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# NORTH AMERICAN FREE TRADE AGREEMENT

DRAFT  
LEGAL TEXT  
PART II

Dept. of External Affairs  
Min. des Affaires extérieures

SEP 8 1992

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*September 8, 1992*

Canada

# PART II

## **\*\* NORTH AMERICAN FREE TRADE AGREEMENT \*\***

— Text prepared September 6, 1992 —

Note: This text is currently undergoing legal review in order to ensure the Agreement's overall consistency and clarity. The three countries will initial the Agreement when legal drafting is completed.



## Chapter Eleven

### Subchapter A - Investment

#### Article 1101: Scope

1. This Chapter applies to measures adopted or maintained by a Party relating to:
  - (a) investors of another Party;
  - (b) investments of investors of another Party in the territory of the Party existing at the date of entry into force of this Agreement as well as to investments made or acquired thereafter by such investors; and
  - (c) with respect to Article 1106, all investments in the territory of the Party existing at the date of entry into force of this Agreement as well as to investments made or acquired thereafter.
2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.
3. This Chapter does not apply to Chapter Fourteen (Financial Services) except to the extent specifically provided therein.
4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.

#### Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by such state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party shall:

- (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
- (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

#### **Article 1103: Most-Favored-Nation Treatment**

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of another Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of another Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

#### **Article 1104: Non-discriminatory Treatment**

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103 ("non-discriminatory treatment").

**Article 1105: Minimum Standard of Treatment**

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.
2. Without prejudice to paragraph 1 and notwithstanding Article 1108 (8) (b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it maintains or adopts relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
3. Paragraph 2 shall not apply to existing measures related to subsidies or grants that are inconsistent with Article 1102.

**Article 1106: Performance Requirements**

1. A Party shall not impose the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:
  - (a) to export a given level or percentage of goods or services;
  - (b) to achieve a given level or percentage of domestic content;
  - (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
  - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
  - (e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
  - (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the

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commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws; or

- (g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

2. A requirement that an investment use a technology to meet generally applicable health, safety or environmental standards-related measures, as defined in Article 915, shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102, 1103 and 1104 shall apply to such requirements.

3. A Party shall not condition the receipt or continued receipt of an advantage, in connection with investments in its territory of investors of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (b) to achieve a given level or percentage of domestic content;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with investments in its territory of investors of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to any requirements other than the requirements listed in those paragraphs.

**Article 1107: Senior Management and Boards of Directors**

1. A Party shall not require that an enterprise of the Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of the Party that is an investment of an investor of another Party, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

**Article 1108: Reservations and Exceptions**

1. Articles 1102, 1103, 1106 and 1107 do not apply to:
  - (a) any existing non-conforming measure that is maintained by:
    - (i) a Party at the federal level, as described in its Schedule to Annex I or III,
    - (ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as described by a Party in its Schedule to Annex I, or
    - (iii) a local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1106 and 1107.
2. A Party shall have two years from the date of entry into force of this Agreement to describe in its Schedule to Annex I any existing non-conforming measure maintained by a state or province.

3. A Party shall not be required to describe in its Schedule to Annex I any existing non-conforming measure that is maintained by a local government.
4. To the extent indicated by a Party in its Schedule to Annex II, Articles 1102, 1103, 1106 and 1107 do not apply to any measure adopted or maintained by a Party with respect to the sectors, subsectors or activities as described therein.
5. Any measure adopted by a Party in a manner consistent with paragraph 4 shall not require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
6. Articles 1102 and 1103 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 1703 (National Treatment) as specifically provided for in that Article.
7. Article 1103 does not apply to treatment accorded by a Party pursuant to agreements or with respect to sectors described in Annex IV.
8. Articles 1102, 1103 and 1107 do not apply to:
  - (a) procurement of goods or services by a Party or a state enterprise; or
  - (b) subsidies and grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.
9. The provisions of:
  - (a) Article 1106(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
  - (b) Article 1106(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement of goods or services by a Party or a state enterprise; and
  - (c) Article 1106(3)(a) and (b) do not apply to requirements imposed by an importing Party related to the content of goods necessary to qualify for preferential tariffs or preferential quotas.



**Article 1109: Transfers**

1. Each Party shall permit all transfers and international payments ("transfers") relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay. Such transfers include:
  - (a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind, and other amounts derived from the investment;
  - (b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
  - (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
  - (d) payments made pursuant to Article 1110; and
  - (e) payments arising under Subchapter B.
2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.
3. No Party shall require its investors to transfer, or penalize its investors who fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, an investment in the territory of another Party.
4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
  - (a) bankruptcy, insolvency or the protection of the rights of creditors;
  - (b) issuing, trading or dealing in securities;
  - (c) criminal or penal offenses;
  - (d) reports of transfers of currency or other monetary instruments; or
  - (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.
6. A Party may restrict transfers of returns in kind only in circumstances in which it could otherwise restrict such transfers under this Agreement.

#### **Article 1110: Expropriation and Compensation**

1. No Party shall directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
  - (a) for a public purpose;
  - (b) on a non-discriminatory basis;
  - (c) in accordance with due process of law and the general principles of treatment provided in Article 1105; and
  - (d) upon payment of compensation in accordance with paragraphs 2 to 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value (including declared tax value of tangible property) and other criteria, as appropriate to determine fair market value.
3. Compensation shall be paid without delay and be fully realizable.
4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment thereof.
5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange

prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. Upon payment, compensation shall be freely transferable as provided in Article 1109.
7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or the revocation, limitation or creation of intellectual property rights to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).
8. For purposes of this Article and for greater clarity, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

#### **Article 1111: Special Formalities and Information Requirements**

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws and regulations of the Party, provided that such formalities do not impair the substance of the benefits of any of the provisions in this Chapter.
2. Notwithstanding Articles 1102 and 1103, a Party may require, from an investor of another Party or its investment, routine business information, to be used solely for informational or statistical purposes, concerning that investment in its territory. The Party shall protect such business information as is confidential from disclosure that would prejudice the investor's or the investment's competitive position. Nothing in this paragraph shall preclude a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

#### **Article 1112: Relationship to Other Chapters**

- i. In the event of any inconsistency between a provision of this Chapter and a provision of another Chapter, the provision of the other Chapter shall prevail to the extent of the inconsistency.

2. A requirement by a Party that a service provider of another Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter shall apply to that Party's treatment of the posted bond or financial security.

#### **Article 1113: Denial of Benefits**

1. Each Party reserves the right to deny to an investor of another Party that is an enterprise of such Party and to investments of such investor the benefits of this Chapter if investors of a non-Party own or control the enterprise and:

- (a) the denying Party does not maintain diplomatic relations with the non-Party; or
- (b) the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), respectively, each Party reserves the right to deny to an investor of another Party that is an enterprise of such Party and to investments of such investors the benefits of this Chapter if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

#### **Article 1114: Environmental Measures**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure, otherwise consistent with this Chapter, that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

2. The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention in its territory of an investment of an investor. If a Party considers that another Party has offered such an

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encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

## **Subchapter B - SETTLEMENT OF DISPUTES BETWEEN A PARTY AND AN INVESTOR OF ANOTHER PARTY**

### **Article 1115: Purpose**

This Subchapter establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

### **Article 1116: Claim by an Investor of a Party on Behalf of Itself**

1. An investor of a Party may submit to arbitration under this Subchapter a claim that another Party has breached:
  - (a) a provision of Subchapter A; or
  - (b) Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A,

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

### **Article 1117: Claim by an Investor of a Party on Behalf of an Enterprise**

1. An investor of a Party, on behalf of an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Subchapter a claim that the other Party has breached:

- (a) a provision of Subchapter A; or
- (b) Article 1502 (3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A;

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events which gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established pursuant to Article 1125, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Subchapter.

#### **Article 1118: Settlement of a Claim Through Consultation and Negotiation**

The disputing parties should first attempt to settle a claim through consultation or negotiation.

#### **Article 1119: Notice of Intent to Submit a Claim to Arbitration**

The disputing investor shall give to the disputing Party written notice of its intention to submit a claim to arbitration at least 90 days before the claim is submitted, which notice shall specify:

- (a) the name and address of the disputing investor;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;

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- (c) the issues and the factual basis for the claim; and
- (d) the relief sought and the approximate amount of damages claimed.

**Article 1120: Submission of a Claim to Arbitration**

1. Except as provided in Annex 1120.1, and provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
- (c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Subchapter.

**Article 1121: Conditions Precedent to Submission of a Claim to Arbitration**

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:
- (a) the investor consents to arbitration in accordance with the provisions of this Subchapter; and
  - (b) both the investor and an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, waive their right to initiate or continue before any administrative tribunal or court under the domestic law of any Party any proceedings with respect to the measure of the disputing Party that is alleged to be a breach of Subchapter A of this Chapter, Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the domestic law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:
  - (a) consent to arbitration in accordance with the provisions of this Subchapter; and
  - (b) waive their right to initiate or continue before any administrative tribunal or court under the domestic law of any Party any proceedings with respect to the measure of the disputing Party that is alleged to be a breach of Subchapter A of this Chapter, Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises), except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the domestic law of the disputing Party.
3. A consent and waiver required by this Article shall be in writing, shall be given to the disputing Party, and shall be included in the submission of a claim to arbitration.

#### **Article 1122: Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the provisions of this Subchapter.
2. The consent given by paragraph 1 and the submission by a disputing investor of a claim to arbitration in accordance with the provisions of this Subchapter shall satisfy the requirement of:
  - (a) Chapter II of the ICSID Convention (Jurisdiction of the Center) and the Additional Facility Rules for written consent of the parties;
  - (b) Article II of the New York Convention for an agreement in writing; and
  - (c) Article I of the Inter-American Convention for an agreement.

#### **Article 1123: Number of Arbitrators and Method of Appointment**

Subject to Article 1125, and unless the disputing parties agree otherwise, the Tribunal shall consist of three arbitrators. One arbitrator shall be appointed by each of the disputing



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parties. The third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

**Article 1124: Constitution of Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator**

1. The Secretary-General of ICSID shall serve as appointing authority for an arbitration under this Subchapter.
2. If a Tribunal has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, at the request of either disputing party:
  - (a) shall appoint the arbitrator or arbitrators not yet appointed in his discretion, except for the presiding arbitrator; and
  - (b) shall appoint the presiding arbitrator in accordance with paragraph 3.
3. The Secretary-General shall appoint the presiding arbitrator from the list of presiding arbitrators described in paragraph 4. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint a presiding arbitrator who is not a national of any of the Parties from the ICSID Panel of Arbitrators.
4. As of the date of entry into force of this Agreement, the Parties shall have jointly designated, without regard to nationality, 45 presiding arbitrators meeting the qualifications of the rules referred to in Article 1120 and experienced in international law and investment.
5. Subject to paragraph 8, where a disputing investor submits a claim to arbitration under the ICSID Convention or the Additional Facility Rules, each Party agrees:
  - (a) to the appointment by the investor of a national of the Party of the investor as an arbitrator; and
  - (b) to the appointment by the Secretary-General of a national of the Party of the investor as an arbitrator or as a presiding arbitrator.
6. Subject to paragraph 8, a disputing investor described in Article 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the Additional Facility Rules, only on the following conditions:

- (a) where the disputing Party appoints a national of the disputing Party as an arbitrator, the investor agrees in writing to the appointment; and
- (b) where the Secretary-General appoints a national of the disputing Party as an arbitrator or as a presiding arbitrator, the investor agrees in writing to the appointment.

7. Subject to paragraph 8, a disputing investor described in Article 1117(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the Additional Facility Rules, only on the following conditions:

- (a) where the disputing Party appoints a national of the disputing Party as an arbitrator, the investor and the enterprise agree in writing to the appointment; and
- (b) where the Secretary-General appoints a national of the disputing Party as an arbitrator or as a presiding arbitrator, the investor and the enterprise agree in writing to the appointment.

8. A disputing party:

- (a) in the case of a claim submitted to arbitration under the ICSID Convention, may propose, under Article 57 of the Convention, the disqualification of a member of the Tribunal on account of any fact indicating a manifest lack of the qualities required by paragraph 1 of Article 14 of the Convention; and
- (b) in the case of a claim submitted to arbitration under the Additional Facility Rules, may propose, under Article 14 of the Rules, the disqualification of a member of the Tribunal on account of any fact indicating a manifest lack of the qualities required by Article 9 of the Rules.

#### **Article 1125: Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules, and shall conduct its proceedings in accordance with those Rules, except as modified by this Subchapter.

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 1120 that have a question of law or fact in common,

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the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, order that the Tribunal:

- (a) shall assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) shall assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General of ICSID to establish a Tribunal and shall specify in the request:

- (a) the name of the disputing Party or disputing parties against which the order is sought;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

4. The disputing party shall give to the disputing Party or disputing parties against which the order is sought a copy of the request.

5. Within 60 days of receipt of the request, the Secretary-General of ICSID shall establish a Tribunal consisting of three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster described in paragraph 4 of Article 1124. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint a presiding arbitrator, who is not a national of any of the Parties, from the ICSID Panel of Arbitrators. The Secretary-General shall appoint the two other members from the roster described in paragraph 4 of Article 1124, and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing party that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

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- (a) the party's name and address;
  - (b) the nature of the order sought; and
  - (c) the grounds on which the order is sought.
7. A disputing party described in paragraph 6 shall give a copy of its request to the parties named in a request made under paragraph 3.
8. A Tribunal established under Article 1120 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.
9. A disputing Party shall give to the Secretariat of the Commission, within 15 days of receipt by the disputing Party, a copy of:
- (a) a request for arbitration made under paragraph 1 of Article 36 of the ICSID Convention;
  - (b) a notice for arbitration made under Article 2 of the Additional Facility Rules; or
  - (c) a notice of arbitration given under the UNCITRAL Arbitration Rules.
10. A disputing Party shall give to the Secretariat of the Commission a copy of a request made under paragraph 3 of this Article:
- (a) within 15 days of receipt of the request, in the case of a request made by a disputing investor;
  - (b) within 15 days of making the request, in the case of a request made by the disputing Party.
11. A disputing Party shall give to the Secretariat of the Commission a copy of a request made under paragraph 6 of this Article within 15 days of receipt of the request.
12. The Secretariat of the Commission shall maintain a public register consisting of the documents referred to in paragraphs 9, 10 and 11.

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**Article 1126: Notice**

A disputing Party shall deliver to the other Parties:

- (a) written notice of a claim that has been submitted to arbitration within 30 days from the date that the claim is submitted; and
- (b) copies of all pleading filed in the arbitration.

**Article 1127: Participation by a Party**

On written notice to the disputing parties, a Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

**Article 1128: Documents**

A Party shall be entitled to receive from the disputing Party at the cost of the requesting Party:

- (a) a copy of the evidence that has been tendered to the Tribunal; and
- (b) a copy of the written argument of the disputing parties.

**Article 1129: Place of Arbitration**

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party which is a party to the New York Convention, selected in accordance with:

- (a) the Additional Facility Rules if the arbitration is under those rules or the ICSID Arbitration Rules; or
- (b) the UNCITRAL Arbitration Rules if the arbitration is under those rules.

**Article 1130: Governing Law**

A Tribunal established under this Subchapter shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

**Article 1131: Interpretation of Annexes**

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach of this Chapter is within the scope of an exception set forth in Annex I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on this question. The Commission shall have 60 days to submit its interpretation in writing to the Tribunal.
2. If the Commission submits to the Tribunal an agreed interpretation, the interpretation shall be binding on the Tribunal. If the Commission fails to submit an agreed interpretation or fails to submit an agreed interpretation within such 60 day period, the Tribunal shall decide the issue of interpretation of the exception.

**Article 1132: Report from an Expert**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

**Article 1133: Interim Measures of Protection**

A Tribunal may take such measures as it deems necessary to preserve the respective rights of the disputing parties, or to ensure that the Tribunal's jurisdiction is made fully effective. Such measures may include, but are not limited to, orders to preserve evidence in the possession or control of a disputing party, or to protect the Tribunal's jurisdiction. An interim measure of protection may not include an order of attachment or an order to enjoin the application of the measure alleged to be the breach of Subchapter A of this Chapter. Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises). For purposes of this paragraph, an order includes a recommendation.

**Article 1134: Final Award**

1. Where a Tribunal makes a final award against a Party, the Tribunal may award only:
  - (a) monetary damages, and any applicable interest; or
  - (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages, and any applicable interest, in lieu of restitution.
2. Subject to paragraph 1, where a claim is made under paragraph 1 of Article 1117:
  - (a) an award of restitution of property shall provide that restitution be made to the enterprise;
  - (b) an award of monetary damages, and any applicable interest, shall provide that the sum be paid to the enterprise; and
  - (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.
3. A Tribunal may not order a Party to pay punitive damages.

**Article 1135: Finality and Enforcement of Award**

1. An award made by a Tribunal is binding on the disputing parties but shall have no binding force except between the disputing parties and in respect of the particular case.
2. Subject to paragraph 3, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
  - (a) in the case of a final award made under the ICSID Convention:
    - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

- (ii) revision or annulment proceedings have been completed, and
  - (b) in the case of a final award under the Additional Facility Rules of ICSID or the UNCITRAL Arbitration Rules:
    - (i) 3 months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
    - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.
5. Each Party undertakes to provide for the enforcement in its territory of an award.
6. If a Party fails to abide by or comply with the terms of a final award under this Subchapter, the Commission provided for in Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) shall, upon delivery of a request by any other Party whose investor was party to the investment dispute, establish a panel under Article 2008(1). The requesting Party may seek in such proceedings:
- (a) a determination that the failure to abide by and comply with the terms of the final award is inconsistent with the obligations of this Agreement; and
  - (b) a recommendation that the defaulting Party abide by or comply with the terms of the final award.
7. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 6.
8. A claim that is submitted to arbitration shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention and Article I of the Inter-American Convention.

#### **Article 1136: General**

1. **Time when a Claim is Submitted to Arbitration:** A claim is submitted to arbitration under this Subchapter when:



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- (a) the notice of registration of the request to institute arbitration proceedings has been dispatched by the Secretary-General of ICSID in accordance with paragraph 3 of Article 36 of the ICSID Convention;
- (b) the certificate of registration of the notice for arbitration has been dispatched by the Secretary-General of ICSID in accordance with Article 4 of Schedule C of the Additional Facility Rules; or
- (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

2. Receipts under Insurance or Guarantee Contracts: In an arbitration under this Subchapter, a Party shall not assert, as a defense, counterclaim, right of set off or otherwise, that the investor 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.

#### **Article 1137: Exclusions**

1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Subchapter or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) to other actions taken by a Party pursuant to Article 2102 (National Security), a decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of another Party, or its investment, pursuant to that Article shall not be subject to such provisions.

2. The dispute settlement provisions of this Subchapter and of Chapter Twenty shall not apply to the matters described in Annex 1137.2.

#### **Article 1138: Definitions**

For purposes of this Chapter:

**disputing Party** means a Party against which a claim is made under Subchapter B;

**disputing party** means the disputing investor or the disputing Party;

**disputing parties** means the disputing investor and the disputing Party;

**enterprise** means an "enterprise" as defined in Article 201, except that it shall also include a branch;

**enterprise of a Party** means an enterprise constituted or organized under the laws and regulations of a Party, and a branch;

**equity or debt securities** includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

**G7 Currency** means the currency of Canada, Germany, France, Italy, Japan, the United States or the United Kingdom of Great Britain and Northern Ireland;

**ICSID Convention** means the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18, 1965;

**ICSID** means the International Centre for Settlement of Investment Disputes;

**Inter-American Convention** means the Inter-American Convention on International Commercial Arbitration, done at Panama, January 30, 1975;

**investment** means:

- (a) an enterprise;
- (b) an equity security of an enterprise;
- (c) a debt security of an enterprise
  - (i) that is an affiliate of the investor, or
  - (ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

- (d) a loan to an enterprise,
  - (i) that is an affiliate of the investor, or
  - (ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

- (e) an interest in an enterprise that entitles the owner to share in the income or profits;
- (f) an interest in an enterprise that entitles the owner to share in the assets on dissolution, other than a debt security or a loan excluded from sub-paragraph (c) or (d);
- (g) real estate or other property (tangible and intangible) acquired in the expectation or used for the purpose of economic benefit or other business purposes;
- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:
  - (i) contracts involving the presence of an investor's property in the territory of the Party (including turnkey or construction contracts, or concessions), or
  - (ii) contracts where the remuneration depends substantially on the production, revenues or profits of an enterprise.

But investment does not mean,

- (i) claims to money that arise solely from:
  - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of one Party to an enterprise in the territory of another Party, or
  - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by sub-paragraph (d), or
- (j) any other claims to money,

which do not involve the kinds of interests set out in sub-paragraphs (a) through (h);

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**investment of an investor of a Party** means an investment owned or controlled directly or indirectly by an investor of such Party;

**investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, makes or has made an investment;

**investor of a non-Party** means an investor other than an investor of a Party, that makes, seeks to make or has made an investment;

**New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958;

**Tribunal** means an arbitration tribunal established under Article 1120 or 1125; and

**UNCITRAL Arbitration rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on December 15, 1976.

ANNEX 1120.1

Submission of Claims to Arbitration

1. An investor of another Party may not allege that Mexico has breached:

- (a) a provision of Subchapter A; or
- (b) Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A,

both in an arbitration under this Subchapter and in proceedings before a Mexican court or administrative tribunal.

2. Where an enterprise of Mexico that is a juridical person that an investor of another Party owns or controls directly or indirectly alleges in proceedings before a Mexican court or administrative tribunal that Mexico has breached:

- (a) a provision of Subchapter A; or
- (b) Article 1502(3)(a) (Monopolies and State Enterprises) or Article 1503(2) (State Enterprises) where the alleged breach pertains to the obligations of Subchapter A,

the investor may not allege the breach in an arbitration under this Subchapter.

ANNEX 1137.2

Exclusions from Dispute Settlement

CANADA

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 Subchapter B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

MEXICO

A decision by the National Commission on Foreign Investment ("Comisión Nacional de Inversiones Extranjeras") following a review pursuant to Annex I, page I-M-7, 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 Subchapter B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

## Chapter Twelve

### Cross-Border Trade in Services

#### Article 1201: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to cross-border trade in services by service providers of another Party, including measures respecting:
  - (a) the production, distribution, marketing, sale and delivery of a service;
  - (b) the purchase, payment or use of a service;
  - (c) the access to and use of distribution and transportation systems in connection with the provision of a service;
  - (d) the presence in its territory of a service provider of another Party; and
  - (e) the provision of a bond or other form of financial security as a condition for the provision of a service.
  
2. This Chapter does not apply to:
  - (a) financial services, as defined in Chapter Fourteen (Financial Services);
  - (b) services associated with energy and basic petrochemical goods to the extent provided in Chapter Six (Energy and Basic Petrochemicals); and
  - (c) air services, including domestic and international air transportation, whether scheduled or non-scheduled, and related activities in support of air services, other than:
    - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service, and
    - (ii) specialty air services.

3. Nothing in this Chapter shall be construed to:
- (a) impose any obligation on a Party with respect to a national of another Party seeking access to its employment market, or employed on a permanent basis in its territory, or to confer any right on that national with respect to such access or employment;
  - (b) impose any obligation or confer any right on a Party with respect to any procurement by a Party or a state enterprise;
  - (c) impose any obligation or confer any right on a Party with respect to subsidies and grants, including government-supported loans, guarantees and insurance provided by a Party or a state enterprise; or
  - (d) prevent a Party from providing a service or performing a function, such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care, in a manner that is not inconsistent with this Chapter.

**Article 1202: National Treatment**

1. Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to its own service providers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to a state or province treatment no less favorable than the most favorable treatment accorded, in like circumstances, by such state or province to service providers of the Party of it forms a part.

**Article 1203: Most-Favored-Nation Treatment**

Each Party shall accord to service providers of another Party treatment no less favorable than that it accords, in like circumstances, to service providers of another Party or of a non-Party.



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**Article 1204: Non-Discriminatory Treatment**

Each Party shall accord to service providers of another Party the better of the treatment required by Articles 1202 and 1203.

**Article 1205: Local Presence**

A Party shall not require a service provider of another Party to establish or maintain a representative office, branch or any form of enterprise, or to be resident, in its territory as a condition for the cross-border provision of a service.

**Article 1206: Reservations**

1. Articles 1202, 1203 and 1205 do not apply to:
  - (a) any existing non-conforming measure that is maintained by:
    - (i) a Party at the federal level, as described in its Schedule to Annex I.
    - (ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as described by a Party in its Schedule to Annex I, or
    - (iii) a local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1202, 1203 and 1205.
2. A Party shall have two years from the date of entry into force of this Agreement to describe in its Schedule to Annex I any existing non-conforming measure maintained by a state or province.

3. A Party shall not be required to describe in its Schedule to Annex I any existing non-conforming measure that is maintained by a local government.
4. To the extent indicated by a Party in its Schedule to Annex II, Articles 1202, 1203 and 1205 do not apply to any measure adopted or maintained by a Party with respect to the sectors, subsectors or activities described therein.

#### **Article 1207: Quantitative Restrictions**

1. The Parties shall periodically, but in any event at least every two years, endeavor to negotiate the liberalization or removal of:
  - (a) any existing quantitative restrictions maintained by
    - (i) a Party at the federal level, as described in its Schedule to Annex V, or
    - (ii) a state or province, as described by a Party in its Schedule to Annex V; and
  - (b) any quantitative restriction adopted by a Party after the date of entry into force of this Agreement.
2. Each Party shall have one year from the date of entry into force of this Agreement to describe in its Schedule to Annex V any quantitative restriction maintained by a state or province.
3. Each Party shall notify the other Parties of any quantitative restriction that it adopts or amends after the date of entry into force of this Agreement and shall describe any such quantitative restriction in its Schedule to Annex V.
4. A Party shall not be required to describe in its Schedule to Annex V, or to notify, any quantitative restriction adopted or maintained by a local government.

#### **Article 1208: Liberalization of Non-Discriminatory Measures**

Each Party shall describe in its Schedule to Annex VI commitments to liberalize quantitative restrictions, licensing requirements, performance requirements or other non-discriminatory measures relating to the cross-border provision of a service.

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#### Article 1209: Procedures

The Commission shall establish procedures for:

- (a) the notification and description by a Party of
  - (i) state or provincial measures that it intends to describe in its Schedule to Annex I pursuant to Article 1206(2),
  - (ii) quantitative restrictions that it intends to describe in its Schedule to Annex V pursuant to Article 1207(2),
  - (iii) commitments that it intends to describe in its Schedule to Annex VI pursuant to Article 1208, and
  - (iv) amendments of measures in accordance with Article 1206(1)(c); and
- (b) consultations between Parties with a view to removing any state or provincial measure described by a Party in its Schedule to Annex I after the date of entry into force of this Agreement.

#### Article 1210: Licensing and Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing and certification of nationals of another Party does not constitute an unnecessary barrier to trade, each Party shall endeavor to ensure that any such measure:

- (a) is based on objective and transparent criteria, such as competence and the ability to provide a service;
- (b) is not more burdensome than necessary to ensure the quality of a service; and
- (c) does not constitute a restriction on the cross-border provision of a service.

2. Notwithstanding Article 1203, a Party shall not be required to extend to a service provider of another Party the benefits of recognition of education, experience, licenses or

certifications obtained in another country, whether such recognition was accorded unilaterally or by arrangement or agreement with that other country. The Party according such recognition shall afford any interested Party an adequate opportunity to demonstrate that education, experience, licenses or certifications obtained in that other Party's territory should also be recognized or to negotiate and enter into an agreement or arrangement of comparable effect.

3. Two years after the date of entry into force of this Agreement, a Party shall eliminate any citizenship or permanent residency requirement for the licensing and certification of professional service providers in its territory. Where a Party does not comply with this provision with respect to a particular sector, any other Party may maintain an equivalent requirement or reinstate any such requirement eliminated pursuant to this Article, only in the affected sector, for such period as the non-complying Party retains the requirement.

4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship or permanent residency requirement for the licensing and certification of nationals of the other Parties.

5. Each Party shall implement the provisions of Annex 1210.

#### **Article 1211: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that:

- (a) such service is being provided by an enterprise owned or controlled by nationals of a non-Party, and
  - (i) the denying Party does not maintain diplomatic relations with the non-Party, or
  - (ii) the denying Party has imposed measures against the non-Party that prohibit transactions with such enterprise or that would be violated or circumvented by the activities of such enterprise; and
- (b) with respect to the cross-border provision of a transportation service covered by this Chapter, the service is provided using equipment not registered by any Party.

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2. Subject to prior notification and consultation in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), respectively, a Party may deny the benefits of this Chapter to a service provider of another Party where the Party establishes that such service is being provided by an enterprise of another Party that is owned or controlled by persons of a non-Party and that has no substantial business activities in the territory of any Party.

3. The Party denying benefits pursuant to paragraph 1 or 2 shall have the burden of establishing that such action is in accordance with such paragraph.

#### **Article 1212: Sectoral Annex**

Each Party shall comply with Annex 1212.

#### **Article 1213: Definitions**

1. For purposes of this Chapter, a reference to a federal, state or provincial government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by such government.

2. For purposes of this Chapter:

**cross-border trade in services or cross-border provision of a service** means the provision of a service:

- (a) from the territory of a Party into the territory of another Party;
- (b) in the territory of a Party by a person of that Party to a person of another Party; or
- (c) by a person of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment, as defined in Article 1138 (Investment - Definitions), in that territory;

**enterprise** means "enterprise" as defined in Article 201, except that it shall also include a branch;

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**enterprise of a Party** means an enterprise constituted or organized under the laws and regulations of a Party, including a branch;

**professional services** means services, the provision of which requires specialized post-secondary education, or equivalent training or experience, and for which the right to practice is granted or restricted by measures adopted or maintained by a Party, but does not include services provided by trades-persons and vessel and aircraft crew members;

**quantitative restriction** means a non-discriminatory measure that imposes limitations on:

- (a) the number of service providers, whether in the form of a numerical quota, monopoly or a requirement for an economic needs test or by any other quantitative means; or
- (b) the operations of any service provider, whether in the form of a quota or the requirement of an economic needs test or by any other quantitative means;

**service provider of a Party** means a person of a Party that provides a service; and

**specialty air services** means aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing, parachute jumping, aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance and aerial spraying services.

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## ANNEX 1210

### Professional Services

#### Section A - General Provisions

##### Scope and Coverage

1. This Annex applies to measures adopted or maintained by a Party relating to the licensing and certification of professional service providers.

##### Processing of Applications for Licenses and Certification

2. Each Party shall ensure that its competent authorities, within a reasonable period after the submission of an application for licensing or certifications by a national of another Party:
  - (a) where the application is complete, make a determination on the application, and inform the applicant of that determination; or
  - (b) where the application is not complete, inform the applicant without undue delay of the status of the application and the additional information that is required under its domestic law.

##### Development of Mutually Acceptable Professional Standards and Criteria

3. The Parties shall encourage the relevant bodies in their respective territories to develop mutually acceptable professional standards and criteria for licensing and certification of professional service providers and to provide recommendations on mutual recognition to the Commission.
4. Such standards and criteria may be developed with regard to the following matters:
  - (a) **education** - accreditation of schools or academic programs where professional service providers obtain formal education;
  - (b) **examinations** - qualifying examinations for the purpose of licensing professional service providers, including alternative methods of assessment such as oral examinations and interviews;

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- (c) **experience** - length and nature of experience required for a professional service provider to be licensed;
- (d) **conduct and ethics** - standards of professional conduct and the nature of disciplinary action for non-conformity with those standards by professional service providers;
- (e) **professional development and re-certification** - continuing education for professional service providers, and ongoing requirements to maintain professional certification;
- (f) **scope of practice** - extent of, or limitations on, field of permissible activities of professional services providers;
- (g) **territory-specific knowledge** - requirements for knowledge by professional service providers of such matters as local laws, regulations, language, geography or climate; and
- (h) **consumer protection** - alternatives to residency, including bonding, professional liability insurance and client restitution funds to provide for the protection of consumers of professional services.

5. Upon receipt of the recommendations of the relevant bodies, the Commission shall review the recommendations within a reasonable period to determine whether they are consistent with this Agreement.

6. Based upon the Commission's review, the Parties shall encourage their respective competent authorities, where appropriate, to adopt those recommendations within a mutually agreed period.

#### **Temporary Licensing**

7. Where the Parties agree, each Party shall encourage the relevant bodies in its territory to develop procedures for temporary licensing of professional service providers of another Party.

#### **Review**

8. The Commission shall periodically, and at least once every three years, review progress in the implementation of this Annex.



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## **Section B - Foreign Legal Consultants**

1. In implementing its commitments regarding foreign legal consultants, set out in its Schedules to Annexes I and VI in accordance with Article 1206 and 1208, each Party shall ensure, subject to its reservations set out in its Schedules to Annexes I and II in accordance with Article 1206, that a foreign legal consultant is permitted to practice or advise on the law of the country in which such consultant is authorized to practice as a lawyer.

### **Consultations With Relevant Professional Bodies**

2. Each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:
- (a) the forms of association and partnership between lawyers authorized to practice in its territory and foreign legal consultants;
  - (b) the development of standards and criteria for the authorization of foreign legal consultants in conformity with Article 1210; and
  - (c) any other issues related to the provision of foreign legal consultancy services.
3. Each Party shall encourage its relevant professional bodies to meet with the relevant professional bodies designated by each of the other Parties to exchange views regarding the development of joint recommendations on the issues described in paragraph 2 prior to initiation of consultations under that paragraph.

### **Future Liberalization**

4. Each Party shall establish a work program aimed at developing common procedures throughout its territory for the licensing and certification of lawyers licensed in the territory of another Party as foreign legal consultants.
5. With a view to meeting this objective, each Party shall, upon receipt of the recommendations of the relevant professional bodies, encourage its competent authorities to bring applicable measures into conformity with such recommendations.
6. Each Party shall report to the Commission within one year after the date of entry into force of this Agreement, and each year thereafter, on progress achieved in implementing the work program.

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7. The Parties shall meet within one year from the date of entry into force of the this Agreement with a view to:
- (a) assessing the work that has been done under paragraphs 2 through 6;
  - (b) as appropriate, amending or removing the remaining reservations on foreign legal consultancy services; and
  - (c) determining any future work that might be appropriate relating to foreign legal consultancy services.

### Section C - Temporary Licensing of Engineers

1. The Parties shall meet within one year after the date of entry into force of this Agreement to establish a work program to be undertaken by each Party, in conjunction with relevant professional bodies specified by that Party, to provide for the temporary licensing in its territory of engineers licensed in the territory of another Party.
2. With a view to meeting this objective, each Party shall undertake consultations with its relevant professional bodies for the purpose of obtaining their recommendations on:
- (a) the development of procedures for the temporary licensing of engineers licensed in the territory of another Party to permit them to practice their engineering specialties in each jurisdiction in its territory that regulates engineers;
  - (b) the development of model procedures, in conformity with Article 1210 and Section A of this Annex, for adoption by the competent authorities throughout its territory to facilitate the temporary licensing of engineers;
  - (c) the engineering specialties to which priority should be given in developing temporary licensing procedures; and
  - (d) any other issues relating to the temporary licensing of engineers identified by the Party through its consultations with the relevant professional bodies.
3. The relevant professional bodies shall be requested to make recommendations on the matters specified in paragraph 2 to their respective Parties within two years after the date of date of entry into force of this Agreement.

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4. Each Party shall encourage its relevant professional bodies to meet at the earliest opportunity with the relevant professional bodies of the other Parties with a view to cooperating in the expeditious development of joint recommendations on matters specified in paragraph 2. The relevant professional bodies shall be encouraged to develop such recommendations within two years after the date of entry into force of this Agreement. Each Party shall request an annual report from its relevant professional bodies on the progress achieved in developing such recommendations.

5. Upon receipt of the recommendations described in paragraphs 3 and 4, the Parties shall review them to ensure their consistency with the provisions of the Agreement and, if consistent, encourage their respective competent authorities to implement such recommendations within one year.

6. Pursuant to paragraph 5 of Section A, within two years after the date of entry into force of this Agreement, the Commission shall review progress made in implementing the objectives set out in this Section.

7. Appendix 1210-C shall apply to engineering specialties.

**ANNEX 1212**

**Land Transportation**

**Contact Points for Land Transportation Services**

1. Further to Article 1801 (Contact Points), each Party shall designate contact points to provide information relating to land transportation services published by that Party on operating authority, safety requirements, taxation, data and studies and technology, as well as assistance in contacting its relevant government agencies.

**Review Process for Land Transportation Services**

2. The Commission shall, during the fifth year after the date of entry into force of this Agreement and thereafter during every second year of the period of liberalization for bus and truck transportation set out in the Schedule of each Party to Annex I of this Chapter, receive and consider a report from the Parties that assesses progress respecting such liberalization, including:

- (a) the effectiveness of such liberalization;
- (b) specific problems for, or unanticipated effects on, each Party's bus and truck transportation industry arising from such liberalization; and
- (c) modifications to such period of liberalization.

The Commission shall endeavor to resolve in a mutually satisfactory manner any matter arising from its consideration of such reports.

3. The Parties shall consult, no later than seven years after the date of entry into force of this Agreement, to determine the possibilities for further liberalization commitments.

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**Appendix 1210 - C**

**Civil Engineers**

Mexico will undertake the commitments of this Section only with respect to civil engineers ("ingenieros civiles").

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## Chapter Thirteen

### Telecommunications

#### Article 1301: Scope and Coverage

1. This Chapter applies to:
  - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services by persons of another Party, including access and use by such persons operating private networks;
  - (b) measures adopted or maintained by a Party relating to the provision of enhanced or value-added services by persons of another Party in the territory, or across the borders, of a Party; and
  - (c) standards-related measures relating to attachment of terminal or other equipment to public telecommunications transport networks.
2. Except to ensure that persons operating broadcast stations and cable systems have continued access to and use of public telecommunications transport networks and services, this Chapter does not apply to any measure adopted or maintained by a Party relating to cable or broadcast distribution of radio or television programming.
3. Nothing in this Chapter shall be construed to:
  - (a) require a Party to authorize a person of another Party to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services;
  - (b) require a Party, or require a Party to compel any person, to establish, construct, acquire, lease, operate or provide telecommunications transport networks or telecommunications transport services not offered to the public generally;

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- (c) prevent a Party from prohibiting persons operating private networks from using such networks to provide public telecommunications transport networks or services to third persons; or
- (d) require a Party to compel any person engaged in the cable or broadcast distribution of radio or television programming to make available its cable or broadcast facilities as a public telecommunications transport network.

**Article 1302: Access to and Use of Public Telecommunications Transport Networks and Services**

1. Each Party shall ensure that persons of another Party have access to and use of any public telecommunications transport network or service, including private leased circuits, offered in its territory or across its borders for the conduct of their business, on reasonable and non-discriminatory terms and conditions, including as set out in paragraphs 2 through 8.
2. Subject to paragraphs 6 and 7, each Party shall ensure that such persons are permitted to:
  - (a) purchase or lease, and attach terminal or other equipment that interfaces with the public telecommunications transport network;
  - (b) interconnect private leased or owned circuits with public telecommunications transport networks in the territory, or across the borders, of that Party, including for use in providing dial-up access to and from their customers or users, or with circuits leased or owned by another person on terms and conditions mutually agreed by such persons;
  - (c) perform switching, signalling and processing functions; and
  - (d) use operating protocols of their choice.
3. Each Party shall ensure that:
  - (a) the pricing of public telecommunications transport services reflects economic costs directly related to providing such services; and
  - (b) private leased circuits are available on a flat-rate pricing basis.

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Nothing in this paragraph shall be construed to prevent cross-subsidization between public telecommunications transport services.

4. Each Party shall ensure that persons of another Party may use public telecommunications transport networks or services for the movement of information in its territory or across its borders, including for intracorporate communications, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.

5. Further to Article 2101 (General Exceptions), nothing in this Chapter shall be construed to prevent a Party from adopting or enforcing any measure necessary to:

- (a) ensure the security and confidentiality of messages; or
- (b) protect the privacy of subscribers to public telecommunications transport networks or services.

6. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services, other than that necessary to:

- (a) safeguard the public service responsibilities of providers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally; or
- (b) protect the technical integrity of public telecommunications transport networks or services.

7. Provided that conditions for access to and use of public telecommunications transport networks or services satisfy the criteria set out in paragraph 6, such conditions may include:

- (a) a restriction on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for interconnection with such networks or services;
- (c) a restriction on interconnection of private leased or owned circuits with such networks or services or with circuits leased or owned by another person, where such circuits are used in the provision of public telecommunications transport networks or services; and



- (d) a licensing, permit, registration or notification procedure which, if adopted or maintained, is transparent and applications filed thereunder are processed expeditiously.

8. For purposes of this Article, "non-discriminatory" means on terms and conditions no less favorable than those accorded to any other customer or user of like public telecommunications transport networks or services in like circumstances.

### **Article 1303: Conditions for the Provision of Enhanced or Value-Added Services**

1. Each Party shall ensure that:
  - (a) any licensing, permit, registration or notification procedure that it adopts or maintains relating to the provision of enhanced or value-added services is transparent and non-discriminatory, and that applications filed thereunder are processed expeditiously; and
  - (b) information required under such procedures is limited to that necessary to demonstrate that the applicant has the financial solvency to begin providing services or to assess conformity of the applicant's terminal or other equipment with the Party's applicable standards or technical regulations.
2. A Party shall not require a person providing enhanced or value-added services to:
  - (a) provide those services to the public generally;
  - (b) cost-justify its rates;
  - (c) file a tariff;
  - (d) interconnect its networks with any particular customer or network; or
  - (e) conform with any particular standard or technical regulation for interconnection other than for interconnection to a public telecommunications transport network.

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3. Notwithstanding paragraph 2(c), a Party may require the filing of a tariff by:
  - (a) such provider to remedy a practice of that provider that the Party has found in a particular case to be anticompetitive under its law; or
  - (b) a monopoly to which Article 1305 applies.

#### **Article 1304: Standards-Related Measures**

1. Further to Article 904(4) (Unnecessary Obstacles), each Party shall ensure that its standards-related measures relating to the attachment of terminal or other equipment to the public telecommunications transport networks, including such measures relating to the use of testing and measuring equipment for conformity assessment procedures, are adopted or maintained only to the extent necessary to:

- (a) prevent technical damage to public telecommunications transport networks;
- (b) prevent technical interference with, or degradation of, public telecommunications transport services;
- (c) prevent electromagnetic interference, and ensure compatibility, with other uses of the electromagnetic spectrum;
- (d) prevent billing equipment malfunction; or
- (e) ensure users' safety and access to public telecommunications transport networks or services.

2. A Party may require approval for the attachment to the public telecommunications transport network of terminal or other equipment that is not authorized, provided that the criteria for such approval are consistent with paragraph 1.

3. Each Party shall ensure that the network termination points for its public telecommunications transport networks are defined on a reasonable and transparent basis.

4. A Party shall not require separate authorization for equipment that is connected on the customer's side of authorized equipment that serves as a protective device fulfilling the criteria of paragraph 1.

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5. Further to Article 904(3) (Non-Discriminatory Treatment), each Party shall:
- (a) ensure that its conformity assessment procedures are transparent and non-discriminatory and that applications filed thereunder are processed expeditiously;
  - (b) permit any technically qualified entity to perform the testing required under the Party's conformity assessment procedures for terminal or other equipment to be attached to the public telecommunications transport network, subject to the Party's right to review the accuracy and completeness of the test results; and
  - (c) ensure that any measure that it adopts or maintains requiring persons to be authorized to act as agents for suppliers of telecommunications equipment before the Party's relevant conformity assessment bodies is non-discriminatory.
6. No later than one year after the date of entry into force of this Agreement, each Party shall adopt, as part of its conformity assessment procedures, provisions necessary to accept the test results from laboratories or testing facilities in the territory of another Party for tests performed in accordance with the accepting Party's standards-related measures and procedures.
7. The Telecommunications Standards Subcommittee established under Article 913(5) (Committee on Standards-Related Measures) shall perform the functions set out in Annex 913-B.

#### **Article 1305: Monopolies**

1. Where a Party maintains or designates a monopoly to provide public telecommunications transport networks or services, and the monopoly, directly or through an affiliate, competes in the provision of enhanced or value-added services or other telecommunications-related services or telecommunications-related goods, the Party shall ensure that the monopoly does not use its monopoly position to engage in anticompetitive conduct in those markets, either directly or through its dealings with its affiliates, in such a manner as to affect adversely a person of another Party. Such conduct may include cross-subsidization, predatory conduct and the discriminatory provision of access to public telecommunications transport networks or services.
2. To prevent such anticompetitive conduct, each Party shall adopt or maintain effective measures such as:

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- (a) accounting requirements;
- (b) requirements for structural separation;
- (c) rules to ensure that the monopoly accords its competitors access to and use of its public telecommunications transport networks or services on terms and conditions no less favorable than those it accords to itself or its affiliates; or
- (d) rules to ensure the timely disclosure of technical changes to public telecommunications transport networks and their interfaces.

#### **Article 1306: Transparency**

Further to Article 1802, each Party shall make publicly available its measures relating to access to and use of public telecommunications transport networks or services, including measures relating to:

- (a) tariffs and other terms and conditions of service;
- (b) specifications of technical interfaces with such networks or services;
- (c) information on bodies responsible for the preparation and adoption of standards-related measures affecting such access and use;
- (d) conditions applying to attachment of terminal or other equipment to the public telecommunications transport network; and
- (e) notification, permit, registration or licensing requirements.

#### **Article 1307: Relationship to other Chapters**

In the event of any inconsistency between a provision of this Chapter and the provision of another Chapter, the provision of this Chapter shall prevail to the extent of such inconsistency.

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### **Article 1308: Relation to International Organizations and Agreements**

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunications Union and the International Organization for Standardization.

