

Investment and Competition Policy

Recommendations 25, 26 and 28

The Government agrees that, in any negotiations on investment in the FTAA negotiations, there should be a clear delineation of the concept of expropriation. There is a need to ensure that the Government retains the right to regulate in the public interest while at the same time seeking to protect the interests of Canadian investors abroad.

The Government agrees that our past experiences with the negotiation and implementation of investment rules with other countries, including Latin America and the Caribbean, provides a basis for exploring possible investment rules in an FTAA agreement.

The Committee's recommendation with respect to competition policy (Recommendation No. 28) confirms the approach taken by the Government. Building on this, and taking into account the support expressed for this approach in public consultations, the Government is in favour of negotiations leading to the establishment of a framework for competition policy in an FTAA agreement, on the understanding that to do so would not prejudice the independence of competition authorities.

A competition policy framework would ideally require FTAA countries to adopt a sound competition law, at the national or sub-regional level, that proscribes certain anti-competitive behaviour, and with appropriate scope and independence in investigation and decision-making, access to effective deterrents, and an advocacy role for the competition authority while protecting confidential information. A framework would also require a commitment to the principles of transparency, non-discrimination and procedural fairness and include mechanisms to facilitate implementation and enhancement of commitments by member countries and co-operation between competition authorities. The application of dispute settlement procedures to competition cases is complex and controversial. Further analysis will be needed to determine if and how binding dispute settlement procedures could be used in relation to competition policy within the FTAA.

Given the various stages of development of countries within the Americas with respect to the adoption, implementation and

