

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 1602, 1603, 1604, 1605 or 1606.

2. The Party asserting that paragraph 1 applies shall have the burden of establishing the validity of such assertion.

3. The *Investment Canada Act*, its regulations and guidelines shall be amended as provided for in Annex 1607.3.

4. In the event that Canada requires the divestiture of a business enterprise located in Canada in a cultural industry pursuant to its review of an indirect acquisition of such business enterprise by an investor of the United States of America, Canada shall offer to purchase the business enterprise from the investor of the United States of America at fair open market value, as determined by an independent, impartial assessment.

Article 1608: Disputes

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

2. Each Party and investors of each Party retain their respective rights and obligations under customary international law with respect to portfolio and direct investment not covered under this Chapter or to which the provisions of this Chapter do not apply.

3. Nothing in this Chapter shall affect the rights and obligations of either Party under the *General Agreement on Tariffs and Trade* or under any other international agreement to which both are party.

4. In view of the special nature of investment disputes and the expertise required to resolve them, where the procedures of Chapter Eighteen (Institutional Provisions) are invoked, the Parties and the Commission shall give the fullest consideration, in any particular case, to settling any dispute regarding the interpretation or application of this Chapter by arbitration or panel procedures pursuant to Articles 1806 or 1807, and shall make every attempt to ensure that the panelists are individuals experienced and competent in the field of international