### **Article 1309: Technical Cooperation and Other Consultations**

1. To encourage the development of interoperable telecommunications transport services infrastructure, the Parties shall cooperate in the exchange of technical information, the development of government-to-government training programs and other related activities. In implementing this obligation, the Parties shall give special emphasis to existing exchange programs.

2. The Parties shall consult with a view to determining the feasibility of further liberalizing trade in all telecommunications services, including public telecommunications transport networks and services.

### **Article 1310: Definitions**

For purposes of this Chapter:

**authorized equipment** means terminal or other equipment that has been approved for attachment to the public telecommunications transport network in accordance with a Party's conformity assessment procedures;

**conformity assessment procedure** means any procedure used, directly or indirectly, to determine that a relevant technical regulation or standard is fulfilled, including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such a purpose;

**enhanced or value-added services** means those telecommunications services employing computer processing applications that:

- (a) act on the format, content, code, protocol or similar aspects of a customer's transmitted information;

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- (b) provide a customer with additional, different or restructured information; or
- (c) involve customer interaction with stored information;

**flat-rate pricing basis** means pricing on the basis of a fixed charge per period of time regardless of the amount of usage;

**intracorporate communications** means telecommunications through which an enterprise communicates:

- (a) internally or with or among its subsidiaries, branches or affiliates, as defined by each Party; or
- (b) on a non-commercial basis with other persons that are fundamental to the economic activity of the enterprise and that have a continuing contractual relationship with it,

but does not include telecommunications services provided to persons other than those described herein;

**network termination point** means the final demarcation of the public telecommunications transport network at the customer's premises;

**private network** means a telecommunications transport network that is used exclusively for intracorporate communications;

**protocol** means a set of rules and formats that govern the exchange of information between two peer entities for purposes of transferring signaling or data information;

**public telecommunications transport network** means public telecommunications infrastructure that permits telecommunications between defined network termination points;

**public telecommunications transport networks or services** means public telecommunications transport networks or public telecommunications transport services;

**public telecommunications transport service** means any telecommunications transport service required by a Party, explicitly or in effect, to be offered to the public generally, including telegraph, telephone, telex and data transmission, that typically involves the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;

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**standards-related measure** means a "standards-related measure" as defined in Article 915;

**telecommunications** means the transmission and reception of signals by any electromagnetic means; and

**terminal equipment** means any digital or analog device capable of processing, receiving, switching, signaling or transmitting signals by electromagnetic means and that is connected by radio or wire to a public telecommunications transport network at a termination point.

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## Chapter Fourteen

### Financial Services

#### Article 1401: Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) financial institutions of another Party;
  - (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
  - (c) cross-border trade in financial services.
2. Only Articles 1109 (Transfers), 1110 (Expropriation and Compensation), 1111 (Special Formalities and Information Requirements), 1113 (Denial of Benefits), 1114 (Environmental Measures) and Articles 1115 to 1136 (Settlement of Disputes Between a Party and an Investor of Another Party) of Chapter Eleven (Investment) and Article 1211 (Denial of Benefits) of Chapter Twelve (Cross-Border Trade in Services) shall apply to this Chapter. Article 1802(2) (Publication) shall not apply to this Chapter.
3. In the event of any inconsistency between a provision of this Chapter and any other provision of this Agreement, the former shall prevail to the extent of the inconsistency. This paragraph does not apply to Article 2103 (Taxation).
4. Nothing in this Chapter shall prevent a Party from being the exclusive service provider in its territory with respect to the following:
  - (a) activities forming part of a public retirement plan or statutory system of social security; and
  - (b) activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government or of any other public entity.



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5. Article 1407 shall not apply to the granting by a Party to a financial service provider of an exclusive right to provide a financial service referred to in paragraph 4(a).

6. Each Party shall comply with Annex 1401.6.

#### **Article 1402: Self-Regulatory Organizations**

Where a Party requires financial service providers of another Party to be members of, participate in, or have access to, a self-regulatory organization to provide a financial service in the territory of that Party, the Party shall ensure observance by such organization of this Chapter.

#### **Article 1403: Regulatory Measures**

1. Nothing in this Part shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

- (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants or persons to whom a fiduciary duty is owed by a financial service provider or financial institution;
- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial service providers or financial institutions; and
- (c) ensuring the integrity and stability of a Party's financial system.

2. Nothing in this Part applies to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 1106 (Performance Requirements), Article 1109 (Transfers) and Article 2104 (Balance of Payments).

#### **Article 1404: Establishment**

1. The Parties recognize the principle that financial service providers of a Party should be permitted to establish financial institutions in the territory of another Party in the juridical form determined by the provider.

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2. The Parties also recognize the principle that financial service providers of a Party should be permitted to participate widely in the market of another Party through the ability:

- (a) to provide in that other Party's territory a range of financial services through separate financial institutions as may be required by that Party;
- (b) to expand geographically within that territory; and
- (c) to own financial institutions without the application of ownership requirements specific to foreign financial institutions.

3. Each Party shall permit financial service providers of another Party that are not already established in its territory to establish financial institutions in the Party's territory. A Party may:

- (a) require such financial service providers to incorporate such financial institutions under its laws; or
- (b) impose other terms, conditions and procedures on establishment that are consistent with Article 1407.

4. At such time as the United States liberalizes its existing measures to permit commercial banks of another Party located in its territory to expand throughout significantly all the United States market either through subsidiaries or direct branches, the Parties shall review and assess market access in each Party, subject to Annex 1404.4, with respect to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investor choice as to juridical form of establishment by commercial banks.

5. Each Party shall permit financial institutions of another Party to transfer and process information outside the territory of the Party in electronic or other form as is necessary for the conduct of ordinary business of such institutions.

#### **Article 1405: Cross-Border Trade**

1. No Party may adopt any measure restricting any type of cross-border trade in financial services by financial service providers of another Party that is permitted on the date of entry into force of this Agreement, except to the extent set out in Part B of the Party's Schedule to Annex VII.

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2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from financial service providers of another Party located in the territory of that other Party or another Party, provided that the Party is not required, in order to fulfill this obligation, to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may, for this purpose, define "doing business" and "solicitation."

3. Without prejudice to prudential regulation by other means, a Party may require registration of financial service providers of another Party and financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services, as set out in Annex 1405.4.

#### **Article 1406: New Financial Services**

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those that the Party permits its financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which such service may be provided.

2. A Party may require authorization for the provision in its territory of a financial service referred to in paragraph 1. Where such authorization is required, a decision shall be made within a reasonable period of time and may only be refused for prudential reasons.

#### **Article 1407: National Treatment**

1. Each Party shall accord to investors of another Party and financial service providers of another Party national treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in financial institutions in its territory.

2. Each Party shall accord to the financial institutions of another Party national treatment.

3. Where a Party permits the cross-border provision of a financial service, it shall accord national treatment to financial service providers of another Party in the provision of such cross-border service.

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4. "National treatment" means treatment no less favorable than that accorded by a Party to its own investors, financial service providers and financial institutions in like circumstances.

5. A measure of a Party, whether it accords to financial service providers or financial institutions of another Party different or identical treatment compared to that it accords to its own providers or institutions in like circumstances, shall be deemed to be consistent with paragraph 4, if it accords equal competitive opportunities.

6. A measure accords equal competitive opportunities if it does not disadvantage financial service providers of another Party in their ability to provide financial services as compared with the ability of domestic financial service providers in like circumstances to provide financial services.

7. Differences in market share, profitability or size shall not by themselves constitute denial of equal competitive opportunities, but shall not be precluded from being used as evidence regarding the issue of whether a Party's measure accords equal competitive opportunities.

8. - With respect to measures of a province or state, paragraph 4 means:

- (a) treatment no less favorable than the most favorable treatment accorded in like circumstances by such province or state to financial service providers of the Party of which it forms a part, including that province or state; or
- (b) in the case of a financial service provider of another Party established in another province or state of the Party, treatment no less favorable than it accords in like circumstances to a financial service provider of the Party established in such other province or state.

#### Article 1408: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party, investments of such investors and financial service providers of another Party treatment no less favorable than that it accords to investors, investments of investors and financial service providers of any other Party or non-Party in like circumstances.

2. Each Party may recognize prudential measures of another Party or non-Party in determining how the Party's measures relating to financial services shall be applied. Such

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recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the Party concerned or may be accorded unilaterally.

3. A Party recognizing measures by means of an agreement or arrangement referred to in paragraph 2 shall afford adequate opportunity for another Party to negotiate its accession to such an agreement or arrangement, or to negotiate a comparable one under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the Parties. Where a Party accords recognition unilaterally, it shall afford adequate opportunity for another Party to demonstrate that such circumstances exist.

#### **Article 1409: Staffing**

1. No Party may require financial institutions of another Party to engage, as top managerial or other essential personnel, individuals of any particular nationality.

2. No Party may require that more than a simple majority of the board of directors of a financial institution of another Party be composed of nationals of the Party, persons residing in the territory of the Party, or a combination thereof.

#### **Article 1410: Transparency**

1. Each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment upon the measure. Such measure shall be provided:

- (a) by means of official publication;
- (b) in other written form; or
- (c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party shall make available to interested persons the information that applications affecting the provision of financial services must contain.

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3. At the request of an applicant, the competent regulatory authority shall provide information concerning the status of an application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
4. Each Party shall make an administrative decision on a completed application of a financial service provider of another Party within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the competent authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.
5. Nothing in this Agreement requires a Party to disclose information related to the affairs and accounts of individual customers or any confidential or proprietary information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest, or prejudice legitimate commercial interests.
6. Each Party shall ensure that inquiry points exist, at the latest 180 days after the date of entry into force of this Agreement, to which all reasonable inquiries from interested persons may be directed regarding any measures of general application taken by that Party with respect to this Chapter. Responses shall be provided in writing as soon as practicable.

#### Article 1411: Transfers

Without prejudice to other provisions of this Agreement that would permit such actions to be taken, a Party may prevent or limit transfers by a financial service provider or a financial institution to, or for the benefit of, an affiliate of or person related to such provider or institution, through the equitable, non-discriminatory and good faith application of its measures relating to maintenance of the safety and soundness of its financial institutions.

**Article 1412: Schedules**

1. Articles 1404 through 1409 do not apply to:
  - (a) any existing non-conforming measure that is maintained by:
    - (i) a Party at the federal level, as set out in Part A of its Schedule to Annex VII;
    - (ii) a state or province, as set out by a Party in Part A of its Schedule to Annex VII within the period referred to in that Part; or
    - (iii) a local government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1404 through 1409.
2. A Party shall set out any non-conforming measure maintained at the state or provincial level in Part A of its Schedule to Annex VII within the periods provided therein.
3. Articles 1404 through 1409 do not apply to any measure adopted or maintained by a Party that is consistent with the terms set out by the Party in Part B of its Schedule to Annex VII.
4. A Party shall describe in Part C of its Schedule to Annex VII any specific commitment it is making to any other Party.
5. For the purposes of Article 1413(2), each Party shall specify in Part D of its Schedule to Annex VII its governmental agency responsible for financial services.
6. A Party shall describe in Part E of its Schedule to Annex VII any terms and conditions that an enterprise of another Party must meet to be considered an enterprise of such other Party for the purposes of restrictions specified in that Part.
7. Any reservation or exception set out by a Party in Annexes I through VI under this

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Part shall be deemed to constitute reservations or exceptions for purposes of Articles 1404 through 1409.

#### **Article 1413: Consultations**

1. Any Party may request consultations with another Party at any time regarding any matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to such a request. The results of consultations under this Article shall be reported during the annual meeting of the Committee provided for in Article 1414.
2. Consultations under this Article shall be conducted by officials of the governmental agencies responsible for financial services specified in Part D of each Party's Schedule to Annex VII.
3. A Party may request that regulatory authorities of another Party participate in consultations under this Article to discuss that other Party's measures of general application that may affect the operations of financial service providers in the requesting Party's territory.
4. Such regulatory authorities shall not be required to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.
5. Where a Party requires information for supervisory purposes concerning a financial service provider in another Party's territory, it may approach the competent regulatory authority in the other Party's territory to seek the information.
6. Each Party shall comply with Annex 1413.6.

#### **Article 1414: Financial Services Committee**

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be the officials referred to in Article 1413(2).



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2. Subject to Article 2001(2)(d) (The Free Trade Commission), the Committee shall:
  - (a) supervise the implementation of this Chapter and its further elaboration;
  - (b) consider issues regarding financial services that are referred to it by a Party;
  - (c) participate in the dispute settlement procedure pursuant to Article 1416; and
  - (d) examine technical issues under this Chapter, including interpretation of this Chapter.
3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.

#### **Article 1415: Dispute Settlement**

1. Disputes arising under this Chapter shall be resolved in accordance with the procedures of Chapter 20 (Institutional Arrangements and Dispute Settlement Procedures) and this Article.
2. In addition to the roster established under Article 2009 (Roster), the Parties shall establish and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years and may be reappointed.
3. Financial services roster members shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment. Such members shall also meet the qualifications set out in Article 2009(2)(b) and (c).
4. Where a Party alleges that a dispute arises under this Chapter, Article 2011 (Panel Selection) applies to the selection of panelists, except that:
  - (a) the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3, where the disputing Parties agree;
  - (b) in any case other than that set out in subparagraph (a)

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- (i) each disputing Party may select panelists meeting the qualifications of Article 2010(1) (Qualifications of Panelists) or paragraph 3 of this Article, as the Party deems appropriate, and
- (ii) if the Party complained against alleges Article 1403 as a defense in the dispute, the chair of the panel must meet the qualifications of paragraph 3 of this Article.

5. Notwithstanding Article 2019(2) (Non-Implementation - Suspension of Benefits), in any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;
- (b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an equivalent effect as the measure or matter complained of has in the financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

#### **Article 1416: Investment Disputes in Financial Services**

1. Where an investor of another Party submits a claim under Articles 1116 or 1117 to arbitration under Section B of Chapter Eleven (Settlement of Disputes Between a Party and an Investor of Another Party) against a Party and the disputing Party alleges Article 1403 as a defense, on request of the disputing Party, the Tribunal shall refer the matter to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. The Committee shall decide the issue of whether and to what extent Article 1403 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. If the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of a panel pursuant to Article 2008(1) to decide the issue. The

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matter shall proceed as a dispute under Article 1415. The panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

4. If no request for the establishment of a panel pursuant to paragraph 3 has been made within 10 days following the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

#### **Article 1417: Definitions**

For purposes of this Chapter:

**cross-border trade in services and cross-border provision of a service** means "cross-border trade in services" and "cross-border provision of a service" as defined in Article 1213 (Definitions);

**financial institution** means any financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the laws of the Party in whose territory it is located;

**financial institution of another Party** means a financial institution in the territory of a Party that is controlled by nationals or enterprises of another Party;

**financial service** means any service of a financial nature, including insurance, and any service incidental or auxiliary to a service of a financial nature;

**financial service provider of another Party** means any national or enterprise of a Party that is engaged in the business of providing financial services in the territory of a Party and that is providing or intends to provide financial services through an investment in the territory of another Party or through cross-border provision into the territory of another Party;

**investment** means "investment" as defined in Article 1138 (Definitions), except that:

- (a) where the loan is extended to a financial institution, regardless of the original maturity of the loan, it shall only be an investment to the extent it is treated as regulatory capital; or

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- (b) where the loan is granted by a financial service provider or a financial institution, the loan shall only be an investment if it is made on a cross-border basis and it has an original maturity of at least three years (other than a loan to a Party or state enterprise thereof);

**new financial service** means a service of a financial nature, including a service related to an existing service or the manner in which a product is delivered, that is not provided by any financial service provider in the territory of a Party but which is provided a financial service provider in the territory of another Party;

**public entity** means a Party, a central bank or monetary authority of a Party, or any financial institution owned or controlled by a Party;

**service provider of a Party** means "service provider of a Party" as defined in Chapter 12 (Cross-Border Trade in Services); and

**self-regulatory organization** means any non-governmental body including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises regulatory or supervisory authority over financial service providers or financial institutions that are members or participants thereof, or that have access thereto.

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**ANNEX 1401.6**  
**Country Specific Commitments**

Articles 1702(1) and (2) of the *Canada - United States Free Trade Agreement* are incorporated into this Agreement and Canada and the United States agree to act in accordance with and be governed by those Articles.

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**ANNEX 1404.4**  
**Review of Market Access**

The review of market access referred to in Article 1404(4) shall not include the market access limitations specified in Part B of the Schedule of Mexico to Annex VII.

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**ANNEX 1405.4**  
**Consultations on Liberalization of Cross-Border Trade**

By January 1, 2000, the Parties shall consult on further liberalization of cross-border trade in financial services. Such consultations shall include the possibility of allowing a wider range of insurance services to be provided on a cross-border basis in the territory of each Party. With respect to Mexico, such consultations on cross-border insurance services shall determine whether the limitations on cross-border insurance services specified in Part A of the Schedule of Mexico to Annex VII shall be maintained, modified, or eliminated.

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**ANNEX 1413.6**  
**Future Consultations and Arrangements**

**Section A - Limited Scope Financial Institutions**

Three years after the date of entry into force of this Agreement, the Parties shall consult on the aggregate limit on limited scope financial institutions described in paragraph 8 of Part B of the Schedule of Mexico to Annex VII.

**Section B - Payments System Protection**

1. If the sum of the authorized capital of Foreign Commercial Bank Affiliates (as such term is defined in Part B of the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25 percent, then Mexico may request consultations with the other Parties on the potential adverse effects arising from the presence of commercial banks of the other Parties in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation.
2. In considering the potential adverse effects, the Parties shall take into account:
  - (a) the threat that the Mexican payments system may be controlled by non-Mexican persons;
  - (b) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange-rate policy effectively; and
  - (c) the adequacy of various provisions agreed under this Chapter to protect the Mexican payments system.
3. If no consensus is achieved through consultations, which shall be completed in an expeditious time frame, a panel shall be convened under the procedures of Article 2008 (Request for an Arbitral Panel) of the Agreement to render a non-binding recommendation to the Parties no later than 60 days after the panel is convened.



## **Chapter Fifteen**

### **Competition Policy, Monopolies and State Enterprises**

#### **Article 1501: Competition Law**

1. Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct, and shall take appropriate action with respect thereto, recognizing that such measures will enhance the fulfillment of the objectives of this Agreement. To this end the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party.
2. Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on issues of competition law enforcement policy, including mutual legal assistance, notification, consultation and exchange of information relating to the enforcement of competition laws and policies in the free trade area.
3. No Party may have recourse to dispute settlement under this Agreement for any matter regarding this Article.

#### **Article 1502: Monopolies and State Enterprises**

1. Nothing in this Agreement shall prevent a Party from designating a monopoly.
2. Where a Party intends to designate a monopoly, and the designation may affect the interests of persons of another Party, the Party shall:
  - (a) wherever possible, provide prior written notification to the other Party of the designation; and
  - (b) endeavor to introduce at the time of designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits under this Agreement, in the sense of Annex 2004.

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3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:

- (a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement whenever such monopoly exercises any regulatory, administrative, or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;
- (b) except to comply with any terms of its designation that are not inconsistent with subparagraph (c) or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;
- (c) provides non-discriminatory treatment to investments of investors, to goods, and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and
- (d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiary, or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect an investment of an investor of another Party, including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.

4. Paragraph 3 shall not apply to the procurement by governmental agencies of a good or service for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or provisions of services for commercial sale.

#### Article 1503: State Enterprises

1. Nothing in this Agreement shall prevent a Party from maintaining or establishing a state enterprise.

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2. Each Party, shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapter Eleven (Investment) wherever such enterprise exercises any regulatory, administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords nondiscriminatory treatment in the sale of its goods or services to investments in the Party's territory of investors of another Party.

#### **Article 1504: Working Group on Trade and Competition**

The Commission shall establish a Working Group on Trade and Competition, comprising representatives of each Party, to report, and to make recommendations on further work as appropriate, to the Commission within five years after the date of entry into force of the Agreement on relevant issues concerning the relationship between competition laws and policies and trade in the free trade area.

#### **Article 1505: Definitions**

For purposes of this Chapter:

**in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

**designate** means to establish, designate or authorize, or to expand the scope of, a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

**discriminatory provision** includes treating a parent, subsidiary, or other enterprise with common ownership more favorably than an unaffiliated enterprise, or treating one class of enterprises more favorably than another, in like circumstances;

**government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the federal government of a Party or by another such monopoly;

**market** means the geographic and commercial market for a good or service;

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**monopoly** means an entity, including any consortium or government agency that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include any entity that has been granted an exclusive intellectual property right solely by reason of such grant;

**non-discriminatory treatment** means the better of national or most-favored-nation treatment, and

**state enterprise** means, except as set out in Annex 1505.1, an enterprise owned, or controlled through ownership interests, by a Party.

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**ANNEX 1505.1**

**State Enterprises**

For purposes of Article 1503(3), "state enterprise" means, with respect to Canada, a Crown Corporation within the meaning of the Financial Administration Act (Canada) or a Crown corporation within the meaning of any comparable provincial legislation or that is incorporated under other applicable provincial legislation.

## Chapter Sixteen

### Temporary Entry for Business Persons

#### Article 1601: General Principles

Further to Article 102 (Objectives), the provisions of this Chapter reflect the preferential trading relationship between the Parties, the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labor force and permanent employment in their respective territories.

#### Article 1602: General Obligations

1. Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article 1601, and in particular, shall apply expeditiously such measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.
2. The Parties shall endeavor to develop and adopt common criteria, definitions and interpretations for the implementation of this Chapter.

#### Article 1603: Grant of Temporary Entry

1. Each Party shall grant, in accordance with this Chapter, including Annex 1603, temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health and safety and national security.
2. A Party may refuse to issue an immigration document authorizing employment to a business person where the temporary entry of that person might affect adversely:
  - (a) the settlement of any labor dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.

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3. When a Party refuses pursuant to paragraph 2 to issue an immigration document authorizing employment, it shall:
  - (a) inform in writing the business person of the reasons for the refusal; and
  - (b) promptly notify in writing the Party whose business person has been refused entry of the reasons for the refusal.
4. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

#### **Article 1604: Provision of Information**

1. Further to Article 1802 (Publication), each Party shall:
  - (a) provide to the other Parties such materials as will enable them to become acquainted with its measures relating to the provisions of this Chapter; and
  - (b) not later than one year after the date of entry into force of this Agreement, prepare, publish and make available in its own territory, and in the territories of the other Parties, explanatory material in a consolidated document regarding the requirements for temporary entry under this Chapter in such a manner as to enable business persons of the other Parties to become acquainted with them.
2. Subject to Annex 1604.2, each Party shall collect and maintain, and make available to the other Parties in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Parties who have been issued immigration documentation, including that specific to each occupation, profession or activity.

#### **Article 1605: Working Group**

1. The Parties hereby establish a Temporary Entry Working Group, comprising representatives of each Party, including immigration officials.
2. The Working Group shall meet at least once a year to consider:

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- (a) the implementation and administration of this Chapter;
- (b) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis;
- (c) the waiving of labor certification tests or procedures of similar effect for spouses of business persons who have been granted temporary entry for more than one year under Sections B, C, or D of Annex 1603; and
- (d) proposed modifications of or additions to this Chapter.

#### Article 1606: Dispute Settlement

A Party may not initiate proceedings under Article 2007 regarding a refusal to grant temporary entry under this Chapter or a particular case arising under Article 1602(1) unless:

- (a) the matter involves a pattern of practice; and
- (b) the business person has exhausted available administrative remedies regarding the particular matter, provided that such remedies shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

#### Article 1607: Relation to Other Chapters

Except for Chapter One (Objectives), Chapter Two (General Definitions), Chapter Twenty (Institutional Arrangements and Dispute Settlement), Chapter Twenty-Two (Final Provisions) and Articles 1801 through 1804, no provision of any other Chapter shall impose any obligation upon a Party regarding its immigration measures.



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**Article 1608: Definitions**

For purposes of this Chapter:

**business person** means a citizen of a Party who is engaged in the trade in goods, the provision of services or the conduct of investment activities;

**citizen** means "citizen" as defined in Annex 1608;

**existing** means "existing" as defined in Annex 1608; and

**temporary entry** means entry into the territory of a Party by a business person of another Party without the intent to establish permanent residence.

**ANNEX 1603**

**Temporary Entry for Business Persons**

**Section A - Business Visitors**

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Schedule I, without requiring that person to obtain an employment authorization, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry, upon presentation of:

- (a) proof of citizenship of a Party;
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and that the business person is not seeking to enter the local labor market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside such territory. A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. If the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Each Party shall grant temporary entry to a business person seeking to engage in a business activity other than those set out in Schedule I, without requiring that person to obtain an employment authorization, on a basis no less favorable than that provided under the existing provisions of the measure set out in Appendix 1603.A, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

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4. No Party shall:

- (a) as a condition for temporary entry under paragraphs 1 or 3, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraphs 1 or 3.

5. Notwithstanding paragraph 4, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, at the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

#### Section B - Traders and Investors

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to:

- (a) carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought; or
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills,

provided that the business person otherwise complies with existing immigration measures applicable to temporary entry.

2. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or

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- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry.

### Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide confirming documentation to a business person employed by an enterprise who seeks to render services to that enterprise or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge, provided that the business person otherwise complies with existing immigration measures applicable to temporary entry. A Party may require that such business person shall have been employed continuously by such enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require labor certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, at the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

### Section D - Professionals

1. Each Party shall grant temporary entry and provide confirming documentation to a business person seeking to engage in a business activity at a professional level in a profession set out in Schedule II, if the business person otherwise complies with existing immigration measures applicable to temporary entry, upon presentation of:

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- (a) proof of citizenship of a Party; and
- (b) documentation demonstrating that the business person will be so engaged and describing the purpose of entry.

2. No Party shall:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, petitions, labor certification tests, or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Part to obtain a visa or its equivalent prior to entry. Before imposing a visa requirement, such Party shall consult with a Party whose business persons would be affected with a view to avoiding the imposition of the requirement. With respect to an existing visa requirement, a Party shall, upon the request of a Party whose business persons are subject to the requirement, consult with that Party with a view to its removal.

4. Notwithstanding paragraphs 1 and 2, a Party may establish an annual numerical limit, which shall be set out in Schedule III, regarding temporary entry of business persons of another Party seeking to engage in business activities at a professional level in a profession set out in Schedule II, if the Parties concerned have not agreed otherwise prior to the entry into force of this Agreement for such Parties. In establishing such a limit, such Party shall consult with the other Party concerned.

5. A Party establishing a numerical limit pursuant to paragraph 4, unless the Parties concerned agree otherwise:

- (a) shall, for each year after the first year after the date of entry into force of this Agreement, consider increasing the numerical limit set out in Schedule III by an amount to be established in consultation with the other Party concerned, taking into account the demand for temporary entry under this Part;
- (b) shall not apply its procedures established pursuant to paragraph 1 to the temporary entry of a business person subject to the numerical limit, but may require such business person to comply with its other procedures applicable to the temporary entry of professionals; and

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(c) may, in consultation with the other Party concerned, grant temporary entry under paragraph 1 to a business person who practices in a profession where accreditation, licensing, and certification requirements are mutually recognized by such Parties.

6. Nothing in paragraphs 4 or 5 shall be construed so as to limit the ability of a business person to seek temporary entry under a Party's applicable immigration measures relating to the entry of professionals other than those adopted or maintained pursuant to paragraph 1.

7. Three years after a Party establishes a numerical limit pursuant to paragraph 4, it shall consult with the other Party concerned with a view to determining a date after which the limit shall cease to apply.

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**ANNEX 1604.2**

**Provision of Information**

The obligations under Article 1604(2) shall take effect with respect to Mexico one year after the date of entry into force of this Agreement.

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**ANNEX 1608**

**Country - Specific Definitions**

For purposes of this Chapter:

**citizen** means, with respect to Mexico, a national or a citizen according to the existing provisions of Articles 30 and 34, respectively, of the Mexican Constitution; and

**existing** means, as between:

- (a) Canada and Mexico, and the United States and Mexico, in effect upon the date of entry into force of this Agreement; and
- (b) Canada and the United States, in effect on January 1, 1989.



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**Appendix 1603.A**

**Existing Immigration Measures**

1. In the case of Canada, the *Immigration Act*, R.S.C. 1985 c.I-2, as amended, and subsection 19(1) of the *Immigration Regulations*, 1978, as amended.
2. In the case of the United States, Section 101(a)(15)(B) of the *Immigration and Nationality Act*, 1952, as amended.
3. In the case of Mexico, Chapter III of the *Ley General de Poblacion*, 1974, as amended.

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## Schedule I

### Research and Design

- Technical, scientific, and statistical researchers conducting independent research, or research for an enterprise located in the territory of another Party.

### Growth, Manufacture and Production

- Harvester owner supervising a harvesting crew admitted under applicable law.
- Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another Party.

### Marketing

- Market researchers and analysts conducting independent research or analysis, or research or analysis for an enterprise located in the territory of another Party.
- Trade fair and promotional personnel attending a trade convention.

### Sales

- Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.
- Buyers purchasing for an enterprise located in the territory of another Party.

### Distribution

- Transportation operators transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or passengers from the territory of a Party to the territory of another Party, with no loading and delivery within the

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territory of the Party into which entry is sought of goods located in or passengers boarding in that territory.

- With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada; with respect to temporary entry into the territory of Canada, United States customs brokers performing brokerage duties relating to the export of goods from the territory of Canada to or through the territory of the United States.
- Customs brokers consulting regarding the facilitation of the import or export of goods.

#### After-Sales Service

- Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform such services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

#### General Service

- Professionals engaging in a business activity at a professional level in a profession set out in Schedule II.
- Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party.
- Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party.
- Public relations and advertising personnel consulting with business associates, and attending or participating in conventions.
- Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party.

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- Tour bus operators entering the territory of a Party:
  - (a) with a group of passengers on a bus tour that has begun in, and will return to, the territory of another Party;
  - (b) to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party; or
  - (c) with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with such group for transportation to the territory of another Party.
  
- Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

#### **Definitions**

For purposes of this Schedule:

**territory of another Party** means the territory of a Party other than the territory of the Party into which temporary entry is sought;

**tour bus operator** means a natural person, including relief personnel accompanying or following to join, necessary for the operation of a tour bus for the duration of a trip; and

**transportation operator** means a natural person, other than a tour bus operator, including relief personnel accompanying or following to join, necessary for the operation of a vehicle for the duration of a trip.

Schedule II

PROFESSION <sup>1</sup>	MINIMUM EDUCATION REQUIREMENTS AND ALTERNATIVE CREDENTIALS
Accountant	Baccalaureate or Licenciatura Degree; or C.P.A., C.A., C.G.A., C.M.A.
Architect	Baccalaureate or Licenciatura Degree; or state/provincial license <sup>2</sup>
Computer Systems Analyst	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma <sup>3</sup> or Post-Secondary Certificate <sup>4</sup> , and three years experience

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<sup>1</sup> A business person seeking temporary entry under this Schedule may also perform training functions relating to the profession, conducting seminars.

<sup>2</sup> The terms "state/provincial licence" and "state/provincial/federal licence" mean any document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, which permits a person to engage in a regulated activity or profession.

<sup>3</sup> The term "Post-Secondary Diploma" means a credential issued, upon completion of two or more years of post-secondary education, by an accredited academic institution in Canada or the United States.

<sup>4</sup> The term "Post-Secondary Certificate" means a certificate issued, upon completion of two or more years of post-secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

<p>Disaster Relief Insurance Claims Adjuster (claims adjuster employed by an insurance company located in the territory of a Party, or an independent claims adjuster)</p>	<p>Baccalaureate or Licenciatura Degree, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims; or three years of experience in claims adjustment, and successful completion of training in the appropriate areas of insurance adjustment pertaining to disaster relief claims</p>
<p>Economist</p>	<p>Baccalaureate or Licenciatura Degree</p>
<p>Engineer</p>	<p>Baccalaureate or Licenciatura Degree; or state/provincial license</p>
<p>Forester</p>	<p>Baccalaureate or Licenciatura Degree; or state/provincial license</p>
<p>Graphic Designer</p>	<p>Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience</p>
<p>Hotel Manager</p>	<p>Baccalaureate or Licenciatura Degree in hotel/restaurant management; or Post- Secondary Diploma or Post-Secondary Certificate in hotel/restaurant management, and three years experience in hotel/restaurant management</p>
<p>Industrial Designer</p>	<p>Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience</p>
<p>Interior Designer</p>	<p>Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience</p>
<p>Land Surveyor</p>	<p>Baccalaureate or Licenciatura Degree; or state/provincial/federal license</p>

Landscape Architect	Baccalaureate or Licenciatura Degree
Lawyer (including Notary in the Province of Quebec)	LL.B., J.D., LL.L., B.C.L., or Licenciatura Degree (five years); or membership in a state/provincial bar
Librarian	M.L.S. or B.L.S. (for which another Baccalaureate or Licenciatura Degree was a prerequisite)
Management Consultant	Baccalaureate or Licenciatura Degree; or equivalent professional experience as established by statement, or professional credential, attesting to five years experience as a management consultant, or five years experience in a field of specialty related to the consulting agreement
Mathematician (including Statistician)	Baccalaureate or Licenciatura Degree
<b>MEDICAL/ALLIED PROFESSIONAL</b>	
Dentist	D.D.S., D.M.D., Doctor en Odontologia, or Doctor en Cirugia Dental; or state/provincial license
Dietitian	Baccalaureate or Licenciatura Degree; or state/provincial license

Medical Laboratory Technologist (Canada)/Medical Technologist (United States and Mexico) <sup>5</sup>	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Nutritionist	Baccalaureate or Licenciatura Degree
Occupational Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Pharmacist	Baccalaureate or Licenciatura Degree; or state/provincial license
Physician (teaching or research only)	M.D. or Doctor en Medicina; or state/provincial license
Physiotherapist/Physical Therapist	Baccalaureate or Licenciatura Degree; or state/provincial license
Psychologist	State/provincial license or Licenciatura Degree
Recreational Therapist	Baccalaureate or Licenciatura Degree
Registered Nurse	State/provincial license or Licenciatura Degree
Veterinarian	D.V.M., D.M.V., or Doctor en Veterinaria; or state/provincial license

<sup>5</sup> A business person in this category must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment or prevention of disease.



Range Manager/ Range Conservationist	Baccalaureate or Licenciatura Degree
Research Assistant (Working in a post-secondary educational institution)	Baccalaureate or Licenciatura Degree
Scientific Technician/Technologist <sup>6</sup>	Possession of: (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics; and (b) the ability to solve practical problems in any of such disciplines, or the ability to apply principles of any of such disciplines to basic or applied research
<b>SCIENTIST</b>	
Agriculturist (including Agronomist)	Baccalaureate or Licenciatura Degree
Animal Breeder	Baccalaureate or Licenciatura Degree
Animal Scientist	Baccalaureate or Licenciatura Degree
Apiculturist	Baccalaureate or Licenciatura Degree

<sup>6</sup> A business person in this category must be seeking temporary entry to work in direct support of professionals in agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics.

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Astronomer	Baccalaureate or Licenciatura Degree
Biochemist	Baccalaureate or Licenciatura Degree
Biologist	Baccalaureate or Licenciatura Degree
Chemist	Baccalaureate or Licenciatura Degree
Dairy Scientist	Baccalaureate or Licenciatura Degree
Entomologist	Baccalaureate or Licenciatura Degree
Epidemiologist	Baccalaureate or Licenciatura Degree
Geneticist	Baccalaureate or Licenciatura Degree
Geologist	Baccalaureate or Licenciatura Degree
Geochemist	Baccalaureate or Licenciatura Degree
Geophysicist (including Oceanographer in Mexico and the United States)	Baccalaureate or Licenciatura Degree
Horticulturist	Baccalaureate or Licenciatura Degree
Meteorologist	Baccalaureate or Licenciatura Degree

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Pharmacologist	Baccalaureate or Licenciatura Degree
Physicist (including Oceanographer in Canada)	Baccalaureate or Licenciatura Degree
Plant Breeder	Baccalaureate or Licenciatura Degree
Poultry Scientist	Baccalaureate or Licenciatura Degree
Soil Scientist	Baccalaureate or Licenciatura Degree
Zoologist	Baccalaureate or Licenciatura Degree
Social Worker	Baccalaureate or Licenciatura Degree
Sylviculturist (including Forestry Specialist)	Baccalaureate or Licenciatura Degree
<b>TEACHER</b>	
College	Baccalaureate or Licenciatura Degree
Seminary	Baccalaureate or Licenciatura Degree
University	Baccalaureate or Licenciatura Degree

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Technical Publications Writer	Baccalaureate or Licenciatura Degree; or Post-Secondary Diploma or Post-Secondary Certificate, and three years experience
Urban Planner (including Geographer)	Baccalaureate or Licenciatura Degree
Vocational Counsellor	Baccalaureate or Licenciatura Degree

Schedule III

United States of America

1. Commencing on the date of entry into force of this Agreement as between the United States and Mexico, the United States shall annually approve as many as 5,500 initial petitions of business persons of Mexico seeking temporary entry under Section D of Annex 1603 to engage in a business activity at a professional level in a profession set out in Schedule II.
2. For purposes of paragraph 1, the United States shall not take into account:
  - (a) the renewal of a period of temporary entry;
  - (b) the entry of a spouse or children accompanying or following to join the principal business person;
  - (c) an admission under Section 101(a)(15)(H)(i)(b) of the *Immigration and Nationality Act*, 1952, as amended, including the worldwide numerical limit established by Section 214(g)(1)(A) of such Act; or
  - (d) an admission under any other provision of Section 101(a)(15) of such Act relating to the entry of professionals.
3. Paragraphs 4 and 5 of Section D of Annex 1603 shall apply as between the United States and Mexico for no longer than:
  - (a) the period that such paragraphs or similar provisions may apply as between the United States and any other Party or non-Party; or
  - (b) 10 years after the date of entry into force of this Agreement as between such Parties,whichever period is shorter.

**PART SIX  
INTELLECTUAL PROPERTY**

**Chapter Seventeen  
Intellectual Property**

**Article 1701: Nature and Scope of Obligations**

1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:

- (a) the *Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms*, 1971 (Geneva Convention);
- (b) the *Berne Convention for the Protection of Literary and Artistic Works*, 1971 (Berne Convention);
- (c) the *Paris Convention for the Protection of Industrial Property*, 1967 (Paris Convention); and
- (d) the *International Convention for the Protection of New Varieties of Plants*, 1978 (UPOV Convention), or the *International Convention for the Protection of New Varieties of Plants*, 1991 (UPOV Convention).

If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.

3. Paragraph 2 shall apply, except as provided in Annex 1701.3.

**Article 1702: More Extensive Protection**

A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.

**Article 1703: National Treatment**

1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights. In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.
2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.
3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party's territory or to appoint an agent in the Party's territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:
  - (a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and
  - (b) is not applied in a manner that would constitute a disguised restriction on trade.
4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

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#### **Article 1704: Control of Abusive or Anticompetitive Practices or Conditions**

Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.

#### **Article 1705: Copyright**

1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:

- (a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and
- (b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.

The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.

2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:

- (a) the importation into the Party's territory of copies of the work made without the right holder's authorization;
- (b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;
- (c) the communication of a work to the public; and
- (d) the commercial rental of the original or a copy of a computer program.



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Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.

3. Each Party shall provide that for copyright and related rights:

- (a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and
- (b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.

7. Each Party shall comply with the requirements set out in Annex 1705.7.

#### Article 1706: Sound Recordings

1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:

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- (a) the direct or indirect reproduction of the sound recording;
- (b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization;
- (c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and
- (d) the commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works fixed therein.

Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.

2. Each Party shall provide a term of protection for sound recordings of at least 50 years from the end of the calendar year in which the fixation was made.

3. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the sound recording and do not unreasonably prejudice the legitimate interests of the right holder.

#### **Article 1707: Protection of Encrypted Program-Carrying Satellite Signals**

Within one year from the date of entry into force of this Agreement, each Party shall:

- (a) make it a criminal offense to manufacture, import, sell, lease or otherwise make available a device or system that is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
- (b) make it a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).

Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.

**Article 1708: Trademarks**

1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration that a sign be visually perceptible.

2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.

3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.

4. Each Party shall provide a system for the registration of trademarks, which shall include:

- (a) examination of applications;
- (b) notice to be given to an applicant of the reasons for the refusal to register a trademark;
- (c) a reasonable opportunity for the applicant to respond to the notice;
- (d) publication of each trademark either before or promptly after it is registered;  
and
- (e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.

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A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.

5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

6. Article 6<sup>bis</sup> of the Paris Convention shall apply, with such modifications as are necessary, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.

8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least two years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.

9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.

10. No Party shall encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.

11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.

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12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interests of the trademark owner and of other persons.

13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.

14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.

#### Article 1709: Patents

1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For the purposes of this Article, a Party may deem the terms "inventive step" and "capable of industrial application" to be synonymous with the terms "non-obvious" and "useful", respectively.

2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.

3. A Party may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) plants and animals other than microorganisms; and
- (c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.

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Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of sui generis protection, or both.

4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1:

- (a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine; and
- (b) as of July 1, 1991, for any other subject matter,

that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.

5. Each Party shall provide that:

- (a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and
- (b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.

6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.

7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.

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8. A Party may revoke a patent only when:
- (a) grounds exist that would have justified a refusal to grant the patent; or
  - (b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.
9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.
10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:
- (a) authorization of such use shall be considered on its individual merits;
  - (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
  - (c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
  - (d) such use shall be non-exclusive;
  - (e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;
  - (f) any such use shall be authorized predominantly for the supply of the Party's domestic market;

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- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;
- (k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;
- (l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.

11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:

- (a) the product obtained by the patented process is new; or
- (b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.



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In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.

12. Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

#### **Article 1710: Layout Designs of Semiconductor Integrated Circuits**

1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the *Treaty on Intellectual Property in Respect of Integrated Circuits* as opened for signature on 26 May 1989.

2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:

- (a) a protected layout design;
- (b) an integrated circuit in which a protected layout design is incorporated; or
- (c) an article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.

3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design or any article that incorporates such an integrated circuit where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.

4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.

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5. No Party may permit the compulsory licensing of layout designs of integrated circuits.
6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of:
  - (a) filing of the application for registration; or
  - (b) the first commercial exploitation of the layout design, wherever in the world it occurs.
7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.
8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.
9. This Article shall apply, except as provided in Annex 1710.9.

#### Article 1711: Trade Secrets

1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:
  - (a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;
  - (b) the information has actual or potential commercial value because it is secret; and
  - (c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

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2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.
3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.
4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses, or conditions that dilute the value of the trade secrets.
5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.
6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.
7. Where a Party relies upon a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

#### **Article 1712: Geographical Indications**

1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:

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- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good;
- (b) any use that constitutes an act of unfair competition within the meaning of Article 10<sup>bis</sup> of the Paris Convention.

2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.

3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality.

4. Nothing in this Article shall require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:

- (a) for at least 10 years, or
- (b) in good faith, before the date of signature of this Agreement.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, either:

- (a) before the date of application of these provisions in that Party, or
- (b) before the geographical indication is protected in its Party of origin,

no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

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6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.

7. A Party may provide that any request made under this Article in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.

8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.

9. Nothing in this Chapter shall require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.

#### **Article 1713: Industrial Designs**

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that:

- (a) designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and
- (b) such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.

3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making or selling articles bearing

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or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of other persons.

5. Each Party shall provide a term of protection for industrial designs of at least 10 years.

#### Article 1714: Enforcement of Intellectual Property Rights: General Provisions

1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.

2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable time-limits or unwarranted delays.

3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:

- (a) preferably be in writing and preferably state the reasons on which the decisions are based;
- (b) be made available at least to the parties in a proceeding without undue delay; and
- (c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.

4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to

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jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.

5. Nothing in this Article and in Articles 1715 through 1718 shall require a Party to establish a judicial system for the enforcement of intellectual property rights distinct from that Party's system for the enforcement of laws in general.

6. For the purposes of Articles 1715 through 1718, the term "right holder" includes federations and associations having legal standing to assert such rights.

#### **Article 1715: Specific Procedural and Remedial Aspects of Civil and Administrative Procedures**

1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right covered by this Chapter. Each Party shall provide that:

- (a) defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims;
- (b) parties in a proceeding are allowed to be represented by independent legal counsel;
- (c) the procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances;
- (d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and
- (e) the procedures include a means to identify and protect confidential information.

2. Each Party shall provide that its judicial authorities shall have the authority:

- (a) where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to

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order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information:

- (b) where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party's control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;
- (c) to order a party in a proceeding to desist from an infringement, including to prevent the date of entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, which order shall be enforceable at least immediately after customs clearance of such goods;
- (d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;
- (e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and
- (f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.

3. With respect to the authority referred to in subparagraph 2(c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.

4. With respect to the authority referred to in subparagraph 2(d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the



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infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.

5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:

- (a) goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed; and
- (b) materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

6. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.

7. Notwithstanding the other provisions of Articles 1714 through 1718, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.

8. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.

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**Article 1716: Provisional Measures**

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures:
  - (a) to prevent an infringement of any intellectual property right, and in particular to prevent the date of entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and
  - (b) to preserve relevant evidence in regard to the alleged infringement.
2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether:
  - (a) the applicant is the right holder;
  - (b) the applicant's right is being infringed or such infringement is imminent; and
  - (c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed.

Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.

3. Each Party shall provide that its competent authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.
4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

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5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis:

- (a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;
- (b) a defendant shall, upon request, have those measures reviewed by that Party's judicial authorities, for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.

6. Without prejudice to paragraph 5, each Party shall provide that, upon the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:

- (a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or
- (b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.

7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.

#### **Article 1717: Criminal Procedures and Penalties**

1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both,

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sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.

2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.

3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.

#### **Article 1718: Enforcement of Intellectual Property Rights at the Border**

1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.

