Protocol. A key feature of the Buenos Aires is that it offers less favourable conditions for investors than either the NAFTA or the Protocol of Colônia.

Buenos Aires, because of Article 1, could pose an obstacle to Argentine accession to the NAFTA. Yet there is a tension between the MERCOSUR investment instruments themselves. The Protocol of Colônia states in Articles 2 and 3 that Argentina must offer most favoured nation treatment to its MERCOSUR partners in the area of investment. This implies that more liberal results may be achieved by a MERCOSUR member with a non-member at some point and thus provides for the extension of this treatment to other MERCOSUR Parties. This is at odds with Article 1 of the Protocol of Buenos Aires described above which is crafted to try to prevent such better treatment for non-MERCOSUR investors and investments in the first instance. Indeed, the Protocol of Buenos Aires also seems at odds with the Argentina-U.S. Bilateral Investment Treaty (BIT) and the Argentina-Canada Foreign Investment Protection Agreement (FIPA) in that it specifies a lower level of treatment for third-country investors (i.e., Canadians or Americans) than is agreed to in these treaties. For example, Buenos Aires allows expropriation for social interest, a broad term, while the BIT and the FIPA allow expropriation only for "public purpose".

Consequently, Article 1 of Buenos Aires may not be a major issue in practice. Rather, the most favoured nation treatment provisions of Colônia may encompass the greater challenge with regard to Argentine accession to the NAFTA. Argentina would be bound to give its MERCOSUR partners any benefit in the area of investment that the NAFTA provides to its members. There are a number of articles in the NAFTA which go beyond the provisions of the Protocol of Colônia.

The definition of an "investor" is more expansive in the NAFTA in that Colônia specifically excludes real persons who are nationals of one Party who are living in another Party's territory permanently unless the funds for the investment can be proved to have come from outside the territory in which they are invested. For example, Colônia does not apply to an Argentine living permanently in Brazil unless he can prove that the funds for the investment came from outside Brazil. NAFTA is more inclusive.

Under NAFTA, any company legally established in a NAFTA country (even a company controlled by non-NAFTA interests) is considered a NAFTA investor, although the benefits flowing from this can be denied if the company does not have substantial business activity in the NAFTA country where it is incorporated. Under Colônia, the company also must have its headquarters in the territory of the Party where it is established. At the least, this appears to mean that a branch operation controlled by foreign interests is not an "investor" for purposes of Colônia, although