is liberalized to conform more closely to the obligations of paragraphs 1, 2 and 3, it may not thereafter be made more restrictive. Where a Party takes an exception to national treatment it shall nonetheless accord most favored nation treatment unless specified otherwise in Annex Y02.5. A brief description of all exceptions and the laws on which they are based shall be set forth in Annex Y02.5.

[7]<sup>US</sup> 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.

[8]<sup>US</sup> Without prejudice to paragraph 7, 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.

[9]<sup>US</sup> (Temporary entry provision deleted; it will be addressed elsewhere in NAFTA)

[10]<sup>US</sup> 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.

[11]<sup>US</sup> 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.

[12]<sup>US</sup> 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.

[13]US CAN [Subject to prior notification and consultation in accordance with Part 6 (Institutional Arrangements),]CAN each Party reserves the right to deny to [a company]US [investors or service providers]CAN of another Party the advantages of this Chapter if:

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

[it establishes that they originate from a country which is not a Party to this Agreement.

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

#### Article Y03: Provincial and State Measures

[1]CAN 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.

2. 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]MEX [residents, or companies legally constituted under its laws, or their investments in its territory]US [investor or service provider, of the Party of which it forms a part]CAN.

#### Article Y04: [Trade-related]US Performance Requirements

[1.]MEX CAN [Except as provided in Annex Y04.1,]MEX no Party shall impose on an investor of a 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, requirements to:

[1]US 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:

[a] US CAN 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;

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

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

e) relate the volume or value [or proportion] US of its purchases of imported products [or services] CAN to the volume or value of its products or services sold for export.

[2] MEX CAN No Party shall prohibit or otherwise restrict an investor established in the territory of another Party from:

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

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

c) using goods and services originating in a non-party country.

[3] MEX CAN For purposes of this Article, a Party "imposes" a requirement or commitment on an investor when it requires, [as a matter of law,] MEX particular action [or omission] MEX of an investor [or when, after the date of the entry into force of this Agreement for that Party, it enforces any undertaking or commitment described in this Part given to that Party after the date this Agreement enters into force for that Party.] CAN

[4] CAN Further to Article 106 (Nullification or Impairment of Benefits), 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.

[5]CAN 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 Y05: Monitoring

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

[a]US 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

[the Parties shall protect such business information that is confidential from disclosure that would prejudice the investor's competitive position.]MEX CAN

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

[2]MEX Nothing in paragraph 1 shall preclude a Party from otherwise obtaining or disclosing information in connection with the nondiscriminatory and bona fide application of its laws.

#### Article Y06: Transfers

[1]US 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:

[1]MEX CAN Subject to [Article 505 (Balance of Payments) and] CAN paragraphs 3 [and 5,] CAN no Party shall prevent an investor [or service provider] CAN of another Party from transferring:

a) any returns on an investment [or service] CAN, including any profits, dividends, royalties, fees, interest [capital gain or return in kind,] US and other earnings from an investment; or

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

[c]US compensation pursuant to Article Y11;

[d]US payments arising out of an investment dispute as defined in Article Y08;

[e]<sup>US</sup> payments made under a contract entered into by an investment, including payments made pursuant to a loan agreement.

[2]<sup>US</sup> Except as provided in Article Y11.2, 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.

3. [Notwithstanding the provisions of paragraph 1]<sup>US</sup> 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:]<sup>MEX CAN</sup> [adopt and enforce laws and regulations requiring:]<sup>US</sup>

[a]<sup>MEX</sup> exchange controls or preferential exchange rate arrangements;

b) [bankruptcy, insolvency or]<sup>MEX CAN</sup> the protection of the rights of creditors;

[c]<sup>MEX CAN</sup> issuing, trading or dealing in securities;

[d]<sup>MEX CAN</sup> criminal or penal offences;

e) reports of currency transfers;

f) [the imposition of income taxes by such means as]<sup>US</sup> withholding taxes [applicable to dividends or other transfers;]<sup>US</sup>

g) ensuring the satisfaction of judgments in judicial proceedings.

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

[5]<sup>CAN</sup> Paragraph 4 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 Y07:]<sup>MEX</sup> CAN Existing Legislation [and Transition Measures]<sup>MEX</sup>**

1. [The provisions of Articles Y02, Y03, Y04 and Y06 of this Chapter]<sup>MEX</sup> [Notwithstanding Article 103 (Extent of Obligations), except in respect of Part 2 (Border Impediments to Free Trade) and as otherwise provided herein the obligations of this Agreement]<sup>CAN</sup> shall not apply to:

- 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
- 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 Y02, Y03, Y04 or Y06]<sup>MEX</sup> [the obligations of this Agreement]<sup>CAN</sup>.