2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence:

- (a) to satisfy that Party's competent authorities that, under the domestic laws of the country of importation, there is prima facie an infringement of its intellectual property right; and
- (b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration.

The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.

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3. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.
4. Each Party shall provide that, where pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority, and the period provided for in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.
5. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.
6. Each Party shall provide that its customs administration shall release goods from suspension if within a period not exceeding ten working days after the applicant under paragraph 1 has been served notice of the suspension:
  - (a) the customs administration has not been informed that a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or
  - (b) a competent authority has taken provisional measures prolonging the suspension,provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.
7. Each Party shall provide that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether the measures shall be modified, revoked or confirmed.

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8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of Article 1716(6) shall apply.

9. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.

10. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate its claims. Each Party shall also provide that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

11. Where a Party requires its competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as are necessary, set out in paragraphs 6 through 8; and
- (c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 1715(5). In regard to counterfeit goods, the

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authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.

14. This Article shall apply, except as provided in Annex 1718.14.

#### **Article 1719: Cooperation and Technical Assistance**

1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include, but not be limited to, the training of personnel.

2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties of contact points in its federal government and shall exchange information concerning trade in infringing goods.

#### **Article 1720: Protection of Existing Subject Matter**

1. Other than the provisions of Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.

2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question, and which is protected in a Party on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.

3. Except as required under Article 1705(7), and notwithstanding paragraph 2, a Party shall not be required to restore protection to subject matter that, on the date of application of

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the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.

4. Any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced or in respect of which a significant investment was made, before the date of ratification of this Agreement by that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of the Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.

5. No Party shall be obliged to apply the provisions of Article 1705(2)(d) or Article 1706(1)(d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.

6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

#### **Article 1721: Definitions**

For purposes of this Agreement:

**confidential information** includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law;

**encrypted program-carrying satellite signal** means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;



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**geographical indication** means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

**in a manner contrary to honest commercial practices** means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;

**intellectual property rights** refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;

**nationals of another Party** means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the *Paris Convention* (1967), the *Berne Convention* (1971), the *Geneva Convention* (1971), the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (1961), the *UPOV Convention* (1978), the *UPOV Convention* (1991) or the *Treaty on Intellectual Property in Respect of Integrated Circuits*, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1;

**public** includes, with respect to rights of communication and performance of works provided for under Articles 11, 11<sup>bis</sup>(1) and 14(1)(ii) of the *Berne Convention*, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and

**secondary uses of sound recordings** means the use directly for broadcasting or for any other public communication of a sound recording.

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### ANNEX 1701.3

#### Intellectual Property Conventions

1. Mexico shall:
  - (a) make every effort to comply with the substantive provisions of the 1978 or 1991 *UPOV Convention* as soon as possible and shall do so no later than two years after the date of signature of this Agreement; and
  - (b) accept from the date of entry into force of this Agreement, applications from plant breeders for varieties in all plant genera and species and grant protection, in accordance with such substantive provisions, promptly after complying with subparagraph (a).
2. Notwithstanding Article 1701(2)(b), this Agreement confers no rights and imposes no obligations on the United States with respect to Article 6<sup>bis</sup> of the Berne Convention, or the rights derived from that Article.

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**ANNEX 1705.7**

**Copyright**

The United States shall provide protection to motion pictures produced in another Party's territory that have been declared to be in the public domain pursuant to 17 U.S.C. section 405. This obligation shall apply to the extent that it is consistent with the Constitution of the United States, and is subject to budgetary considerations.

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**ANNEX 1710.9**

**Layout Designs**

Mexico shall make every effort to implement the requirements of Article 1710 as soon as possible, and shall do so no later than four years after the date of entry into force of this Agreement.

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**ANNEX 1718.14**

**Enforcement of Intellectual Property Rights**

Mexico shall make every effort to comply with the requirements of Article 1718 as soon as possible, and shall do so in any event no later than three years after the date of signature of this Agreement.

## Chapter Eighteen

### Publication, Notification and Administration of Laws

#### Article 1801: Contact Points

Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. Upon the request of another Party, the contact point shall identify the office or official responsible for the matter and assist, as necessary, in facilitating communication with the requesting Party.

#### Article 1802: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement shall be promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

2. To the extent possible, each Party shall:

- (a) publish in advance any such measure that it proposes to adopt; and
- (b) provide a reasonable opportunity for comment by interested persons and Parties on such proposed measures.

#### Article 1803: Notification and Provision of Information

1. Each Party shall, to the maximum extent possible, notify any other Party with an interest in the matter of any proposed or actual measure that it considers might materially affect the operation of this Agreement or otherwise substantially affect another Party's interests under this Agreement.

2. Upon request of another Party, a Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure, whether or not previously notified.

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3. Notification and provision of information shall be without prejudice as to whether the measure is consistent with this Agreement.

#### **Article 1804: Administrative Proceedings**

With a view to administering in a consistent, impartial and reasonable manner all measures of general application affecting matters covered by this Agreement, each Party shall ensure in its administrative proceedings applying measures referred to in Article 1802 to particular persons, goods or services of another Party in specific cases that:

- (a) whenever possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) such persons are afforded a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the proceeding and the public interest permit; and
- (c) its procedures are in accordance with domestic law.

#### **Article 1805: Review and Appeal**

1. Each Party shall adopt or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record or, where required by domestic law the record compiled by the administrative authority.

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3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions shall be implemented by, and shall govern the practice of, such offices or authorities with respect to the administrative action at issue.

#### **Article 1806: Definitions**

For purposes of this Chapter:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct rather than adjudicating with respect to a particular act or practice, but, does not include a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of another Party in a specific case.



## **Chapter Nineteen**

### **Review and Dispute Settlement in Antidumping and Countervailing Duty Matters**

#### **Article 1901: General Provisions**

1. The provisions of Article 1904 shall apply only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.
2. For the purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.
3. With the exception of Article 2203 (Entry into Force), no provision of any other chapter of this Agreement shall be construed as imposing obligations on the Parties with respect to the Parties' antidumping law or countervailing duty law.

#### **Article 1902: Retention of Domestic Antidumping Law and Countervailing Duty Law**

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.
2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:
  - (a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to the Parties to this Agreement;
  - (b) the amending Party notifies any Party to which the amendment applies in writing of the amending statute as far in advance as possible of the date of enactment of such statute;

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- (c) following notification, the amending Party, upon request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and
- (d) such amendment, as applicable to another Party, is not inconsistent with:
  - (i) the *General Agreement on Tariffs and Trade (GATT)*, the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Antidumping Code) or the *Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (the Subsidies Code), or successor agreements to which all the original signatories to this Agreement are party, or
  - (ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade among the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives and the practices of the Parties.

#### **Article 1903: Review of Statutory Amendments**

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:
  - (a) the amendment does not conform to the provisions of Article 1902(2)(d)(i) or (ii); or
  - (b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of Article 1902(2)(d)(i) or (ii).

Such declaratory opinion shall have force or effect only as provided in this Article.

2. The panel shall conduct its review in accordance with the procedures of Annex 1903.2.

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3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:
- (a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;
  - (b) if corrective legislation is not enacted within nine months from the end of the 90-day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may
    - (i) take comparable legislative or equivalent executive action, or
    - (ii) terminate this Agreement with regard to the amending Party upon 60-day written notice to that Party.

#### **Article 1904: Review of Final Antidumping and Countervailing Determinations**

1. As provided in this Article, the Parties shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.
2. An involved Party may request that a panel review, based upon the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of a Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into this Agreement.
3. The panel shall apply the standard of review described in Article 1909 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

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4. A request for a panel shall be made in writing to the other involved Party within 30 days following the date of publication of the final determination in question in the official journal of the importing Party. In the case of final determinations that are not published in the official journal of the importing Party, the importing Party shall immediately notify the other involved Party of such final determination where it involves goods from the other involved Party, and the other involved Party may request a panel within 30 days of receipt of such notice. Where the competent investigating authority of the importing Party has imposed provisional measures in an investigation, the other involved Party may provide notice of its intention to request a panel under this Article, and the Parties shall begin to establish a panel at that time. Failure to request a panel within the time specified in this paragraph shall preclude review by a panel.

5. An involved Party on its own initiative may request review of a final determination by a panel and shall, upon request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review.

6. The panel shall conduct its review in accordance with the procedures established by the Parties pursuant to paragraph 14. Where both involved Parties request a panel to review a final determination, a single panel shall review that determination.

7. The competent investigating authority that issued the final determination in question shall have the right to appear and be represented by counsel before the panel. Each Party shall provide that other persons who, pursuant to the law of the importing Party, otherwise would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent investigating authority, shall have the right to appear and be represented by counsel before the panel.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision. Where the panel remands a final determination, the panel shall establish as brief a time as is reasonable for compliance with the remand, taking into account the complexity of the factual and legal issues involved and the nature of the panel's decision. In no event shall the time permitted for compliance with a remand exceed an amount of time equal to the maximum amount of time (counted from the date of the filing of a petition, complaint or application) permitted by statute for the competent investigating authority in question to make a final determination in an investigation. If review of the action taken by the competent investigating authority on remand is needed, such review shall be before the same panel, which shall normally issue a final decision within 90 days of the date on which such remand action is submitted to it.

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9. The decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel.

10. This Agreement shall not affect:

- (a) the judicial review procedures of any Party; or
- (b) cases appealed under those procedures,

with respect to determinations other than final determinations.

11. A final determination shall not be reviewed under any judicial review procedures of the importing Party if an involved Party requests a panel with respect to that determination within the time limits set forth in this Article. No Party shall provide in its domestic legislation for an appeal from a panel decision to its domestic courts.

12. The provisions of this Article shall not apply where:

- (a) neither involved Party seeks panel review of a final determination;
- (b) a revised final determination is issued as a direct result of judicial review of the original final determination by a court of the importing Party in cases where neither involved Party sought panel review of that original final determination; or
- (c) a final determination is issued as a direct result of judicial review that was commenced in a court of the importing Party before the date of entry into force of this Agreement.

13. Where within a reasonable time after the panel decision is issued, an involved Party alleges that:

- (a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,
- (ii) the panel seriously departed from a fundamental rule of procedure, or

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- (iii) the panel manifestly exceeded its powers, authority or jurisdiction set forth in this Article, for example by failing to apply the appropriate standard of review, and
- (b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

that Party may avail itself of the extraordinary challenge procedure set out in Annex 1904.13.

14. To implement the provisions of this Article, the Parties shall adopt rules of procedure by January 1, 1994. Such rules shall be based, where appropriate, upon judicial rules of appellate procedure, and shall include rules concerning: the content and service of requests for panels; a requirement that the competent investigating authority transmit to the panel the administrative record of the proceeding; the protection of business proprietary, government classified, and other privileged information (including sanctions against persons participating before panels for improper release of such information); participation by private persons; limitations on panel review to errors alleged by the Parties or private persons; filing and service; computation and extensions of time; the form and content of briefs and other papers; pre- and post-hearing conferences; motions; oral argument; requests for rehearing; and voluntary terminations of panel reviews. The rules shall be designed to result in final decisions within 315 days of the date on which a request for a panel is made, and shall allow:

- (a) 30 days for the filing of the complaint;
- (b) 30 days for designation or certification of the administrative record and its filing with the panel;
- (c) 60 days for the complainant to file its brief;
- (d) 60 days for the respondent to file its brief;
- (e) 15 days for the filing of reply briefs;
- (f) 15 to 30 days for the panel to convene and hear oral argument; and
- (g) 90 days for the panel to issue its written decision.

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15. In order to achieve the objectives of this Article, the Parties shall, with respect to goods of the other Parties, amend their antidumping and countervailing duty statutes and regulations, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws. In particular, without limiting the generality of the foregoing:

- (a) each Party shall amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;
- (b) each Party shall amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal, business proprietary or other privileged information;
- (c) each Party shall amend its statutes or regulations to ensure that
  - (i) domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and
  - (ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and
- (d) Each Party shall make the further amendments set forth in Annex 1904.15(d).

#### Article 1905: Safeguarding the Panel Review System

- 1. Where a Party alleges that the application of another Party's domestic law,
  - (a) has prevented the establishment of a panel requested by the complaining Party;

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- (b) has prevented a panel requested by the complaining Party from rendering a final decision;
- (c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or
- (d) has resulted in a failure to provide opportunity for review of a final determination by a court or panel of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the investigating authorities' determination and whether the investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911,

that Party may request in writing consultations with the other Party regarding the allegations. The consultations shall begin within 15 days of the date of the request.

2. If the matter has not been resolved within 45 days of the request for consultations or such other period as the consulting Parties may agree, the complaining Party may request the establishment of a special committee.

3. Unless otherwise agreed by the disputing Parties, the special committee shall be established within 15 days of a request and perform its functions in a manner consistent with the provisions of this Chapter.

4. The roster for special committees shall be that established pursuant to Annex 1904.13.1.

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.1.

6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.7.

7. If the special committee makes an affirmative finding in respect of one of the grounds specified in paragraph 1, the complaining Party and the Party complained against shall begin consultations within 10 days, and shall seek to achieve a mutually satisfactory solution within 60 days of the issuance of the committee's report.



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8. If, within the 60-day period, the Parties are unable to reach a mutually satisfactory solution to the matter, or the Party complained against has not demonstrated to the satisfaction of the special committee that it has corrected the problem or problems with respect to which the committee has made an affirmative finding, the complaining Party may:

- (a) suspend the operation of Article 1904 with respect to the Party complained against; or
- (b) suspend the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

9. In the event that a complaining Party suspends the operation of Article 1904 with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 1904. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.

10. The special committee may reconvene at any time, at the request of the Party complained against, to determine:

- (a) whether the suspension of benefits by the complaining Party pursuant to subparagraph 8(b) is manifestly excessive; or
- (b) whether the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

The special committee shall, within 45 days of the request, present a report to both Parties containing its determination. Where the special committee determines that the Party complained against has corrected the problem or problems, any suspension effected by the complaining Party or the Party complained against, or both, pursuant to paragraphs 8 or 9 shall be terminated.

11. If the special committee makes an affirmative finding with respect to one of the grounds specified in paragraph 1, then effective as of the day following the date of issuance of the special committee's decision:

- (a) binational panel or extraordinary challenge committee review under Article 1904 shall be stayed

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- (i) with respect to review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1 of this Article and in no case later than 150 days prior to an affirmative finding by the special committee, or
  - (ii) with respect to review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party; and
- (b) the time for requesting panel or committee review under Article 1904 shall be tolled.

12. If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), the panel or committee review stayed under paragraph 11(a) shall be terminated and the challenge to the final determination shall be irrevocably referred to the appropriate domestic court for decision, as provided below:

- (a) with respect to review of any final determination of the complaining Party requested by the Party complained against, at the request of either Party, or of a party to the panel review under Article 1904; or
- (b) with respect to review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party, or of a party of the complaining Party that is a party to the panel review under Article 1904.

If either Party suspends the operation of Article 1904 pursuant to paragraph 8(a), any time period tolled under Paragraph 11(b) of this Article shall resume.

If such suspension does not become effective, panel or committee review stayed under paragraph 11(a), and any time period tolled under paragraph 8(b), shall resume.

#### Article 1906: Prospective Application

The provisions of this Chapter shall apply only prospectively to:

- (a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and

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- (b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

#### Article 1907: Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.
2. The Parties further agree to consult on:
  - (a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and
  - (b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.
3. The competent investigating authorities of the Parties shall consult annually or on the request of any Party and may submit reports to the Commission, if appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of anti-dumping and countervailing duty laws to:
  - (a) publish notice of initiation of investigations in the importing country's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product at issue;
  - (b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;
  - (c) provide explicit written notice and instructions as to the information required from interested parties, including foreign interests, and reasonable time to respond to requests for information;

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- (d) accord reasonable access to information
  - (i) "reasonable access" in this context means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set forth in paragraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review,
  - (ii) "access to information" in this context means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential (business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic legislation of a Party; any privileges arising under domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;
- (e) provide the opportunity for interested parties, including foreign interests, to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;
- (f) protect confidential (business proprietary) information, received by the competent investigating authority, to ensure that there is no disclosure except to representatives determined by the competent investigating authorities to be qualified;
- (g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of ex parte meetings that may be required to be kept;

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- (h) provide disclosure of relevant information upon which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties, including foreign interests. Such information shall include an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of subsidy;
- (i) provide a statement of reasons concerning the final determination of dumping or subsidization; and
- (j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Inclusion of an item in paragraphs (a) through (j) is not intended to serve as guidance to a binational panel reviewing a final antidumping or countervailing duty determination pursuant to Article 1904 in determining whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party.

#### **Article 1908: Special Secretariat Provisions**

1. The Parties shall establish a section within the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter and the work of panels or committees that may be convened pursuant to this Chapter.
2. The secretaries of the Secretariat established pursuant to Article 2002 shall act jointly to service all meetings of panels or committees established pursuant to this Chapter. The secretary of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in the permanent offices. Such secretary shall upon request provide to the secretary of any other Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the secretary of the Party that is not an involved Party.
3. Each secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.

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4. Each secretary shall forward to the secretary of the other involved Party copies of all official letters, documents or other papers received or filed with the Secretariat office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 1. The secretary of an involved Party shall provide upon request to the secretary of the Party that is not an involved Party in the proceeding a copy of such public documents as are requested.

5. The remuneration of panelists or committee members, their travel and lodging expenses, and all general expenses of the panels or committees shall be borne equally by the involved Parties. Each panelist or committee member shall keep a record and render a final account of the person's time and expenses, and the panel or committee shall keep a record and render a final account of all general expenses. The Commission shall establish amounts of remuneration and expenses that will be paid to the panelists and committee members.

#### Article 1909: Code of Conduct

The Parties shall, by the date of entry into force of this Agreement, exchange letters establishing a code of conduct for panelists and members of committees established pursuant to Articles 1903, 1904 and 1905.

#### Article 1910: Miscellaneous

Upon request, the competent investigating authority of a Party shall provide the other Party or Parties with copies of all public information submitted to it for the purposes of an investigation with respect to goods of that other Party or Parties.

#### Article 1911: Definitions

For purposes of this Chapter:

**administrative record** means, unless otherwise agreed by the Parties and the other persons appearing before a panel:

- (a) all documentary or other information presented to or obtained by the competent investigating authority in the course of the administrative proceeding, including any governmental memoranda pertaining to the case, and including any record of ex parte meetings as may be required to be kept;

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- (b) a copy of the final determination of the competent investigating authority, including reasons for the determination;
- (c) all transcripts or records of conferences or hearings before the competent investigating authority; and
- (d) all notices published in the official journal of the importing party in connection with the administrative proceeding;

**antidumping statute** as referred to in Articles 1902 and 1903 means "antidumping statute" as defined in Annex 1911;

**competent investigating authority** means "competent investigating authority" of a Party, as defined in Annex 1911;

**countervailing duty statute** as referred to in Articles 1902 and 1903 means "countervailing duty statute" as defined in Annex 1911;

**domestic law** for the purposes of Article 1905(1) means a Party's constitution, statutes, regulations and judicial decisions to the extent they are relevant to the antidumping and countervailing duty laws;

**final determination** means "final determination" as defined in Annex 1911;

**foreign interests** includes exporters or producers of the Party whose goods are the subject of the proceeding or, in the case of a countervailing duty proceeding, the government of the Party whose goods are the subject of the proceeding;

**general legal principles** includes principles such as standing, due process, rules of statutory construction, mootness and exhaustion of administrative remedies;

**importing Party** means the Party that issued the final determination;

**involved Party** means:

- (a) the importing Party; or
- (b) a Party whose goods are the subject of the final determination;

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**remand** means a referral back for a determination not inconsistent with the panel or committee decision; and

**standard of review** means the standards set out in Annex 1911, as may be amended from time to time by a Party.



**ANNEX 1901.2**

**Establishment of Binational Panels**

1. Prior to the date of entry into force of this Agreement, the Parties shall develop a roster of individuals to serve as panelists in disputes under this Chapter. The roster shall include sitting or retired judges to the fullest extent practicable. The Parties shall consult in developing the roster, which shall include at least 75 candidates. Each Party shall select at least 25 candidates, and all candidates shall be citizens of Canada, the United States or Mexico. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Candidates shall not be affiliated with a Party, and in no event shall a candidate take instructions from a Party. Judges shall not be considered to be affiliated with a Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.
2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each involved Party shall appoint two panelists, in consultation with the other involved Party. The involved Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each involved Party shall have the right to exercise four preemptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other involved Party. Preemptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If an involved Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.
3. Within 55 days of the request for a panel, the involved Parties shall agree on the selection of a fifth panelist. If the involved Parties are unable to agree, they shall decide by lot which of them shall select, by the 61st day, the fifth panelist from the roster, excluding candidates eliminated by preemptory challenges.
4. Upon appointment of the fifth panelist, the panelists shall promptly appoint a chairman from among the lawyers on the panel by majority vote of the panelists. If there is no majority vote, the chairman shall be appointed by lot from among the lawyers on the panel.

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5. Decisions of the panel shall be by majority vote and based upon the votes of all members of the panel. The panel shall issue a written decision with reasons, together with any dissenting or concurring opinions of panelists.

6. Panelists shall be subject to the code of conduct established pursuant to Article 1909. If an involved Party believes that a panelist is in violation of the code of conduct, the involved Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures of this Annex.

7. When a panel is convened pursuant to Article 1904 each panelist shall be required to sign:

- (a) an application for protective order for information supplied by the United States or its persons covering business proprietary and other privileged information;
- (b) an undertaking for information supplied by Canada or its persons covering confidential, personal, business proprietary and other privileged information;  
or
- (c) an undertaking for information supplied by Mexico or its persons covering confidential, business proprietary, and other privileged information.

8. Upon a panelist's acceptance of the obligations and terms of an application for protective order or disclosure undertaking, the importing Party shall grant access to the information covered by such order or disclosure undertaking. Each Party shall establish appropriate sanctions for violations of protective orders or disclosure undertakings issued by or given to any Party. Each Party shall enforce such sanctions with respect to any person within its jurisdiction. Failure by a panelist to sign a protective order or disclosure undertaking shall result in disqualification of the panelist.

9. If a panelist becomes unable to fulfill panel duties or is disqualified, proceedings of the panel shall be suspended pending the selection of a substitute panelist in accordance with the procedures of this Annex.

10. Subject to the code of conduct established pursuant to Article 1909, and provided that it does not interfere with the performance of the duties of such panelist, a panelist may engage in other business during the term of the panel.

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11. While acting as a panelist, a panelist may not appear as counsel before another panel.
12. With the exception of violations of protective orders or disclosure undertakings, signed pursuant to paragraph 7, panelists shall be immune from suit and legal process relating to acts performed by them in their official capacity.

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## ANNEX 1903.2

### Panel Procedures Under Article 1903

1. The panel shall establish its own rules of procedure unless the Parties otherwise agree prior to the establishment of that panel. The procedures shall ensure a right to at least one hearing before the panel, as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential, unless the two Parties otherwise agree. The panel shall base its decisions solely upon the arguments and submissions of the two Parties.
2. Unless the Parties otherwise agree, the panel shall, within 90 days after its chairman is appointed, present to the two Parties an initial written declaratory opinion containing findings of fact and its determination pursuant to Article 1903.
3. If the findings of the panel are affirmative, the panel may include in its report its recommendations as to the means by which the amending statute could be brought into conformity with the provisions of Article 1902(2)(d). In determining what, if any, recommendations are appropriate, the panel shall consider the extent to which the amending statute affects interests under this Agreement. Individual panelists may provide separate opinions on matters not unanimously agreed. The initial opinion of the panel shall become the final declaratory opinion, unless a Party to the dispute requests a reconsideration of the initial opinion pursuant to paragraph 4.
4. Within 14 days of the issuance of the initial declaratory opinion, a Party to the dispute disagreeing in whole or in part with the opinion may present a written statement of its objections and the reasons for those objections to the panel. In such event, the panel shall request the views of both Parties and shall reconsider its initial opinion. The panel shall conduct any further examination that it deems appropriate, and shall issue a final written opinion, together with dissenting or concurring views of individual panelists, within 30 days of the request for reconsideration.
5. Unless the Parties to the dispute otherwise agree, the final declaratory opinion of the panel shall be made public, along with any separate opinions of individual panelists and any written views that either Party may wish to be published.
6. Unless the Parties to the dispute otherwise agree, meetings and hearings of the panel shall take place at the office of the amending Party's Section of the Secretariat.

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## ANNEX 1904.13

### Extraordinary Challenge Procedure

1. The involved Parties shall establish an extraordinary challenge committee, composed of three members, within 15 days of a request pursuant to Article 1904(13). The members shall be selected from a 15-person roster comprised of judges or former judges of a federal judicial court of the United States or a judicial court of superior jurisdiction of Canada, or a Federal Judicial Court of Mexico. Each Party shall name five persons to this roster. Each involved Party shall select one member from this roster and the involved Parties shall decide by lot which of them shall select the third member from the roster.
2. The Parties shall establish by the date of entry into force of the Agreement rules of procedure for committees. The rules shall provide for a decision of a committee within 90 days of its establishment.
3. Committee decisions shall be binding on the Parties with respect to the particular matter between the Parties that was before the panel. After examination of the legal and factual analysis underlying the findings and conclusions of the panel's decision in order to determine whether one of the grounds set out in Article 1904(13) has been established, and upon finding that one of those grounds has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall deny the challenge and, therefore, the original panel decision shall stand affirmed. If the original decision is vacated, a new panel shall be established pursuant to Annex 1901.2.

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ANNEX 1904.15(d)

Amendments to Domestic Laws

Part A - Schedule of Canada

1. Canada shall amend sections 56 and 58 of the *Special Import Measures Act*, as amended, to allow the United States or Mexico or a United States or a Mexican manufacturer, producer, or exporter, without regard to payment of duties, to make a written request for a re-determination; and section 59 to require the Deputy Minister to make a ruling on a request for a redetermination within one year of a request to a designated officer or other customs officer;
2. Canada shall amend section 18.3(1) of the *Federal Court Act*, as amended, to render that section inapplicable to the United States and to Mexico; and shall provide in its statutes or regulations that persons (including producers of goods subject to an investigation) have standing to ask Canada to request a panel review where such persons would be entitled to commence domestic procedures for judicial review if the final determination were reviewable by the Federal Court pursuant to section 18.1(4);
3. Canada shall amend the *Special Import Measures Act*, as amended, and any other relevant provisions of law, to provide that the following actions of the Deputy Minister shall be deemed for the purposes of this Article to be final determinations subject to judicial review:
  - (a) a determination by the Deputy Minister pursuant to section 41;
  - (b) a re-determination by the Deputy Minister pursuant to section 59; and
  - (c) a review by the Deputy Minister of an undertaking pursuant to section 53(1).
4. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for binational panel review respecting goods of the Mexico and the United States;
5. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for definitions related to this Agreement, as may be required;

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6. Canada shall amend Part II the *Special Import Measures Act*, as amended, to permit the governments of Mexico and the United States to request binational panel review of final determinations;
7. Canada shall amend Part II of *Special Import Measures Act*, as amended, to provide for the establishment of panels requested to review final determinations in respect of goods of Mexico and goods of the United States;
8. Canada shall amend Part II of *Special Import Measures Act*, as amended, to provide for the conduct of review of a final determination in accordance with Chapter XX of this Agreement;
9. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for request and conduct of an extraordinary challenge proceeding in accordance with Article 1904 of this Agreement;
10. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for a code of conduct, immunity, disclosure undertakings respecting confidential information and remuneration for members of panels established pursuant to this Agreement; and
11. Canada shall make such amendments as are necessary to establish a Canadian Secretariat for this Agreement and generally to facilitate the operation of Chapter 19 of this Agreement.

#### Part B - Schedule of Mexico

Mexico shall amend its antidumping and countervailing duty statutes and regulations, and other statutes and regulations to the extent that they apply to the operation of the antidumping and countervailing duty laws, to provide the following:

1. elimination of the possibility of imposing duties within the five day period after the acceptance of a petition; substitution of the term Resolución de Inicio for Resolución Provisional and the term Resolución Provisional for Resolución que revisa a la Resolución Provisional;

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2. full participation in the administrative process for interested parties, including foreign interests, as well as the right to administrative appeal and judicial review of final determinations of investigations, reviews, product coverage or other final decisions affecting them;
3. elimination of the possibility of imposing provisional duties before the issuance of a preliminary determination;
4. the right to immediate access to review of final determinations by binational panels, to interested parties, including foreign interests, without the need to exhaust first the administrative appeal;
5. explicit and adequate timetables for determinations of the competent investigating authority and for the submission of questionnaires, evidence and comments by interested parties, including foreign interests, as well as an opportunity for them to present facts and arguments in support of their positions prior to any final determination, to the extent time permits, including an opportunity to be adequately informed in a timely manner of and to comment on all aspects of preliminary determinations of dumping or subsidization;
6. written notice to interested parties, including foreign interests, of any of the actions or resolutions rendered by the competent investigating authority, including initiation of an administrative review as well as its conclusion;
7. disclosure meetings by the competent investigating authority with interested parties, including foreign interests, in investigations and reviews, within seven calendar days after the date of publication in the *Diario Oficial de la Federacion* of preliminary and final determinations, to explain the margins of dumping and the amount of subsidies calculations and to provide them with copies of sample calculations and, if used, computer programs;
8. timely access by eligible counsel of interested parties, including foreign interests, during the course of the proceeding (including disclosure meetings) and on appeal, either before a national tribunal or a panel, to all information contained in the administrative record of the proceeding, including confidential information, excepting proprietary information of such a high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner as well as government classified information, subject to an undertaking for confidentiality that strictly forbids use of the information for personal benefit and its disclosure to persons who are not authorized to receive such information; and for sanctions that are specific to violations of undertakings in proceedings before national tribunals or panels;



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9. timely access by interested parties, including foreign interests, during the course of the proceeding, to all non-confidential information contained in the administrative record and access to such information by interested parties or their representatives in any proceeding after 90 days following the issuance of the final determination;
10. a mechanism requiring that any person submitting documents to the competent investigating authority shall simultaneously serve on interested persons, including foreign interests, any submissions after the complaint;
11. preparation of summaries of ex parte meetings held between the competent investigating authority and any interested party and the inclusion in the administrative record of such summaries, which shall be made available to parties to the proceeding; if such summaries contain business proprietary information, such documents must be disclosed to a party's representative under an undertaking to ensure confidentiality;
12. maintenance by the competent investigating authority of an administrative record as defined in this Chapter and a requirement that the final determination be based solely on the administrative record;
13. informing interested parties, including foreign interests, in writing of all data and information the administering authority requires them to submit for the investigation, review, product coverage proceeding, or other antidumping and countervailing duty proceedings;
14. the right to an annual individual review on request by the interested parties, including foreign interests, through which they can obtain their own dumping margin or countervailing duty rate, or can change the margin or rate they received in the investigation or a previous review, reserving to the competent investigating authority the ability to initiate a review, at any time, on its own motion and requiring that the competent investigating authority issue a notice of initiation within a reasonable period of time after the request;
15. application of determinations issued as a result of judicial, administrative, or panel review, to the extent they are relevant to interested parties, including foreign interests, in addition to the plaintiff, so that all interested parties will benefit;
16. issuance of binding decisions by the competent investigating authority if an interested party, including a foreign interest, seeks clarification outside the context of an antidumping or countervailing duty investigation or review as to whether a particular product is covered by an antidumping or countervailing duty order;

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17. a detailed statement of reasons and legal basis concerning final determinations in a manner sufficient to permit interested parties, including foreign interests, to make an informed decision as to whether to seek judicial or panel review, including an explanation of methodological or policy issues raised in the calculation of dumping or subsidization;
18. written notice to interested parties, including foreign interests, and publication in the *Diario Oficial de la Federacion* of initiation of investigations setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product at issue;
19. documentation in writing of all advisory bodies' decisions or recommendations, including the basis for the decision, and release of such written decision to parties to the proceeding; all decisions or recommendations of any advisory body shall be placed in the administrative record and made available to parties to the proceeding; and
20. a standard of review to be applied by binational panels as defined in Article 1911.

#### Part C - Schedule of the United States

1. The United States shall amend section 301 of the *Customs Courts Act of 1980*, as amended, and any other relevant provisions of law, to eliminate the authority to issue declaratory judgments in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian or Mexican merchandise;
2. The United States shall amend section 405(a) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 19 U.S.C. section 2112 note, to provide that the interagency group established under section 242 of the Trade Expansion Act of 1962 shall prepare a list of individuals qualified to serve as members of binational panels, extraordinary challenge committees, and special committees convened under chapter 19 of this Agreement;
3. The United States shall amend section 405(b) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 19 U.S.C. section 2112 note, to provide that panelists selected to serve on panels or committees convened pursuant to chapter XX of this Agreement, and individuals designated to assist such appointed individuals, shall not be considered employees of the United States;
4. The United States shall amend section 405(c) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 19 U.S.C. section 2112 note, to provide that panelists selected to serve on panels or committees convened pursuant to chapter XX of this

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Agreement, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members, except with respect to the violation of protective orders described in section 777f(d)(3) of the *Tariff Act of 1930*;

5. The United States shall amend section 405(d) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 19 U.S.C. section 2112 note, to establish a United States Secretariat to facilitate, *inter alia*, the operation of chapter XX of this Agreement and the work of the binational panels, extraordinary challenge committees, and special committees convened under that chapter;

6. The United States shall amend section 407 of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 19 U.S.C. section 2112 note, to provide on that an extraordinary challenge committee convened pursuant to chapter XX of this Agreement shall have authority to obtain information in the event of an allegation that a member of a binational panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct, and for the committee to summon the attendance of witnesses, order the taking of depositions, and obtain the assistance of any district or territorial court of the United States in aid of the committee's investigation;

7. The United States shall amend section 408 of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, 19 U.S.C. section 2112 note, to provide that, in the case of a final determination of a competent investigating authority of Mexico, as well as Canada, the filing with the United States Secretary of a request for binational panel review by a person described in Article 1904.5 of this Agreement shall be deemed, upon receipt of the request by the Secretary, to be a request for binational panel review within the meaning of Article 1904.4 of that Agreement;

8. The United States shall amend section 516A of the *Tariff Act of 1930* to provide that judicial review of antidumping or countervailing duty cases regarding Mexican, as well as Canadian, merchandise shall not be commenced in the Court of International Trade if binational panel review is requested;

9. The United States shall amend section 516A(a) of the *Tariff Act of 1930* to provide that the time limits for commencing an action in the Court of International Trade with regard to antidumping or countervailing duty proceedings involving Mexican or Canadian merchandise shall not begin to run until the 31st day after the date of publication in the Federal Register of notice of the final determination or the antidumping duty order;

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10. The United States shall amend section 516A(g) of the *Tariff Act of 1930* to provide, in accordance with the terms of this Agreement, for binational panel review of antidumping and countervailing duty cases involving Mexican or Canadian merchandise. Such amendment shall provide that if binational panel review is requested such review will be exclusive;

11. The United States shall amend section 516A(g) of the *Tariff Act of 1930* to provide that the competent investigating authority shall, within the period specified by any panel formed to review a final determination regarding Mexican or Canadian merchandise, take action not inconsistent with the decision of the panel or committee;

12. The United States shall amend section 777 of the *Tariff Act of 1930* to provide for the disclosure to authorized persons under protective order of proprietary information in the administrative record if binational panel review of a final determination regarding Mexican or Canadian merchandise is requested; and

13. The United States shall amend section 777 of the *Tariff Act of 1930* to provide for the imposition of sanctions on any person who the competent investigating authority finds to have violated a protective order issued by the competent investigating authority of the United States or disclosure undertakings entered into with an authorized agency of Mexico or with a competent investigating authority of Canada to protect proprietary material during binational panel review.

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## ANNEX 1905.7

### Special Committee Procedures

1. The Parties shall establish rules of procedure by the date of entry into force of this Agreement in accordance with the following principles:
  - (a) the procedures shall assure a right to at least one hearing before the special committee as well as the opportunity to provide initial and rebuttal written submissions;
  - (b) the procedures shall assure that the special committee shall prepare an initial report typically within 60 days of the appointment of the last member, and shall afford the Parties 14 days to comment on that report prior to issuing a final report 30 days after presentation of the initial report;
  - (c) the special committee's hearings, deliberations, and initial report, and all written submissions to and communications with the special committee shall be confidential;
  - (d) unless the parties to the dispute otherwise agree, the decision of the special committee shall be published 10 days after it is transmitted to the disputing Parties, along with any separate opinions of individual members and any written views that either Party may wish to be published; and
  - (e) unless the Parties to the dispute otherwise agree, meetings and hearings of the special committee shall take place at the office of the section of the Secretariat of the Party complained against.

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## ANNEX 1911

### Country-Specific Definitions

For purposes of this Chapter:

**antidumping statute means:**

- (a) in the case of Canada, the relevant provisions of the Special Import Measures Act, as amended, and any successor statutes;
- (b) in the case of the United States, the relevant provisions of Title VII of the *Tariff Act of 1930*, as amended, and any successor statutes;
- (c) in the case of Mexico, the relevant provisions of the *Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior Implementing Article 131 of the Constitution of the United Mexican States*, as amended, and any successor statutes; and
- (d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations.

**competent investigating authority means:**

- (a) in the case of Canada;
  - (i) the Canadian International Trade Tribunal, or its successor, or
  - (ii) the Deputy Minister of National Revenue for Customs and Excise as defined in the *Special Import Measures Act*, or the Deputy Minister's successor;
- (b) in the case of the United States;
  - (i) the International Trade Administration of the United States Department of Commerce, or its successor, or
  - (ii) the United States International Trade Commission, or its successor; and

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- (c) in the case of Mexico, the designated authority within the Secretaría de Comercio y Fomento Industrial, or its successor.

**countervailing duty statute means:**

- (a) in the case of Canada, the relevant provisions of the *Special Import Measures Act*, as amended, and any successor statutes;
- (b) in the case of the United States, section 303 and the relevant provisions of Title VII of the *Tariff Act of 1930*, as amended, and any successor statutes;
- (c) in the case of Mexico, the relevant provisions of the *Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior*, as amended, and any successor statutes; and
- (d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations.

**final determination means:**

- (a) in the case of Canada,
  - (i) an order or finding of the Canadian International Trade Tribunal under subsection 43(1) of the *Special Import Measures Act*,
  - (ii) an order by the Canadian International Trade Tribunal under subsection 76(4) of the *Special Import Measures Act*, continuing an order or finding made under subsection 43(1) of the Act with or without amendment,
  - (iii) a determination by the Deputy Minister of National Revenue for Customs and Excise pursuant to section 41 of the *Special Import Measures Act*,
  - (iv) a re-determination by the Deputy Minister pursuant to section 59 of the *Special Import Measures Act*,

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- (v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the *Special Import Measures Act* not to initiate a review,
  - (vi) a reconsideration by the Canadian International Trade Tribunal pursuant to subsection 91(3) of the *Special Import Measures Act*, and
  - (vii) a review by the Deputy Minister of an undertaking pursuant to section 53(1) of the *Special Import Measures Act*;
- (b) in the case of the United States,
- (i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930*, as amended, including any negative part of such a determination,
  - (ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930*, as amended, including any affirmative part of such a determination,
  - (iii) a final determination, other than a determination in (iv), under section 751 of the *Tariff Act of 1930*, as amended,
  - (iv) a determination by the United States International Trade Commission under section 751(b) of the *Tariff Act of 1930*, as amended, not to review a determination based upon changed circumstances, and
  - (v) a final determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order; and



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- (c) in the case of the Mexico,
  - (i) a final resolution regarding anti-dumping or countervailing duties investigations by the Secretaría de Comercio y Fomento Industrial, pursuant to Article 13 of the *Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior*, as amended,
  - (ii) a final resolution regarding an annual administrative review of anti-dumping or countervailing duties by the Secretaría de Comercio y Fomento Industrial, as described in Article 1904.15(q)(xiv), and
  - (iii) a final resolution by the Secretaria de Comercio y Fomento Industrial as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping or countervailing duty resolution.

**standard of review means:**

- (a) in the case of Canada, the grounds set forth in section 18.1(4) of the *Federal Court Act* with respect to all final determinations;
- (b) in the case of the United States,
  - (i) the standard set forth in section 516A(b)(1)(B) of the *Tariff Act of 1930*, as amended, with the exception of a determination referred to in (ii), and
  - (ii) the standard set forth in section 516A(b)(1)(A) of the *Tariff Act of 1930*, as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the *Tariff Act of 1930*, as amended; and
- (c) in the case of the Mexico, the standard set forth in Article 238 of the *Código Fiscal de la Federación*, or any successor statutes, based solely on the administrative record.

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**Chapter Twenty**  
**Institutional Arrangements**  
**and Dispute Settlement Procedures**

**Subchapter A - Institutions**

**Article 2001: The Free Trade Commission**

1. The Parties hereby establish the Free Trade Commission, comprising cabinet-level representatives of the Parties or their designees.
2. The Commission shall:
  - (a) supervise the implementation of this Agreement;
  - (b) oversee its further elaboration;
  - (c) resolve disputes that may arise regarding its interpretation or application;
  - (d) supervise the work of all committees and working groups established under this Agreement, referred to in Annex 2001.2; and
  - (e) consider any other matter that may affect the operation of this Agreement.
3. The Commission may:
  - (a) establish, and delegate responsibilities to, ad hoc or standing committees, working groups or expert groups;
  - (b) seek the advice of non-governmental persons or groups; and
  - (c) take such other action in the exercise of its functions as the Parties may agree.
4. The Commission shall establish its rules and procedures. All decisions of the Commission shall be taken by consensus, except as the Commission may otherwise agree.
5. The Commission shall convene at least once a year in regular session. Regular sessions of the Commission shall be chaired successively by each Party.

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**Article 2002: The Secretariat**

1. The Commission shall establish and oversee a Secretariat comprising national Sections.
2. Each Party shall:
  - (a) establish a permanent office of its Section;
  - (b) be responsible for
    - (i) the operation and costs of its Section, and
    - (ii) the remuneration and payment of expenses of panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex 2002.2;
  - (c) designate an individual to serve as Secretary for its Section, who shall be responsible for its administration and management; and
  - (d) notify the Commission of the location of its Section's office.
3. The Secretariat shall:
  - (a) provide assistance to the Commission;
  - (b) provide administrative assistance to:
    - (i) panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908. and
    - (ii) panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and

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- (c) as the Commission may direct:
  - (i) support the work of other committees and groups established under this Agreement, and
  - (ii) otherwise facilitate the operation of this Agreement.

### **Subchapter B - Dispute Settlement**

#### **Article 2003: Cooperation**

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

#### **Article 2004: Recourse to Dispute Settlement Procedures**

Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.

#### **Article 2005: GATT Dispute Settlement**

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the *General Agreement on Tariffs and Trade*, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.
2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to

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agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

3. In any dispute referred to in paragraph 1 where the responding Party claims that its action is subject to Article 104 (Relation to Environmental and Conservation Agreements) and requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

4. In any dispute referred to in paragraph 1 that arises under Subchapter Seven-B (Sanitary and Phytosanitary Measures) or Chapter Nine (Standards-Related Measures).

- (a) concerning a measure adopted or maintained by a Party to protect its human, animal, or plant life or health, or to protect its environment; and
- (b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

where the responding Party requests in writing that the matter be considered under this Agreement, the complaining Party may, in respect of that matter, thereafter have recourse to dispute settlement procedures solely under this Agreement.

5. The responding Party shall deliver a copy of a request made pursuant to paragraph 3 or 4 to the other Parties and to its Section of the Secretariat. Where the complaining Party has initiated dispute settlement proceedings regarding any matter subject to paragraph 3 or 4, the responding Party shall deliver its request no later than 15 days thereafter. Upon receipt of such request, the complaining Party shall promptly withdraw from participation in those proceedings and may initiate dispute settlement procedures under Article 2007.

6. Once dispute settlement procedures have been initiated under Article 2007 or dispute settlement proceedings have been initiated under the GATT, the forum selected shall be used to the exclusion of the other, unless a Party makes a request pursuant to paragraph 3 or 4.

7. For purposes of this Article, dispute settlement proceedings under the GATT are deemed to be initiated by a Party's request for a panel, such as under Article XXIII:2 of the *General Agreement on Tariffs and Trade 1947*, or for a committee investigation, such as under Article 20.1 of the Customs Valuation Code.

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## *Consultations*

### **Article 2006: Consultations**

1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.
3. Unless the Commission otherwise provides in its rules and procedures established under Article 2001(4), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to its Section of the Secretariat.
4. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.
5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:
  - (a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;
  - (b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and
  - (c) seek to avoid any resolution that adversely affects the interests under this Agreement of any other Party.

## *Initiation of Procedures*

### **Article 2007: Commission - Good Offices, Conciliation and Mediation**

1. If the consulting Parties fail to resolve a matter pursuant to Article 2006 within:
  - (a) 30 days of delivery of a request for consultations;

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- (b) 45 days of delivery of such request if any other Party has subsequently requested or has participated in consultations regarding the same matter;
- (c) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods; or
- (d) such other period as they may agree,

any such Party may request in writing a meeting of the Commission.

2. A Party may also request in writing a meeting of the Commission where:

- (a) it has initiated dispute settlement proceedings under the GATT regarding any matter subject to Article 2005(3) or (4), and has received a request pursuant to Article 2005(5) for recourse to dispute settlement procedures under this Chapter; or
- (b) consultations have been held pursuant to Article 513 (Working Group on Rules of Origin), Article 765 (Sanitary and Phytosanitary Measures - Technical Consultations) and Article 914 (Standards-Related Measures - Technical Consultations).

3. The requesting Party shall state in the request the measure or other matter complained of and indicate the provisions of this Agreement that it considers relevant, and shall deliver the request to the other Parties and to its Section of the Secretariat.

4. Unless it decides otherwise, the Commission shall convene within 10 days of delivery of the request and shall endeavor to resolve the dispute promptly.

