

## **Recommendation 21**

*In light of the United States' recent policy change with respect to aspects of Chapter 11 of NAFTA, the Government of Canada should review as soon as possible with Mexico and the United States elements of Chapter 11 that have proved problematic, in particular the investor-state provisions.*

Providing investors with protection from arbitrary and discriminatory actions is not only important, it is also in Canada's interest. It promotes a stable and secure environment for international investment, which facilitates innovation, productivity and prosperity, both at home and abroad. This is why the NAFTA includes the investment protections contained in Chapter 11.

The Government views the NAFTA, including Chapter 11, as working reasonably well. In order to develop a consistent understanding of this Chapter, the NAFTA Partners have been engaged in the important and on-going task of reviewing the operation of these provisions and clarifying, as necessary, their terms.

On July 31, 2001, under the aegis of the NAFTA Free Trade Commission, the NAFTA Trade Ministers issued a binding note of interpretation concerning NAFTA Chapter 11, which was intended to bring greater transparency to the arbitration process, and to provide fair treatment of foreign investors. The Ministers also directed trade experts to continue examining the implementation and operation of Chapter 11, and develop recommendations as appropriate. At the May 2002 Free Trade Commission Meeting, the NAFTA Ministers directed trade experts to report regularly on developments related to this work.

Based on our shared experience with the NAFTA, Canada, Mexico and the United States are among the most experienced members of the international community with respect to the operation of investment rules. This shared experience will help in developing further clarifications of NAFTA Chapter 11 and positions with respect to future agreements.

With respect to the latter, the recently-passed US Trade Promotion Authority (TPA), which was signed into law on August 6, 2002, contains a number of provisions relating to future investment agreements. TPA does not directly bear on existing trade agreements, including the NAFTA. This said, the objectives set out in the TPA may signal an opportunity for greater refinement of international investment protection rules. In turn, this may assist in our ongoing review of such protections in the NAFTA.