[2]<sup>MEX</sup> 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 Y08:]<sup>MEX</sup> US [Disputes]<sup>MEX</sup>**

[Disputes arising from the interpretation and application of this Chapter shall not be subject to the dispute settlement provisions of this Agreement.]<sup>MEX</sup>

**[Settlement of Disputes between a Party and a National or Company of Another Party:]<sup>US</sup>**

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 carry out without delay the provisions of any such award and to provide in its territory for its enforcement.

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

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

**[Settlement of Disputes Between Parties:]<sup>US</sup>**

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

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

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

**Article Y09: National Security**

[1]<sup>MEX</sup> A Party may deny the application of this Chapter to investors of the other Parties for reasons of national security.

[1]<sup>USCAN</sup> Nothing in this Agreement shall be construed:

a) to prevent any Party from [applying measures necessary for the maintenance of public order or the protection of its own essential security interests]<sup>US</sup> [refusing to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;]<sup>CAN</sup>

[b]<sup>CAN</sup> 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]<sup>CAN</sup> Any determination made under paragraph 1(b) shall be published promptly in the official journal of that Party.

[3]<sup>CAN</sup> 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 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]<sup>CAN</sup> 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 (Institutional Arrangements).

[Note: This provision is self-judging.]<sup>US</sup>

[Article Y10: State Enterprises]US CAN

[Provisions to be provided; may be included elsewhere in the NAFTA text]US

[Each Party shall ensure that state enterprises engaged in nonregulated commercial activities in competition with private enterprises shall:

- 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.]CAN

[Article Y11: Expropriation and Compensation]US CAN

1. 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]US.

[2]US 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.

[Article Y12: Transparency]US CAN

1. Each Party shall ensure that [any measures of general application respecting any matter covered by this Agreement]CAN [all laws, regulations, procedures and administrative rulings of general application, and adjudicatory decisions that pertain to or affect investments]US 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]<sup>US</sup> 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.

[2]<sup>CAN</sup> 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.

[3]<sup>CAN</sup> Paragraph 2 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;
- 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.

[4]<sup>CAN</sup> The provisions of this Article shall not require any Party to provide confidential information, the disclosure of which would prejudice legitimate commercial interests.

[Article Y13: Taxation]<sup>USCAN</sup>

[1]<sup>US</sup> Issues of non-discrimination arising under Article Y02 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.

[2]<sup>CAN</sup> Subject to Article 106 (Nullification or Impairment of Benefits) 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.

[3]<sup>CAN</sup> 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.

[Article Y14: Extraterritoriality]<sup>CAN</sup>

1. No party shall prohibit one of its investors on the territory of another Party from exporting goods and services from such territory to a third country or from using goods and services originating in a third country.

2. No Party may prescribe new laws or enforce existing laws so as to require investors or service providers to act, in the territory of another Party, in a manner that conflicts with the laws of such other Party.

[Article Y15: Monopolies]<sup>CAN</sup>

1. Subject to Article 106 (Nullification or Impairment of Benefits), 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 minimize 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.

**[Article Y16: Technology Consortia]<sup>CAN</sup>**

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 Y02 and Article 105 (General Obligation of National Treatment) or Article 106 (Nullification or Impairment of Benefits).

**[Article Y17: Competition]<sup>CAN</sup>**

1. The Parties recognize 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

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.

#### Article Y18: Definitions

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

[1] MEX CAN 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

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.

[2] MEX Agency

3. [Business enterprise]<sup>MEX CAN</sup> [located in the territory of a Party, with respect to a business enterprise,]<sup>US</sup> means a business that has, or in the case of an establishment thereof, will have:

- a) a place of business;
- b) an individual or individuals employed or self-employed in connection with the business; and
- c) assets used in carrying on the business.

[NOTE:]<sup>MEX CAN</sup> A part of a business enterprise that is capable of being carried on as a separate business enterprise is itself a business enterprise.

[4]<sup>MEX</sup> Constitution of a Party

[5]<sup>MEX CAN</sup> Control or controlled, with respect to:

- 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
  - (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.

[6]<sup>MEX CAN</sup> Entity means a corporation, partnership, trust or joint venture.

[7]<sup>MEX CAN</sup> Establishment means a start-up of a new business enterprise and the activities related thereto.

8. Investment means:

- [a]<sup>MEX CAN</sup> the establishment of a new business enterprise, or
- [b]<sup>MEX CAN</sup> the acquisition of a business enterprise; and includes:
- [c]<sup>MEX CAN</sup> as carried on, the new business enterprise so established or the business enterprise so acquired, and controlled by the investor who has made the investment; and
- [d]<sup>MEX CAN</sup> the share or other investment interest in such business enterprise owned by the investor provided that such

business enterprise continues to be controlled by such investor.