5. The Commission may:

- (a) call on such technical advisers or create such working groups or expert groups as it deems necessary;
- (b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures; or
- (c) make recommendations.

as may assist the consulting Parties to reach a mutually satisfactory resolution of the dispute.

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6. Unless it decides otherwise, the Commission shall consolidate two or more proceedings before it pursuant to this Article regarding the same measure. The Commission may consolidate two or more proceedings regarding other matters before it pursuant to this Article that it determines are appropriate to be considered jointly.

*Panel Proceedings*

**Article 2008: Request for an Arbitral Panel**

1. If the Commission has convened pursuant to Article 2007(4), and the matter has not been resolved within:

- (a) 30 days thereafter;
- (b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 2007(6); or
- (c) such other period as the consulting Parties may agree,

any consulting Party may request in writing the establishment of an arbitral panel. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.

2. Upon delivery of the request, the Commission shall establish an arbitral panel.

3. A third Party that considers it has a substantial interest in the matter shall be entitled to join as a complaining Party, on delivery of written notice of its intention to participate to the disputing Parties and its Section of the Secretariat. Such notice shall be delivered at the earliest possible time, and in any event no later than seven days after the date of delivery of a request by a Party for the establishment of a panel.

4. If such Party does not join as a complaining Party in accordance with paragraph 3, it normally shall refrain thereafter from initiating or continuing:

- (a) a dispute settlement procedure under this Agreement; or
- (b) a dispute settlement proceeding in the GATT on grounds that are substantially equivalent to those available to that Party under this Agreement,



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regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.

**Article 2009: Roster**

1. The Parties shall establish and maintain a roster of up to 30 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.
2. Roster members shall:
  - (a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;
  - (b) be independent of, and not be affiliated with or take instructions from, any Party; and
  - (c) comply with a code of conduct to be established by the Commission.

**Article 2010: Qualifications of Panelists**

1. All panelists shall meet the qualifications set out in Article 2009(2).
2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 2007(5).

**Article 2011: Panel Selection**

1. Where there are two disputing Parties, the following procedures shall apply:
  - (a) The panel shall comprise five members.

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- (b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.
- (c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.
- (d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

- (a) The panel shall comprise five members.
- (b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.
- (c) Within 15 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.
- (d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a preemptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.

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### **Article 2012: Rules of Procedure**

1. The Commission shall establish Model Rules of Procedure, in accordance with the following principles:

- (a) The procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions.
- (b) The panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the NAFTA, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 2016(2)."

4. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

5. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 2004, the terms of reference shall so indicate.

### **Article 2013: Third Party Participation**

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and to its Section of the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.

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#### **Article 2014: Role of Experts**

At the request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.

#### **Article 2015: Scientific Review Boards**

1. At the request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing Party in a proceeding, subject to such terms and conditions as such Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the disputing Parties and the scientific bodies set out in the Model Rules of Procedure established pursuant to Article 2012(1).

3. The participating Parties shall be provided:

- (a) advance notice of, and an opportunity to provide comments to the panel on the proposed factual issues to be referred to the board; and
- (b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties thereon into account in the preparation of its report.

#### **Article 2016: Initial Report**

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 2014 or 2015.

2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected or such other period as the Model Rules of Procedure established

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pursuant to Article 2012(1) may provide, present to the disputing Parties an initial report containing:

- (a) findings of fact, including any findings pursuant to a request under Article 2012(5);
  - (b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004, or any other determination requested in the terms of reference; and
  - (c) its recommendations, if any, for resolution of the dispute.
3. Panelists may furnish separate opinions on matters not unanimously agreed.
  4. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.
  5. In such an event, and after considering such written comments, the panel, on its own initiative or at the request of any disputing Party, may:
    - (a) request the views of any participating Party;
    - (b) reconsider its report; and
    - (c) make any further examination that it considers appropriate.

#### **Article 2017: Final Report**

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.
2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.
3. The disputing Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article 2015, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

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4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.

### *Implementation of Panel Reports*

#### **Article 2018: Implementation of Final Report**

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.
2. Whenever possible, such resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.

#### **Article 2019: Non-Implementation - Suspension of Benefits**

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 2004 and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution pursuant to Article 2018(1) within 30 days of receiving the final report, such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.
2. In considering what benefits to suspend pursuant to paragraph 1:
  - (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment by the non-complying Party in the sense of Annex 2004; and
  - (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.

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3. On the written request of any disputing Party delivered to the other Parties and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.
4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.

### **Subchapter C - Domestic Proceedings and Private Commercial Dispute Settlement**

#### **Article 2020: Referrals of Matters from Judicial or Administrative Proceedings**

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or administrative body in accordance with the rules of that forum.
3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.

#### **Article 2021: Private Rights**

No Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.

#### **Article 2022: Alternative Dispute Resolution of Commercial Disputes**

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

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2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *Inter-American Convention on International Commercial Arbitration*.

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.



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## ANNEX 2001.2

### Committees and Working Groups

#### A. Committees:

1. Committee on Trade in Goods (Article 317)
2. Committee on Trade in Worn Clothing (Annex 300-B, Section 9.1)
3. Committee on Agricultural Trade (Article 708)
4. Committee on Sanitary and Phytosanitary Measures (Article 764)
5. Committee on Standards-Related Measures (Article 913)
  - (a) Land Transportation Services Standards Subcommittee (Article 913(5))
  - (b) Telecommunications Standards Subcommittee (Article 913(5))
  - (c) Automotive Standards Council (Article 913(5))
  - (d) Subcommittee on Labelling of Textile and Apparel Goods (Article 913(5))
6. Committee on NAFTA Small Business (Article 1021)
7. Financial Services Committee (Article 1414)
8. Advisory Committee on Private Commercial Disputes (Article 2022)

#### B. Working Groups:

1. Working Group on Rules of Origin (Article 513)
  - (a) Customs Subgroup (Article 513(5))
2. Working Group on Agricultural Subsidies (Article 706(6))

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3. Mexican-American Working Group (Article 704(3), Section I)
4. Mexican-Canadian Working Group (Article 704(3), Section II)
5. Working Group on Trade and Competition (Article 1504)
6. Temporary Entry Working Group (Article 1605)

**C. Other Committees and Working Groups established under this Agreement**

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## ANNEX 2002.2

### Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to the panelists, committee members and members of scientific review boards.
2. The remuneration of panelists or committee members and their assistants, members of scientific review boards, their travel and lodging expenses, and all general expenses of panels, committees or scientific review boards shall be borne equally by:
  - (a) in the case of panels or committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), the involved Parties, as they are defined in Article 1911; or
  - (b) in the case of panels and scientific review boards established under this Chapter, the disputing Parties.
3. Each panelist shall keep a record and render a final account of the person's time and expenses, and the panel, committee or scientific review board shall keep a record and render a final account of all general expenses.

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## ANNEX 2004

### Nullification and Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

- (a) Part Two (Trade in Goods), except for those provisions of Annex 300-A (Automotive Sector) or Chapter Six (Energy) relating to investment,
- (b) Part Three (Technical Barriers to Trade),
- (c) Chapter Twelve (Cross-Border Trade in Services), or
- (d) Part Six (Intellectual Property),

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke:

- (a) paragraph (1)(a) or (b), to the extent that the benefit arises from any cross-border trade in services provision of Part Two, or
- (b) paragraph (1)(c) or (d),

with respect to any measure subject to an exception under Article 2101 (General Exceptions).

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**PART NINE  
OTHER PROVISIONS**

**Chapter Twenty-One**

**Exceptions**

**Article 2101: General Exceptions**

1. For purposes of:
  - (a) Part Two (Trade in Goods), except to the extent that a provision of that Part applies to services or investment, and
  - (b) Part Three (Technical Barriers to Trade), except to the extent that a provision of that Part applies to services,

GATT Article XX and its interpretative notes, or any equivalent provision of a successor agreement to which all Parties are party, are incorporated into and made part of this Agreement. The Parties understand that the measures referred to in GATT Article XX(b) include environmental measures necessary to protect human, animal or plant life or health, and that GATT Article XX(g) applies to measures relating to the conservation of living and non-living exhaustible natural resources.

2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade between the Parties, nothing in:
  - (a) Part Two (Trade in Goods), to the extent that a provision of that Part applies to services,
  - (b) Part Three (Technical Barriers to Trade), to the extent that a provision of that Part applies to services,

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- (c) Chapter Twelve (Cross-Border Trade in Services), and
- (d) Chapter Thirteen (Telecommunications),

shall be construed to prevent the adoption or enforcement by any Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with the provisions of this Agreement, including those relating to health and safety and consumer protection, or

3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in Article 1106(1)(b) or (c) or (3)(a) or (b) (Performance Requirements) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;
- (b) necessary to protect human, animal or plant life or health; or
- (c) necessary for the conservation of living or non-living exhaustible natural resources.

#### **Article 2102: National Security**

1. Subject to Articles 607 (Energy) and 1018 (Government Procurement), nothing in this Agreement shall be construed:

- (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
  - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

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- (ii) taken in time of war or other emergency in international relations, or
  - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) to prevent any Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### Article 2103: Taxation

1. Except as set out in this Article, nothing in this Agreement shall apply to taxation measures.
2. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention shall prevail to the extent of the inconsistency.
3. Notwithstanding paragraph 2:
  - (a) Article 301 (Market Access - National Treatment) and such other provisions of this Agreement as are necessary to give effect to that Article shall apply to taxation measures to the same extent as does Article III of the GATT, and
  - (b) Article 315 (Market Access - Export Taxes) and Article 604 (Energy - Export Taxes),shall apply to taxation measures.
4. Subject to paragraph 2:
  - (a) Article 1202 (Cross-Border Trade in Services - National Treatment) and Article 1407 (Financial Services - National Treatment) shall apply to taxation measures on income, capital gains or on the taxable capital of corporations, and to those taxation measures set out in Annex 2103.4 that relate to the purchase or consumption of particular services, and

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- (b) Articles 1102 and 1103 (Investment - National Treatment and MFN), Articles 1202 and 1203 (Cross-Border Trade in Services - National Treatment and MFN) and Articles 1407 and 1408 (Financial Services - National Treatment and MFN) and shall apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations and those taxes listed in Annex 2103.4,

except that nothing in those Articles shall apply

- (c) any most-favored-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention,
- (d) to a non-conforming provision of any existing taxation measure,
- (e) to the continuation or prompt renewal of a non-conforming provision of any existing taxation measure,
- (f) to an amendment to a non-conforming provision of any existing taxation measure to the extent that the amendment does not decrease its conformity, at the time of the amendment, with any of those Articles,
- (g) to any new taxation measure aimed at ensuring the equitable and effective imposition or collection of taxes and that does not arbitrarily discriminate between persons, goods or services of the Parties or arbitrarily nullify or impair benefits accorded under those Articles, in the sense of Annex 2004. or
- (h) to the measures set out in Annex 2103.4.

5. Subject to paragraph 2 and without prejudice to the rights and obligations of the Parties, Article 1106(3), (4), (5) and (6) (Performance Requirements) shall apply to taxation measures.

6. Article 1110 (Expropriation) shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 1116 or 1117, where it has been determined pursuant to this paragraph that the measure is not an expropriation. The investor shall refer the issue of whether the measure is not an expropriation for a determination to the appropriate competent authorities set out in Annex 2104.6 at the time that it gives notice under Article 1119. If the competent authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an



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expropriation within a period of six months after such referral, the investor may submit its claim to arbitration under Article 1120.

#### **Article 2104: Balance of Payments**

1. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures that restrict international transactions or related international transfers and payments ("transfers") where the Party experiences serious balance of payments difficulties, or the threat thereof, and such restrictions are:

- (a) consistent with paragraphs 4 through 8 when imposed on cross-border trade in financial services; or
- (b) consistent with paragraphs 2 through 6 when imposed on any other transaction or transfer.

2. Restrictions imposed on transactions or transfers other than cross-border trade in financial services shall:

- (a) when imposed on payments for current international transactions, be consistent with Article VIII(3) of the Articles of Agreement of the International Monetary Fund ("IMF");
- (b) when imposed on international capital transactions, be consistent with Article VI of the Articles of Agreement of the IMF and imposed only in conjunction with measures imposed on current international transactions under paragraphs 2(a) and 4(a); and
- (c) when imposed on transfers covered by Article 1109 (Investment - Transfers) and transfers related to trade in goods, be made in a freely usable currency at a market rate of exchange such that the payments and transfers are not substantially impeded.

3. No Party may adopt or maintain measures such as tariff surcharges, quotas or licenses under this Article.

4. As soon as practicable after imposing a restriction under this Article, the Party imposing the restriction shall:

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- (a) submit any current account exchange restrictions to the IMF for review under Article VIII of the Articles of Agreement of the IMF; and
- (b) enter into good faith consultations with the IMF on economic adjustment measures to address the fundamental underlying economic problems causing the difficulties and receive endorsement of such measures by the IMF.

5. Each Party shall ensure that any measure that it adopts or maintains under this Article shall:

- (a) avoid unnecessary damage to the commercial, economic and financial interests of another Party;
- (b) not be more burdensome than necessary to deal with the balance of payments difficulties or threat thereof;
- (c) be temporary and be phased out progressively as the situation improves;
- (d) be consistent with any economic adjustment measures endorsed by the IMF under paragraph 4(b) and consistent with the Articles of Agreement of the IMF; and
- (e) be applied on a national treatment and most-favored-nation treatment basis.

6. A Party may adopt or maintain a measure under this Article that gives priority to services which are more essential to its economic program, provided that, except as specifically approved under an IMF-endorsed adjustment program in effect under paragraph 4, no such measure is imposed for the purpose of protecting a specific industry or sector.

7. A Party imposing a restriction on cross-border trade in financial services shall:

- (a) not impose more than one measure on any given transaction and its related transfer, except as specifically approved under an IMF-endorsed adjustment program;
- (b) promptly notify the other Parties; and
- (c) consult promptly with the other Parties to assess the balance of payments situation of the Party and the measures it has adopted, taking into account among other elements

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- (i) the nature and extent of the balance of payments and external financial difficulties of the Party,
  - (ii) the external economic and trading environment of the Party, and
  - (iii) alternative corrective measures that may be available.
8. In consultations under paragraph 7(c), the Parties shall:
- (a) consider if measures adopted under this Article comply with paragraph 5, in particular subparagraph 5(c); and
  - (b) accept all findings of statistical and other facts presented by the IMF relating to foreign exchange, monetary reserves and balance of payments, and shall base their conclusions on the assessment by the IMF of the balance of payments and external financial situation of the Party adopting the measures.

#### **Article 2105: Disclosure of Information**

Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to laws protecting personal privacy.

#### **Article 2106: Cultural Industries**

Annex 2106 applies to cultural industries.

#### **Article 2107: Definitions**

For purposes of this Chapter:

**cultural industries** means any person engaged in any of the following activities:

- (a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

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- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine readable form; or
- (e) radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services;

**international capital transactions** means "international capital transactions" as defined under the Articles of Agreement of the IMF;

**payments for current international transactions** means "payments for current international transactions" as defined under the Articles of Agreement of the IMF;

**tax convention** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**taxes and taxation measures** do not include:

- (a) a "customs duty" as defined in Article 319; or
- (b) the measures listed in exceptions (b), (c), (d) and (e) of that definition.

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**ANNEX 2103.4**

**Specific Taxation Measures**

1. Article 2103(4)(a) (Taxation) shall apply to an asset tax under the *Asset Tax Law* ("Ley del Impuesto al Activo") of Mexico.
2. Article 2103(4)(a) and (b) shall not apply to any excise tax on insurance premiums adopted by Mexico to the extent that such tax would, if levied by Canada or the United States, be covered by Article 2103(4)(d), (e) or (f).

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**ANNEX 2104.6**

**Competent Authorities**

1. The competent authority for Canada is the Assistant Deputy Minister for Tax Policy, Department of Finance.
2. The competent authority for Mexico is the Deputy Minister of Revenue of the Ministry of Finance and Public Credit. (Secretaria de Hacienda y Credito Publico)
3. The competent authority for the United States is the Assistant Secretary of the Treasury (Tax Policy), U.S. Department of the Treasury.

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**ANNEX 2106**

**Cultural Industries**

Notwithstanding any other provision of this Agreement, as between the United States and Canada, any measure adopted or maintained with respect to cultural industries, except as specifically provided in Article 302 (Market Access - Tariff Elimination), and any measure of equivalent commercial effect taken in response, shall be governed exclusively in accordance with the terms of the *Canada - United States Free Trade Agreement*. The rights and obligations between Canada and any other Party with respect to such measures shall be identical to those applying between Canada and the United States.

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## **Chapter Twenty-Two**

### **Final Provisions**

#### **Article 2201: Annexes**

The Annexes to this Agreement constitute an integral part of this Agreement.

#### **Article 2202: Amendments**

1. The Parties may agree on any modification of or addition to this Agreement.
2. When so agreed, and approved in accordance with the applicable legal procedures of each Party, a modification or addition shall constitute an integral part of this Agreement.

#### **Article 2203: Entry into Force**

This Agreement shall enter into force on January 1, 1994, upon an exchange of written notifications certifying the completion of necessary legal procedures.

#### **Article 2204: Withdrawal**

A Party may withdraw from this Agreement six months after it provides written notice of withdrawal to the other Parties. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

#### **Article 2205: Accession**

1. Any country or group of countries may accede to this Agreement subject to such terms and conditions as may be agreed between such country or countries and the Commission and following approval in accordance with the applicable approval procedures of each country.



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2. This Agreement shall not apply as between any Party and any acceding country or group of countries if, at the time of accession, either does not consent to such application.

**Article 2206: Authentic Texts**

The English, French and Spanish texts of this Agreement are equally authentic.

## ANNEX I

1. The Schedule of a Party sets out the reservations taken by that Party, pursuant to Articles 1108(1) and 1206(2), with respect to existing, non-conforming measures that derogate from an obligation relating to:

- (a) national treatment, pursuant to Article 1102 (Investment) or 1202 (Services);
- (b) most-favored-nation treatment, pursuant to Article 1103 (Investment) or 1203 (Services);
- (c) local presence, pursuant to Article 1205 (Services);
- (d) performance requirements, pursuant to Article 1106 (Investment); or
- (e) nationality requirements for senior management or members of boards of directors, pursuant to Article 1107 (Investment).

2. Each reservation sets out the following elements<sup>1</sup>:

- (a) **SECTOR** refers to the general sector in which the reservation is taken;
- (b) **SUB-SECTOR** refers to the specific sector in which the reservation is taken;
- (c) **INDUSTRY CLASSIFICATION** refers to the activity, where applicable, covered by the reservation according to domestic industry classification codes;
- (d) **TYPE OF RESERVATION** specifies the obligation referred to in paragraph 1 for which a reservation is taken;
- (e) **LEVEL OF GOVERNMENT** indicates the level of government maintaining the measure for which the Party is taking the reservation;
- (f) **LEGAL CITATION** identifies the specific existing measures, where applicable, for which the reservation is taken;<sup>2</sup>

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<sup>1</sup> The reservations are current as of September 5, 1992. The three delegations understand that where a Party adopts liberalizing measures prior to the date of entry into force of this Agreement, such measures will be considered to be existing measures.

<sup>2</sup> The three delegations are considering the need for inclusion of language to the effect that measures set out in the **LEGAL CITATION** shall be deemed to include existing administrative decisions, interpretations and practices pursuant to the measure cited.

- (g) **DESCRIPTION** describes the non-conforming aspects of the existing measures for which the reservation is taken and, where applicable, commitments for liberalization upon entry into force of this Agreement; and
- (h) **DURATION** sets out the period for which the reservation is taken and the phase-in of commitments for liberalization.

3. In the interpretation of a reservation, all elements of the reservation should be considered. Where the **DURATION** does not provide for liberalization, the **LEGAL CITATION** shall govern to the extent of any inconsistency with any other element. Where the **DURATION** provides for liberalization upon or after entry into force of this Agreement, the **DURATION** shall govern to the extent of any inconsistency with any other element.

4. Where a Party maintains a measure that requires that a service provider be a citizen, permanent resident or resident of its territory as a condition to the provision of a service in its territory, a reservation for Articles 1202, 1203 or 1205 taken with respect to that measure shall operate as a reservation for Articles 1102 or 1103 with respect to the effect of that measure on the ability of the service provider to establish an investment.

5. For purposes of this Annex:

**CMAP** means *Clasificación Mexicana de Actividades y Productos*;

**concession** means an authorization provided by the State to a person to exploit a natural resource or provide a service, for which Mexican nationals and Mexican enterprises are granted priority over foreigners;

**CPC** means Central Product Classification numbers as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No. 77, *Provisional Central Product Classification*, 1991;

**foreigners' exclusion clause** means the express provision in an enterprise's by-laws, stating that the enterprise shall not allow foreigners, directly or indirectly, to become partners or shareholders of the enterprise;

**international cargo** means goods that have an origin or destination outside the territory of a Party;

**Mexican enterprise** means an enterprise constituted under the laws of Mexico;

**Mexican national** means a national of Mexico, as defined by the Constitution of Mexico;

**person of a Party** means a national or an enterprise of a Party; and

**SIC** means:

- (a) with respect to Canada, Standard Industrial Classification (SIC) numbers as set

out in Statistics Canada, *Standard Industrial Classification*, fourth edition, 1980:  
and

- (b) with respect to the United States, Standard Industrial Classification (SIC) numbers as set out in the United States Office of Management and Budget, *Standard Industrial Classification Manual*, 1987.

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Agriculture

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Farm Credit Act, R.S.C. 1985, c. F-2 as amended by R.S.C. 1985, c. 1 (4th Supp.); S.C. 1991, c. 5, 53  
Farm Credit Regulations, C.R.C. 1978, c. 644 as amended by SOR/81-560; SOR/82-495; SOR/83-198

**DESCRIPTION:** Investment  
Loans by the Farm Credit Corporation may be made only to:

- (a) individuals who are Canadian citizens or permanent residents;
- (b) farming corporations controlled by Canadian citizens or permanent residents; or
- (c) cooperative farm associations, all of whose members are Canadian citizens or permanent residents.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** All Sectors

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Performance Requirements (Article 1106)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Investment Canada Act, R.S.C. 1985, c. 28, as amended by S.C.1988, c. 65  
  
Investment Canada Regulations, SOR/85-611, as amended by SOR/189-69  
  
An Act to Amend the Investment Canada Act, (Bill C-89, introduced in Parliament on 18 June 1992)

**DESCRIPTION:** Investment

1. Under the Investment Canada Act, the following acquisitions of Canadian businesses by "non-Canadians" are subject to review by Investment Canada:

- (1) all direct acquisitions of Canadian businesses with assets of \$5 million or more;
- (2) all indirect acquisitions of Canadian businesses with assets of \$50 million or more; and
- (3) indirect acquisitions of Canadian businesses with assets between \$5 million and \$50 million which represent more than 50 percent of the value, calculated in the prescribed manner, of

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the assets of all the entities the control of which is being acquired, directly or indirectly, in the transaction in question.

2. "Canadian business", "Canadian" and "non-Canadian" are defined in the Investment Canada Act. A "non-Canadian" is an individual, government or agency thereof or an entity which is not "Canadian".
3. In addition, specific acquisitions or new businesses in designated types of business activities related to Canada's cultural heritage or national identity, which are normally notifiable, may be reviewed if the Governor in Council authorizes a review in the public interest.
4. Investments subject to review under the Investment Canada Act are not to be implemented unless the Minister responsible for the Investment Canada Act advises the applicant that the investment is likely to be of net benefit to Canada. Such a determination is made in accordance with six factors described in the Act.
5. These factors are summarized as follows:
  - (a) the effect of the investment on the level and nature of economic activity in Canada, including the effect on employment, on the utilization of parts, components and services produced in Canada, and on exports from Canada;
  - (b) the degree and significance of participation by Canadians in the investment;
  - (c) the effect of the investment on productivity, industrial efficiency, technological development and product innovation in Canada;

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- (d) the effect of the investment on competition within any industry or industries in Canada;
- (e) the compatibility of the investment with national industrial, economic and cultural policies, taking into consideration industrial, economic and cultural policy objectives enunciated by the government or legislature of any province likely to be significantly affected by the investment; and
- (f) the contribution of the investment to Canada's ability to compete in world markets.

6. In making a net benefit determination, the Minister, through Investment Canada, may review plans under which the applicant demonstrates the net benefit to Canada of the proposed acquisition. An applicant may also submit undertakings to the Minister in connection with any proposed acquisition which is the subject of review. In the event of noncompliance with an undertaking by an applicant, the Minister may seek a court order directing compliance or any other remedy authorized under the Act.

7. The establishment or acquisition of Canadian businesses by non-Canadians, other than those described above, are to be notified to the agency administering the Act, Investment Canada.

8. Review of "acquisition of control", as defined in the Investment Canada Act, of a Canadian business by an American or Mexican will take place if the value of the gross assets of the Canadian business is not less than the applicable thresholds, effective on the date of entry into force of this Agreement and adjusted on each anniversary thereof. The calculation of the applicable review threshold is set out in the Duration section below.



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9. The review threshold applicable to American and Mexican investors is higher than those set out above. However, this higher review threshold does not apply in the following sectors: uranium production and ownership of uranium producing properties; oil and gas; financial services; transportation services and cultural businesses.

10. Indirect "acquisitions of control", as defined in the Investment Canada Act, of Canadian businesses by "American" and "Mexican" investors are not reviewable. Notwithstanding the definition of "investor of a Party" in Chapter Eleven, only investors who are nationals, or entities controlled by nationals, (as defined in the Investment Canada Act) of the United States or Mexico, may benefit from the higher review threshold.

11. Notwithstanding Article 1106(1), Canada reserves the right to impose requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, conduct or operation of an investment of an investor of another Party for the transfer of technology, production process or other proprietary knowledge to a national or enterprise, affiliated to the transferor, in Canada, in connection with the review of an acquisition of an investment pursuant to the Investment Canada Act.

12. Except for requirements, commitments or undertakings related to technology transfer as set out above, Article 1106(1) shall apply to requirements, commitments or undertakings imposed or enforced under the Investment Canada Act. However, Article 1106(1) shall not be construed to apply to any requirement, commitment or undertaking imposed or enforced in connection with a review under the Investment Canada Act, to locate production, carry out research and development, employ or train workers, or to construct or expand particular facilities, in Canada.

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**DURATION:**

Paragraphs 10, 11 and 12 of the Description setting out Canada's reservations and commitments with respect to Articles 1102, 1106(1), and 1138 shall govern.

For American and Mexican investors, the applicable threshold for the review of a direct acquisition of control of a Canadian business shall be:

- (a) for the twelve month period commencing on the date of entry into force of this Agreement, such monetary amount as determined in accordance with Annex 1607.3 of the Canada-United State Free Trade Agreement;
- (b) commencing on the first anniversary of the date of entry into force of this Agreement, the monetary amount for the preceding year multiplied by an annual adjustment representing the increase in nominal Gross Domestic Product, as set out below.

The calculation of the annual adjustment shall be determined in January of each year after 1994 using the most recently available data as published by Statistics Canada and using the following formula:

Annual Adjustment =

Current nominal GDP at market prices

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Previous year nominal GDP at market prices

"Current nominal GDP at market prices" means the arithmetic mean of the nominal Gross Domestic Product at market prices for the most recent four consecutive quarters (seasonally adjusted at annual rates).

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"Previous year nominal GDP at market prices" means the arithmetic mean of the nominal Gross Domestic Product at market prices for the four consecutive quarters (seasonally adjusted at annual rates) for the comparable period in the year preceding the year used in calculating the "current nominal GDP at market prices".

The amounts determined in this manner shall be rounded to the nearest million dollars.

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** All Sectors

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal  
Provincial

**LEGAL CITATION:**

**DESCRIPTION:** Investment

When selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, Canada and each province reserve the right to prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of another Party or non-Party or their investments. In addition, Canada and each province reserve the right to adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

For the purposes of this reservation:

- (a) any measure maintained, or adopted after the entry into force of this Agreement, prohibiting or imposing limitations on the ownership of equity interests or assets or nationality requirements described in this reservation shall be deemed to be an existing measure; and

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- (b) "state enterprise" means an enterprise owned or controlled through ownership interests by Canada or a province and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

**DURATION:**

The Description shall govern on entry into force of this Agreement.

Indeterminate.

**ANNEX I**  
**Schedule of Canada**

**SECTOR:** All Sectors

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Business Corporations Act, R.S.C. 1985, C. I-44, as amended by R.S.C. 1985, c. 27 (2nd Supp.), R.S.C. 1985, c. 1 (4th Supp.); S.C. 1990, c. 17; S.C. 1991, c. 45, 46, 47

Canada Corporations Act, R.S.C. 1970, C. C-32, as amended by R.S.C. 1970, c. C-10 (1st Supp.); S.C. 1970-71-72, c. 43, 63; S.C. 1972, c. 17; S.C. 1974-75-76, c. 33; S.C. 1978-79, c. 11; S.C. 1985, c. 26; S.C. 1986, c. 26, 35

Canada Business Corporations Act Regulations  
SOR/79-316, as amended by SOR/79-513.  
SOR/79-728, SOR/80-873, SOR/81-3, SOR/81-189,  
SOR/81-868, SOR/82-187, SOR/83-511, SOR/83781,  
SOR/83-817, SOR/85-384, SOR/86-365, SOR/86-366,  
SOR/86-421, SOR/86-983, SOR/87-248, SOR/87-629,  
SOR/8863, SOR/88-491, SOR/89-159, SOR/89-323,  
SOR/90-660, SOR/91-567

**DESCRIPTION:** Investment

The cited laws and regulations permit constraints to be placed on issue, transfer and ownership of shares in federally incorporated business corporations. The object is to permit corporations to meet Canadian

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ownership requirements, under certain laws as prescribed in the regulations, in sectors where such ownership is required as a condition to operate. In order to maintain certain "Canadian" ownership levels, corporations are permitted to sell shareholders' shares without the consent of those shareholders, and to purchase the corporation's own shares on the open market. "Canadian" is defined in the regulations.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** All Sectors

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Business Corporations Act, R.S.C. 1985, c. I-44 as amended R.S.C. 1985, c. 27 (2nd Supp.), R.S.C. 1985, c. 1 (4th Supp.); S.C. 1990, c. 17; S.C. 1991, c. 45, 46, 47

Canada Business Corporations Act Regulations, SOR/79-316, as amended SOR/79-513, SOR/79-728, SOR/80-873, SOR/81-3, SOR/81-189, SOR/81-868, SOR/82-187, SOR/83-511, SOR/83-781, SOR/83-817, SOR/85-384, SOR/86-365, SOR/86-366, SOR/86-421, SOR/86-983, SOR/87-248, SOR/87-629, SOR/88-63, SOR/88-491, SOR/89-159, SOR/89-323, SOR/90-660, SOR/91-567

Canada Corporations Act, R.S.C. 1970, c. C-32

Special Acts of Parliament incorporating specific companies

**DESCRIPTION:** Investment

The Canada Business Corporations Act requires that a simple majority of members of the board of directors, or of a committee thereof, of a federally-incorporated company must be resident Canadians. For the purposes of the Act the term "resident Canadian" is defined as an individual who is a Canadian citizen



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ordinarily resident in Canada, a citizen who is a member of a class as set out in the regulations, or a permanent resident as defined in the Immigration Act except a person who has been ordinarily resident in Canada for more than one year after he became eligible to apply for Canadian citizenship.

In the case of a holding corporation, not more than 1/3 of the directors need be resident Canadians if the earnings in Canada of the holding corporation and its subsidiaries are less than 5% of the gross earnings of the holding corporation and its subsidiaries.

Under the Canada Corporations Act, a simple majority of the elected directors of a Special Act corporation must be residents of Canada and citizens of a Commonwealth country. This requirement applies to every joint stock company incorporated subsequent to 22 June 1869 by any Special Act of Parliament and any subsequent amendments to such Acts.

**DURATION:**

Indeterminate

September 6, 1992

**ANNEX I**  
**Schedule of Canada**

**SECTOR:** All Sectors

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Citizenship Act, R.S.C. 1985, c. C-29 as amended by R.S.C. 1985 c. 28 (1st Supp.); c. 30 (3rd Supp.); c. 44 (3rd Supp.); c. 28 (4th Supp.)**

**Foreign Ownership of Land Regulations, SOR/79-416; SOR/79-514; SOR/80-156; SOR/82-544**

**DESCRIPTION:** Investment

Under the Citizenship Act, a province is authorized to prohibit or restrict acquisitions of real property located in that province by non-Canadians.

The Foreign Ownership of Land Regulations are made pursuant to the Citizenship Act and the Alberta Agricultural and Recreational Land Ownership Act. In Alberta, an ineligible person or foreign owned or controlled corporation may **only** hold an interest in controlled land consisting of not more than 2 parcels containing, in the aggregate, not more than 20 acres. An "ineligible person" is (1) an individual who is not a Canadian citizen or permanent resident; (2) a foreign government or agency thereof; or (3) a corporation incorporated elsewhere than in Canada. "Controlled land" means land in Alberta but does not include (1) land other than land owned by the Crown;

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(2) land within a city, town, new town, village, or summer village and (3) mines or minerals.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:**

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Air Canada Public Participation Act, R.S.C. 1985,  
c. 35 (4th Supp.)

Canada Development Corporation Reorganization  
Act, S.C. 1985, c. 49

Petro-Canada Public Participation Act, S.C. 1991,  
c. 10

Canadian Arsenals Limited Divestiture  
Authorization Act, S.C. 1986, c. 20

Cooperative Energy Act, S.C. 1980-81-82-83, c. 108

Eldorado Nuclear Limited Reorganization and  
Divestiture Act, S.C. 1988, c. 41

Nordion and Theratronics Divestiture Authorization  
Act, S.C. 1990, c. 4

**DESCRIPTION:**

Investment

Non-residents may not own more than a specified percentage of the voting shares of the corporation to which each Act applies. For each company the restrictions are as follows:

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Air Canada: 25%  
Canada Development Corporation: 25%  
Petro-Canada Inc: 25%  
Canadian Arsenals Limited: 25%  
Eldorado Nuclear Limited: ownership not restricted  
but voting rights restricted to 25% of votes cast at  
meetings  
Nordion Limited: 25%  
Theratronics Limited: 49%  
Cooperative Energy Corporation: 49%

Non-resident is defined in the cited laws to generally  
mean:

- (a) an individual, other than a Canadian citizen,  
who is not ordinarily resident in Canada;
- (b) a corporation incorporated, formed or  
otherwise organized outside Canada;
- (c) the government of a foreign state or any  
political subdivision thereof, or a person  
empowered to perform a function or duty on  
behalf of such a government;
- (d) a corporation that is controlled directly or  
indirectly by non-residents as defined in any of  
paragraphs (a) to (c);
- (e) a trust (i) established by a non-resident as  
defined in any of paragraphs (b) to (d), other  
than a trust for the administration of a pension  
fund for the benefit of individuals a majority of  
whom are residents, or (ii) in which  
non-residents as defined in any of paragraphs  
(a) to (d) have more than fifty per cent of the  
beneficial interest; or
- (f) a corporation that is controlled directly or  
indirectly by a trust described in paragraph (e).

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DURATION:

Indeterminate

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ANNEX I  
Schedule of Canada

SECTOR: All Sectors

SUB-SECTOR:

INDUSTRY CLASSIFICATION:

TYPE OF RESERVATION: Local Presence (Article 1205)

LEVEL OF GOVERNMENT: Federal

LEGAL CITATION: Export and Import Permits Act, R.S.C., 1985, c. E-19

DESCRIPTION: Cross-Border Services

Only natural persons ordinarily resident in Canada, enterprises having their head office in Canada or branch offices in Canada of a foreign enterprise may apply for and be issued import or export permits or a transit authorization certificate for goods and related services subject to controls pursuant to regulations of the Export and Import Permits Act.

DURATION: Indeterminate

**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Automotive

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada-United-States Free Trade Agreement  
Implementation Act

**DESCRIPTION:** Investment

Article 1106(3) shall not apply to the granting of waivers of customs duties conditioned, explicitly or implicitly, upon the fulfillment of performance requirements by those manufacturers of automotive goods:

(a) set out in Part One of Annex 1002.1 of the *Canada - United-States Free Trade Agreement*, in accordance with the headnote to that Part; and

(b) for the applicable periods specified in Article 1002(2) and (3) of the *Canada - United-States Free Trade Agreement* to those manufacturers of automotive goods set out in Parts Two and Three, respectively, of Annex 1002.1 of that Agreement.

**DURATION:**

(a) Indeterminate

(b) For Part Two, until January 1, 1998; and for Part Three, until January 1, 1996 or such



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earlier date specified in existing agreements  
between Canada and the recipient of the  
waiver.

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Business Service Industries

**SUB-SECTOR:** Customs Brokerages and Brokers

**INDUSTRY CLASSIFICATION:** SIC 7794 Customs Brokerages and Brokers

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Customs Act, R.S.C., 1985, c. 41  
(2nd Supp.)  
  
Customs Brokers Licensing Regulations, SOR/86-1067

**DESCRIPTION:** Cross-Border Services and Investment

1. To be a licensed customs broker in Canada, an individual must be a Canadian citizen or permanent resident.
2. To be a licensed customs brokerage in Canada:
  - (a) a corporation must be incorporated in Canada with a majority of its directors being Canadian citizens or permanent residents; and
  - (b) a partnership must be composed of persons who are Canadian citizens or permanent residents, or corporations incorporated in Canada with a majority of their directors being Canadian citizens or permanent residents.

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DURATION:

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Business Service Industries

**SUB-SECTOR:** Duty Free Shops

**INDUSTRY CLASSIFICATION:** SIC 6599 Other Retail Stores, Not Elsewhere Classified

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Customs Act, R.S.C., 1986, c.1 (2nd Supp.)  
**Duty Free Shop Regulations,**  
SOR/86-1072, as amended

**DESCRIPTION:** Cross-Border Services and Investment

1. To be a licensed duty free shop operator at a land border crossing in Canada, an individual must:
  - (a) be a Canadian citizen or permanent resident;
  - (b) be of good character;
  - (c) be principally resident in Canada; and
  - (d) have resided in Canada for at least 183 days of the year preceding the year of application for the licence.
2. To be a licensed duty free shop operator at a border crossing in Canada, a corporation must:
  - (a) be incorporated in Canada; and

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- (b) have all of its shares beneficially owned by Canadian citizens or permanent residents who meet the requirements of paragraph 1.

DURATION:

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Business Service Industries

**SUB-SECTOR:** Examination Services relating to the Export and Import of Cultural Property

**INDUSTRY CLASSIFICATION:** SIC 990 Other Services

**TYPE OF RESERVATION:** Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Cultural Property Export and Import Act, R.S.C. 1985, c. C-51

**DESCRIPTION:** Cross-Border Services

For purposes of the Cultural Property Export and Import Act an "expert examiner" of cultural property must be either a natural person who ordinarily resides in Canada or a corporation that has its head office in Canada or maintains one or more establishments in Canada to which employees employed in connection with the business of the corporation ordinarily report for work.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Business Service Industries

**SUB-SECTOR:** Patent Agents and Agencies

**INDUSTRY CLASSIFICATION:** SIC 7499 Other Financial Intermediaries, Not Elsewhere Classified (Limited to Holders of Intellectual Property Rights)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Patent Act, R.S.C., 1985, c. P-4  
Patent Rules, CRC, Vol. XIII, c. 1250, p.10053  
Patent Cooperation Treaty Regulations, SOR/89-453

**DESCRIPTION:** Cross-Border Services

1. To be able to represent persons in the presentation and prosecution of applications for patents or in other business before the Patent Office, a patent agent must be a resident of Canada and registered by the Patent Office.
2. To prosecute an application for a patent in Canada a registered patent agent who is not a resident of Canada must appoint a registered patent agent who is a resident of Canada as an associate to prosecute the application.

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3. Any firm may be added to the patent register provided that it has at least one member who is also on the register.

**DURATION:**

Indeterminate



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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Business Service Industries

**SUB-SECTOR:** Trade-Mark Agents

**INDUSTRY CLASSIFICATION:** SIC 7499 Other Financial Intermediaries, Not Elsewhere Classified (Limited to Holders of Intellectual Property Rights)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation Treatment (Article 1203)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Trade-Marks Act, R.S.C., 1985, c. T-13  
  
Trade-Marks Regulations, CRC, Vol. XVIII, c. 1559, p. 13803, as amended

**DESCRIPTION:** Cross-Border Services

1. To be able to represent persons in the presentation and prosecution of applications for trade-marks or in other business before the Trade-Mark Office, a trade-mark agent must be a resident of Canada and registered by the Trade-Mark Office.
2. To prosecute an application for a trade-mark in Canada, a registered trade-mark agent who is not resident in Canada must appoint a registered trade-mark agent who is resident in Canada as an associate to prosecute the application.
3. Trade-mark agents who reside, and are registered (in good standing), in a Commonwealth

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country or the United States may be added to the register of trade-mark agents.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Energy

**SUB-SECTOR:** Oil and Gas

**INDUSTRY CLASSIFICATION:** [To be provided]

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.) as amended by R.S.C. 1985, c. 21 (4th Supp.), S.C. 1990, c. 8, 41., S.C. 1991, c. 10 (partly in force), 24 (not in force), 46 (not in force)

Territorial Lands Act, R.S.C. 1985, c.T-7 as amended by R.S.C. 1985, c. 7 (3rd Supp.)(partly in force); S.C. 1991, c. 2, 24 (not in force), 50 (not in force)

Public Lands Grants Act, R.S.C. 1985, c. P-30 as amended R.S.C. 1985, c. 13 (1st Supp.); S.C. 1991, c. 24 (not in force). Act repealed S.C. 1991, c. 50 (repealing legislation not in force)

Canada-Newfoundland Atlantic Accord Implementation Act, S.C. 1987, c. 3 as amended by S.C. 1988, c. 28, S.C. 1990, c. 41; S.C. 1991, c. 46 (not in force), 49, 50 (not in force)

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act. S.C. 1988, c. 28 as amended by S.C. 1990, c. 28, 41; S.C. 1991, c. 46 (not in force), 49, 50 (not in force)

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Canada Oil and Gas Land Regulations, C.R.C. c.  
1518 as amended SOR/80-590; SOR/82-663;  
SOR/89-144

**DESCRIPTION:**

Investment

Canadian legislation contains certain qualifications for holders of oil and gas production licenses for discoveries made after March 5, 1982. These qualifications ensure that holders of such licenses, or shares therein, are Canadian citizens ordinarily resident in Canada, permanent residents or corporations incorporated in Canada.

Notwithstanding qualification to hold a production license, no production license shall be issued for discoveries made after March 5, 1982 unless the Minister of Energy, Mines and Resources is satisfied that the Canadian ownership rate of the interest-owner in relation to the production license on the date of issuance would not be less than 50%. "Interest-owner" is defined in the Canada Petroleum Resources Act to mean "an interest holder who holds the interest or a group of interest holders who hold all the shares of the interest".

With respect to production licenses for discoveries made prior to March 5, 1982, the Canadian ownership requirements are as set out in the Canada Oil and Gas Land Regulations.

These qualifications and Canadian ownership requirements are in respect of production licenses issued on "frontier lands" and the "offshore areas" (areas not under provincial jurisdiction) as defined in the legislation.

**DURATION:**

Indeterminate

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ANNEX I  
Schedule of Canada

**SECTOR:** Energy

**SUB-SECTOR:** Uranium

**INDUSTRY CLASSIFICATION:** [To be provided]

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Investment Canada Act, R.S.C. 1985, c. 28, as  
amended by S.C.1988, c.65

Investment Canada Regulations, SOR/85-611 as  
amended by SOR/189-69

An Act to Amend the Investment Canada Act, (Bill  
C-89, introduced in Parliament on 18 June 1992)

Policy on Non-resident Ownership in the Uranium  
Mining Sector, 1987

**DESCRIPTION:** Investment

Non-resident ownership of a uranium mining property  
is limited to 49% at the stage of first production.  
Exceptions to this limit may be permitted if it can be  
established that the property is in fact  
Canadian-controlled as defined in the Investment  
Canada Act.

Exemptions from the policy are allowed, subject to  
Cabinet approval, only in cases where Canadian  
participants in the ownership of the property cannot be  
found. Investments in properties by "non-Canadians",  
as defined in the Investment Canada Act, prior to

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December 23, 1987, beyond the permitted ownership level, are allowed to remain in place; however no increase in non-Canadian ownership is permitted.

**DURATION:**

Indeterminate

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ANNEX I  
Schedule of Canada

SECTOR: Fisheries

SUB-SECTOR: Fish Harvesting and Processing

INDUSTRY CLASSIFICATION: [To be provided]

TYPE OF RESERVATION: National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

LEVEL OF GOVERNMENT: Federal

LEGAL CITATION: Coastal Fisheries Protection Act, R.S.C. 1985, c. C-33 as amended by R.S.C. 1985, c. 31 (1st Supp.); R.S.C. 1985, c. 39 (2nd Supp.); S.C. 1990, c. 44

Fisheries Act, R.S.C. 1985, c. F-14 as amended by R.S.C. 1985, c. 31 (1st Supp.); R.S.C. 1985, c. 35 (1st Supp.); R.S.C. 1985, c. 40 (4th Supp.); S.C. 1990, c. 16; S.C. 1990, c. 17

Policy on Foreign Investment in the Canadian Fisheries Sector. 1985

Commercial Fisheries Licensing Policy

Coastal Fisheries Protection Regulations. C.R.C., 1978, c. 413

DESCRIPTION: Investment

Under the Coastal Fisheries Protection Act, "foreign" fishing vessels are prohibited from entering Canada's 200 mile fishing zone except under authority of a license or under treaty. "Foreign" vessels are those which are not "Canadian" as defined in the Coastal Fisheries Protection Act. Under the Fisheries Act, The Minister of Fisheries and Oceans has a

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discretionary authority with respect to the issuance of licenses.

Fish processing companies which have a foreign ownership level of more than 49% are prohibited from holding Canadian commercial fishing licenses.

**DURATION:**

Indeterminate



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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Fisheries

**SUB-SECTOR:** Fishing-Related Services

**INDUSTRY CLASSIFICATION:** SIC 032 Services Incidental to Fishing

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation Treatment (Article 1203)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Coastal Fisheries Protection Act, R.S.C., 1985, c.  
C-33

**DESCRIPTION:** Cross-Border Services

Under the Coastal Fisheries Protection Act, the Department of Fisheries and Oceans is responsible for controlling the activities of foreign fishing vessels in Canada's Exclusive Fisheries Zone (EFZ), including access to Canadian ports (port privileges).

In general, the Department grants such port privileges, including the purchase of fuel and supplies, ship repair, crew exchanges and transshipment of fish catches, only to fishing vessels from countries with which it has favorable fishery relations, based primarily on adherence by the foreign country to Canadian and international conservation practices and policies. Exceptions to this general rule are allowed in cases of emergency ("force majeure") and where the specific provisions of bilateral fisheries treaties apply.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Government Finance

**SUB-SECTOR:** Securities

**INDUSTRY CLASSIFICATION:** [To be provided]

**TYPE OF RESERVATION:** National Treatment (Article 1202)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Financial Administrative Act, R.S.C., 1985, Chap. F-11 and annual Orders-in-Council

**DESCRIPTION:** Investment  
Canada Savings Bonds are issued annually pursuant to the Financial Administration Act. Terms and conditions are set by Orders-in-Council. Sale of Canada Savings Bonds is restricted to individuals who are Canadian nationals.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Transportation

**SUB-SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** [To be provided]

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most Favored Nation Treatment (Article 1103)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** National Transportation Act, 1987, R.S.C. 1985, c. 28 (3rd Supp.), as amended by R.S.C. 1985, c. 29 (3rd Supp.); R.S.C. 1985 c. 19 (4th Supp.); R.S.C. 1985, c. 32 (4th Supp.)

Aeronautics Act, R.S.C. 1985, c. A-2 as amended by R.S.C. 1985, c. 33 (1st Supp.); R.S.C. 1985, c. 28 (3rd Supp.)

Air Regulations, C.R.C. 1978, c. 2

Aircraft Marking and Registration Regulations, SOR/90-591, as amended by SOR/91-504

**DESCRIPTION:** Investment

The following "commercial air services" are reserved to Canadian air carriers or operators: domestic air transportation services (cabotage); international scheduled air transportation services reserved by bilateral agreements to Canadian airlines; and international non-scheduled air transportation services between Canada and a country other than a foreign air carrier's state of registry ("fifth freedom charters"). For specialty air services, see Schedule of Canada,

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Annex I, p.I-C-42 and Schedule of Canada, Annex II, p.II-C-9.

Only qualified persons may provide commercial air services reserved to Canadian air carriers or operators. Non-Canadian investment in voting stock of enterprises providing commercial air services that are reserved to Canadian air carriers or operators is limited to 25% or to a lesser percentage where control in fact of the enterprise is otherwise considered not to be held by Canadians. Non-Canadians are not permitted, through voting interests or other forms of investment, to control Canadian air carriers or operators. Aircraft other than state aircraft may only be registered in Canada by qualified persons. Aircraft not registered in Canada are limited by regulation concerning the period during which they may be operated in Canada by Canadians.

A qualified person is a Canadian citizen or permanent resident, or a corporation incorporated by or under the laws of Canada or a province and of which:

- (a) not less than 75 % of the voting interest is in fact owned and controlled by Canadian citizens or permanent residents or by a corporation meeting the requirements on Canadian ownership and control;
- (b) not less than 2/3 of its directors are Canadian citizens or permanent residents;
- (c) the executive head is a Canadian citizen or permanent resident; and
- (d) the principal place of business is in Canada.

A corporation incorporated by or under the laws of Canada or a province but that does not meet the Canadian ownership and control requirements may only register a private aircraft when the corporation is

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the sole owner and subject to other limitations and requirements of the Air Regulations.

The Air Regulations also have the effect of limiting "non-Canadian" corporations operating foreign registered private aircraft within Canada to the carriage of their own employees. A "non-Canadian" corporation is a corporation which does not meet the Canadian ownership and control requirements.

All commercial air services operating in Canada require a Canadian operating certificate to ensure their safety and security. An operating certificate authorizing the provision of commercial air services reserved to Canadian operators or air carriers is only issued to qualified persons.

**DURATION:**

Indeterminate

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ANNEX I  
Schedule of Canada

**SECTOR:** Transportation

**SUB-SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** SIC 4513 Non-Scheduled Air Transport, Specialty Industry

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Aeronautics Act, R.S.C., 1985, c. A-2, section 4.2  
  
Air Regulations, C.R.C., Vol. I, c. 2, sections 700 and 702  
  
Air Regulations Series 2, No. 2 (Aircraft Marking and Registration Regulations), SOR/90-591, section 19

**DESCRIPTION:** Cross-Border Services and Investment

1. A person requires a Canadian operating certificate issued by the Department of Transport to provide specialty air services in the territory of Canada. The Department of Transport will issue an operating certificate to a person applying for authority to provide such services, subject to compliance by such person with Canadian safety requirements.
2. Such operating certificate for the provision of aerial construction, heli-logging, aerial inspection, aerial surveillance, flight training, aerial sightseeing, and aerial spraying services is not issued to a person

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that is not "Canadian" as defined in the applicable regulations (a Canadian national or a corporation incorporated and having its principal place of business in Canada, its chief executive officer and not fewer than 2/3 of its directors as Canadian nationals, and not less than 75% of its voting interest owned and controlled by persons otherwise meeting these requirements).

3. A person of Mexico or of the United States may obtain an operating certificate, subject to compliance by such person with Canadian safety requirements, for the provision of aerial mapping, aerial surveying, aerial photography, forest fire management, fire-fighting, aerial advertising, glider towing and parachute jumping services.

**DURATION:**

Cross-Border Services

Paragraph 3 of the Description shall govern upon entry into force of this Agreement.

A person of Mexico or of the United States will be permitted to obtain an operating certificate, subject to compliance with Canadian safety requirements, for the provision of the following specialty air services:

- (a) two years after the entry into force of this Agreement, aerial construction and heli-logging services;
- (b) three years after the entry into force of this Agreement, aerial inspection, aerial surveillance, flight training, and aerial sightseeing services; and
- (c) six years after the entry into force of this Agreement, aerial spraying services.

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Investment

Indeterminate



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ANNEX I  
Schedule of Canada

**SECTOR:** Transportation

**SUB-SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** SIC 4523 Aircraft Servicing Industry  
SIC 3211 Aircraft and Aircraft Parts Industry

**TYPE OF RESERVATION:** Most-Favored-Nation Treatment (Article 1203)  
Local Presence (1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Aeronautics Act, R.S.C., 1985,  
c. A-2, section 4.9

Air Regulations, Series 2, No.11 [ ]

Airworthiness Manual, chapters 573 and 575 [ ]

Agreement Concerning Airworthiness Certification,  
Exchange of Letters between Canada and the United  
States, dated August 31, 1984, CTS \_\_\_\_\_

**DESCRIPTION:** Cross-Border Services

Aircraft repair, overhaul and maintenance activities which are required to maintain the airworthiness of Canadian-registered aircraft must be performed by Canadian-certified persons. Such certifications are not provided for enterprises located outside Canada, except sub-organizations of approved maintenance organizations that are themselves located in Canada.

Pursuant to an airworthiness agreement between Canada and the United States, Canada recognizes the certifications and oversight provided by the United

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States for all repair, maintenance and overhaul activities performed by U.S.-certified persons, including the individual performing the work, located in the United States.

**DURATION:**

Indeterminate

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ANNEX I  
Schedule of Canada

**SECTOR:** Transportation

**SUB-SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** SIC 456 Truck Transport Industries  
SIC 4572 Interurban and Rural Transit Systems  
Industry  
SIC 4573 School Bus Operations Industry  
SIC 4574 Charter and Sightseeing Bus Services  
Industry

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEGAL CITATION:** Motor Vehicle Transport Act, 1987, R.S.C., 1985,  
c. 29, (3rd Supp.), Parts I and II  
National Transportation Act, 1987, R.S.C., 1985, c.  
28 (3rd Supp.), Part IV  
Customs Tariff, R.S.C., 1985, c. 41 (3rd Supp.),  
subsection 19(1)

**DESCRIPTION:** Cross-Border Services  
Only persons of Canada, using Canadian-built or duty-  
paid trucks or buses, may provide truck or bus  
services between points in the territory of Canada.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Transportation

**SUB-SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** SIC 4541 Freight and Passenger Water Transport Industry  
SIC 4542 Ferry Industry  
SIC 4543 Marine Towing Industry  
SIC 4549 Other Water Transport Industries  
SIC 4553 Marine Salvage Industry  
SIC 4559 Other Service Industries Incidental to Water Transport

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Shipping Act, R.S.C., 1985, c. S-9, sections 6 and 7

**DESCRIPTION:** Cross-Border Services and Investment

To register a ship in Canada for the purpose of providing international maritime transportation services, the owner of the ship must be:

- (a) a Canadian citizen or a citizen of a Commonwealth country, or
- (b) a corporation incorporated under the laws of, and having its principal place of business in, Canada or a Commonwealth country.

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For domestic maritime transportation services  
(cabotage), see Schedule of Canada, Annex II,  
p.II-C-10.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Transportation

**SUB-SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** SIC 4541 Freight and Passenger Water Transport Industry  
SIC 4542 Ferry Industry  
SIC 4543 Marine Towing Industry  
SIC 4549 Other Water Transport Industries  
SIC 4553 Marine Salvage Industry  
SIC 4554 Piloting Service, Water Transport Industry  
SIC 4559 Other Service Industries Incidental to Water Transport

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Shipping Act, R.S.C., 1985, c. S-9, Part II

**DESCRIPTION:** Cross-Border Services  
Masters, mates, and engineers are required to be certified by the Department of Transport as ship's officers while engaged on a Canadian-registered vessel. Only Canadian nationals may be certified as ship's officers.

**DURATION:** Indeterminate

September 6, 1992

ANNEX I  
Schedule of Canada

**SECTOR:** Transportation

**SUB-SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** SIC 4554 Piloting Service, Water Transport Industry

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Pilotage Act, R.S.C., 1985, c. P-14

General Pilotage Regulations, C.R.C., Vol. XIII c. 1263

Atlantic Pilotage Authority Regulations, C.R.C. Vol. XIII, c. 1264

Laurentian Pilotage Authority Regulations. C.R.C., Vol. XIII, c. 1268

Great Lakes Pilotage Regulations. C.R.C., Vol. XIII, c. 1266

Pacific Pilotage Regulations, C.R.C., Vol. XIII, c. 1270

**DESCRIPTION:** Cross-Border Services

A licence issued by the Department of Transport is required to provide pilotage services in Canada. Only Canadian citizens or permanent residents may obtain such licence. A permanent resident of Canada who has been issued a pilot's licence must become a

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Canadian citizen within five years of receipt of such licence in order to retain it.

**DURATION:**

Indeterminate



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ANNEX I  
Schedule of Canada

SECTOR: Transportation

SUB-SECTOR: Water Transportation

INDUSTRY CLASSIFICATION: SIC 454 Water Transport Industry

TYPE OF RESERVATION: Local Presence (Article 1205)

LEVEL OF GOVERNMENT: Federal

LEGAL CITATION: Shipping Conference Exemption Act, 1987, R.S.C.,  
1985, c.17 (3rd Supp.), section 18

DESCRIPTION: Cross-Border Services

Members of a shipping conference shall maintain jointly an office or agency in the region of Canada where they operate. A shipping conference is an association of ocean carriers that has the purpose or effect of regulating rates and conditions for the transportation by such carriers of goods by water.

DURATION: Indeterminate

September 6, 1992

ANNEX I  
Schedule of Canada

**SECTOR:** Transportation

**SUB-SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** SIC 4541 Freight and Passenger Water Transport Industry  
SIC 4542 Ferry Industry  
SIC 4543 Marine Towing Industry

**TYPE OF RESERVATION:** Most-Favored-Nation Treatment (Article 1203)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Coasting Trade Act, S.C., 1992, c. 31, subsection 3(5)

**DESCRIPTION:** Cross-Border Services  
  
The prohibitions under the Coasting Trade Act set out in Schedule of Canada, Annex II, p. II-C-10 do not apply to any vessel that is owned by the U.S. Government when used solely for the purpose of transporting goods owned by the U.S. Government from the territory of Canada to supply Distant Early Warning sites.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Energy

**SUB-SECTOR:** Oil and Gas

**INDUSTRY CLASSIFICATION:** [To be provided]

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Oil and Gas Operations Act (in force as of September 1, 1992)

**DESCRIPTION:**

**Hibernia Development Project Act**

1. The terms and conditions of government assistance for the Hibernia project require that certain goods and services be sourced in Newfoundland and in Canada and that the project operator undertakes, on a "best efforts" basis, to achieve specific Canadian and Newfoundland content levels.
2. In addition, Canada reserves the right to impose any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada, in connection with the Hibernia project.

**DURATION:** For purposes of this entry, paragraph 2 of the Description shall govern with respect to Canada's reservation to the obligations of Article 1106(1) (f).

Indeterminate

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**ANNEX I**  
**Schedule of Canada**

**SECTOR:** Energy

**SUB-SECTOR:** Oil and Gas

**INDUSTRY CLASSIFICATION:** [To be provided]

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Oil and Gas Operation Act, (in force as of  
September 1, 1992)

Canada-Nova Scotia Offshore Petroleum Resources  
Accord Implementation Act, S.C. 1988, c.28

Canada-Newfoundland Atlantic Accord, S.C. 1987,  
c.3

Yukon Oil and Gas Accord (under negotiation)

Northwest Territories Oil and Gas Accord (under  
negotiation)

**DESCRIPTION:**

1. Under the Canada Oil and Gas Operations Act, the Minister of Energy, Mines and Resources requires the applicant to submit a "benefits plan". Approval of the benefits plan is required to receive authorization to proceed with any oil and gas development project.
2. A "benefits plan" means a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of

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goods and services used in any proposed work or activity referred to in the benefits plan. The Act permits the Minister to impose an additional requirement on the applicant, as part of the benefits plan, to ensure that disadvantaged individuals or groups have access to training and employment opportunities or can participate in the supply of goods and services used in any proposed work referred to in the benefits plan. Similar provisions will be included in the Yukon and Northwest Territories Accords.

3. The Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act and the Canada-Newfoundland Atlantic Accord Implementation Act have the same requirement for a "benefits plan" but also require that the "benefits plan" ensure that:

- (a) before carrying out any work or activity in the offshore area the corporation or other body submitting the plan shall establish in the Province an office where appropriate levels of decision-making are to take place;
- (b) expenditures shall be made for research and development to be carried out in the Province, and for education and training to be provided in the Province; and
- (c) first consideration shall be given to goods produced or services provided from within the Province, where those goods or services are competitive in terms of fair market price, quality and delivery.

4. The Boards administering the benefits plan under these Acts may also require that the plan include provisions to ensure that disadvantaged individuals or groups or corporations owned or cooperatives operated by them participate in the

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supply of goods and services used in any proposed work or activity referred in the benefits plan.

5. In addition, Canada reserves the right to impose any requirement or enforce any commitment or undertaking for the transfer of technology, a production process or other proprietary knowledge to a national or enterprise in Canada, in connection with the approval of development projects under the Acts cited above.

**DURATION:**

For purposes of this entry, paragraph 5 of the Description shall govern with respect to Canada's reservation to the obligations of Article 1106(1) (f).

For purposes of this entry, the Yukon Oil and Gas Accord and the Northwest Territories Oil and Gas Accord shall be deemed to be existing measures, upon completion of their negotiation.

Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** All

**SUB-SECTOR:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**LEGAL CITATION:** Securities Act of 1933, Rules 251 and 405, 17  
C.F.R. §§ 240.251 and 240.405

Securities Exchange Act of 1934,  
Section 12(b)(2), 15 U.S.C. § 1(b)(2) and the Rules  
thereunder.

**DESCRIPTION:** Investment

Foreign issuers, except for certain Canadian issuers,  
may not use the small business forms under the  
Securities Act of 1933 to register securities.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:**

**SUBSECTOR:**

**INDUSTRY CLASSIFICATION:** SIC 4952 Sewerage System

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEGAL CITATION:** Clean Water Act, 33 U.S.C. §§1251 et seq.

**DESCRIPTION:** Investment

The Clean Water Act authorizes grants for the construction of treatment plants for municipal sewage or industrial waste. Grant recipients may be privately-owned enterprises. The Act provides that grants shall be made for treatment works only if such articles, materials, and supplies as have been manufactured, mined or produced in the United States will be used in the treatment works. The Administrator of the Environmental Protection Agency has authority not to apply this provision, e.g., if the cost of the articles in question is unreasonable. 33 U.S.C. §1295.

**DURATION:** Indeterminate



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ANNEX I  
Schedule of the United States

SECTOR: Energy

SUB-SECTOR: Atomic Energy

INDUSTRY CLASSIFICATION: Not Applicable

TYPE OF RESERVATION: National Treatment (Article 1102)

LEVEL OF GOVERNMENT: Federal

LEGAL CITATION: Atomic Energy Act of 1954, 42 U.S.C. §§2133-2134

DESCRIPTION: Investment

A license is required for any person in the United States to transfer, manufacture, produce, use or import any facilities that produce or use nuclear materials. Such license may not be issued to any entity known or believed to be owned, controlled or dominated by an alien, a foreign corporation or a foreign government (42 U.S.C. §§2133, 2134). The issuance of a license is also prohibited for utilization or production facilities for such uses as medical therapy or research and development activities to any corporation or other entity owned, controlled or dominated by one of the foreign persons described above (42 U.S.C. §2134(d)).

DURATION: Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Business Services

**SUB-SECTOR:** Export Intermediaries

**INDUSTRY CLASSIFICATION:** 7389 Business Services, Not Elsewhere Classified

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Export Trading Company Act of 1982, Public Law  
97-290, 96 Stat. 1233, 15 U.S.C. §§ 4011-4021

**15 C.F.R. Part 325**

**DESCRIPTION:** Cross-Border Services

Title III of the Export Trading Company Act of 1982 authorizes the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act calls for the issuance of a certificate of review if the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a "person" as defined by the Act can apply for a certificate of review. The term "person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation; whether

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organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons."

A foreign national or enterprise can receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) which is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement."

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of United States**

**SECTOR:** Business Services

**SUB-SECTOR:** Export Intermediaries

**INDUSTRY CLASSIFICATION:** 7389 Business Services, Not Elsewhere Classified

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Export Administration Act of 1979, Pub. L. 96-72,  
as amended

Export Administration Regulations, 15 C.F.R. parts  
768 through 799

**DESCRIPTION:** Cross-Border Services

With some limited exceptions, the export from the United States of all commodities, and all "technical data", requires either a general license or a validated license or other authorization granted by the Office of Export Licensing, United States Department of Commerce. A general license requires no application or documentation and is generally available for use by all persons.

An application for a validated license may be made only by a person subject to the jurisdiction of the United States who is in fact the exporter, or by his duly authorized agent. An application may be made on behalf of a person not subject to the jurisdiction of the United States by an authorized agent in the United States, who then becomes the applicant.

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**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of United States**

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications (Enhanced or Value-Added Services)

**INDUSTRY CLASSIFICATION:** CPC 752323 Value-Added Network Services CPC 752329 Other Message Services

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** F.C.C. Decision, International Communications Policies Governing Designation of Recognized Private Operating Agencies, 104 F.C.C. 2d 208, n. 123, n. 126 (1986)

**47 C.F.R. §64.702** (1991) (Definition of enhanced or value-added services)

**DESCRIPTION:** Investment

If a U.S.-based foreign-owned enhanced service provider obtains voluntary Recognized Private Operating Agency certification from the U.S. Department of State for purposes of negotiating operating agreements with governments other than the U.S. Government, it must submit copies of all operating agreements granted to it by foreign governments and any refusal of a foreign government to grant it an operating agreement. For purposes of this rule, a service provider is generally considered "foreign owned" if 20 percent or more of its stock is owned by persons that are not U.S. citizens.

**DURATION:** Indeterminate

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ANNEX I  
Schedule of the United States

**SECTOR:** Manufacturing

**SUB-SECTOR:** Agricultural Chemicals

**INDUSTRY CLASSIFICATION:** SIC 2879 Pesticides and Agricultural Chemicals,  
not Elsewhere Classified

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEGAL CITATION:** Federal Insecticide, Fungicide, and Rodenticide  
Act, as amended, 7 U.S.C. §136 et seq.

**DESCRIPTION:** Investment

7 U.S.C. §135h(g) prevents the Administrator of the Environmental Protection Agency from knowingly disclosing information submitted by an applicant or registrant under the Act (without consent) to any person engaged in the production, sale or distribution of pesticides in countries other than the United States or to any person who intends to deliver such data to such foreign or multinational business or entity.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Mining and Materials

**SUB-SECTOR:** Minerals Mining

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Mineral Lands Leasing Act of 1920; 30 U.S.C.  
Chapter 3; 10 U.S.C. §7435

**DESCRIPTION:** Investment

1. Under the Mineral Lands Leasing Act of 1920, aliens and corporations with foreign stockholders may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from them, across on-shore federal lands, or acquire leases or interests in certain minerals, such as coal or oil. However, non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands or lease to develop mineral resources on on-shore federal lands unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own (30 U.S.C. §§181, 183(a)).
2. Nationalization is not considered to be denial of similar or like privileges.



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3. See also 10 U.S.C. §7435, which restricts foreign citizens, or corporations controlled by them, from obtaining access to leases on Naval Petroleum Reserves, should the laws, customs or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States.

DURATION:

Indeterminate.

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**ANNEX I**  
**Schedule of United States**

**SECTOR:** Professional Services

**SUB-SECTOR:** Patent Attorneys and Patent Agents and other Practice before the Patent and Trademark Office

**INDUSTRY CLASSIFICATION:** [to be provided]

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation Treatment (Article 1203)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** 35 USC Chapter 3 (Practice Before Patent and Trademark Office)  
37 C.F.R. Part 10 (Representation of Others Before the U.S. Patent and Trademark Office)

**DESCRIPTION:** Cross-Border Services  
As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):  
  
(a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. 10.6(a));  
  
(b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States, or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country (37 C.F.R. 10.6(c)); and

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(c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in another country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country (37 C.F.R. 10.14(a)-(c)).

**DURATION:**

Citizenship and permanent residency requirements subject to removal within two years after entry into force of this Agreement in accordance with Article 1210(3).

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Public Administration

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**LEGAL CITATION:** 22 U.S.C. §§ 2194(a), 2194(b) and 2198(c)

**LEVEL OF GOVERNMENT:** Federal

**DESCRIPTION:** Investment  
The Overseas Private Investment Corporation (OPIC) insurance and loan guarantees under 22 U.S.C. §§2194(a), 2194(b) and 2198(c) are not available to certain aliens, foreign enterprises, or foreign - controlled domestic enterprises.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Transportation

**SUB-SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** SIC 3721 Aircraft Repair and Rebuilding on a Factory Basis  
SIC 4581 Aircraft Repair (Except on a Factory Basis)

**TYPE OF RESERVATION:** Most-Favored-Nation Treatment (Article 1203)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** 49 U.S.C. App. 1354, 1421-1430  
14 C.F.R. Parts 43 and 145  
**Agreement Concerning Airworthiness Certification, Exchange of Letters between U.S. and Canada dated August 31, 1984, Treaties and International Agreement Service 11023**

**DESCRIPTION:** Cross-Border  
For major aircraft repair, overhaul or maintenance activities, during which an aircraft is withdrawn from service, U.S. measures require that, in order to perform work on U.S.-registered aircraft, foreign air repair stations must be certified by the Federal Aviation Administration with continuing oversight provided by the Federal Aviation Administration. Pursuant to a bilateral airworthiness agreement dated August 31, 1984, as amended, between the United States and Canada, the United States recognizes the certifications and oversight provided by Canada for all repair stations and individuals performing the work located in Canada.

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DURATION:

Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Transportation

**SUB-SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** 4512 Air Transportation Scheduled  
4522 Air Transportation Non-scheduled  
4513 Air Courier Services

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Federal Aviation Act of 1958, as amended; 14  
C.F.R. For purposes of this entry, the Description  
governs.

**DESCRIPTION:** Investment

Whether an entity is a U.S. citizen determines the type of commercial air services company that it can own or control. Under the Federal Aviation Act of 1958 (49 U.S.C. App. Ch. 20), "citizens" include (1) individuals who are citizens; (2) a partnership in which each member is a citizen of the U.S.; or (3) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers are U.S. citizens, and at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens. 49 U.S.C. App. §1301(16).

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require

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that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis. Nevertheless, the Department has provided guidance as to some lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), taken alone, is not construed as indicative of foreign control. (See Department of Transportation Order 91-1-41, January 23, 1991.)

Only air carriers that are U.S. citizens are permitted to operate domestic air services or operate international air services as a "U.S." carrier; non-U.S. citizens may own and control foreign air carriers that operate between the U.S. and foreign points. See Sections 401, 402, 417(b)(7) and 1108 of the Federal Aviation Act. The different rights of each type of air carrier are usually spelled out in the applicable aviation bilateral agreement.

Certain distinctions based on citizenship also exist with regard to other types of air services providers, such as air freight forwarders (14 C.F.R. 297), charter operators (14 C.F.R. 380), and intermodal operators (14 C.F.R. 222).

Air freight forwarders may be "U.S. citizens" (defined as indicated above) which use the services of (inter alia) direct air carriers (with a Department of Transportation certificate, regulation, order or permit) to transport property. 14 C.F.R. Part 296. They may also be "foreign air freight forwarders", which similarly use direct air carriers to transport property. 14 C.F.R. Part 296. There is no "U.S. citizenship" requirement for "foreign air freight forwarders." 14 C.F.R. §297.3(d). Foreign air freight forwarders may obtain the same operating exemptions available to U.S. citizens. They must, however, apply for registration with the Department of Transportation.



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Their application can be rejected "for reasons relating to the failure of effective reciprocity, or if the Department finds that it is in the public interest to do so." 14 C.F.R. §297.22.

Charter operators may be "public charter operators", which inter alia must be "U.S. citizens" (defined as indicated above) or "foreign charter operators," for which there is not a citizenship requirement. 14 C.F.R. §380.2. Unlike domestic charter operators, "foreign charter operators" wishing to operate charters which originate in the U.S. must register with the Department of Transportation. 14 C.F.R. §380.61. The Department of Transportation may reject a registration application "for reasons relating to the failure of effective reciprocity or if the Department finds it would be in the public interest to do so." 14 C.F.R. § 380.64.

A direct foreign air carrier may engage in the surface transport of property (which it has carried by air) in a zone extending 35 miles from the boundary of the airport or city it is authorized to serve. There is no such geographic limitation on a direct U.S. air carrier, or on a U.S. or foreign indirect air carrier.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Transportation

**SUB-SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** SIC 0721 Crop Planting, Cultivating, and Protecting (limited to aerial dusting and spraying, dusting crops, with or without fertilizing, spraying crops, with or without fertilizing)

SIC 4522 Air Transportation, Nonscheduled (limited to air taxi services, sightseeing airplane services)

SIC 7319 Advertising, Not Elsewhere Classified (limited to aerial advertising, sky writing)

SIC 7335 Commercial Photography (limited to aerial photographic service, except mapmaking)

SIC 7389 Business Services, Not Elsewhere Classified (limited to mapmaking, including aerial, pipeline and powerline inspection services, firefighting service, other than forestry or public)

SIC 7997 Membership Sports & Recreation Clubs (limited to aviation clubs, membership)

SIC 8299 Schools & Education Services, Not Elsewhere Classified (limited to flying instruction)

SIC 8713 Surveying Services (limited to aerial surveying)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

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**LEVEL OF GOVERNMENT:**

Federal

**LEGAL CITATION:**

Federal Aviation Act of 1958, as amended: 49 U.S.C. App. 1508(b); 14 C.F.R. 375. For purposes of this entry, paragraph 3 of the Description governs.

**DESCRIPTION:**

Cross-Border Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States. A person of Canada or Mexico that provides aerial construction, heli-logging, aerial sightseeing, flight training, aerial inspection and surveillance and aerial spraying services may not be authorized to provide such services if there is inadequate reciprocity on the part of the country of the applicant, or if approval would otherwise not be in the public interest.

2. A person of Mexico or Canada may be authorized to provide, subject to compliance by that person with U.S. safety regulations, aerial mapping, aerial surveying, aerial photography, forest fire management, fire fighting, aerial advertising, glider towing and parachute jumping.

Investment

3. Specialty air enterprises are required to comply with the same requirements as those set out in the exception for air transportation carriers described in the investment exception for air transportation.

**DURATION:**

Cross-Border

Paragraph 2 of the Description governs on entry into force.

A person of Canada or Mexico may obtain, subject to compliance with U.S. safety requirements,

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authorization to provide the following specialty air services in the territory of the United States:

- (a) two years after entry into force of the Agreement, aerial construction and heli-logging;
- (b) three years after entry into force of the Agreement, aerial sightseeing, flight training and aerial inspection and surveillance services; and
- (c) six years after entry into force of the Agreement, aerial spraying services.

Investment: Indeterminate

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**ANNEX I**  
**Schedule of the United States**

**SECTOR:** Transportation

**SUB-SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** SIC 4213 Trucking, Except Local  
SIC 4215 Courier Services, Except by Air  
SIC 4131 Intercity and Rural Bus Transportation  
SIC 4142 Bus Charter Service, Except Local  
SIC 4151 School Buses (limited to interstate transportation not related to school activity)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Bus Regulatory Reform Act of 1982, as amended, section 6, 49 U.S.C. 10922(1) (1) and (2)

49 U.S.C. 10530 (3)

49 U.S.C. 10329, 10330 and 11705 and 49 C.F.R. 1044

19 U.S.C. 1202

Memorandum of Understanding Between the United States of America and the United Mexican States on Facilitation of Charter/Tour Bus Service. December 3, 1990.

**DESCRIPTION:** Cross-Border Services

Operating authority from the Interstate Commerce Commission (ICC) is required to provide interstate or

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cross border bus or truck services in the territory of the United States. A moratorium has been imposed on new grants of operating authority for persons of Mexico, except for provision of cross-border charter or tour bus services.

Under the moratorium, persons of Mexico without operating authority may operate only within ICC Border Commercial Zones, for which ICC operating authority is not required. Persons of Mexico providing truck services (including for hire, private, and exempt services) without operating authority are required to obtain a certificate of registration from the ICC to enter the United States and operate in the ICC Border Commercial Zones. Persons of Mexico providing bus service are not required to obtain an ICC certificate of registration to provide such service within the ICC Border Commercial Zones.

A person providing bus or truck service between points in the United States is required to use United States-registered and either U.S.-built or duty-paid equipment.

#### Investment

The moratorium has the effect of being an investment restriction because enterprises of the United States providing bus or truck services that are owned or controlled by persons of Mexico may not obtain ICC operating authority.

#### **DURATION:**

On entry into force of this Agreement, the Description shall govern.

#### Cross-Border Services

A person of Mexico will be permitted to obtain operating authority to provide:

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- (a) three years after signature of this Agreement, cross-border truck services to or from border states (California, Arizona, New Mexico, and Texas), and such persons will be permitted to enter and depart the territory of United States through different ports of entry;
- (b) three years after entry into force of this Agreement, cross-border scheduled bus services; and
- (c) six years after entry into force of this Agreement, cross-border truck services.

Investment

A person of Mexico will be permitted to establish an enterprise in the United States to provide:

- (a) three years after signature of this Agreement, truck services for the distribution of international cargo between points in the United States; and
- (b) seven years after entry into force of this Agreement, bus services between points in the United States.

Indeterminate: The moratorium will remain in place on grants of authority for the provision of truck services by persons of Mexico between points in the United States for the transportation of goods other than international cargo.

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**ANNEX I**  
**Schedule of United States**

**SECTOR:** Transportation Services

**SUB-SECTOR:** Customs Brokers

**INDUSTRY CLASSIFICATION:** SIC 4731 Arrangement of Transportation of  
Freight and Cargo

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** 19 U.S.C. § 1641(b)

**DESCRIPTION:** Cross-Border Services and Investment  
  
Only U.S. citizens may obtain a customs broker's license, which is required to conduct customs business on behalf of another person. A corporation, association, or partnership established under the laws of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

**DURATION:** Indeterminate



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ANNEX I  
Schedule of the United States

SECTOR: All

SUB-SECTOR:

TYPE OF RESERVATION: National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

LEGAL CITATION: Securities Act of 1933, Rules 251 and 405, 17  
C.F.R. §§ 240.251 and 240.405

Securities Exchange Act of 1934,  
Section 12(b)(2), 15 U.S.C. § 1(b)(2) and the Rules  
thereunder.

DESCRIPTION: Investment

Foreign issuers, except for certain Canadian issuers,  
may not use the small business forms under the  
Securities Act of 1933 to register securities.

DURATION: Indeterminate

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ANNEX I  
Schedule of the United States

SECTOR:

SUBSECTOR:

INDUSTRY CLASSIFICATION: SIC 4952 Sewerage System

TYPE OF RESERVATION: Performance Requirements (Article 1106)

LEGAL CITATION: Clean Water Act, 33 U.S.C. §§1251 et seq.

DESCRIPTION: Investment

The Clean Water Act authorizes grants for the construction of treatment plants for municipal sewage or industrial waste. Grant recipients may be privately-owned enterprises. The Act provides that grants shall be made for treatment works only if such articles, materials, and supplies as have been manufactured, mined or produced in the United States will be used in the treatment works. The Administrator of the Environmental Protection Agency has authority not to apply this provision, e.g., if the cost of the articles in question is unreasonable. 33 U.S.C. §1295.

DURATION: Indeterminate

September 6, 1992

**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** All sectors

**SUB-SECTOR:** All sub-sectors

**INDUSTRY CLASSIFICATION:** Not applicable

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** - **Constitución Política de los Estados Unidos Mexicanos** (United Mexican States Political Constitution).  
Título I Capítulo I.

**Ley de Nacionalidad y Naturalización** (Nationality and Naturalization Law). Capítulo VI (Disposiciones generales)

**Ley Orgánica de la Fracción I del Artículo 27 de la Constitución** (Organic Law of the First Section of Article 27 of the United Mexican States Political Constitution).

**Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera** (Law to Promote Mexican Investment and to Regulate Foreign Investment). Capítulos I y IV (Objeto y Fideicomisos en frontera y litorales)

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera** (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment). Título III Capítulo I y Título III Capítulo III.

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(Inversión extranjera mediante fideicomisos)

**DESCRIPTION:**

Investment

Foreigners and foreign enterprises, as defined in the Constitución Política de los Estados Unidos Mexicanos; and Mexican enterprises without a foreigners' exclusion clause may not acquire "direct dominion" (dominio directo) over land and water in a 100 kilometers strip along the country's borders or in a 50 kilometers strip inland from its coasts (the Restricted Zone).

Nevertheless, foreigners, foreign enterprises and Mexican enterprises may acquire "Certificados de Participación Ordinaria" (CPO's). Such CPO's grant to the beneficiaries the right to use and enjoy the real estate and to receive the profits that it may obtain from the profitable use of the property.

The CPO's are issued by a Mexican credit institution that has been granted authorization to acquire through trust the title to real estate intended for industrial and tourist activities in the Restricted Zone for a period not to exceed 30 years.

The trust is renewable if:

- (a) The beneficiaries of the trust which is to be extinguished or terminated will be beneficiaries of the new trust;
- (b) the new trust is to be executed under the same terms and conditions as the trust which is to be extinguished or terminated, in respect of the purposes of the trust, the use of real estate and its characteristics;

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- (c) the respective permits are requested within a period of 360 to 181 days prior to the trust be extinguished or terminated; and
- (d) the provisions of the Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera and its regulations are observed.

**DURATION:**

Indeterminate

**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	All sectors
<b>SUB-SECTOR:</b>	All sub-sectors
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	National Treatment (Article 1102)
<b>LEGAL CITATION:</b>	<b>Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment).</b>  <b>Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment).</b>
<b>DESCRIPTION:</b>	<u>Investment</u>  The Comisión Nacional de Inversiones Extranjeras in order to evaluate the applications submitted to its consideration (acquisitions or establishment of investments in restricted activities as set out in this Schedule), shall take into account the following criteria:  (a) Its effects on employment and training;  (b) Its technological contribution;  (c) In general its contribution to increase the Mexican industrial production and competitiveness.

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The Comisión Nacional de Inversiones Extranjeras may impose performance requirements which are not prohibited by Article 1106 of the Investment Chapter.

**DURATION:**

Description shall govern upon entry into force of this Agreement.

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**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	All sectors
<b>SUB-SECTOR:</b>	All sub-sectors
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	National Treatment (Article 1102)
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<b>Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment).</b>  <b>Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment).</b>
<b>DESCRIPTION:</b>	<u>Investment</u>  Mexico will review the acquisition, whether directly or indirectly, of more than 49% of the ownership interest of a Mexican enterprise in an unrestricted sector, that is owned or controlled by Mexican nationals, directly or indirectly, by an investor of another Party if the value of the gross assets of the Mexican enterprise is not less than the applicable thresholds, effective on the date of entry into force of this Agreement and adjusted on each anniversary thereof. The calculation of the applicable review thresholds is set out in the following section below.



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**DURATION:**

Description shall govern upon entry into force of this Agreement.

The basis for calculating the threshold will be:

- (a) USD 25 million, for the three year period commencing on the date of entry into force of this Agreement;
- (b) USD 50 million, for the three year period commencing on the fourth year after the date of entry into force of this Agreement;
- (c) USD 75 million, for the three year period commencing on the seventh year after the entry into force of this Agreement;
- (d) USD 150 million, for the tenth year after entry into force of this Agreement.

Beginning with the Agreement's second year these thresholds shall be adjusted for cumulative inflation based on the US GDP price deflator from the date of entry into force of this Agreement.

Beginning with year eleven after entry into force of this Agreement, the threshold will be adjusted for growth in nominal Mexican GDP--but in no case will the threshold to be applied exceed that of Canada.

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**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	All sectors
<b>SUB-SECTOR:</b>	All sub-sectors
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	National Treatment (Article 1102) Senior Management (Article 1107)
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<b>Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution).</b>  <b>Ley General de Sociedades Cooperativas (General Law of Cooperative Companies). Título I Capítulo I y Título II Capítulo II</b>
<b>DESCRIPTION:</b>	<u>Investment</u>  No more than 10 percent of the persons participating in a Mexican Cooperative Production enterprise may be foreigners.  Foreigners cannot engage in general administrative functions.
<b>DURATION:</b>	Indeterminate

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ANNEX I  
Schedule of Mexico

SECTOR:	All sectors
SUB-SECTOR:	All sub-sectors
INDUSTRY CLASSIFICATION:	Not applicable
TYPE OF RESERVATION:	National Treatment (Article 1102)
LEVEL OF GOVERNMENT:	Federal
LEGAL CITATION:	Ley Federal para el Fomento de la Microindustria (Law to Promote the Microindustry).
DESCRIPTION:	<u>Investment</u>  Only Mexican nationals and Mexican enterprises with foreigners' exclusion clause may qualify as microindustry enterprises.
DURATION:	Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Agriculture, Livestock, Forestry, and Lumber Activities

**SUB-SECTOR:** Agriculture, Livestock or Forestry

**INDUSTRY CLASSIFICATION:** CMAP 1111 Agriculture  
CMAP 1112 Livestock  
CMAP 120011 Forestry  
CMAP 120012 Exploitation of Forest Nurseries  
CMAP 120030 Collection of Forest Products  
CMAP 120040 Falling Trees

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Constitución Política de los Estados Unidos Mexicanos** (United Mexican States Political Constitution).  
  
Ley Agraria (Agrarian Law). Título VI,

**DESCRIPTION:** Investment  
  
All enterprises constituted in Mexico which own land for agriculture, livestock or forestry purposes. must issue a special type of shares ("T" shares) which represent the value of the aforementioned land at the time of its acquisition. Investors of another Party and their investments may own up to 49 percent of such "T" shares.

**DURATION:** Indeterminate

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ANNEX I  
Schedule of Mexico

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services (Broadcasting and Multipoint Distribution Systems, (MDS), and Cable Television)

**INDUSTRY CLASSIFICATION:** CMAP 941104 Private Production and Transmission of Radio Programs (Limited to Production and Transmission of Radio Programs, MDS and uninterrupted music)  
CMAP 941105 Private Services of Production, Transmission and Repetition of Television Programming (Limited to Production, Transmission and Repetition of Television Programs, MDS, Direct Broadcasting Systems, and High Definition Television and Cable Television)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Federal de Radio y Televisión (Radio and Television Federal Law), Título IV (Funcionamiento), Capítulo III (Programación)

Reglamento de la Ley Federal de Radio y Televisión y de la Ley de la Industria Cinematográfica relativo al contenido de las transmisiones de Radio y Televisión (Regulations of the Radio and Television Federal Law and Motion Picture Industry Law relating to Radio o Television Content), Título III (Programación)

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Reglamento del Servicio de Televisión por Cable,  
(Cable Television Regulations) Capítulo VI  
(Programación)

**DESCRIPTION:**

Cross-Border Services

For the protection of copyrights a holder of a concession for a commercial broadcast station or for a cable television system in Mexico is required to obtain an authorization from the Secretaría de Gobernación to import in any form radio or television programming for broadcast or cable distribution of such programming within Mexico.

The authorization will be granted if the request includes documentation showing that the foreign government, sponsoring international organization, or the private entrepreneur or organizer has granted the license ("derechos") to retransmit or distribute by cable such program.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services (Cable Television)

**INDUSTRY CLASSIFICATION:** CMAP 941105 Private Services of  
Production, Transmission and Retransmission of  
Television Programming (Limited to cable television)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos  
Mexicanos (United Mexican States Political  
Constitution), Article 32

Ley de Vías Generales de Comunicación (General  
Means of Communication Law), Libro I Capítulo III  
(Concesiones, Permisos y Contratos)

Ley Federal de Radio y Televisión (Radio and  
Television Federal Law), Título III, (Concesiones,  
Permisos e Instalaciones)

Ley para Promover la Inversión Mexicana y  
Regular la Inversión Extranjera (Law to Promote  
Mexican Investment and to Regulate Foreign  
Investment)

Reglamento del Servicio de Televisión por Cable  
(Cable Television Regulations), Capítulo II  
(Concesiones)

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)**

**DESCRIPTION:**

Cross-Border Services

1. A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or to operate, cable television systems. Such concession is granted only to Mexican nationals or Mexican enterprises.

Investment:

2. Investors of another Party and their investments may own, directly or indirectly, up to 49 percent of an enterprise established or to be established in Mexico which owns or operates a cable television systems or provides cable television services.

**DURATION:**

Cross-Border Services

Indeterminate.

Investment

Paragraph 2 of the description shall govern upon entry into force of this Agreement; subject to discussion by the Parties five years after the entry into force of this Agreement.



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services

**INDUSTRY CLASSIFICATION:** CMAP 941103 Private Exhibition of Films (cinema)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley de la Industria Cinematográfica** (Motion Picture Industry Law)

**Reglamento de la Ley de la Industria Cinematográfica** (Regulations of the Motion Picture Industry)

**DESCRIPTION:** Cross-Border Services and Investment

On an annual basis, 30 percent of the screen time of every theater may be reserved for films produced either within or outside Mexico, by Mexican enterprises.

**DURATION:** The description shall govern upon entry into force of this Agreement.

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services (Broadcasting, Multipoint Distribution Systems (MDS), and Cable Television)

**INDUSTRY CLASSIFICATION:** CMAP 941104 Private Production and Transmission of Radio Programs (Limited to Production and Transmission of Radio Programs, MDS and uninterrupted music)  
CMAP 941105 Private Services of Production, Transmission and Retransmission of Television Programming (Limited to Production, Transmission and Retransmission of Television Programs, MDS, Direct Broadcasting Systems, High-Definition Television and Cable Television)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Performance Requirement (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Federal de Radio y Televisión, (Radio and Television Federal Law), Título IV (Funcionamiento), Capítulo III (Programación)

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**Reglamento de la Ley Federal de Radio y Televisión y de la Ley de la Industria Cinematográfica relativo al contenido de las transmisiones de Radio y Televisión (Regulation of Radio and Television Federal Law and Regulations of the Motion Picture Industry Law relating to Broadcasting Content), Título III (Programación)**

**Reglamento del Servicio de Televisión por Cable (Cable Television Regulations), Capítulo VI (Programación)**

**DESCRIPTION:**

Cross-Border Services and Investment

The use of the Spanish language is required for the broadcast, cable or multipoint-distribution-system distribution of radio or television programming, except when the Secretaría de Gobernación authorizes the use of another language.

A majority of personnel involved in the production and performance of a live broadcast programming activity must be Mexican nationals.

To perform in Mexico, a radio and television announcer or presenter who is not a Mexican national must obtain an authorization from the Secretaría de Gobernación.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services (Broadcasting, and Multipoint Distribution Systems and Cable Television)

**INDUSTRY CLASSIFICATION:** CMAP 941105 Private Services of Production, Transmission and Retransmission of Television Programming (Limited to Broadcasting, Cable Television and Multipoint Distribution Systems)

**TYPE OF RESERVATION:** National Treatment (Article 1202)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Federal de Radio y Televisión, (Radio and Television Federal Law), Título IV (Funcionamiento), Capítulo III (Programación)

Reglamento de la Ley Federal de Radio y Televisión y de la Ley de la Industria Cinematográfica relativo al contenido de las transmisiones de Radio y Televisión (Regulations of the Radio and Television Federal Law and Regulation of the Motion Picture Industry Law relating to Broadcasting Content), Título III (Programación)

Reglamento del Servicio de Televisión por Cable. (Cable Television Regulations), Capítulo VI (Programación)

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**DESCRIPTION:**

Cross-Border Services and Investment

The use of the Spanish language or Spanish subtitles is required for advertising broadcast or distributed in Mexico.