[every kind of investment, including investment consisting or taking the form of:]<sup>US</sup>

[a]<sup>US</sup> equity;

[b]<sup>US</sup> a company or shares of stock or other interests in a company or interests in the assets thereof;

[c]<sup>US</sup> loans (other than the extension of short term credit), bonds or debt securities;

[d]<sup>US</sup> service or investment contracts;

[e]<sup>US</sup> a claim to money or a claim to performance having economic value;

[f]<sup>US</sup> tangible or intangible property;

[g]<sup>US</sup> intellectual property which includes rights relating to:

(i) literary and artistic works, including sound recordings,

(ii) inventions,

(iii) industrial designs,

(iv) semiconductor mask works,

(v) trade secrets, know-how, and confidential business information, and

(vi) trademarks, service marks, and trade names;  
and

[h]<sup>US</sup> any right conferred by law or contract, or any license or permit pursuant to law.

[9]<sup>US</sup> "Investments of nationals or companies of a Party" mean investments owned or controlled directly or indirectly by nationals or companies of such Party.

[9]<sup>MEX CAN</sup> investor of a Party means:

a) such Party or agency thereof;

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

c) a national of such Party;

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

- (i) such Party or one or more agencies thereof;
- (ii) one or more provinces or states of such Party or one or more agencies thereof;
- (iii) one or more nationals of such Party,
- (iv) one or more entities described in paragraph (e); or
- (v) any combination of persons or entities described in i), (ii, iii) [and iv); or

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

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

ii) entities incorporated or otherwise duly constituted in the territory of such Party and, in the case of entities that carry on business, carrying on a business enterprise located in the territory of such Party, other than any such entity in respect of which it is established that nationals of a third country control such entity or own a majority of the voting interests of such entity, or

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

that makes or has made an investment.

NOTE: For purposes of paragraph (e), in respect of individuals each of whom holds not more than one percent of the total number of the voting interests of an entity the voting interests of which are publicly traded, it shall be presumed, in the absence of evidence to the contrary, that those voting interests are owned by nationals of such Party on the basis of a statement by a duly authorized officer of the entity that, according to the records of the entity, those individuals have addresses in the territory of such Party and that the signatory to the statement has no knowledge or reason to believe that those voting interests are owned by individuals who are not nationals of such Party.

[10]MEX CAN Investor of a non-party country means an investor other than an investor of a Party, that makes or has made an investment.

[11]MEX CAN Joint venture means an association of two or more persons or entities where the relationship among those

associated persons or entities does not, under the laws in force in the territory of the Party in which the investment is made, constitute a corporation, a partnership or a trust and where all those associated persons or entities own or will own assets of a business enterprise, or directly or indirectly own or will own voting interests in an entity that carries on a business enterprise.

[12]MEX Law

[13]MEX CAN Measure [shall have the same meaning as in Article 201 (General Obligations) except that it shall also include]MEX [includes any law, regulation, procedure, requirement or practice, including]CAN any published policy;

[14]MEX CAN Ownership means beneficial ownership and with respect to assets also includes the beneficial ownership of a leasehold interest in such assets.

[15]MEX CAN Person means a Party or agency thereof, a province or state of a Party or agency thereof, or a national of a Party;

[16]MEX CAN Voting interest with respect to

- a) a corporation with share capital, means a voting share;
- b) a corporation without share capital, means an ownership interest in the assets thereof that entitles the owner to rights similar to those enjoyed by the owner of a voting share; and
- c) a partnership, trust, joint venture or other organization means an ownership interest in the assets thereof that entitles the owner to receive a share of the profits and to share in the assets on dissolution.

[17]MEX CAN Voting share means a share in the capital of a corporation to which is attached a voting right ordinarily exercisable at meetings of shareholders of the corporation and to which is ordinarily attached a right to receive a share of the profits, or to share in the assets of the corporation on dissolution, or both.

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

[19]US "Company of a Party" means a company legally constituted under the laws and regulations of a Party or a political subdivision thereof.

[20]US "National" means a natural person who is a national of a country under its applicable law.

[21]US "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.

[22]US "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.

[23]US "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.

[24]US "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.

[25]US "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.

[26]US "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.

[27]CAN Enterprises means any juridical entity involving a financial commitment for the purpose of commercial gain.

[28]CAN Monopoly means a sole provider of a good or service.

[29]CAN Service provider of a Party means any business enterprise legally constituted or organized under the law of that Party.

[Notes:]US

1. Further provisions may be needed to address the behavior of state enterprises.

2. While financial services will be covered in the financial services chapter, certain provisions of the investment chapter may apply to financial services by cross-reference in the financial services chapter.

3. Language on the environment may be provided for this chapter and/or generically.

4. The suitability of some of the provisions of this chapter may depend on the outcome of negotiations in other areas.