Advertising included in programs transmitted directly from outside Mexico may not be broadcast in such programs when they are retransmitted or distributed in Mexico

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications (Enhanced or Value-Added Services)

**INDUSTRY CLASSIFICATION:** CMAP 720006 Other Telecommunications Services (Limited to Enhanced or Value-Added Services)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Vías Generales de Comunicación (General Means of Communication Law), Libro Primero, Capítulo III (Concesiones, Permisos y Contratos)

Reglamento de Telecomunicaciones (Telecommunications Regulations), Capítulo 4, (Permisos)

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**DESCRIPTION:** Cross-border Services

1. A provider of enhanced or value-added services

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must obtain a permit issued by the Secretaría de Comunicaciones y Transportes.

2. Persons of Canada or the United States may provide all enhanced or value-added services, except videotext or enhanced packet switching services, without the need to establish local presence.

3. Videotext and enhanced packet switching services may not be provided on a cross-border basis.

Investment

1. Investors of another Party and their investments may own 100 percent of an enterprise established or to be established in Mexico that provides any telecommunication enhanced or value-added service, other than videotext or enhanced packet switching services.

2. Investors of another Party and their investments may own, directly or indirectly, up to 49 percent of an enterprise established or to be established in Mexico that provides videotext or enhanced packet switching services.

**DURATION:**

Cross-border Services

Paragraphs 2 and 3 of the description shall govern upon entry into force of this Agreement.

Commencing July 1, 1995, a person of Canada or the United States may provide videotext or enhanced packet switching services without the need to establish a local presence in Mexico.

Investment

Paragraph 1 of the description shall govern upon entry

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into force of this Agreement.

Commencing July 1, 1995, investors of another Party and their investments may own 100 percent of an enterprise established or to be established in Mexico that provides videotext or enhanced packet switching services.



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**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	Communications
<b>SUB-SECTOR:</b>	Transport Telecommunications General Means of Communication
<b>INDUSTRY CLASSIFICATION:</b>	CMAP 7200 Communications CMAP 7100 Transport CMAP 9411 Radio and Television
<b>TYPE OF RESERVATION:</b>	National Treatment (Articles 1102, 1202)
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	Ley de Vías Generales de Comunicación (General Means of Communication Law)  Ley Federal de Radio y Televisión. (Radio and Television Federal Law)  Reglamento del Servicio de Televisión por Cable (Cable Television Regulations)  Reglamento de Telecomunicaciones (Telecommunications Regulations)
<b>DESCRIPTION:</b>	<u>Investment</u>  Foreign Governments and Foreign state enterprises or their investments may not invest, directly or indirectly, in a Mexican enterprise providing services related to the general means of communication set out herein.

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**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Construction

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:** CMAP 501101 Residential or Housing Construction  
CMAP 501102 Non-residential Construction  
CMAP 501200 Construction of Urbanization Projects  
CMAP 501311 Construction of Industrial Plants  
CMAP 501312 Construction of Electricity Generation  
Plants  
CMAP 501321 Construction and Maintenance of  
Electricity Conduction Lines and Networks  
CMAP 501411 Mounting or Installing Concrete  
Structures  
CMAP 501412 Mounting or Installing Metallic  
Structures  
CMAP 501421 Marine and River Works  
CMAP 501422 Construction of Routes for Land  
Transportation  
CMAP 502001 Hydraulic and Sanitation Installations  
in Buildings  
CMAP 502002 Electrical Installations in Buildings  
CMAP 502003 Telecommunications Installations  
CMAP 502004 Other Special Installations  
CMAP 503001 Earth Movement  
CMAP 503002 Cement Works  
CMAP 503003 Underground Excavations  
CMAP 503004 Underwater Works  
CMAP 503005 Installation of Signs and Warnings  
CMAP 503006 Demoiition  
CMAP 503007 Construction of Water Purification or  
Treatment Plants  
CMAP 503009 Drilling Water Wells  
CMAP 503010 Construction Activities not Elsewhere

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Classified

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment), Capítulos II y III**

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment).**

**DESCRIPTION:** Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interests of an enterprise established or to be established in Mexico that carry out construction activities as set out in the classification mentioned above.

**DURATION:** Five years after the entry into force of this Agreement, investors of another Party and their investments may own 100 percent of the ownership interests of such enterprises without Comisión Nacional de Inversiones Extranjeras' prior approval.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Construction

**SUB-SECTOR:** Not applicable

**INDUSTRY CLASSIFICATION:** CMAP 503008 Exploration and drilling works and services done by specialized contractors excluding the case when these same works and services are done by personnel of PEMEX in the activities classified under industrial classification 220000.

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution), Título I Capítulo I.

Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo (Regulatory Law of Article 27 of the United Mexican States Political Constitution in matters related with Petroleum)

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment) Capítulo I

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**DESCRIPTION:** Investment

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Risk-sharing services contracts are prohibited.

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party and their investments to own, directly or indirectly, more than 49 percent of the ownership interests of an enterprise established or to be established in Mexico involved in "non-risk sharing" service contracts for the drilling of petroleum and gas wells.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Educational Services

**SUB-SECTOR:** Private Schools

**INDUSTRY CLASSIFICATION:** CMAP 921101 Preschool Private Educational Services  
CMAP 921102 Primary School Private Educational Services  
CMAP 921103 Secondary School Private Educational Services  
CMAP 921104 Middle High School Private Educational Services  
CMAP 921105 Higher Private Educational Services  
CMAP 921106 Private Educational Services that Combine Preschool, Primary, Secondary, Middle High and Higher Instruction

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

Ley Para la Coordinación de la Educación Superior (Law for the Coordination of the Higher Education), Capítulo II

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Ley Federal de Educación (Education Law), Capítulo III

**DESCRIPTION:**

Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interests of an enterprise established or to be established in Mexico that operates educational services as set out in the classification mentioned above.

**DURATION:**

Indeterminate



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Energy

**SUB-SECTOR:** Commercialization of Petroleum Products

**INDUSTRY CLASSIFICATION:** CMAP 623050 Retail Sales of Gas of liquified petroleum gas (LPG), including the installation of fixed deposits when the facilities are built by the same establishment.

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo** (Regulatory Law of Article 27 of the United Mexican States Political Constitution related to Oil).

**Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera** (Law to Promote Mexican Investment and to Regulate Foreign Investment). Capítulo I

**Reglamento de la Ley Reglamentaria del Artículo 27 Constitucional en el Ramo de Petróleo** (Reglamentation of the Regulatory Law of Article 27 of the United Mexican States Political Constitution related to Oil)

**Reglamento de la Distribución de Gas.**(Regulations of the Distribution of LPG). Capítulos I y II (Autorizaciones y permisos)

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**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera**  
(Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment).

**DESCRIPTION:**

Investment

Only Mexican nationals and Mexican enterprises with foreigners' exclusion clause may engage in the distribution of liquified Petroleum gas.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Energy

**SUB-SECTOR:** Commercialization of Petroleum Products

**INDUSTRY CLASSIFICATION:** CMAP 6260000 Retail Outlets of Gasoline and Diesel. Includes Lubricants, Oils and Additives for Resale in these Retail Outlets.

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo (Regulatory Law of Article 27 of the United Mexican States Political Constitution related to Oil)**  
**Reglamento de la Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo (Reglamentation of the Regulatory Law of Article 27 of the United Mexican States Political Constitution related to Oil).**

**DESCRIPTION:** Only Mexican nationals and Mexican enterprises with foreigners' exclusion clause may acquire, establish and operate retail outlets engaged in the resale of gasoline, diesel, lubricants, oils and additives.

**DURATION:** The description shall govern upon entry into force of this Agreement

**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Fishing

**SUB—SECTOR:** Fishing

**INDUSTRY CLASSIFICATION:** CMAP 130011 Fishing on the High Seas  
CMAP 130012 Coastal Fishing  
CMAP 130013 Fresh Water Fishing  
CMAP 130014 Fishing in the Economic Exclusive Zone

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Pesca (Fishing Law) Capítulo I.

Ley de Navegación y Comercio Marítimo  
(Navigation and Maritime Commerce Law), Libro II  
Título Unico Capítulo V

Ley Federal del Mar (Federal Sea Law)

Ley Federal de Aguas (Federal Law of Water)

Ley para Promover la Inversión Mexicana y  
Regular la Inversión Extranjera (Law to Promote  
Mexican Investment and to Regulate Foreign  
Investment).

Reglamento de la Ley para Promover la Inversión  
Mexicana y Regular la Inversión Extranjera  
(Regulations of the Law to Promote Mexican  
Investment and to Regulate Foreign Investment).

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**DESCRIPTION:**

Investment

With respect to enterprises established or to be established in Mexico performing coastal fishing, fresh water fishing and fishing in the exclusive economic zone, investors of another Party and their investments may own, directly or indirectly, up to 49 percent of the ownership interest of such enterprises. With respect to enterprises established or to be established in Mexico performing fishing on the high seas, prior approval of the Comision Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interests of enterprises established or to be established in Mexico performing fishing on the high seas.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Manufacturing and Assembly of Goods

**SUB-SECTOR:** Auto Parts Industry

**INDUSTRY CLASSIFICATION:** CMAP 383103 Manufacturing of Parts and Accessories for Electrical Automotive Systems  
CMAP 384121 Manufacture and Assembly of Car and Truck Bodies and Tows  
CMAP 384122 Manufacture of Car and Trucks Motors and Their Parts  
CMAP 384123 Manufacture of Car and Truck Transmission System Parts  
CMAP 384124 Manufacture of Car and Truck Suspension System Parts  
CMAP 384125 Manufacture of Car and Truck Brake System Parts and Accessories  
CMAP 384126 Manufacture of Other Car and Truck Parts and Accessories

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Annex 300-A (Trade and Investment in the Automotive Industry Sector) of this Agreement.

Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment).

Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican

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Investment and to Regulate Foreign Investment).

Decreto para el fomento y modernización de la Industria Automotriz (Decree for the Development and Modernization of the Automotive Industry) ("Auto Decree").

Decreto que Determina Reglas para la Aplicación del Decreto para el Fomento y Modernización de la Industria Automotriz (Resolution that Establishes Rules for the Implementation of the Auto Decree) ("Auto Decree Implementing Regulations").

**DESCRIPTION:**

Investors of another Party and their investments may own, directly or indirectly, up to 49 percent of the ownership interests of an enterprise established or to be established in Mexico and engaged in the auto parts industry.

Investors of another Party and their investments that qualify as "national suppliers" may own 100% of an enterprise established or to be established in Mexico engaged in the manufacture of specified auto parts.

To qualify as "national supplier", the enterprise must:

- (a) obtain a national value added calculated as set out in the "Auto Decree Implementing Regulations" of at least 20%; and
- (b) not be controlled or related, directly or indirectly, to a manufacturer of motor vehicles.

**DURATION:**

Annex 300-A (Trade and Investment in the Automotive Sectors) of Chapter Three (National Treatment and Market Access) shall govern.

Commencing on the sixth year after the entry into

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force of this Agreement, investors of another Party and their investments may own 100 percent of the ownership interests of an enterprise established or to be established in Mexico engaged in auto parts industry.

(See also page I-M-39 of this Schedule - performance requirements)



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Manufacture of Goods

**SUB-SECTOR:** Automotive Industry

**INDUSTRY CLASSIFICATION:** CMAP 383103 Manufacturing of Parts and Accessories for Electrical Automotive Systems  
CMAP 3841 Automotive Industry.  
CMAP 384121 Manufacture and Assembly of Car and Truck Bodies and Tows  
CMAP 384122 Manufacture of Car and Trucks Motors and Their Parts  
CMAP 384123 Manufacture of Car and Truck Transmission System Parts  
CMAP 384124 Manufacture of Car and Truck Suspension System Parts  
CMAP 384125 Manufacture of Car and Truck Brake System Parts and Accessories  
CMAP 384126 Manufacture of Other Car and Truck Parts and Accessories

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Annex 300-A (Trade and Investment in the Automotive Sector) of Chapter Three (Market Access) of this Agreement

Decreto para el fomento y modernización de la Industria Automotriz (Decree for the Development and Modernization of the Automotive Industry) ("Auto Decree")

**Decreto que Determina Reglas para la Aplicación del Decreto para el Fomento y Modernización de la Industria Automotriz (Resolution that Establishes Rules for the Implementation of the Auto Decree) ("Auto Decree Implementing Regulations")**

**DESCRIPTION:**

Investment

Annex 300-A (Trade and Investment in the Automotive Sector) of Chapter Three (Market Access) shall govern. A summary of performance requirements in the automotive industry follows:

- (a) National value added shall constitute at least 20% of the total value of sales of an enterprise of the autoparts industry or of a "National Supplier". In calculating the national value added, custom duties shall be included in the value of imports.
- (b) A manufacturer of motor vehicles must attain specified levels of national value added from suppliers of Mexican parts (enterprises of the autoparts industry and national suppliers) and must comply with specified trade balance requirements in order to receive permits for the importation of new motor vehicles.
- (c) Manufacturers of autotransportation vehicles may only import the types of autotransportation vehicles it produces in Mexico and in a quantity not exceed 50% of the number of such vehicles it produces in Mexico in a year.

**DURATION:**

Annex 300-A (Trade and Investment in the Automotive Sector) of Chapter Three (Market Access) shall govern upon entry into force of this Agreement

Commencing on the sixth year after entry into force

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of this Agreement Mexico will eliminate restrictions on the number of an autotransportation vehicles that a manufacture autotransportation vehicles may import.

Commencing on the eleventh year after the entry into force of this Agreement, Mexico will eliminate all performance requirements in the Auto Decree and the "Auto Decree Implementing Regulations".

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Manufacture of Goods

**SUB-SECTOR:** Maquiladora Industry

**INDUSTRY CLASSIFICATION:** Not applicable

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Aduanera (Customs Law)

**DESCRIPTION:** **Decreto para el Fomento y Operación de la Industria Maquiladora de Exportación (Decree for the Promotion and Operation of Maquiladora Industry for Export)**

Investment

Persons authorized by the Secretaría de Comercio y Fomento Industrial to operate under the "Maquiladora Decree" may not sell to the domestic market more than 50% of the total value of its exports.

**DURATION:** Domestic market may not exceed:

(a) during the first year of entry into force of this Agreement, 55% of the total value of its exports;

(b) during the second year after the date of entry into force of this Agreement, 60% of the total value of its exports;

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- (c) during the third year after the date of entry into force of this Agreement, 65% of the total value of its exports;
- (d) during the fourth year after the date of entry into force of this Agreement, 70% of the total value of its exports;
- (e) during the fifth year after the date of entry into force of this Agreement, 75% of the total value of its exports;
- (f) during the sixth year after the date of entry into force of this Agreement, 80% of the total value of its exports;
- (g) during the seventh year after the date of entry into force of this Agreement, 85% of the total value of its exports;
- (h) from the eighth year after the date of entry into force of this Agreement and thereafter, persons may not be subject to this requirement.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Manufacture of Goods

**SUB-SECTOR:** Not applicable

**INDUSTRY CLASSIFICATION:** Not applicable

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Reglamentaria del Artículo 131 de la  
Constitución Política de los Estados Unidos  
Mexicanos en Materia de Comercio Exterior  
(Mexican Foreign Trade Act)

Decreto para el Fomento y Operación de las  
Empresas Altamente Exportadoras" (Decree for the  
Promotion and Operation of High-Export Firms)

**DESCRIPTION:** Investment

1. "Direct exporters" authorized by the Secretaría de Comercio y Fomento Industrial to operate under the "ALTEX Decree" must export at least 40% of their total sales or \$2,000,000. U.S. dollars.
2. "Indirect exporters" authorized by the Secretaría de Comercio y Fomento Industrial to operate under the "ALTEX Decree" must export at least 50% of their total sales.

**DURATION:** Seven years after the entry into force of this Agreement, direct and indirect exporters will not be subject to the above mentioned percentage.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Manufacture of Goods

**SUB-SECTOR:** Not applicable

**INDUSTRY CLASSIFICATION:** Not applicable

**TYPE OF RESERVATION:** Performance Requirements (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior (Mexican Foreign Trade Act).  
  
Ley Aduanera (Customs Law).  
  
Programa de Importación Temporal para Producir Artículos de Exportación (Temporal Import Program to Produce Export Goods).

**DESCRIPTION:** Investment  
  
Persons authorized by Secretaría de Comercio y Fomento Industrial to operate under the "PITEX Decree" are required to:

(a) export at least 30% of their total production for the temporary entry of machinery, equipment, instruments, molds and durable tools used in the manufacturing process; equipment used to handle materials directly related to exported such goods; and research, industrial security, quality control,

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communication, training personnel, computer and environmental devices, equipment and accessories or others related with the process of the goods exported.

- (b) export at least 10% of their total production or \$500,000 U.S.dollars for the temporary import of raw materials, parts and components totally used as inputs on the export merchandise, packages, bottles, containers and trailer's containers which are fully used to contain export merchandise; fuel, lubricants, auxiliary materials, reparation of tools and equipment consumed in the export process.

**DURATION:**

As from the eighth year after the date of entry into force of this Agreement such persons will not be subject to the above mentioned percentages.



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Manufacturing Industry

**SUB-SECTOR:** Artificial explosives, fireworks, firearms and cartridges

**INDUSTRY CLASSIFICATION:** CMAP 352236 Manufacturing of Artificial Explosives and Fireworks  
CMAP 382208 Manufacturing of Firearms and Cartridges

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Federal de Armas de Fuego y Explosivos (Federal Law of Firearms and Explosives) Título III Capítulo I

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)

Reglamento de la Ley Federal de Armas de Fuego y Explosivos (Regulations of the Federal Law of Firearms and Explosives) Capítulo IV

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

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**DESCRIPTION:**

Investment

Investors of another Party and their investments may own, directly or indirectly, up to 49 percent of the ownership interest of an enterprise established or to be established in Mexico that manufacture artificial explosives and fireworks, and ammunition as set out in the classification mentioned above.

Foreigners cannot appoint directors nor become members of the board of directors of such enterprises.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Mining

**SUB-SECTOR:** Extraction and Exploitation of Minerals

**INDUSTRY CLASSIFICATION:** CMAP 210000 Exploitation of Mineral Carbon  
CMAP 231000 Extraction of Minerals Containing Iron  
CMAP 232001 Extraction of Minerals Containing Gold, Silver and Other Precious Minerals and Metals  
CMAP 232002 Extraction of Mercury and Antimony  
CMAP 232003 Extraction of Industrial Minerals Containing Lead and Zinc  
CMAP 232004 Extraction of Minerals Containing Copper  
CMAP 232006 Extraction of Other Metallic Minerals Not Containing Iron  
CMAP 291001 Extraction of Sand and Gravel  
CMAP 291002 Extraction of Marble and other Gravels for construction  
CMAP 291003 Exploitation of Feldspar  
CMAP 291004 Extraction of Kaolin, Clay and Refractory Minerals  
CMAP 291005 Extraction of Limestones  
CMAP 291006 Exploitation of Gypsum  
CMAP 292001 Extraction of Barium Oxide  
CMAP 292002 Extraction of Phosphoric Rock  
CMAP 292003 Extraction of Fluorite  
CMAP 292004 Extraction of Suiphur  
CMAP 292005 Extraction of Other Minerals in Order to Obtain Chemicals  
CMAP 292006 Extraction of Salt  
CMAP 292007 Extraction of Graphite  
CMAP 292008 Extraction of other Non Metallic Minerals

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**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Minera (Mining Law)

Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)

Reglamento de la Ley Minera (Mining Law Regulations)

Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**DESCRIPTION:** Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interests of an enterprise established or to be established in Mexico engaged in the extraction or exploitation of all kind of minerals.

**DURATION:** The description shall govern upon the entry into force of this Agreement.

Commencing on the sixth year after the entry into force of this Agreement investors of another Party and their investments may own 100 percent of ownership interests of an enterprise established or to be established in Mexico engaged in such activities.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Printing, Editing and Associated Industries

**SUB-SECTOR:** Newspaper Publishing

**INDUSTRY CLASSIFICATION:** CMAP 342001 Newspaper Publishing

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)**

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)**

**DESCRIPTION:** Investment

Investors of another Party and their investments may own 100 percent of an enterprise established or to be established in Mexico engaged in the simultaneous printing and distribution in Mexico of a daily newspaper that is published outside of Mexico.

Investors of another Party and their investments may own, directly or indirectly, up to 49 percent of an enterprise established or to be established in Mexico engaged in the publication of daily newspapers written primarily for a Mexican audience and distributed in Mexico.

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For purposes of this reservation, daily newspapers are those published at least five days a week.

**DURATION:**

The description shall govern upon entry into force of this Agreement.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Other Services Provider by natural persons

**SUB-SECTOR:** Medical Doctors

**INDUSTRY CLASSIFICATION:** CMAP 9231 Private Medical, Odontological and Veterinary Services (limited to medical and odontological services)

**TYPE OF RESERVATION:** National Treatment (Article 1202)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Federal del Trabajo (Federal Labor Law)

**DESCRIPTION:** Cross-Border Services  
Only Mexican nationals licensed as doctors in Mexico may provide medical in-house services in Mexican enterprises.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Services Provider by natural persons

**SUB-SECTOR:** Specialized Personnel

**INDUSTRY CLASSIFICATION:** CMAP 951012 Custom Brokers and Representation Agency Services (limited to shippers' export declarations)

**TYPE OF RESERVATION:** National Treatment (Article 1202)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley Aduanera, (Customs Law) Capítulo Unico, Título Noveno

**DESCRIPTION:** Cross-Border Services

A shipper's export declaration must be processed by a Mexican national licensed as a customs broker (agente aduanal) or by the representative (apoderado aduanal) employed by the exporter and authorized by the Secretaría de Hacienda y Crédito Público for this purpose.

**DURATION:** Indeterminate; subject to discussion by the Parties five years after the entry into force of this Agreement.



**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Other Services Provider by natural persons

**SUB-SECTOR:** Professional Services

**INDUSTRY CLASSIFICATION:** CMAP 9510 Professional, Technical and Specialized Services (limited to Professional Services)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** Ley Reglamentaria del Artículo 5o. Constitucional, relativo al ejercicio de las profesiones en el Distrito Federal y sus regulaciones (Regulatory Law of Article 5 of the United Mexican States Political Constitution in relation to Professional Services and its regulations) Capítulo III, Sección Tercera, Capítulos IV y V

Equivalent State Laws

Ley General de Población (General Population Law) Capítulo III

**DESCRIPTION:** Cross-Border Services

Only Mexican nationals may be licensed at the federal level, in the Distrito Federal, and in the States of Baja California Sur, Colima, Chihuahua, Durango, Jalisco, Estado de México, Morelos, Nayarit, Nuevo León, Puebla, Querétaro, Sonora, Tabasco and Veracruz in professions that require a "cédula professional".

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Only a permanent resident (inmigrado or inmigrante) in Mexico may be granted a waiver of the citizenship requirement by the Supreme Court to be licensed as a professional at the federal level.

**DURATION:**

Citizenship and permanent residency requirements are subject to removal within two years after the entry into force of this Agreement in accordance with Article 1210(3). Upon removal of these requirements, a foreign professional will be required to have non-immigrant visitor status and an address in Mexico.

With respect to legal services see Mexico's Schedule in Annex II, p. M-10.

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ANNEX I  
Schedule of Mexico

**SECTOR:** Professional, Technical and Specialized Services and Services Provided by natural persons

**SUB-SECTOR:** Professional Services

**INDUSTRY CLASSIFICATION:** CMAP 951002 Legal Services and Foreign Legal Consultants

**TYPE OF RESERVATION:** National Treatment (Article 1102 and 1202)  
Most-Favored-Nation Treatment (Articles 1103 and 1203)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** Ley Reglamentaria del Artículo 5o. Constitucional, relativo al ejercicio de las profesiones en el Distrito Federal (Regulatory Law of Article 5' of the United Mexican States Political Constitution in relation to Professional Services), Capítulo I, Capítulo III, Sección Tercera

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**DESCRIPTION:** Cross Border Services and Investment

Except as provided for in this reservation, only lawyers licensed in Mexico may have an ownership interest in a law firm established in Mexico.

Lawyers licensed in a Canadian province that allows

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partnerships between lawyers licensed in that province and lawyers licensed in Mexico, will be permitted to form partnerships with lawyers licensed in Mexico.

The number of lawyers licensed in Canada serving as partners, and their ownership interest in the partnership, shall not exceed the number of lawyers licensed in Mexico serving as partners, and their ownership interest in the partnership. A lawyer licensed in Canada shall not be allowed to practice or advise on Mexican law.

A law firm established in Mexico resulting from the partnership of lawyers licensed in Canada and lawyers licensed in Mexico may hire lawyers licensed in Mexico as employees.

Lawyers licensed in Canada will be subject to the regime for foreign legal consultants established in page M-2 of Schedule VI.

**DURATION:**

The description shall govern upon entry into force of this Agreement.

**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	Professional, Technical and Specialized Services and Services Provided by natural persons
<b>SUB-SECTOR:</b>	Professional Services
<b>INDUSTRY CLASSIFICATION:</b>	CMAP 951003 Accounting and Auditing Services (limited to accounting services)
<b>TYPE OF RESERVATION:</b>	National Treatment (Article 1202) Local Presence (Article 1205)
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	Código Fiscal de la Federación, (Federal Tax Code), Título Tercero, Capítulo Unico  Reglamento del Código Fiscal de la Federación, (Regulations of the Federal Tax Code)  Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)
<b>DESCRIPTION:</b>	<u>Cross-Border Services</u>  Only Mexican nationals who are licensed as accountants in Mexico are authorized to perform audits for tax purposes on behalf of the following:  (a) state enterprises,  (b) enterprises that are authorized to receive tax-deductible donations,

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- (c) enterprises with income, capital stock, number of employees, and operations above levels specified annually by the Secretaría de Hacienda y Crédito Público, or
- (d) enterprises undergoing a merger or divestiture.

**DURATION:**

Citizenship and permanent residency requirements are subject to removal within two years after the entry into force of this Agreement in accordance with Article 1210(3). Upon removal of these requirements, a foreign professional will be required to have non-immigrant visitor status and an address in Mexico.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Services Provided by natural persons

**SUB-SECTOR:** Specialized Services

**INDUSTRY CLASSIFICATION:** CMAP 951001 Notary Public (limited to Corredores Públicos)

**TYPE OF RESERVATION:** National Treatment (Articles 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** Código de Comercio (Commerce Code), Libro Primero, Título Tercero

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera**  
(Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera** (Law to Promote Mexican Investment and to Regulate Foreign Investment)

**DESCRIPTION:** Cross-Border Services

1. Only a Mexican by birth may be licensed to be a commercial notary public.
2. A commercial notary public may not have any business affiliations with any person to provide commercial notary public services.

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**DURATION:**

1. Citizenship and permanent residency requirements are subject to removal within two years after the entry into force of this Agreement in accordance with Article 1210(3). Upon removal of these requirements, a foreign professional will be required to have non-immigrant visitor status and an address in Mexico.
2. Indeterminate



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Services Provided by Natural Persons

**SUB-SECTOR:** Specialized Services

**INDUSTRY CLASSIFICATION:** CMAP 951001 Notary Public

**TYPE OF RESERVATION:** National Treatment (Article 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** **Ley del Notariado del Distrito Federal (Notary Law of the Federal District, and its equivalents at state laws)**

**Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)**

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)**

**DESCRIPTION:** Cross-Border Services and Investment

Only Mexicans by birth may be licensed to be notaries public.

A notary public may not have any business affiliations with any person to provide notary public services.

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DURATION:

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Services Provided by Natural Persons

**SUB-SECTOR:** Specialized Services

**INDUSTRY CLASSIFICATION:** CMAP 923121 Private Veterinary Services to Cattle

**TYPE OF RESERVATION:** National Treatment (Article 1202)

**LEVEL OF GOVERNMENT:** Federal, State and Local

**LEGAL CITATION:** Reglamento de Control de Productos Químico-Farmacéuticos, Biológicos, Alimenticios, Equipos y Servicios para Animales, (Chemical Products Control Regulations) Capítulos IV y V

**DESCRIPTION:** Cross-Border Services

Veterinarians responsible for enterprises managing chemical, pharmaceutical and biological goods for application to animals must be Mexican nationals. A Mexican national who is a licensed professional must be responsible for the laboratories of such enterprises.

**DURATION:** Citizenship and permanent residency requirements are subject to removal within two years after the entry into force of this Agreement in accordance with Article 1210(3). Upon removal of these requirements, a foreign professional will be required to have non-immigrant visitor status and an address in Mexico.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Retail Commerce

**SUB-SECTOR:** Sales of Non-Food Products in Specialized Establishment

**INDUSTRY CLASSIFICATION:** CMAP 623087 Sales of Firearms, Cartridges and Ammunition  
CMAP 612024 Wholesale Commerce, not elsewhere Classified (limited to a firearms, cartridges and ammunition)

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley Federal de Armas de Fuego y Explosivos** (Federal Law of Firearms and Explosives), Título Tercero, Capítulo I

**Reglamento de la Ley de Armas de Fuego y Explosivos** (Regulation of the Federal Law of Firearms and Explosives), Capítulo IV

**Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera** (Law to Promote Mexican Investment and to Regulate Foreign Investment)

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera** (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

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**DESCRIPTION**

Investment

Investors of another Party and their investments may own, directly and indirectly, up to 49 percent of the ownership interest of an enterprise established or to be established in Mexico that sells firearms, cartridges and ammunition as set out in the classification mentioned above

Foreigners cannot appoint or elect members to be directors nor become members of the board of directors of such enterprises.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	Religious Services
<b>SUB-SECTOR:</b>	Not applicable
<b>INDUSTRY CLASSIFICATION:</b>	CMAP 929001 Religious Services
<b>TYPE OF RESERVATION:</b>	Senior Management (Article 1107)
<b>LEVEL OF GOVERNMENT</b>	Federal
<b>LEGAL CITATION:</b>	Ley de Asociaciones Religiosas y Culto Privado (Religious Associations Law). Título II, Capítulo II
<b>DESCRIPTION:</b>	<u>Investment</u>  The representatives of the religious associations in Mexico must be Mexican nationals.
<b>DURATION:</b>	Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Services to Agriculture and Cattle

**SUB-SECTOR:** Services to Agriculture

**INDUSTRY CLASSIFICATION:** CMAP 971010 Agriculture Services Supply

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Constitución Política de los Estados Unidos Mexicanos, (United Mexican States Political Constitution) Article 32**  
**Reglamento de la Ley de Sanidad Fitopecuaria (Regulation of the Phitosanitary Law), Capítulo VII**

**DESCRIPTION:** Cross-Border Services  
  
A concession granted by the Secretaría de Agricultura y Recursos Hidráulicos is required to spray pesticides.  
  
Only Mexican nationals or Mexican enterprises may obtain such concession.

**DURATION:** The requirement of a concession will be replaced with a permit requirement, and the citizenship requirement will be eliminated, in accordance with the schedule of liberalization for specialty air services.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** CMAP 713001 Transportation  
Services on Mexican-Registered Aircraft  
CMAP 713002 Air Taxi Transportation Services

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera**(Law to Promote Mexican Investment and to Regulate Foreign Investment), Capítulo I

**Reglamento de la Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera**(Regulation of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**Ley de Vías Generales de Comunicación**(General Means of Communications Law), Libro Cuarto, Capítulo I-XII

**DESCRIPTION:** Investment

Investors of another Party and their investments may own directly or indirectly, up to 25 percent of the voting interest in an enterprise established or to be established in Mexico that provides commercial air



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services. The chairman and at least two-thirds of the board of directors and two-thirds of managing officers of such enterprises must be Mexican nationals.

**DURATION:**

Description shall govern upon entry into force of this Agreement.

**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973303 Specialty Air Services

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Vías Generales de Comunicación (General Means of Communication Law), Libro Cuarto, Capítulo XII

**DESCRIPTION:** Cross-Border Services

1. A permit issued by the Secretaría de Comunicaciones y Transportes (SCT) is required to provide all specialty air services in the territory of Mexico.
2. Such permit may be issued to a person of Canada and the United States to provide services related to flight training, forest fire-management, fire-fighting, glider towing, and parachute jumping in Mexico, subject to compliance with national safety rules.
3. Such permit may not be issued to a person of Canada or the United States to provide: aerial advertising, aerial sightseeing services, aerial construction, heli-logging, inspection (surveillance), mapping, photography, surveying and aerial spraying

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services.

Investment

Investors of another Party and their investments may own, directly or indirectly, up to 25 percent of the voting interest in an enterprise established or to be established in Mexico that provides specialty air services. The chairman and at least two-thirds of the board of directors and two-thirds of managing officers of such enterprises must be Mexican nationals.

**DURATION:**

Cross-Border Services

Paragraphs 2 and 3 of the description shall govern upon entry into force of this Agreement.

A person of Canada or the United States will be issued a permit by SCT to provide, subject to compliance with safety requirements, the following specialty air services:

- (a) three years after entry into force of the Agreement, aerial advertising, aerial sightseeing services, aerial construction and heli-logging.
- (b) six years after entry into force of this Agreement, inspection (surveillance), mapping, photography, surveying and aerial spraying services.

Investment

Description shall govern upon entry into force of this Agreement

**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** CMAP 384205 Aircraft Building, Assembly and Repair (limited to aircraft repair)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** **Constitución Política de los Estados Unidos Mexicanos** (United Mexican States Political Constitution), Artículo 32

**Ley de Vías Generales de Comunicación** (General Means of Communication Law), Libro Cuarto, Capítulo XV

**Reglamento de Talleres Aeronáuticos** (Aeronautical Workshops Regulation) Article 8

**DESCRIPTION:** Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to establish and operate an aircraft repair facility. Only Mexican nationals and Mexican enterprises may obtain such concession.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Air Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973301 Air Navigation Services  
CMAP 973302 Airport and Heliport Administration Services

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution), Artículo 32

Ley de Vías Generales de Comunicación (General Means of Communication Law), Libro Primero, Capítulo II y II, Libro Cuarto, Capítulo IX

Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment) Libro Primero, Capítulo II y III, Libro Cuarto, Capítulo IX

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulation of the Law to Promote Mexican Investment and to Regulate Foreign Investment)

**DESCRIPTION:** Cross-Border Services

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A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, airports and heliports and to provide air navigation services. Only Mexican nationals and Mexican enterprises may obtain such concession.

Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own, directly or indirectly, more than 49 percent of the ownership interest of an enterprise established or to be established in Mexico engaged in the following activities:

- (a) construction and operation of airports or heliports;
- (b) operation of airports or heliports; or
- (c) provision of air navigation services.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973101 Bus and Truck Station Administration and Ancillary Services (main bus and truck terminals and bus and truck stations)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Vías Generales de Comunicación (General Means of Communication Law), Libro Primero, Capítulo II y III, Libro Segundo, Título Segundo, Capítulos I y II, Título Tercero, Capítulo Unico

Reglamento para el Aprovechamiento del Derecho de Vía de las Carreteras Federales y Zonas Aledañas (Regulations for the Use of the Right of Way of Federal Roads and their Adjacent Areas), Capítulos II y IV

Reglamento del Autotransporte Federal de Pasajeros, (Regulations of the Federal Transport of Passengers), and 34Capítulo IV

**DESCRIPTION:** Cross-Border Services

A permit issued by the Secretaría de Comunicaciones y Transportes is required to establish or operate a bus or truck station or terminal. Only Mexican nationals and Mexican enterprises with a foreigners' exclusion

clause may obtain such permit.

Investment

Foreign investment is not permitted in an enterprise established or to be established in Mexico engaged in the establishment or operation of bus or truck station or terminals as described in the industry classification mentioned above.

**DURATION:**

Cross-Border Services

Description shall govern upon entry into force of this Agreement.

Three years after signature of this Agreement, such permit may be obtained by Mexican nationals and Mexican enterprises.

Investment

With respect to enterprises established or to be established in Mexico providing such service investors of another Party and their investment may own:

- (a) three years after the signature of this Agreement, up to 49 percent of ownership interest of the enterprise;
- (b) seven years after the entry into force of this Agreement, up to 51 percent of the ownership interest of the enterprise; and
- (c) ten years after the entry into force of this Agreement, up to 100 percent of the enterprise.



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973102 Road and Bridge Administration  
Services and Ancillary Services

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos  
Mexicanos (United Mexican States Political  
Constitution), Artículo 32

**Ley de Vías Generales de Comunicación (General  
Means of Communication Law), Libro Primero,  
Capítulos I, II y III, Libro Segundo, Título Segundo,  
Capítulo II, Título Tercero, Capítulo Unico**

**DESCRIPTION:** Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to provide road and bridge administration services and ancillary services. Only Mexican nationals and Mexican enterprises may obtain such concession.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 711312 Urban and Suburban Passenger  
Transportation Service by Bus  
CMAP 711315 Collective Automobile Transportation  
Service  
CMAP 711316 Established Route Automobile  
Transportation Service  
CMAP 711317 Automobile Transportation Service  
from a Specific Station.  
CMAP 711318 School and Tourist Transportation  
Service (limited to school transportation service)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** *Ley para Promover la Inversión Mexicana y  
Regular la Inversión Extranjera* (Law to Promote  
General Investment and to Regulate Foreign  
Investment)

*Ley de Vías Generales de Comunicación*  
(General Means of Communication Law)

*Reglamento de la Ley para Promover la Inversión  
Mexicana y Regular la Inversión Extranjera*  
(Regulation of the Law to Promote General  
Investment and to Regulate Foreign Investment)

*Reglamento para el Autotransporte Federal de  
Pasajeros* (Regulations of the Federal Transport of

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Passengers)

State laws [to be provided]

**DESCRIPTION:**

Cross-Border Services and Investment

Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may provide local bus services, school bus services and taxi and other collective transportation services.

**DURATION:**

Indeterminate

ANNEX I  
Schedule of Mexico

**SECTOR:** Transportation

**SUB—SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 711201 Road Transport Services for Construction Materials  
CMAP 711202 Road Transport Moving Services  
CMAP 711203 Other Services of Specialized Cargo Transportation  
CMAP 711204 General Trucking Services  
CMAP 711311 Inter-City Busing Services  
CMAP 711318 School and Tourist Transportation Services (limited to tourist transportation services).

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** State

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution), Artículo 32

State laws and its regulations equivalent to Ley de Vías Generales de Comunicación (General Means of Communication Law) [to be provided] Libro Primero, Título Segundo, Capítulo II, Libro Primero, Capítulo III

**DESCRIPTION:** Cross-Border Services

In each state, a concession is required to provide intrastate bus and truck services on roads under the jurisdiction of such state. Such concession is provided

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on the basis of economic needs tests.  
Preferences in the granting of such concessions by states is accorded to natural persons born in such states and enterprises constituted by persons born in such states, including the states of Michoacán, San Luis Potosí, Tamaulipas, Tlaxcala and Zacatecas.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 711201 Road Transport Services for  
Construction Materials  
CMAP 711202 Road Transport Moving Services  
CMAP 711203 Other Services of Specialized Cargo  
Transportation  
CMAP 711204 General Trucking Services  
CMAP 711311 Inter-City Busing Services  
CMAP 711318 School and Tourist Transportation  
Services (limited to tourist transportation services)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Vías Generales de Comunicación (General  
Means of Communication Law), and its regulations  
[to be provided]

Ley para Promover la Inversión Mexicana y  
Regular la Inversión Extranjera, (Law to Promote  
General Investment and to Regulate Foreign  
Investment)

Memorandum de Entendimiento entre los Estados  
Unidos Mexicanos y los Estados Unidos de  
Norteamérica para la promoción de Servicios de  
Transporte Turístico de Ruta Fija, (Memorandum  
of Understanding Between the United States of  
America and the United Mexican States on Facilitation

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of Charter/Tour Bus Service)

**Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera,**  
(Regulation of the Law to Promote General Investment and to Regulate Foreign Investment)

**DESCRIPTION:**

Cross-Border Services

A permit issued by the Secretaría de Comunicaciones y Transportes is required to provide bus or truck services for the transportation of goods or passengers to or from the territory of Mexico. Only Mexican nationals and Mexican enterprises with a foreigners' exclusion clause may provide such services, except that a person of Canada or the United States may be granted permanent operating authority to provide international charter or tour bus services into the territory of Mexico.

Only Mexican nationals, and Mexican enterprises with a foreigners' exclusion clause, using Mexican registered equipment and drivers who are Mexican nationals, may provide bus and truck services for the transportation of goods and passengers between two points in the territory of Mexico.

Investment

Foreign investment is not permitted in an enterprise established or to be established in Mexico engaged in bus or truck transportation services as described in the industry classification mentioned above.

**DURATION:**

Cross-Border Services

Description shall govern upon entry into force of this Agreement.

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A person of Canada or of the United States will be permitted to provide:

- (a) three years after signature of this Agreement, cross-border truck services to or from the territory of border states (Baja California, Sonora, Chihuahua, Coahuila, Tamaulipas and Nuevo León), and such person will be permitted to enter and depart Mexico through different ports of entry in such states;
- (b) three years after signature of this Agreement, only Mexican nationals and Mexican enterprises, using Mexican-registered equipment and drivers who are Mexican nationals, may provide bus and truck services for the transportation of goods and passengers between two points in the territory of Mexico.
- (c) three years after entry into force of this Agreement, cross-border scheduled bus services to or from the territory of Mexico; and
- (d) six years after entry into force of this Agreement, cross-border truck services to or from the territory of Mexico.

#### Investment

With respect to enterprises established or to be established in Mexico providing such services, investors of another Party may own:

- (a) three years after signature of this Agreement, up to 49 percent of ownership of an enterprise providing bus services, tourist transportation services and truck services for the transportation of international cargo, between



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points in the territory of Mexico;

- (b) seven years after entry into force of this Agreement, up to 51 percent of the ownership interest of an enterprise providing bus services, tourist transportation services or truck services for the transportation of international cargo, between points in the territory of Mexico; and
- (c) ten years after entry into force of this Agreement, up to 100 percent ownership interest of an enterprise providing bus services, tourist services and truck services for the transportation of international cargo, between points in the territory of Mexico.

Foreign ownership in enterprises providing truck services for the carriage of domestic cargo will not be permitted. Indeterminate.

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB-SECTOR:** Land Transportation and Water Transportation

**INDUSTRY CLASSIFICATION:** CMAP 501421 Marine and River Works  
CMAP 501422 Construction of Roads for Land Transportation

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos, (Political Constitution of the United Mexican States) Artículo 32  
  
Ley de Vías Generales de Comunicación (General Means of Communications Law) Libro Primero, Capítulos I, Libro Segundo, Capítulo I

**DESCRIPTION:** Cross-Border Services  
  
A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, marine and river works and roads for land transportation. Such concession may be granted only to Mexican nationals and Mexican enterprises.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	Transportation
<b>SUB—SECTOR:</b>	Non-energy pipelines
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	National Treatment (Article 1202) Local Presence (Article 1205)
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<b>Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution)</b>  <b>Ley de Vías Generales de Comunicación (General Means of Communication Law), Articles 8, 12 and 5</b>  <b>Ley Federal de Aguas(Waters Federal Law)</b>
<b>DESCRIPTION:</b>	<u>Cross-Border Services</u>  A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, pipelines carrying non-energy goods, excluding basic petrochemicals. Only Mexican nationals and Mexican enterprises may obtain such concession.
<b>DURATION:</b>	Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Freight and Passenger Water Transportation

**INDUSTRY CLASSIFICATION:** CMAP 712011 International Maritime Transportation Services  
CMAP 712012 Cabotage Maritime Services  
CMAP 712013 International and Cabotage Towing Services  
CMAP 712021 River and Lake Transportation Services  
CMAP 712022 Internal Port Water Transportation Services

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation (Articles 1103, 1203)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Vías Generales de Comunicación (General Means of Communication Law), Capítulo III, Libro Tercero

Ley para el Desarrollo de la Marina Mercante (Law for the Development of the Merchant Navy), Capítulos I y III

Ley de Navegación y Comercio Marítimos (Navigation and Maritime Navigation Law)

Libro Segundo, Título Unico, Capítulos I y III  
Ley Para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Law to Promote Mexican Investment and to Regulate Foreign Investment)

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**DESCRIPTION:**

Cross-Border Services and Investment

Maritime cabotage services, including off-shore maritime services, are reserved to Mexican-flagged vessels. A waiver may be granted by the Secretaría de Comunicaciones y Transportes when Mexican-flagged vessels are not able to provide such services. Only Mexican flagged vessels may transport cargo owned by the Federal Government.

Foreign-flagged vessels may provide international maritime services in Mexico on the basis of reciprocity with the relevant country. Only Mexican-flagged towing vessels may provide towing services from Mexican ports to foreign ports. When such towing vessels are not able to provide such services, the Secretaría de Comunicaciones y Transporte may provide a permit to foreign-flagged towing vessels. Only a Mexican national or a Mexican enterprise with a foreigners' exclusion clause may own vessels registered and flagged as Mexican. All members of the board of directors and managers of such enterprise must be Mexican nationals.

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments, to own, directly or indirectly, more the 49 percent of the ownership interest of an enterprise established or to be established in Mexico operating foreign-flagged vessels providing international maritime transport services.

**DURATION:**

Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

<b>SECTOR:</b>	Transportation
<b>SUB-SECTOR:</b>	Specialized Personnel
<b>INDUSTRY CLASSIFICATION:</b>	CMAP 951012 Customs Brokers (Agentes Aduanales)
<b>TYPE OF RESERVATION:</b>	National Treatment (Article 1102)
<b>LEGAL CITATION:</b>	Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution)  Ley Aduanera (Customs Law)
<b>DESCRIPTION:</b>	<u>Investment</u>  Only Mexican nationals by birth may serve as customs brokers.
<b>DURATION:</b>	Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** CMAP 1300 Fishing

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation (Article 1203)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican Stated Political Constitution), Artículo 32

Ley de Pesca (Fishing Law), Capítulos I y II

Ley de Navegación y Comercio Marítimo (Navigation and Maritime Commerce Law)  
Libro Segundo, Título Unico, Capítulo I

**DESCRIPTION:** Cross-Border Services

A concession granted, or permit issued, by the Secretaría de Pesca is required to engage in fishing activities in Mexican jurisdictional waters. Only Mexican nationals and Mexican enterprises, using Mexican-flagged vessels, may obtain such concession or permit. Permits may exceptionally be issued to persons operating vessels flagged in a foreign country that provides equivalent treatment to Mexican-flagged vessels to engage in fishing activities in the Exclusive Economic Zone (EEZ).

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Only Mexican nationals and Mexican enterprises may obtain authorization from the Secretaría de Pesca for deep sea fishing on Mexican-flagged vessels, fixed rigging installation, recollection from the natural milieu of larvae, post-larvae, eggs, seeds or alevines, for research or acuaculture purposes, introduction of live species into Mexican jurisdictional waters, and for educational fishing in accordance with the programmes of the fishing educational institutions.

**DURATION:**

Indeterminate



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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** CMAP 384201 Shipbuilding and Ship Repairs

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)  
Performance Requirement (Article 1106)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution), Artículo 32

Ley de Vías Generales de Comunicación (General Means of Communication Law) Capítulo XV, Libro Tercero

Ley Para el Desarrollo de la Marina Mercante (Law for the Development of the Merchant Navy), Capítulo IV

**DESCRIPTION:** Cross-Border Services and Investment

A concession granted by the Secretaría de Comunicaciones y Transportes is required to establish and operate a shipyard. Only Mexican nationals and Mexican enterprises may obtain such concession.

For the owner of a Mexican-flagged vessel to be eligible for government cargo preferences, subsidies and tax benefits granted under the Ley para el

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Desarrollo de la Marina Mercante, such person must carry out repair and maintenance operations in shipyards and repair facilities in Mexico.

**DURATION:**

Indeterminate

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ANNEX I  
Schedule of Mexico

**SECTOR:** Transportation

**SUB—SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973203 Maritime and Inland (Lake and Rivers) Ports Administration

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Navegación y Comercio Marítimo  
(Navigation and Maritime Commerce Law), Libro Segundo, Capítulo II Secciones A y B, Título Unico

Ley de Vías Generales de Comunicación (General Means of Communication Law), Capítulo XI

**DESCRIPTION:** Cross-Border Services

All port workers must be Mexican nationals.

**DURATION:** Indeterminate

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**ANNEX I**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973201 Loading and Unloading Services Related to Water Transportation (includes operation and maintenance of docks; Loading and unloading of vessels at shore-side; marine cargo handling; operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of cargo between ships and trucks, trains, pipelines and wharfs; waterfront terminal operations)

**TYPE OF RESERVATION:** National Treatment (Article 1102, 1202)  
Local Presence (Article 1205)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution), Artículo 32

Ley de Navegación y Comercio Marítimo (Navigation and Maritime Commerce Law), Libro Primero, Título Unico, Capítulo I, Libro Segundo, Título Segundo

Ley Orgánica de la Administración Pública Federal (Federal Public Administration Law)

Ley de Vías Generales de Comunicación (General Means of Communication Law) Libro Tercero, Capítulo II

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Reglamento del Servicio de Maniobras en las Zonas Federales de Puertos, Articles 1, 2, 13 and 14 (Operation Services in the Federal Port Zones Regulation), Libro Primero, Título Unico, Capítulo I, Libro Segundo, Título Unico, Capítulo II, Sección A y Libro Cuarto, Título Unico

Reglamento para el Uso y Aprovechamiento del Mar Territorial, Vías Navegables, Playas, Zona Federal Marítimo Terrestre y Terrenos Ganados al Mar, (Regulation for the Use of the Territorial Sea, Navigable Ways, Beaches, Maritime and Terrestrial Federal Zones)

**DESCRIPTION:**

Cross-Border Services

A concession granted by the Secretaría de Comunicaciones y Transportes is required to construct and operate, or operate, maritime and inland port terminals, including dock, cranes and related facilities. Only Mexican nationals and Mexican enterprises may obtain such concession.

A permit issued by the Secretaría de Comunicaciones y Transportes is required to provide stevedoring and warehousing services. Only Mexican nationals and Mexican enterprises may obtain such permit.

Investment

Prior approval of the Comisión Nacional de Inversiones Extranjeras is required for investors of another Party or their investments to own directly or indirectly, more than 49 percent of the ownership interest of an enterprise established or to be established in Mexico providing to third persons the following services: operation and maintenance of docks; loading and unloading of vessels at shore-side; marine cargo handling; operation and maintenance of piers; ship and boat cleaning; stevedoring; transfer of

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cargo between ships and trucks, trains, pipelines and wharves; and waterfront terminal operations.

**DURATION:**

Cross-Border Services

Indeterminate

Investment

Description shall govern upon entry into force of this Agreement.

## ANNEX II

1. The Schedule of a Party sets out the reservations taken by that Party, pursuant to Articles 1108(4) and 1206(4), with respect to specific sectors, sub-sectors or activities for which it may maintain existing, non-conforming measures or adopt new or more restrictive measures. Such measures may derogate from an obligation relating to:

- (a) national treatment, pursuant to Article 1102 (Investment) or 1202 (Services);
- (b) most-favored-nation treatment, pursuant to Article 1103 (Investment) or 1203 (Services);
- (c) local presence, pursuant to Article 1205 (Services);
- (d) performance requirements, pursuant to Article 1106 (Investment); or
- (e) nationality requirements for senior management or members of boards of directors, pursuant to Article 1107 (Investment).

2. Each reservation sets out the following elements:

- (a) **SECTOR** refers to the general sector in which the reservation is taken;
- (b) **SUB-SECTOR** refers to the specific sector in which the reservation is taken;
- (c) **INDUSTRY CLASSIFICATION** refers to the activity, where appropriate, covered by the reservation according to domestic industry classification codes;
- (d) **TYPE OF RESERVATION** specifies the obligation referred to in paragraph 1 for which a reservation is taken;
- (e) **DESCRIPTION** describes the scope of the sector, sub-sector or activities covered by the reservation; and
- (f) **LEGAL CITATION OF EXISTING MEASURES** identifies existing measures that apply to the sector, sub-sector or activities covered by the reservation.

3. In the interpretation of a reservation, all elements of the reservation should be considered. In the event of any inconsistency between **DESCRIPTION** and any other element of the reservation, the **DESCRIPTION** shall govern to the extent of the inconsistency.

4. For purposes of this Annex:

**CMAP** means *Clasificación Mexicana de Actividades y Productos*;

**CPC** means Central Product Classification numbers as set out in Statistical Office of the United

Nations, Statistical Papers, Series M, No. 77, *Provisional Central Product Classification*, 1991;

**Mexican enterprise** means an enterprise constituted under the laws of Mexico;

**Mexican national** means a national of Mexico, as defined by the Constitution of Mexico;

**person of a Party** means a national or an enterprise of a Party; and

**SIC** means:

- (a) with respect to Canada, Standard Industrial Classification (SIC) numbers as set out in Statistics Canada, *Standard Industrial Classification*, fourth edition, 1980; and
- (b) with respect to the United States, Standard Industrial Classification (SIC) numbers as set out in the United States Office of Management and Budget, *Standard Industrial Classification Manual*, 1987.



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**ANNEX II**  
**Schedule of Canada**

**SECTOR:** Aboriginal Affairs

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)  
Performance Requirements (Article 1106)  
Senior Management (Article 1107)

**DESCRIPTION:** Investment and Cross-Border Services

Canada reserves the right to adopt or maintain any measure denying investors of another Party and their investments, or service providers of another Party, any rights or preferences provided to aboriginal peoples.

**LEGAL CITATION  
OF EXISTING MEASURES:** [Constitution Act, 1982 and any relevant legislation  
or policy]

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**ANNEX II**  
**Schedule of Canada**

**SECTOR:** Social Services

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**DESCRIPTION:** Investment and Cross-Border Services

Canada reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**LEGAL CITATION  
OF EXISTING MEASURES:**

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ANNEX II  
Schedule of Canada

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

**INDUSTRY CLASSIFICATION:** CPC 752 Telecommunications Services

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)  
Senior Management (Article 1107)

**DESCRIPTION:** Investment

Canada reserves the right to adopt or maintain any measure relating to investment in telecommunications transport networks and telecommunications transport services, radiocommunications and submarine cables, including ownership restrictions and measures concerning corporate officers and directors and place of incorporation.

This reservation does not apply to providers of Value-Added Networks (CPC 752323) and Other Message Services (CPC 752329) whose underlying telecommunications transmission facilities are leased from providers of public telecommunications transport networks.

**LEGAL CITATION OF EXISTING MEASURES:** Bell Canada Act, S.C. 1987, c.19

British Columbia Telephone Company Special Act, S.C. 1916, c.66

Teleglobe Canada Reorganization and Divestiture Act, R.S.C. 1985, c.T-4

Telesat Canada Act, R.S.C. 1985, c.T-6

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**Radiocommunication Act, R.S.C. 1985, c.R-2; as  
amended by S.C.1989 c.1, c.17**

**Telegraphs Act R.S.C. 1985, c.T-5**

**Telecommunications Policy Framework, 1987**

**Telecommunications Act (Bill C-62)**

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ANNEX II  
Schedule of Canada

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications Transport Networks and Services, Radiocommunications and Submarine Cables

**INDUSTRY CLASSIFICATION:** CPC 752 Telecommunication Services (not including CPC 752323 Value-Added Network Service or CPC 752329 Other Message Services)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation Treatment (Article 1203)  
Local Presence (Article 1205)

**DESCRIPTION:** Cross-Border Services

Canada reserves the right to adopt or maintain any measure relating to radio-communications, submarine cables, and the provision of telecommunications transport networks and telecommunications transport services. These measures apply to such matters as market entry, spectrum assignment, tariffs, intercarrier agreements, terms and conditions of service, interconnection between networks and services, and routing requirements that impede the provision of telecommunications transport networks and telecommunications transport services, radio communication and submarine cables, on a cross-border basis.

Telecommunications transport services typically involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, whether or not such services are offered to the public generally. These services include voice and data services by wire,

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radiocommunication or any other electromagnetic means of transmission.

This reservation does not apply to measures relating to the cross-border provision of enhanced or value-added services.

**LEGAL CITATION OF  
EXISTING MEASURES:**

**Bell Canada Act, S.C. 1987, c. 19**

**British Columbia Telephone Company Special Act,  
S.C. 1916, c.66**

**Railway Act, R.S.C. 1985, c.R-3**

**Radiocommunication Act, R.S.C. 1985,  
c.R-2; as amended by S.C. 1989, c.1, c.17**

**Telegraphs Act, R.S.C. 1985, c.T-5**

**Telecommunications Policy Framework, 1987**

**Telecommunications Act (Bill C-62)**

**CRTC Decisions, including (85-19), (90-3), (91-10),  
(91-21), (92-11), (92-12)**

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**Annex II**  
**Schedule of Canada**

**SECTOR:** Government Finance

**SUB-SECTOR:** Securities

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102)

**DESCRIPTION:** Investment

Canada reserves the right to adopt or maintain any measure relating to the acquisition or sale or other disposition of bonds, treasury bills, or other kinds of debt securities issued by the Government of Canada, a province or local government by nationals of another Party.

**LEGAL CITATION OF EXISTING MEASURES:** Financial Administrative Act, R.S.C., 1985, Chap. F-11

ANNEX II  
Schedule of Canada

<b>SECTOR:</b>	Transportation
<b>SUB-SECTOR:</b>	Water Transportation
<b>INDUSTRY CLASSIFICATION:</b>	SIC 4541 Freight and Passenger Water Transport Industry SIC 4542 Ferry Industry SIC 4543 Marine Towing Industry SIC 4549 Other Water Transport Industries SIC 4552 Harbour and Port Operation Industries SIC 4553 Marine Salvage Industry SIC 4554 Piloting Service, Water Transport Industry SIC 4559 Other Service Industries Incidental to Water Transport
<b>TYPE OF RESERVATION:</b>	National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management (Article 1107)
<b>DESCRIPTION:</b>	<u>Cross-Border Services and Investment</u>  Canada reserves the right to adopt or maintain any measure relating to the investment in or provision of maritime cabotage services, including:  (a) the transportation of goods or passengers by vessel between points in the territory of Canada and the Exclusive Economic Zone;  (b) with respect to waters above the continental shelf, the transportation of goods in relation to the exploration, exploitation, or transportation of the mineral or non-living natural resources of the continental shelf; and



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- (c) the engaging by vessel in any maritime activity of a commercial nature in the territory of Canada and the Exclusive Economic Zone and, with respect to waters above the continental shelf, in such other maritime activities of a commercial nature in relation to the exploration, exploitation or transportation of mineral or non-living natural resources of the continental shelf.

This reservation relates to, among other things, local presence requirements for service providers entitled to participate in these activities, the criteria for the issuance of a temporary cabotage license to foreign vessels, and limits on the number of cabotage licenses issued to foreign vessels.

**LEGAL CITATION OF  
EXISTING MEASURES:**

Coasting Trade Act, S.C., 1992, c. 31

Canada Shipping Act, R.S.C., 1985, c. S-9

Customs Act, R.S.C., 1985, c.1 (2nd Supp.)

Customs and Excise Offshore Application Act,  
R.S.C., 1985, c. C-53

**ANNEX II**  
**Schedule of Canada**

<b>SECTOR:</b>	Transportation
<b>SUB-SECTOR:</b>	Water Transportation
<b>INDUSTRY CLASSIFICATION:</b>	SIC 4541      Freight and Passenger Water Transport Industry SIC 4542      Ferry Industry SIC 4543      Marine Towing Industry SIC 4549      Other Marine Transport Industries SIC 4551      Marine Cargo Handling Industry SIC 4552      Harbour and Port Operation Industry SIC 4553      Marine Salvage Industry SIC 4554      Piloting Service, Water Transport Industry SIC 4559      Other Service Industries Incidental to Water Transport
<b>TYPE OF RESERVATION:</b>	National Treatment (Articles 1102, 1202) Most-Favored-Nation Treatment (Articles 1103, 1203) Local Presence (Article 1205) Performance Requirements (Article 1106) Senior Management (Article 1107)
<b>DESCRIPTION:</b>	<u>Cross-Border Services and Investment</u>  Canada reserves the right to adopt or maintain any measure denying service providers or investors of the United States, or their investments, the benefits accorded service providers or investors of Mexico or any other country, or their investments, in sectors equivalent to those subject to the maritime services reservation inscribed in page II-U-8.
<b>LEGAL CITATION OF EXISTING MEASURES:</b>	None

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ANNEX II  
Schedule of Canada

**SECTOR:** Transportation

**SUB-SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:**

SIC 4541	Freight and Passenger Water Transport Industry
SIC 4542	Ferry Industry
SIC 4543	Marine Towing Industry
SIC 4549	Other Marine Transport Industries
SIC 4551	Marine Cargo Handling Industry
SIC 4552	Harbour and Port Operation Industry
SIC 4553	Marine Salvage Industry
SIC 4554	Piloting Service, Water Transport Industry
SIC 4559	Other Service Industries Incidental to Water Transport

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation Treatment (Article 1203)  
Local Presence (Article 1205)

**DESCRIPTION:** Cross-Border Services

Canada reserves the right to adopt or maintain any measure relating to the implementation of agreements, arrangements and other formal or informal undertakings with other countries with respect to maritime activities in waters of mutual interest in such areas as pollution control (including double hull requirements for oil tankers), safe navigation, barge inspection standards, water quality, pilotage, salvage, drug abuse control, and maritime communications.

**LEGAL CITATION OF EXISTING MEASURES:** United States Wreckers Act, R.S.C. 1985, c. U-3  
Various Agreements and Arrangements, including:

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- (a) Memorandum or Arrangement on Great Lakes Pilotage;
- (b) Canada-United-States Joint Marine Pollution Circumpolar Agreement;
- (c) Agreement with the United States on Loran "C" Service on the East and West Coasts; and
- (d) Denmark - Canada Joint Marine Pollution Circumpolar Agreement.

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ANNEX II  
Schedule of United States

**SECTOR:** Communication

**SUB-SECTOR:** Cable Television

**INDUSTRY CLASSIFICATION:** SIC 4841 Cable and Other Pay Television Services

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**DESCRIPTION:** Investment  
  
Subject to Article 2106, the United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country.

**LEGAL CITATION OF EXISTING MEASURES:** None

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**ANNEX II**  
**Schedule of United States**

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications Transport Networks and Services and Radio Communications

**INDUSTRY CLASSIFICATION:** CPC 752 Telecommunications Services (Not Including CPC 752323 Value-Added Network Services or CPC 752329 Other Message Services)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**DESCRIPTION:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to investment in, or the provision of, telecommunications transport networks and telecommunications transport services or to radio communications. These measures apply to such matters as market entry, spectrum assignment, tariffs, intercarrier agreements, terms and conditions of service, and interconnection between networks and services. Telecommunications transport services typically involve the real-time transmission of customer-supplied information between two or more points without end-to-end change in the form or content of the customer's information, whether or not such services are offered to the public generally. These services include voice and data services provided by any electromagnetic means. Radio communications include all communications by radio, including broadcasting. This reservation does not apply to measures relating to enhanced or value-added services.

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**LEGAL CITATION OF  
EXISTING MEASURES:**

Communications Act of 1934, as amended, 47 U.S.C. §§151 et seq., see particularly §§310(a), (b) (1988) (radio licenses for common carrier, aeronautical en route, aeronautical en route, aeronautical fixed, and broadcasting services), and any Federal Communications Commission rules or policies adopted pursuant to Title 47 of the United States Code, including F.C.C. Decision, International Competitive Carrier, 102 F.C.C. 2d 812 (1985)

An Act relating to the Landing and Operation of Submarine Cables in the United States, as amended, 47 U.S.C. §34-9 (1988), see particularly §35 (Submarine Cable Landing Act) (undersea cables)

Communications Satellite Act of 1962, as amended, 47 U.S.C. §§701-57 (1988)

Telegraph Act, as amended, 47 U.S.C. §17 (1988) (telegraph cables serving Alaska)

Children's Television Act of 1990, 47 U.S.C. §303a (1990)

Television Program Improvement Act of 1990, 47 U.S.C. §303c (1990)

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**ANNEX II**  
**Schedule of United States**

**SECTOR:** Social Services

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**DESCRIPTION:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**LEGAL CITATION  
OF EXISTING MEASURES:**



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**ANNEX II**  
**Schedule of the United States**

**SECTOR:** Minority Affairs

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Local Presence (Article 1205)  
Performance Requirements (Article 1106)  
Senior Management (Article 1107)

**DESCRIPTION:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. §1601 et seq.)

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**ANNEX II**  
**Schedule of United States**

**SECTOR:** Professional Services

**SUB-SECTOR:** Attorneys

**INDUSTRY CLASSIFICATION:** SIC 8111 Legal Services

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**DESCRIPTION:** Cross-Border Services and Investment

Subject to page VI-U-3, the United States reserves the right to adopt or maintain any measure relating to the provision of legal services, including foreign legal consultancy services, by persons of Mexico.

**LEGAL CITATION OF EXISTING MEASURES:** None

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**ANNEX II**  
**Schedule of the United States**

**SECTOR:** Publishing

**SUB-SECTOR:** Newspaper Publishing

**INDUSTRY CLASSIFICATION:** SIC 2711 Newspapers: Publishing, or Publishing and Printing

**TYPE OF RESERVATION:** National Treatment (Article 1102)  
Most-Favored-Nation Treatment (Article 1103)

**DESCRIPTION:** Investment

Subject to Article 2106, the United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the publication of daily newspapers primarily written for audiences and distributed in that country.

For purposes of this reservation, daily newspapers are newspapers published at least five days each week.

**LEGAL CITATION OF EXISTING MEASURES:** None

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**ANNEX II**  
**Schedule of the United States**

**SECTOR:** Transportation

**SUB-SECTOR:** Water Transportation

**INDUSTRY CLASSIFICATION:** SIC 4412 Deep Sea Foreign Transportation of Freight  
(limited to promotional programs)

SIC 4424 Deep Sea Domestic Transportation of Freight (includes coastwise transportation of freight, deep sea domestic freight transportation, intercoastal transportation of freight, water transportation of freight to noncontiguous territories)

SIC 4432 Freight Transportation on the Great Lakes and St. Lawrence Seaway

SIC 4449 Water Transportation of Freight, Not Elsewhere Classified (includes canal barge operations, canal freight transportation, intracoastal freight transportation, lake freight transportation except on the Great Lakes, log rafting and towing, river freight transportation except on the St. Lawrence Seaway, transportation of freight on bays and sounds of the oceans)

SIC 4481 Deep Sea Transportation of Passengers, Except by Ferry (limited to promotional programs)

SIC 4482 Ferries

SIC 4489 Water Transportation of Passengers, Not Elsewhere Classified (includes airboats, swamp buggy rides, excursion boat operations, passenger water transportation on rivers and canals, sightseeing boats, water taxis)

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SIC 4492 Towing and Tugboat Services

SIC 4499 Water Transportation Services, Not Elsewhere Classified (limited to cargo salvaging, chartering of commercial boats, lighterage, bunkering, marine salvage, pilotage, steamship leasing, cable laying)

SIC 4491 - Marine Cargo Handling (limited to crew activities aboard vessels transporting supplies and cargo within U.S. territorial waters and longshore work performed by crew affected by reciprocity restrictions)

SIC 1629 Heavy Construction, Not Elsewhere Classified (limited to marine dredging)

SIC 091 Commercial Fishing (limited to fishing vessels and fishing operations within the Exclusive Economic Zone)

**TYPE OF RESERVATION:**

National Treatment (Articles 1102, 1202)  
Most-Favored-Nation Treatment (Articles 1103, 1203)  
Local Presence (Article 1205)  
Performance Requirements (Article 1106)  
Senior Management (Article 1107)

**DESCRIPTION:**

Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

- (a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic

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offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf, and in the inland waterways;

- (b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;
- (c) requirements for investment in, ownership and control of, and operation of vessels engaging in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone (EEZ);
- (d) requirements related to documenting a vessel under the U.S. flag;
- (e) promotional programs, including tax benefits, available for shipowners, operators and vessels meeting certain requirements;
- (f) certification, licensing and citizenship requirements for crew members on U.S.-flagged vessels;
- (g) manning requirements of U.S.-flagged vessels;
- (h) all matters falling under the jurisdiction of the Federal Maritime Commission;
- (i) negotiation and implementation of bilateral and other international maritime agreements and understandings;
- (j) limitations on longshore work performed by crew members;
- (k) tonnage duties and light money assessments for entering U.S. waters; and

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- (l) certification, licensing, and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation:

- (a) vessel construction and repair; and
- (b) landside aspects of port activities including operation and maintenance of docks, loading and unloading of vessels directly to or from land, marine cargo handling, operation and maintenance of piers, ship cleaning, stevedoring, transfer of cargo between a ship and trucks, trains, pipelines and wharves, waterfront terminal operations, boat cleaning, canal operation, dismantling of ships, operation of marine railways for drydocking, marine surveyors, except cargo, marine wrecking of ships for scrap and ship classification societies.

**LEGAL CITATION OF  
EXISTING MEASURES:**

Merchant Marine Act of 1920, §27, 46 App. U.S.C. 883 *et seq.* (Jones Act, including Bowaters Corporations, 46 App. U.S.C. 883-1);

Jones Act Waiver Statute, Act of December 27, 1950, 46 U.S.C. App., note preceding Sec. 1;

Shipping Act of 1916, §9, 46 U.S.C. App. 808;

Shipping Act of 1916, §2, 46 U.S.C. App. 802;

Merchant Marine Act of 1936, §905(c), 46 U.S.C. App. 1244;

Merchant Ship Sales Act of 1946, 50 U.S.C. App. 1738;

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46 U.S.C. App. 292;

46 U.S.C. 12101 *et seq.* and 31301 *et seq.*;

46 U.S.C. App. 316 and 8904;

Passenger Vessel Act, 46 U.S.C. 289;

Merchant Marine Act of 1936, Title VI, 46 U.S.C. App. 1171, *et seq.* (includes Capital Construction Fund -- 46 App. U.S.C. 1177, 26 U.S.C. 7518) and the Merchant Marine Act of 1936, Title V, 46 U.S.C. App. 1151, *et seq.* (includes Capital Reserves Fund, 46 App. U.S.C. 1161 and trade in of obsolete vessels, 46 App. U.S.C. 1160(1) and for National Defense Reserve Fleet, 46 App. 1160(i));

46 U.S.C. 31328(2);

Merchant Marine Act of 1936, Title XI, 46 U.S.C. App. 1271, *et seq.* (includes Marine Hull Insurance Requirements -- 46 App. U.S.C. 1273(b) and 46 U.S.C. Part 249);

Tonnage Duties, 46 App. U.S.C. 121;

Merchant Marine Act of 1936, §901(a) and (b), 46 App. U.S.C. 1241(b); Public Resolution 17, 46 App. U.S.C. 1241-1; and the Cargo Preference Act of 1904, 10 U.S.C. 2631;

Environmental laws: CERCLA (superfund) 42 U.S.C. 9601 *et seq.*; and Oil Pollution Act of 1990, 33 U.S.C. 2701; Clean Water Act, 33 U.S.C. 1251 *et seq.*;

46 U.S.C. 3301 *et seq.*;

46 U.S.C. 3701, *et seq.*;



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Controlled Carrier Act, Shipping Act of 1984, §9,  
46 App U.S.C. 1708;

Merchant Marine Act of 1920, §19 as amended, 46  
App. U.S.C. 876; Shipping Act of 1984, §13(b)(5);  
46 App. U.S.C. 1712 (b)(5); and the Foreign  
Shipping Practices Act of 1988; Omnibus Trade and  
Competitiveness Act of 1988, Title X, 46 App.  
U.S.C. 1710a;

Immigration Act of 1990, §203, 8 U.S.C. 1288,  
restrictions on stevedoring by crews of foreign  
vessels;

46 U.S.C. 8103;

Nicholson Act, 46 U.S.C. App. 251;

Commercial Fishing Industry Vessel  
Anti-Reflagging Act of 1987, 46 U.S.C. 2101 and 46  
U.S.C. 12108;

43 U.S.C. 1841;

22 U.S.C. 1980;

Intercoastal Shipping Act, 46 App. U.S.C. 843;

46 U.S.C. 9302, 46 U.S.C. 8502; Agreement  
Governing the Operation of Pilotage on the Great  
Lakes, Exchange of Notes at Ottawa, August 23,  
1978, and March 29, 1979, Treaties and International  
Agreements Service 9445;

46 U.S.C. 12107(b); and

Magnuson Fisheries Conservation and Management  
Act, 16 U.S.C. 1801, *et seq.*

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** All sectors

**SUB-SECTOR:** All sub-sectors

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)

**DESCRIPTION:** Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure restricting the ownership of bonds, treasury bills or any other kind of debt or security issued by the federal, state or local governments except with respect to ownership by financial institutions of another Party, as such term is defined in Chapter Fourteen (Financial Services).

**LEGAL CITATION  
OF EXISTING MEASURES:**

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services (Broadcasting and Multipoint Distribution Systems (MDS))

**INDUSTRY CLASSIFICATION:** CMAP 941104 Private Production and Transmission of Radio Programs (Limited to Transmission of Radio Programs, MDS and uninterrupted music)  
CMAP 941105 Private Services of Production, Transmission and Repetition of Television Programming (Limited to Transmission and Repetition of Television Programs, MDS, and High-Definition Television)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation (Articles 1103, 1203)  
Local Presence (Article 1205)  
Senior Management (Article 1106)

**DESCRIPTION:** Cross-Border Services and Investment  
  
Mexico reserves the right to adopt or maintain any measure relating to investment in or provision of broadcasting, multipoint distribution systems, uninterrupted music and high-definition television services.

**LEGAL CITATION OF EXISTING MEASURES:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution)  
  
Ley de Vías Generales de Comunicación (General Means of Communication Law)

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**Ley Federal de Radio y Televisión (Radio and  
Television Federal Law)**

**Ley Para Promover la Inversión Mexicana y  
Regular la Inversión Extranjera (Law to Promote  
Mexican Investment and to Regulate Foreign  
Investment)**

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications

**INDUSTRY CLASSIFICATION:** CMAP 720006 Other Telecommunications Services (Limited to Aeronautical Mobile and Fixed Services)

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation (Articles 1103, 1203)  
Local Presence (Article 1205)

**DESCRIPTION:** Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure relating to investment in or provision of air traffic control, aeronautical meteorology, aeronautical telecommunications, flight control and other telecommunication services relating to air navigation services.

**LEGAL CITATION OF EXISTING MEASURES:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution)

Ley de Vías Generales de Comunicación (General Means of Communication Law)

Decree creating the entity "Servicios a la navegación en el espacio aéreo mexicano" (SENEAM) (Air Services in the Mexican Air Space), 3 de octubre de 1978

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**Ley para Promover la Inversión Mexicana y  
Regular la Inversión Extranjera (Law to Promote  
Mexican Investment and to Regulate Foreign  
Investment)**

**Reglamento de la Ley para Promover la Inversión  
Mexicana y Regular la Inversión Extranjera  
(Regulations of the Law to Promote Mexican  
Investment and to Regulate Foreign Investment)**

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications Transport Networks

**INDUSTRY CLASSIFICATION:** CMAP 720003 Telephone Services  
CMAP 720004 Telephone Booth Services  
CMAP 720006 Other Telecommunications Services  
(Not Including Enhanced or Value-Added Services)  
CMAP 502003 Telecommunications installations

**TYPE OF RESERVATION:** National Treatment (Articles 1102, 1202)  
Most-Favored-Nation (Articles 1103, 1203)  
Local Presence (Article 1205)

**DESCRIPTION:** Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure relating to investment in, or provision of, telecommunications transport networks and telecommunication transport services.

Telecommunications transport networks include the facilities to provide telecommunications transport services such as local basic telephone services, long-distance telephone services (national and international), rural telephone services, cellular telephone services, telephone booth services, satellite services, trunking, paging, mobile telephony, maritime telecommunication services, air telephone, telex, and data transmission services.

Telecommunications transport services typically involve the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information, whether or not

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such services are offered to the public generally.

**LEGAL CITATION  
OF EXISTING MEASURES:**

**Constitución Política de los Estados Unidos  
Mexicanos (United Mexican States Political  
Constitution)**

**Ley de Vías Generales de Comunicación (General  
Means of Communication Law)**

**Reglamento de Telecomunicaciones  
(Telecommunications Regulations)**

**Reglamento de la Ley para Promover la Inversión  
Mexicana y Regular la Inversión Extranjera  
(Regulations of the Law to Promote Mexican  
Investment and to Regulate Foreign Investment)**



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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Communications and Transportation

**SUB-SECTOR:** Postal Services, Telecommunications, Railroads

**INDUSTRY CLASSIFICATION:** CMAP 720001 Postal Services  
CMAP 720005 Telegraphic Services, Radiotelegraphic Services, Wireless Telegraphy  
CMAP 720006 Other Telecommunications services (limited to satellite communications)  
CMAP 711101 Railway Transportation Service (limited to operation, administration and control of traffic within the Mexican railway system, supervision and management of railway rights-of-way, construction, operation, and maintenance of basic railway infrastructure)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-favored-Nation Treatment (Article 1203)  
Local Presence (Article 1205)

**DESCRIPTION:** Cross-Border Services

Mexico reserves the right to adopt or maintain any measure related to the provision of the following services: postal services (operation, administration and organization of first class mail), telegraph, radiotelegraphy, satellite communications (establishment, ownership and operation of satellite systems, and establishment, ownership and operation of earth stations with international links), and railroads (operation, administration and control of traffic within the Mexican railway system, supervision and management of railway rights-of-way, construction, operation, and maintenance of basic

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railway infrastructure).

**LEGAL CITATION  
OF EXISTING MEASURES:**

**Constitución Política de los Estados Unidos Mexicanos, (United Mexican States Political Constitution) Article 28**

**Ley de Vías Generales de Comunicación (General Means of Communications Law and its regulations)**

**Ley Orgánica de Ferrocarriles Nacionales de México (Mexican National Railroad Law)**

**Ley del Servicio Postal Mexicano (Mexican Postal Services Law and its regulations)**

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Professional, Technical and Specialized Services and Other Services Provided by Natural Persons

**SUB-SECTOR:** Professional Services

**INDUSTRY CLASSIFICATION:** CMAP 951002 Legal Services/Foreign Legal Consultants

**TYPE OF RESERVATION:** National Treatment (Article 1102, 1202)  
Most-Favored-Nation Treatment (Article 1103, 1203)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**DESCRIPTION:** Cross-Border Services and Investment

Subject to page VI-M-2, Mexico reserves the right to adopt or maintain any measure relating to the provision of legal services and foreign legal consultancy services by person of the United States.

**LEGAL CITATION OF EXISTING MEASURES:** Ley Reglamentaria del Artículo 5o. Constitucional, relativo al ejercicio de las profesiones en el Distrito Federal (Regulatory Law of Article 5' of the United Mexican States Political Constitution in relation to Professional Services)

Reglamento de la Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera (Regulations of the Law to Promote Mexican Investment and to Regulate Foreign Investment).

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Social Services

**SUB-SECTOR:** Not applicable

**INDUSTRY CLASSIFICATION:**

**TYPE OF RESERVATION:** National Treatment (Article 1102, 1202)  
Local Presence (Article 1205)  
Senior Management (Article 1107)

**DESCRIPTION:** Cross-Border Services and Investment

Mexico reserves the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**LEGAL CITATION  
OF EXISTING MEASURES:**

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**ANNEX II**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB-SECTOR:** Specialized Personnel

**INDUSTRY CLASSIFICATION:** Ship Captains (Capitanes)  
Aircraft Pilots (Pilotos)  
Ship Masters (Patrones)  
Ship Machinists (Maquinistas)  
Ship Mechanics (Mecánicos)  
Airport Administrators (Comandantes de Aeródromos)  
Harbor Masters (Capitanes de Puerto)  
Harbor Pilots (Pilotos de Puerto)  
Customs Brokers (Agentes Aduanales)  
Crew on Mexican flagged vessels and aircraft  
(Personal que tripule cualquier embarcación o aeronave con bandera o insignia mercante mexicana)

**TYPE OF RESERVATION:** National Treatment (Article 1202)  
Most-Favored-Nation Treatment (Article 1203)  
Local Presence (Article 1205)

**DESCRIPTION:** Cross-Border Services

Only Mexicans by birth may serve as captains, pilots, ship masters, machinists, mechanics and crew members manning vessels or aircraft under the Mexican flag; as harbor pilots, harbor masters and airport administrators; and as customs brokers.

**LEGAL CITATION OF EXISTING MEASURES:** Constitución Política de los Estados Unidos Mexicanos, (Political Constitution of United Mexican States)

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**ANNEX III  
Schedule of Mexico**

I. The Mexican State reserves the right to perform exclusively, and to refuse to permit the establishment of investments in, the following activities:

1. Petroleum, other Hydrocarbons and Basic Petrochemicals

(a) Description of activities

- (i) exploration and exploitation of crude oil and natural gas; refining or processing of crude oil and natural gas; and production of artificial gas, basic petrochemicals and their feedstocks and pipelines; and,
- (ii) foreign trade; transportation, storage and distribution up to and including first hand sales of the following goods: crude oil; natural and artificial gas; goods obtained from the refining or processing of crude oil and natural gas; and basic petrochemicals.

(b) Legal citation:

**Constitución Política de los Estados Unidos Mexicanos, Articles 25, 27 and 28 (United Mexican States Political Constitution, Articles 25, 27 and 28).**

**Ley Reglamentaria del Artículo 27 Constitucional en el Ramo del Petróleo y sus reglamentos (Regulatory Law of Article 27 of the United Mexican States Constitution related to Oil, and its regulations).**

**Ley Orgánica de Petróleos Mexicanos y Organismos Subsidiarios (Statutory Law of Petróleos Mexicanos and its Subsidiaries).**

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**ANNEX III  
Schedule of Mexico**

2. Electricity

(a) Description of activities: the supply of electricity as a public service in Mexico, including, except as provided in Annex 602.3 of the Energy Chapter, the generation, transmission, transformation, distribution and sale of electricity.

(b) Legal citation:

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28 (United Mexican States Political Constitution, Articles 25 and 28).**

**Ley del Servicio Público de Energía Eléctrica y su reglamento (Public Service of Electric Energy Law, and its Regulations)**

3. Nuclear Power and Treatment of Radioactive Minerals

(a) Description of activities: the generation of nuclear energy; the exploration, exploitation and processing of radioactive minerals; the nuclear fuel cycle; the use and reprocessing of nuclear fuels and the regulation of their applications for other purposes; the transportation and storage of nuclear wastes; and the production of heavy water.

(b) Legal citation:

**Constitución Política de los Estados Unidos Mexicanos, Articles 25, 27 and 28 (United Mexican Constitution, Article 25, 27 and 28).**

**Ley Reglamentaria del Artículo 27 Constitucional en Materia de Energía Nuclear (Regulatory Law of the Article 27 of the United Mexican Constitution related to Atomic Energy).**

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**ANNEX III**  
**Schedule of Mexico**

4. Satellite Communications

(a) Description of activities: the establishment, operation and ownership of satellite systems and earth stations with international links.

(b) Legal citation:

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28**  
(United Mexican States, Articles 25 and 26).

**Ley de Vías Generales de Comunicación y sus reglamentos (General Means of Communication Law)**

5. Telegraph Services

Legal citation:

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28** (United Mexican States, Articles 25 and 28)

**Ley de Vías Generales de Comunicación y sus reglamentos (General Means Communication Law)**

6. Radiotelegraph Services

Legal citation:

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28** (United Mexican States Political Constitution, Article 25 and 28)

**Ley de Vías Generales de Comunicación y sus reglamentos (General Means of Communication Law).**



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**ANNEX III  
Schedule of Mexico**

7. **Postal Services**

- (a) **Description of activities:** operation, administration and organization of first class mail.
- (b) **Legal citation:**

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28  
(United Mexican States Political Constitution, Articles 25 and 28).**

**Ley del Servicio Postal Mexicano (Mexican Postal Service Law)**

8. **Railroads**

- (a) **Description of activities:** the operation, administration and control of traffic within the Mexican railway system; supervision and management of railway right-of-way; operation, construction and maintenance of basic railway infrastructure.
- (b) **Legal citation:**

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28  
(United Mexican States Political Constitution, Articles 25 y 28).**

**Ley Orgánica de Ferrocarriles Nacionales de México (Statutory Law of  
Mexican Railroads).**

9. **Issuance of Bills (currency) and Minting of Coinage**

**Legal citation:**

**Constitución Política de los Estados Unidos Mexicanos, Articles 25 and 28 (United  
Mexican States Political Constitution, Articles 25 and 28).**

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**ANNEX III**  
**Schedule of Mexico**

**Ley Orgánica del Banco de México** (Statutory Law of Banco de México).

**Ley Orgánica de la Casa de Moneda de México** (Statutory Law of the Mexican Coining Agency).

10. **Control, Inspection and Surveillance of Maritime and Inland (Lake and River) Ports**

Legal citation:

**Ley de Navegación y Comercio Marítimo** (Commercial and Navigation Law),  
Articles 43 and 47.

**Ley de Vías Generales de Comunicación** (General Means of Communication Law)  
Article 272.

11. **Control, Inspection and Surveillance of Airports and Heliports**

Legal citation:

**Ley de Vías Generales de Comunicación** (General Means of Communication)  
Article 327.

The legal citations are provided only for transparency purposes.

**II. Deregulation of Activities Reserved to the State**

1. The activities set out in Section I are reserved to the Mexican State, and private equity investment is prohibited under Mexican Law. Where Mexico allows private investment to participate in such activities through service contracts, concessions, lending arrangements or any other type of contractual arrangement, such participation shall not be construed to affect the State's reservation of those activities.

2. If Mexican laws or regulations are amended to allow private equity investment in an activity set out in Section I, Mexico may impose restrictions on foreign investment

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**ANNEX III**  
**Schedule of Mexico**

participation notwithstanding Article 1102 and describe them in Annex I. Mexico may also impose derogations from 1102 on foreign equity investment participation when selling an asset or ownership interest in an enterprise in activities set out in Section I and describe them in Annex I.

**III. Activities Formerly Reserved to the Mexican State**

Where an activity was reserved to the Mexican State on January 1, 1992 and is not reserved to the Mexican State upon entry into force of this Agreement, Mexico may restrict the initial sale of a state-owned asset or an ownership interest in a state enterprise that performs that activity to enterprises with majority ownership by Mexican nationals, as defined by the Mexican Constitution. For a period not to exceed three years from the initial sale, Mexico may restrict the transfer of such asset or ownership interest to other enterprises with majority ownership by Mexican nationals, as defined by the Mexican Constitution. Upon expiration of the three year period, the obligations of national treatment set out in Article 1102 (National Treatment) shall apply. This provision is subject to Article 1108 (Reservations and exceptions).

## ANNEX IV

The Schedule of a Party sets out the reservations taken by that Party pursuant to Article 1108(7) with respect to Article 1103 (Most-Favored-Nation Treatment). Each reservation sets out the sector, subsector or activities to which it applies.

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**ANNEX IV**  
**Schedule of Canada**

Canada takes an exception to Article 1103 for all international agreements (bilateral and multilateral) in force or signed prior to the date of entry into force of this Agreement.

As for international agreements other than those in force or signed prior to the date of entry into force of this Agreement, Canada takes an exception to Article 1103 for those agreements involving:

1. Aviation;
2. Fisheries;
3. Maritime matters, including salvage; or
4. Telecommunications.

With respect to provincial measures not yet described in Annex I, pursuant to paragraph 2 of Article 1108, Canada takes an exception for international agreements signed within two years of the entry into force of this Agreement.

For greater certainty, the Parties note that Article 1103 does not apply to any current or future foreign aid programs to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the OECD Agreement on Export Credits.

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ANNEX IV  
Schedule of the United States

The United States takes an exception to Article 1103 for all international agreements (bilateral and multilateral) in force or signed prior to the date of entry into force of this Agreement.

As for international agreements other than those in force or signed prior to the date of entry into force of this Agreement, the United States takes an exception to Article 1103 for those agreements involving:

1. Aviation;
2. Fisheries;
3. Maritime matters, including salvage; or
4. Telecommunications.

With respect to state measures not yet described in Annex I, pursuant to paragraph 2 of Article 1108, the United States takes an exception to Article 1103 for international agreements signed within two years of the entry into force of this Agreement.

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**ANNEX IV**  
**Schedule of Mexico**

Mexico takes an exception to Article 1103 for all international agreements (bilateral and multilateral) in force or signed prior to the date of entry into force of this Agreement.

As for international agreements other than those in force or signed prior to the date of entry into force of this Agreement, Mexico takes an exception to Article 1103 for those agreements involving:

1. Aviation;
2. Fisheries;
3. Maritime matters, including salvage; or
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With respect to state measures not yet described in Annex I, pursuant to paragraph 2 of Article 1108, Mexico takes an exception to Article 1103 for international agreements signed within two years of the entry into force of this Agreement.

For greater certainty, the Parties note that Article 1103 does not apply to any current or future foreign aid programs to promote economic development, such as those governed by the Energy Economic Cooperation Program with Central America and the Caribbean (Pacto de San José) and the OECD Agreement on Export Credits.

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**ANNEX V**  
**Schedule of Canada**

**SECTOR:** Communication Industries

**SUB-SECTOR:** Postal Services

**INDUSTRY CLASSIFICATION:** SIC 4841 Postal Service Industry

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Canada Post Corporation Act, R.S.C., c. C-10  
Letter Definition Regulations,  
SOR/83-481

**DESCRIPTION:** Canada Post Corporation has the exclusive privilege to collect, transmit and deliver "letters", as defined in the Letter Definition Regulations, addressed in the territory of Canada, and its assent is required in order for other persons to sell stamps.



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**ANNEX V**  
**Schedule of Canada**

**SECTOR:** Communications

**SUB-SECTOR:** Radiocommunications

**INDUSTRY CLASSIFICATION:** CPC 752 Telecommunication

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Radiocommunication Act, R.S.C. 1985, c.R-2; as amended by S.C 1989 c.1, c.17, ss. 5, 6

**DESCRIPTION:** A person desiring to operate a private radio transmission system must obtain a licence from the Department of Communications. The issuance of such licence is subject to spectrum availability and policies regarding its use. In general, priority is given to the use of spectrum for the purpose of developing non-private networks.

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**ANNEX V**  
**Schedule of Canada**

**SECTOR:** Energy

**SUB-SECTOR:** Electricity Transmission

**INDUSTRY CLASSIFICATION:** [To be provided]

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** National Energy Board Act, R.S.C., 1985, c. N-6

**DESCRIPTION:** Under Part III of the Act, construction and operation of international electricity transmission lines may require approval by the National Energy Board.

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**ANNEX V**  
**Schedule of Canada**

**SECTOR:** Energy

**SUB-SECTOR:** Oil and Gas Transportation

**INDUSTRY CLASSIFICATION:** [To be provided]

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** National Energy Board Act R.S.C., 1985 c. N-6

**DESCRIPTION:** The approval of the National Energy Board (NEB) is required for the construction and operation of all interprovincial or international pipelines for the transmission of oil or gas. A public hearing must be held and a certificate of public convenience and necessity issued where the pipeline in question is longer than 40 kilometers. Pipelines shorter than 40 kilometers may be authorized by an order without a public hearing. All modifications to and extension of pipelines must be approved by the Board.

Part IV of the Act requires that all tolls for the transmission of oil and gas on NEB-regulated pipelines and all tariff matters shall be filed with or approved by the NEB. A public hearing may be held in considering toll and tariff matters.

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**ANNEX V**  
**Schedule of Canada**

**SECTOR:** Food, Beverages and Drug Industries, Retail

**SUB-SECTOR:** Liquor, Wine and Beer Stores

**INDUSTRY CLASSIFICATION:** 6021 Liquor Stores  
6022 Wine Stores  
6023 Beer Stores

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Importation of Intoxicating Liquors Act, R.S.C.,  
1985, c. I-3

**DESCRIPTION:** The Importation of Intoxicating Liquors Act gives each provincial government an import monopoly on any intoxicating liquors entering its territory.

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**ANNEX V**  
**Schedule of Canada**

**SECTOR:** Transportation

**SUB-SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** SIC 457 Public Passenger Transit Systems

**LEVEL OF GOVERNMENT:** Federal (administration delegated to provinces)

**LEGAL CITATION:** National Transportation Act, 1987, R.S.C., 1985, c. 28 (3rd Supp.)

**DESCRIPTION:** Provincial transport boards have been delegated the authority to permit persons to provide extra-provincial (inter-provincial and cross-border) bus services in their respective provinces on the same basis as local bus services. All provinces, except New Brunswick, Prince Edward Island and Yukon, permit the provision of local and extra-provincial bus services on the basis of a public convenience and necessity test.

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ANNEX V  
Schedule of United States

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications (Radio Communications)

**INDUSTRY CLASSIFICATION:** CPC 752 Telecommunications Services

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Communications Act of 1934, as amended, Sections 1, 2, 4, and Title III, 47 U.S.C. §§151 et. seq. (1988)

**DESCRIPTION:** The Communications Act of 1934 (the Act) requires anyone wishing to engage in communications by radio within the United States and between the United States and points outside the United States to obtain a license from the Federal Communications Commission (FCC) for the use, but not the ownership, of all channels of radio communications; and no such license shall be construed to create any right beyond the terms, conditions and periods of the license.

The Act requires the FCC, in granting radio station licenses, to determine if such a license would serve the public interest, convenience and necessity and empowers the FCC to impose conditions pursuant to this determination. The Act also empowers the FCC to deny applications for radio licenses where it is unable to find that such grant would serve the public interest, convenience and necessity.

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**ANNEX V**  
**Schedule of United States**

**SECTOR:** Communications

**SUB-SECTOR:** Cable Television Services

**INDUSTRY CLASSIFICATION:** CPC 753 Radio and Television Cable Services

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Communications Act of 1934, as amended, 47  
U.S.C. §§151 et. seq. (1988)

Federal Communications Commission Rules,  
Sections 76.501, 74.931(e)(5), 63.54, and 21.912

47 C.F.R. §§76.501, 74.931(e)(5), 63.54, and 21.912

**DESCRIPTION:** A cable television system is not allowed to carry any television broadcast signal if the cable system owns, operates, controls or has an interest in a television broadcast station whose Grade B contour overlaps the service area of such cable system. (§76.501(a))

A cable television system may directly or indirectly own, operate, control, or have an interest in a national television network (such as ABC, CBS, or NBC) only if such system does not pass more than (i) 10 percent of homes passed on a nationwide basis when aggregated with all other cable systems in which the network holds such a cognizable interest, and (ii) 50 percent of homes passed within any one ADI (Arbitron Area of Dominant Influence), except that a cable television system facing a competing system will not be counted toward this 50 percent limit. (§76.501(b))

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A cable television company may not lease excess transmission time or capacity from a licensee of an Instructional Television Fixed Service (ITFS) station (television services intended for use in educational institutions) if the ITFS station is located within 20 miles of that cable television company's franchise area. (§74.931(e)(5))

A telephone common carrier may not engage in the provision (e.g., ownership, control, or production) of video programming to the viewing public in its telephone service area, but may distribute such programming on a common carrier basis and may only have up to a five percent non-controlling financial interest in video programmers. (§63.54(a))

A telephone common carrier may not provide channels of communications or pole line conduit space, or other rental arrangements to any entity which is directly or indirectly owned, operated or controlled by, or under common control with, such telephone common carrier, where such facilities or arrangements are to be used for, or in connection with, the provision of video programming to the viewing public in the telephone service area of the telephone common carrier. (§63.54(b))

In cable television franchise areas served by a single cable operator, that operator may not be authorized to use frequencies assigned to the Multichannel Multipoint Distribution Service (MMDS) (the 2150-2165 Mhz and 2596-2644 Mhz bands), if a portion of an MMDS station's protected service area lies within that cable television operator's franchise area. (§21.912)



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ANNEX V  
Schedule of the United States

SECTOR: Energy

SUB-SECTOR: Natural Gas Transportation

INDUSTRY CLASSIFICATION: SIC 4922 Natural Gas Transmission  
SIC 4923 Natural Gas Transmission and  
Distribution  
SIC 4924 Natural Gas Distribution

LEGAL CITATION: 15 U.S.C. section 717(f)  
18 C.F.R. part 157

DESCRIPTION: Section 7(c) of the Natural Gas Act of 1938, as amended, requires a natural gas company, or a person which will be a natural gas company upon completion of proposed construction or extension of transportation facilities, to obtain a certificate of public convenience and necessity to construct, extend, acquire, or operate such facilities. In addition, a certificate is required to transport or sell for resale natural gas in interstate commerce.

The Act requires the FERC to hold hearings on applications for permanent certificates and to give interested persons notice of such hearings and notices of applications are published in the Federal Register.

The FERC does not require a certificate of public convenience and necessity for certain replacement construction, maintenance, emergency facilities, auxiliary installations, and certain types of taps.

Natural gas services for drilling oil wells, or for

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testing or purging new natural gas pipeline facilities are exempt from the certificate requirement.

Certain "emergency" sales, transportation, or exchanges are exempt from the certificate requirement. When a certificate is required, the FERC may grant a temporary certificate for sale or transportation in emergency circumstances, pending the determination on a permanent certificate.

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**ANNEX V**  
**Schedule of the United States**

**SECTOR:** Postal Services

**SUB-SECTOR:** Postal Services

**INDUSTRY CLASSIFICATION:** SIC 4311 United States Postal Service

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** 39 U.S.C. §§ 401 et seq.  
18 U.S.C. § 1693  
39 C.F.R. Parts 310 and 320

**DESCRIPTION:** The United States Postal Service is generally authorized to "receive, transmit, and deliver throughout the United States, its territories and possessions ... written and printed matter, parcels and like materials." The Postal Service also has the exclusive authority to "provide and sell postage stamps."

A carrier other than the U.S. Postal Service may carry letters if, among other things, each letter is enclosed in an envelope, proper postage has been paid in stamps, the stamp is canceled by the sender, and the carrier endorses the envelope.

The postal regulations define "letters" to exclude telegrams, books and magazines, and other materials. The regulations also permit letters to be carried accompanying cargo, by the sender, by others without compensation, and by special messengers. The Postal Service has suspended its regulations with respect to private "express mail" services.

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ANNEX V  
Schedule of United States

**SECTOR:** Recreation

**SUB-SECTOR:** National Parks Concessions

**INDUSTRY CLASSIFICATION:** SIC 7999 Amusement and Recreation Services,  
Not Elsewhere Classified

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** 16 U.S.C. §§ 20 and 20a

**DESCRIPTION:** A concession is required to operate hotels, restaurants, gift shops, snack bars, equipment rentals, horseback riding services, guide services, fishing guides, mountain climbing, bus transportation, and other services facilities in U.S. national parks. The National Park Service regulates all aspects of these services, including building specifications, rates for the services, and hours of operation.

The National Park Service awards concessions only where they are determined to be "necessary and appropriate." In developing its plans for the operation of a national park, the Park Service determines what operations, including concessions, are "necessary and appropriate." As a result of this determination, the Park Service may determine that a given concession is not needed.

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**ANNEX V**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Telecommunications

**INDUSTRY CLASSIFICATION:** CMAP 720006 Other Telecommunications Services  
(Limited to Private Networks)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Ley de Vías Generales de Comunicación (General  
Means of Communication Law), Libro Primero,  
Capítulo III (Concesiones, Permisos y Contratos)

**Reglamento de Telecomunicaciones**  
(Telecommunications Regulations), Capítulo 2  
Capítulo 4 (Permisos)

**DESCRIPTION:** Cross-Border Services

Resale of circuit capacity of a private network may  
not exceed 30 percent of such capacity.

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**ANNEX V**  
**Schedule of Mexico**

**SECTOR:** Private Educational Services

**SUB-SECTOR:**

**INDUSTRY CLASSIFICATION:** CMAP 921101 Preschool Private Educational Services  
CMAÑ 921102 Primary School Private Educational Services  
CMAP 921103 Secondary School Private Educational Services  
CMAP 921104 Middle High (Preparatory) School Private Educational Services  
CMAP 921105 Higher Private Educational Services  
CMAP 921106 Private Educational Services that Combine Preschool, Primary, Secondary, Middle High and Higher School Instruction

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** Constitución Política de los Estados Unidos Mexicanos (United Mexican States Political Constitution) Título Primero, Capítulo I

Ley Federal de Educación (Federal Education Law) Capítulos I, II, III y IV

Ley para la Coordinación de la Educación Superior (Higher Education Coordination Law) Capítulos I y II

Ley Reglamentaria del Artículo 5 Constitucional relativo al ejercicio de las profesiones en el Distrito Federal, (Regulatory Law of Article 5 of the United Mexican States Political Constitution in relation to Professional Services) Article 1, related articles and its Regulation Art. 12, Capítulos I y III, Secciones I y III

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**Reglamento de la Ley Reglamentaria del Artículo 5  
Constitucional relativo al ejercicio de las  
profesiones en el Distrito Federal, (Regulation of the  
Regulatory Law of Article 5 of the United Mexican  
States Political Constitution in relation to Professional  
Services) Capítulo V**

**DESCRIPTION:**

Cross-Border Services and Investment

For the provision of primary, secondary, normal and workers or peasants educational services, prior and express authorization granted by the Secretaría de Educación Pública or corresponding state authorities is required. Such authorization is granted on a case-by-case basis in accordance with public convenience and necessity.

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**ANNEX V**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUB—SECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 973103 Vehicle Parking services) Services  
(Parking and garage  
CMAP 973104 Weight Scale Services for  
Transportation.  
CMAP 973105 Towing Services for Vehicles.  
CMAP 973106 Other Services Related to Land  
Transportation not mentioned in sections 9731, 7112  
and 7113 of the CMAP

**LEVEL OF GOVERNMENT:** Federal and State

**LEGAL CITATION:** Ley de Vías Generales de  
Comunicación (General Means of Communication  
Law)  
  
State laws [to be provided]

**DESCRIPTION:** A permit issued by the Secretaría de Comunicaciones  
y Transportes is required to provide services related to  
land transportation. In some states such permits are  
granted on a basis of the public convenience and  
necessity.



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**ANNEX VI**  
**Schedule of Canada**

**SECTOR:** Professional Services

**SUB-SECTOR:** Lawyers

**INDUSTRY CLASSIFICATION:** SIC [To be provided]

**LEVEL OF GOVERNMENT:** Provincial

**LEGAL CITATION:** [To be provided]

**DESCRIPTION:** Lawyers authorized to practise in Mexico or the United States and law firms headquartered in Mexico or the United States will be permitted to provide foreign legal consultancy services and to establish for that purpose, in British Columbia, Ontario, and Saskatchewan, and in any other province that so permits by the date of entry into force of this Agreement.

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Annex VI  
Schedule of United States

**SECTOR:** Communications

**SUB-SECTOR:** Broadcasting

**INDUSTRY CLASSIFICATION:** CPC 7524 Program Transmission Services

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Communications Act of 1934, as amended, Sections 309, 325, 47 U.S.C. §§309, 325 (1988)

**DESCRIPTION:** The United States will ensure that in considering applications for a grant of authority to transmit programming to foreign stations for retransmission into the United States under Section 325 of the Communications Act of 1934 (the Act), the Federal Communications Commission (FCC) will not consider the nationality of the affected stations for the purpose of favoring a U.S. station that is competing with a Mexican station for affiliation with a U.S. programmer. Rather the FCC will apply the criteria for the grant of such permit in the same manner as would be applied to a domestic broadcast station application under Section 309 of the Act.

In addition, the term of the Section 325 permit shall be extended from one year to five years in all situations where it can be assured that the retransmitting station is and will be in full compliance with applicable treaties. In assessing the public interest, convenience, and necessity required by the Act for the grant of authorization under Section 325, the primary criterion will be avoiding the creation or maintenance of electrical interference to U.S. broadcast stations that violates applicable treaty provisions. In evaluating this and any other criteria permitted under Section 309, the U.S. will ensure that

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the Section 325 process shall not be conducted in a manner that would constitute an unnecessary restriction on trade.

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ANNEX VI  
Schedule of the United States

**SECTOR:** Professional Services

**SUB-SECTOR:** Attorneys

**INDUSTRY CLASSIFICATION:** SIC 8111 Legal Services

**LEVEL OF GOVERNMENT:** State

**LEGAL CITATION:** [to be provided]

**DESCRIPTION:** Lawyers authorized to practice in Mexico or Canada and law firms headquartered in Mexico or Canada will be permitted to provide foreign legal consultancy services, and to establish for that purpose, in Alaska, California, Connecticut, District of Columbia, Florida, Georgia, Illinois, Michigan, New Jersey, New York, Ohio, Oregon, Texas, and Washington, or in any other state that so permits by the date of entry into force of this Agreement.

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**ANNEX VI**  
**Schedule of Mexico**

**SECTOR:** Communications

**SUB-SECTOR:** Entertainment Services (Cinema)

**INDUSTRY CLASSIFICATION:** CMAP 941102 Private Services of Distribution and  
Films Rental

**LEGAL CITATION:** Ley de la Industria Cinematográfica (Motion Picture  
Industry Law)

Reglamento de la Ley de la Industria  
Cinematográfica. (Regulations of the Motion Picture  
Industry Law)

**DESCRIPTION:** Cross-Border Services

A distributor of films produced outside of Mexico is  
required to provide to the Cineteca Nacional no more  
than one copy of two film titles of each five film titles  
imported by such distributor into Mexico.

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**ANNEX VI**  
**Schedule of Mexico**

- SECTOR:** Professional, Technical and Specialized Services and Services Provided by Natural Persons
- SUB-SECTOR:** Professional Services
- INDUSTRY CLASSIFICATION:** CMAP 951002 Legal Services and Foreign Legal Consultants
- LEVEL OF GOVERNMENT:** Federal and State
- LEGAL CITATION:** [to be provided]
- DESCRIPTION:**
1. Mexico will ensure that:
    - (a) a lawyer authorized to practice in a province of Canada or a state of the United States of America who seeks to practice as a foreign legal consultant in Mexico shall be granted a license to do so if lawyers licensed in Mexico are accorded equivalent treatment in such province or state; and
    - (b) a law firm headquartered in a province of Canada or a state of the United States of America that seeks to establish in Mexico to provide legal services through licensed foreign legal consultants shall be authorized to do so if law firms headquartered in Mexico are accorded equivalent treatment in such province or state.
  2. Mexico will, pursuant to paragraph 1(a), deny benefits to foreign lawyers employed by or associated with foreign legal consultancy firms established in Mexico, pursuant to paragraph 1(b), if such lawyers

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are not authorized to practice in a province of Canada or a state of the United States of America that authorizes lawyers licensed in Mexico to practice as foreign legal consultants in its territory.

3. Subject to paragraphs 1 and 2, Mexico will adopt rules and procedures regarding the practice of foreign legal consultants in Mexico, including matters related to association and hiring of lawyers licensed in Mexico.

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**ANNEX VI**  
**Schedule of Mexico**

**SECTOR:** Transportation

**SUBSECTOR:** Land Transportation

**INDUSTRY CLASSIFICATION:** CMAP 711201 Road Transport  
Services for Construction Materials  
CMAP 711202 Road Transport Moving Services  
CMAP 711203 Other Services of Specialized Cargo  
Transportation  
CMAP 711204 General Trucking Services  
CMAP 711311 Inter-City Busing Services  
CMAP 711318 School and Tourist Transportation  
Services (limited to Tourist Transportation Services)

**LEGAL CITATION:** Federal regulations will be established in relation to  
leasing and rental operations.

**DESCRIPTION:** An enterprise authorized in Mexico to provide bus or  
truck transportation services may use equipment of its  
own, leased vehicles with option to purchase (financial  
leasing), leased vehicles (operational leasing), or  
short-term rental vehicles.



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ANNEX VII

PART A

Schedule of Canada

**SECTOR:** Financial Services

**SUB-SECTOR:** Insurance

**TYPE OF RESERVATION:** Article 1404 (Cross-Border Trade)

**MEASURE:** Limitation on purchase of reinsurance from non-resident reinsurers

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** The Insurance Companies Act; S.C. 1991, c.47; Reinsurance (Canadian Companies) Regulations; SOR/92-298; Reinsurance (Foreign Companies) Regulations; SOR/92-596.

**DESCRIPTION:** The purchase of reinsurance services by a Canadian insurer, other than a life insurer or a reinsurer, from a non-resident reinsurer is limited to no more than 25 percent of the risks undertaken by the insurer purchasing the reinsurance.

**DURATION:** Indeterminate

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**ANNEX VII**

**PART A**

**Schedule of Canada**

Canada shall set out any existing non-conforming measure maintained at the provincial level by the date of entry into force of this Agreement.

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**ANNEX VII**

**PART B**

**Schedule of Canada**

Canada reserves the right to derogate from Article 1405(1) for the securities sector. With respect to this Article, Canada reserves the right to adopt and maintain new measures affecting cross-border trade in securities services that are more restrictive than such measures existing on the entry into force of this Agreement.

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ANNEX VII

PART E

Schedule of Canada

For the purposes of restrictions that limit foreign ownership of Canadian-controlled financial institutions and for the purposes of restrictions on total domestic assets of foreign bank subsidiaries in Canada, an enterprise of another Party, to be considered an enterprise of such other Party must meet the terms and conditions of being controlled by one or more residents of the other Party. For these purposes:

- (a) an enterprise controlled by one or more residents of another Party means controlled, directly or indirectly by such residents;
- (b) an enterprise that is a body corporate is controlled by one or more persons if
  - (i) securities of the enterprise to which are attached more than fifty percent of the votes that may be cast to elect directors of the enterprise are beneficially owned by the person or persons and the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the enterprise, and
  - (ii) the person or persons has or have, directly or indirectly, control in fact of the enterprise,
- (c) an enterprise that is an unincorporated entity is controlled by one or more persons if
  - (i) more than fifty percent of ownership interests, however designated, into which the enterprise is divided is beneficially owned by the person or persons and the person or persons are able to direct the business and affairs of the enterprise, and
  - (ii) the person or persons has or have, directly or indirectly, control in fact of the enterprise,
- (d) a limited partnership is controlled by the general partner;

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- (e) ordinarily resident in a country generally means sojourning in that country for a period of, or periods the aggregate of which is, 183 days or more during the relevant year; and
- (f) a person ordinarily resident in another Party means;
  - (i) in the case of an enterprise, an enterprise legally constituted or organized under the laws of that Party and controlled, directly or indirectly, by one or more individuals of that Party described in clause (ii), and
  - (ii) in the case of an individual, an individual who is ordinarily resident in the territory of that Party.

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ANNEX VII

PART A

Schedule of Mexico

SECTOR:	Financial Services
SUB-SECTOR:	Financial Holding Companies
INDUSTRY CLASSIFICATION:	Not applicable.
TYPE OF RESERVATION:	Articles 1404, 1407 (Establishment, National Treatment)
MEASURE:	Aggregate limits on foreign ownership
LEVEL OF GOVERNMENT:	Federal
LEGAL CITATION:	<i>Ley para Regular las Agrupaciones Financieras</i> (Law Regulating Financial Groups), Art. 18
DESCRIPTION:	Aggregate foreign investments in financial holding companies are limited to 30% of common stock capital ( <u>capital ordinario</u> ). These limits do not apply to financial holding companies established pursuant to Parts B and C of the Schedule of Mexico.
DURATION:	Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Commercial Banks (Instituciones de Crédito)

**INDUSTRY CLASSIFICATION:** 811030

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Aggregate limits on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley de Instituciones de Crédito* (Law of the Credit Institutions), Arts. 11 y 15

**DESCRIPTION:** Aggregate foreign investments in commercial banks are limited to 30% of common stock capital (capital ordinario). These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Securities Firms (Casas de Bolsa)

**INDUSTRY CLASSIFICATION:** 812001

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitations on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley del Mercado de Valores* (Law of the Stock Market), Art. 17-II

**DESCRIPTION:** Aggregate foreign investments in securities firms are limited to 30% of capital (capital social) and individual foreign investments are limited to 10% of capital, while individual investments by Mexicans may, with approval from the Ministry of Finance and Public Credit, rise to 15% of capital. These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate



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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Securities Specialists (Especialistas Bursátiles)

**INDUSTRY CLASSIFICATION:** 812001

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitations on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley del Mercado de Valores* (Law of the Stock Market), Art. 17-II

**DESCRIPTION:** Aggregate foreign investments in securities specialists are limited to 30% of capital (capital social) and individual foreign investments are limited to 10% of capital, while individual investments by Mexicans may, with approval from the Ministry of Finance and Public Credit, rise to 15% of capital. These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** General Deposit Warehouses (Almacenes Generales de Depósito)

**INDUSTRY CLASSIFICATION:** 811042

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Aggregate limits on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Organizaciones y Actividades Auxiliares del Crédito* (General Law of Auxiliary Credit Organizations and Activities), Art. 8-III-1

**DESCRIPTION:** Foreign participation must be less than 50% of paid-in capital (capital pagado). These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Financial Leasing Companies (Arrendadoras Financieras)

**INDUSTRY CLASSIFICATION:** 811043

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Aggregate limits on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Organizaciones y Actividades Auxiliares del Crédito* (General Law of Auxiliary Credit Organizations and Activities), Art. 8-III-1

**DESCRIPTION:** Foreign participation must be less than 50% of paid-in capital (capital pagado). These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Financial Factoring Companies (Empresas de Factoraje Financiero)

**INDUSTRY CLASSIFICATION:** Not applicable

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Aggregate limits on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Organizaciones y Actividades Auxiliares del Crédito* (General Law of Auxiliary Credit Organizations and Activities), Art. 8-III-1

**DESCRIPTION:** Foreign participation must be less than 50% of paid-in capital (capital pagado). These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Financial Agents (Comisionistas Financieros)

**INDUSTRY CLASSIFICATION:** 811045

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitation on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley de Instituciones de Crédito* (Law of Credit Institutions), Art. 92  
*Reglas de SHCP* (Regulations of the Ministry of Finance and Public Credit)

**DESCRIPTION:** Foreign investors may not participate in the capital of these entities. This limitation does not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Bonding Companies (Instituciones de Fianzas)

**INDUSTRY CLASSIFICATION:** 813001

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Aggregate limits on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley Federal de Instituciones de Fianzas* (Federal Law of Bonding Companies), Art. 15-XIII

**DESCRIPTION:** Foreign participation must be less than 50% of paid-in capital (capital pagado). These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Insurance Companies (Instituciones de Seguros)

**INDUSTRY CLASSIFICATION:** 813002

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Aggregate limits on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Instituciones y Sociedades Mutualistas de Seguros* (General Law on Insurance Institutions and Mutual Societies), Art. 29-I

**DESCRIPTION:** Foreign participation must be less than 50% of paid-in capital (capital pagado). These limits do not apply to Foreign Financial Affiliates established pursuant to Part B of the Schedule of Mexico.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Financial Holding Companies
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	Limitation on foreign ownership
<b>MEASURE:</b>	Articles 1404, 1407 (Establishment, National Treatment)
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<i>Ley para Regular las Agrupaciones Financieras</i> (Law Regulating Financial Groups), Art. 18
<b>DESCRIPTION:</b>	Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a financial holding company.
<b>DURATION:</b>	Indeterminate



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ANNEX VII

PART A

Schedule of Mexico

SECTOR:	Financial Services
SUB-SECTOR:	Commercial Banks ( <u>Instituciones de Crédito</u> )
INDUSTRY CLASSIFICATION:	811030
TYPE OF RESERVATION:	Articles 1404, 1407 (Establishment, National Treatment)
MEASURE:	Limitation on foreign ownership
LEVEL OF GOVERNMENT:	Federal
LEGAL CITATION:	<i>Ley de Instituciones de Crédito</i> (Law of Credit Institutions), Art. 15
DESCRIPTION:	Foreign entities that exercise governmental functions may not invest, directly or indirectly, in a commercial bank.
DURATION:	Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Securities Firms ( <u>Casas de Bolsa</u> )
<b>INDUSTRY CLASSIFICATION:</b>	812001
<b>TYPE OF RESERVATION:</b>	Articles 1404, 1407 (Establishment, National Treatment)
<b>MEASURE:</b>	Limitation on foreign ownership
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<i>Ley del Mercado de Valores</i> (Law of the Stock Market), Art. 17-II-b
<b>DESCRIPTION:</b>	Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a securities firm.
<b>DURATION:</b>	Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Securities Specialists ( <u>Especialistas Bursátiles</u> )
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	Articles 1404, 1407 (Establishment, National Treatment)
<b>MEASURE:</b>	Limitation on foreign ownership
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<i>Ley del Mercado de Valores</i> (Law of the Stock Market), Art. 17-II
<b>DESCRIPTION:</b>	Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a securities specialist.
<b>DURATION:</b>	Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** General Deposit Warehouses (Almacenes Generales de Depósito)

**INDUSTRY CLASSIFICATION:** 811042

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitation on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Organizaciones y Actividades Auxiliares del Crédito* (General Law of Auxiliary Credit Organizations and Activities), Art. 8-III-1

**DESCRIPTION:** Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a general deposit warehouse.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Financial Leasing Companies (Arrendadoras Financieras)

**INDUSTRY CLASSIFICATION:** 811043

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitation on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Organizaciones y Actividades Auxiliares del Crédito* (General Law of Auxiliary Credit organizations and Activities), Art. 8-III-1

**DESCRIPTION:** Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a financial leasing company.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Financial Factoring Companies ( <u>Empresas de Factoraje Financiero</u> )
<b>INDUSTRY CLASSIFICATION:</b>	Not applicable
<b>TYPE OF RESERVATION:</b>	Articles 1404, 1407 (Establishment, National Treatment)
<b>MEASURE:</b>	Limitation on foreign ownership
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<i>Ley General de Organizaciones y Actividades Auxiliares del Crédito</i> (General Law of Auxiliary Credit Organizations and Activities), Art. 8-III-1
<b>DESCRIPTION:</b>	Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a financial factoring company.
<b>DURATION:</b>	Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Savings and Loan Companies (Sociedades de Ahorro y Préstamo)

**INDUSTRY CLASSIFICATION:** 811046

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitation on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Organizaciones y Actividades Auxiliares del Crédito* (General Law of Auxiliary Credit Organizations and Activities), Art. 38-G

**DESCRIPTION:** Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a savings and loan company.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Managing Companies of Investment Companies ( <u>Sociedades Operadoras de Sociedades de Inversión</u> )
<b>INDUSTRY CLASSIFICATION:</b>	812003
<b>TYPE OF RESERVATION:</b>	Articles 1404, 1407 (Establishment, National Treatment)
<b>MEASURE:</b>	Limitation on foreign ownership
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	<i>Ley de Sociedades de Inversión</i> (Law of Investment Companies), Art. 29-VI
<b>DESCRIPTION:</b>	Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in an operator of an investment company.
<b>DURATION:</b>	Indeterminate



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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Investment Companies (Sociedades de Inversión)

**INDUSTRY CLASSIFICATION:** 812002

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitation on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley de Sociedades de Inversión* (Law of Investment Companies), Art. 9-III

**DESCRIPTION:** Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in an investment company.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

SECTOR:	Financial Services
SUB-SECTOR:	Bonding Companies ( <u>Instituciones de Fianzas</u> )
INDUSTRY CLASSIFICATION:	813001
TYPE OF RESERVATION:	Articles 1404, 1407 (Establishment, National Treatment)
MEASURE:	Limitation on foreign ownership
LEVEL OF GOVERNMENT:	Federal
LEGAL CITATION:	<i>Ley Federal de Instituciones de Fianzas</i> (Federal Law of Bonding Companies), Art. 15 bis-IV-a
DESCRIPTION:	Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in a bonding company.
DURATION:	Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Insurance Companies (Instituciones de Seguros)

**INDUSTRY CLASSIFICATION:** 813002

**TYPE OF RESERVATION:** Articles 1404, 1407 (Establishment, National Treatment)

**MEASURE:** Limitation on foreign ownership

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Instituciones y Sociedades de Mutualistas de Seguros* (General Law on Insurance Institutions and Mutual Societies), Art. 29-I

**DESCRIPTION:** Foreign governments and foreign state enterprises or their investments may not invest, directly or indirectly, in an insurance company.

**DURATION:** Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Insurance

**INDUSTRY CLASSIFICATION:** 813002

**TYPE OF RESERVATION:** Article 1405 (Cross-Border Trade)

**MEASURE:** Restrictions on cross-border insurance

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley General de Instituciones y Sociedades Mutualistas de Seguros* (General Law on Insurance Institutions and Mutual Societies), Art. 3<sup>o</sup>

**DESCRIPTION:** Mexico reserves its existing prohibitions and restrictions on cross-border trade in insurance services, which do not now include restrictions on the right of individuals to purchase, by physical mobility, life and health insurance. Mexico is not reserving its present restrictions with respect to the ability of residents of Mexico to purchase from non-resident insurance companies of another Party, the following types of insurance:

- (a) tourist insurance (including travel accident and motor vehicle insurance for non-resident tourists, but not insurance of risks of liability to third parties) for individuals, purchased without solicitation via physical mobility of such individuals;

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- (b) cargo insurance to and from each Party purchased without solicitation for goods in international transit from point of origin to final destination and for the vehicle during the period of its use in transportation of such goods, provided such vehicle is licensed and registered outside Mexico (including vehicles in maritime shipping, commercial aviation, space launching and freight (including satellites)); and
- (c) intermediary services incidental to (a) and (b) without solicitation.

**DURATION:**

For greater clarity, this reservation does not apply to reinsurance.

Indeterminate

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ANNEX VII

PART A

Schedule of Mexico

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking

**INDUSTRY CLASSIFICATION:** 811021  
811030

**TYPE OF RESERVATION:** Articles 1404, 1405, 1407 (Establishment, Cross-Border Trade, National Treatment)

**MEASURE:** Activities reserved for development banks

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** *Ley Orgánica de Nacional Financiera* (Organic Law of Nacional Financiera), Art. 7; *Ley Orgánica del Banco Nacional del Ejército, la Fuerza Aérea y la Armada* (Organic Law of the National Bank of the Army, Air Force and Navy)

**DESCRIPTION:** The following activities are reserved solely to Mexican development banks:

- (1) acting as custodians of securities and cash funds deposited by or in the administrative or judiciary authorities, and acting as custodian of goods that have been confiscated according to Mexican measures;
- (2) managing the savings funds, retirement plans and any other funds or property of the personnel of the Secretaría de la Defensa Nacional, Secretaría de Marina and the Mexican armed forces, and performing other

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financial activities pertaining to the financial  
resources of such personnel.

**DURATION:**

Indeterminate

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ANNEX VII

PART B

Schedule of Mexico

TRANSITIONAL EXCEPTIONS

Reservations to Articles 1404 and 1407

1. The provisions of paragraphs 2 through 10 of this Part B of the Schedule of Mexico shall apply during the Transition Period, except as otherwise specifically provided in paragraphs 9 and 10 of this Part B.
2. For the types of financial institutions listed in the chart in this paragraph 2, the maximum capital to be authorized for a Foreign Financial Affiliate, measured as a percentage of the aggregate capital of all financial institutions of the same type in Mexico, shall not exceed the percentage set forth in the chart in this paragraph 2:

<u>Type of Financial Institution</u>	<u>Maximum Individual Capital to be Authorized (Percentage of the Aggregate Capital of all Institutions of the same type)</u>
Commercial Banks	1.5%
Securities Firms	4.0%
Insurance Companies	
Casualty	1.5%
Life and Health	1.5%

In the case of an acquisition by a financial service provider of another Party of a financial institution established in Mexico, the sum of the authorized capital of the acquired institution and the authorized capital of any Foreign Financial Affiliate already controlled by the acquiror may not, at the time of acquisition or at any time thereafter during the Transition Period, exceed the applicable limit set forth in the chart in this paragraph 2.

This paragraph 2 will not apply to new or existing Mexican insurance companies invested in by insurance providers of another Party (or their affiliates) pursuant to paragraph 7 of this Part 3 or paragraph 4 of Part C of the Schedule of Mexico.



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3. For purposes of the proper administration of the capital limits in the Schedule of Mexico, the following provisions shall apply:

i. Each Foreign Financial Affiliate shall have a paid-in capital not less than that authorized by Mexico at the time of approval of its establishment. The authorized capital shall be determined by Mexico. After the time of establishment, Mexico may permit authorized capital to exceed paid-in capital. Authorized capital shall not be reduced by any measure of Mexico (other than prudential measures) below paid-in capital. The maximum size of the operations of each Foreign Financial Affiliate shall be determined, on a national treatment basis, as a function of the lesser of its capital or its authorized capital.

ii. Mexico reserves the right to impose limitations on transfers of assets or liabilities by Foreign Financial Affiliates that have the effect of evading the capital limits set forth in the Schedule of Mexico. This subparagraph does not apply to bona fide transfers of funds to make overnight deposits or bona fide transfers of banking liabilities.

4. A Foreign Financial Affiliate shall not issue subordinated debentures, except to its parent outside of Mexico.

5. The aggregate of the authorized capital of all Foreign Financial Affiliates of the same type, measured as a percentage of the aggregate capital of all financial institutions of such type in Mexico, shall not exceed the percentage set forth in the chart in this paragraph 5 for that type of institution, except for the case of insurance which is addressed in paragraph 6 of this Part B. Beginning one year after the entry into force of the Agreement, these initial limits shall increase annually in equal increments so as to reach the final limits specified in the chart in this paragraph 5 at the beginning of the last year of the Transition Period.

<u>Type of Financial Institution</u>	<u>Percentage of Total Capital</u>	
	Initial Limit	Final Limit
Commercial banks	8%	15%
Securities firms	10%	20%
Factoring companies	10%	20%
Leasing companies	10%	20%

Any capital in existence as of the date of signature of this Agreement of a foreign bank branch established in Mexico prior to such date shall be excluded from each of the aggregate capital limits referred to in the Schedule of Mexico.

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6. In the case of insurance, the aggregate of the authorized capital of all Foreign Insurance Affiliates, measured as a percentage of the aggregate capital of all insurance companies in Mexico, shall not exceed the percentage set forth in the chart in this paragraph 6 for the respective one-year periods beginning on each of the following dates:

<u>Date</u>	<u>Percentage of Total Capital</u>
January 1, 1994	6%
January 1, 1995	8%
January 1, 1996	9%
January 1, 1997	10%
January 1, 1998	11%
January 1, 1999	12%

If the entry into force of the Agreement occurs on a date prior to January 1, 1994, that date shall become the initial date for purposes of this chart, and each succeeding anniversary of the entry into force of the Agreement shall become the next succeeding date in this chart, with the percentages listed in this chart applying to each of the respective periods as so adjusted. If the entry into force of the Agreement occurs on a date after January 1, 1994, the dates and corresponding limits in this chart shall nonetheless not be changed.

The individual and aggregate capital limits described in paragraphs 2 and 6 of this Part B shall be measured separately (through separate accounting) for life and non-life insurance operations; but both types of insurance operations may be conducted either by a single or separate Foreign Financial Affiliates.

7. Insurance providers of another Party may elect an alternative procedure for entering Mexico through phasing-in an equity interest in a new or existing Mexican insurance company, and thereby exempt such Mexican company from the capital limits of paragraphs 2 and 6 of this Part B. In order to qualify, the percentage of the Mexican insurance company's voting common stock that is owned by Mexican persons must not be less than the levels set forth in the chart in this paragraph 7 for the respective one-year periods beginning on each of the following dates:

<u>Date</u>	<u>Mexican Interest</u>
January 1, 1994	70%
January 1, 1995	65%
January 1, 1996	60%
January 1, 1997	55%
January 1, 1998	49%

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January 1, 1999

25%

If the entry into force of the Agreement occurs on a date prior to January 1, 1994, that date shall become the initial date for purposes of this chart, and each succeeding anniversary of the entry into force of the Agreement shall become the next succeeding date in this chart, with the percentages listed in this chart applying to each of the respective periods as so adjusted. If the entry into force of the Agreement occurs on a date after January 1, 1994, the dates and corresponding limits in this chart shall nonetheless not be changed.

On and after January 1, 2000 (or, if the entry into force of the Agreement occurs on a date prior to January 1, 1994, on and after the sixth anniversary of such date), the percentage requirement of Mexican ownership set forth in this paragraph 7 shall no longer apply.

This paragraph 7 is further modified by paragraph 4 of Part C of the Schedule of Mexico to the extent set forth therein.

8. The aggregate assets of Foreign Financial Affiliates that are limited scope financial institutions within the meaning of paragraph 2 of Part C of the Schedule of Mexico shall not exceed 3% of the sum of (1) the aggregate assets of all commercial banks in Mexico plus (2) the aggregate assets of all types of limited scope financial institutions in Mexico. Lending by affiliates of automobile manufacturing companies with respect to their vehicles shall not be subject to or taken into account in determining compliance with this 3% limit.

9. The capital limits in paragraphs 2, 5, 6 and 8 of this Part B shall be removed at the end of the Transition Period. If the sum of the authorized capital of Foreign Financial Affiliates, measured as a percentage of the aggregate capital of all financial institutions of such type in Mexico, reaches the percentage set forth in the chart in this paragraph 9 for such type of institutions, then Mexico shall have the right, once during the four years following the end of the Transition Period, to freeze such aggregate capital percentage at its then-existing level:

Commercial banks	25%
Securities firms	30%

If applied, such a restriction will have a duration not to exceed a period of 3 years.

10. No additional license to establish a Foreign Financial Affiliate shall be granted during the Transition Period (and, in the case of paragraph 9 of this Part B, during the additional periods described in that paragraph) if after such issuance the sum of the authorized capital of all Foreign Financial Affiliates of the same type would exceed the applicable percentage limit for that type of institution in paragraph 5, 6, 8 or 9 of this Part B.

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## OTHER EXCEPTIONS

11. The provisions of the following paragraphs 12 through 15 of this Part B shall apply immediately upon the entry into force of the Agreement and at all times thereafter, except as otherwise specifically provided in such paragraphs. Any amendment or modification to a measure adopted or maintained pursuant to paragraphs 12 through 15 of this Part B shall not decrease the conformity of the measure, as it existed immediately before such amendment or modification, with Articles 1404 to 1409 of the Agreement.

### Reservation to Article 1407

12. Mexico may require that a Foreign Financial Affiliate (other than a Foreign Insurance Affiliate) be wholly-owned by a financial service provider of another Party (except for directors' nominal qualifying shares). Mexico may also restrict any Foreign Financial Affiliate from establishing agencies, branches, or other direct or indirect subsidiaries in the territory of any other country.

### Reservations to Articles 1404 and 1407

13. Following the Transition Period, acquisition of a commercial bank established in Mexico, or of the assets or liabilities thereof, by a financial service provider of another Party will only be authorized by Mexico, subject to reasonable prudential considerations on a case by case basis, if the sum of the authorized capital of the acquired commercial bank and the authorized capital of any commercial bank in Mexico already controlled by the acquiror would not exceed 4% of the aggregate capital of all commercial banks in Mexico.

14. Mexico may adopt measures that (i) limit eligibility to establish a Foreign Financial Affiliate in Mexico to a financial service provider of another Party that is, directly or through any of its affiliates, engaged in the same general type of financial services in the territory of the other Party; and (ii) limit such provider (together with its affiliates) to no more than one institution of the same type in Mexico. In determining what types of operations a financial service provider of another Party is engaged in for purposes of the preceding sentence, all types of insurance shall be considered to be only one type of financial service; but both life and non-life insurance operations may be conducted either by a single or separate Foreign Financial Affiliates.

### Reservation to Articles 1404, 1405 and 1407

15. The existing activities and operations of Mexican governmental insurance programs conducted by Aseguradora Mexicana, S.A. or Aseguradora Hidalgo, S.A. (including

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insurance for government employees, agencies, instrumentalities and public entities) are excluded from Articles 1404, 1405 and 1407 for so long as such firm is controlled by the government of Mexico and for a commercially reasonable time after such governmental control ceases.

Reservation to Article 1405

16. In order not to impair the conduct of Mexico's monetary and exchange rate policies, non-resident financial service providers of another Party shall not be permitted to provide financial services into the territory of Mexico or to residents of Mexico, and residents of Mexico may not purchase financial services from non-resident financial service providers of another Party, if such transactions are denominated in Mexican pesos.

Reservation to Articles 1404-1409

17. The benefits of this Agreement shall not be extended to a foreign bank branch existing in Mexico on the date of entry into force of this Agreement. The existing legal regime will continue to apply to such a branch for so long as it operates in that form. Such a branch shall be permitted to convert to a subsidiary pursuant to the terms of this Schedule, and upon conversion shall be covered by this Agreement. The existing capital of such branch on the date of signature of this Agreement shall not be counted against such Foreign Commercial Bank Affiliate's individual capital limit, or the aggregate capital limits for commercial banks in the event of conversion.

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Definitions

For purposes of Part B of Mexico's schedule:

**capital** means the following, as defined in Mexican measures, applied on a national treatment basis:

Type of Financial Institution	Concept of "Capital"
commercial banks	capital neto
securities firms	capital global
insurance companies	
casualty	requerimiento bruto de solvencia (allocation to casualty insurance)
life and health	requerimiento bruto de solvencia (allocation to life and health insurance)
factoring companies	capital contable
leasing companies	capital contable

**Foreign Commercial Bank Affiliate** means a Foreign Financial Affiliate that is a commercial bank;

**Foreign Financial Affiliate** means a financial institution established in Mexico and owned and controlled by a financial service provider of another Party;

**Foreign Insurance Affiliate** means a Foreign Financial Affiliate that is an insurance company; and

**Transition Period** means the period beginning with the entry into force of the Agreement and ending on the earlier of i) January 1, 2000, or ii) six years from the entry into force of the Agreement.

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## ANNEX VII

### PART C

#### Schedule of Mexico

#### SPECIFIC COMMITMENTS

1. Mexico shall retain discretion to approve, on a case-by-case basis, any affiliation of a commercial bank or securities firm with a commercial or industrial corporation that has a commercial presence in Mexico, if Mexico determines that such affiliation is harmless and, in the case of banking, either (a) not substantial, or (b) the financial-related activities of the commercial or industrial commercial corporation are at least 90 percent of its annual income worldwide, and the non-financial activities of such commercial or industrial corporation are of a type that Mexico determines to be acceptable. Affiliation with a non-resident commercial or industrial corporation that has no commercial presence in Mexico will not be a reason for denial of an application to establish or acquire a commercial bank or securities firm in Mexico.
2. Non-bank financial service providers of another Party shall be permitted to establish one or more limited scope financial institutions in Mexico to provide separately consumer lending, commercial lending, mortgage lending or credit card services on terms no less favorable than those applied to like domestic firms under Mexican measures. Mexico may permit lending services closely related to the principal authorized business of a limited scope financial institution to be carried out by that institution. Such firms shall be provided the opportunity to raise funds in the securities market for business operations subject to normal terms and conditions. Mexico may restrict such limited scope financial institutions from taking deposits.
3. Within two years of the entry into force of the Agreement, Mexico shall conduct a study of the desirability and, if desirable, the possible methods of establishing limited scope securities firms which would have more limited powers than current securities firms. Such limited scope securities firms would be subject to differing capital requirements, depending on the type and extent of business conducted, that would permit lower minimum capital requirements than those currently applicable to Mexican securities firms. The basis of the study would be prudential considerations and opportunities for investment in the securities sector. As part of the second annual meeting of the Committee required under Article 1414, Mexico shall report to the other Parties on the outcome of the study, including any plans for the establishment of new categories of securities firms.

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4. Notwithstanding Part B (paragraph 7) of the Schedule of Mexico, an insurance provider of another Party, together with its affiliates, that as of July 1, 1992 collectively have an active investment or ownership interest that has been specifically approved by the Mexico of 10% or more in a Mexican insurance company may: (1) exercise any contract right or option in existence as of July 1, 1992 with respect to ownership interests in such Mexican insurance company; and (2) effective the earlier of January 1, 1996 or two years following the date of entry into force of the Agreement, acquire a controlling interest of up to 100% in such Mexican insurance company. Before the effective date described in clause (2) of the preceding sentence, an insurance provider of another Party (together with its affiliates) described in that sentence may exercise any existing contract right or option described in clause (1) of that sentence, and choose to maintain its existing interest or expand its interest in such Mexican insurance company to the extent consistent with Part B (paragraph 7) of the Schedule of Mexico. Mexico shall maintain discretion to permit acceleration of the schedule for equity participation in a Mexican insurance company by an insurance provider of another Party described in the first sentence of this paragraph.

5. A bank or securities provider of another Party that is authorized to and establishes or acquires a commercial bank or securities firm, respectively, in Mexico may also establish a financial holding company in Mexico, and thereby establish or acquire other types of financial institutions in Mexico, under the terms of Mexican measures.

6. Mexico shall administer its licensing and approval procedures during the Transition Period (as defined in Part B of the Schedule of Mexico) in a manner that does not deny the benefits of the liberalization of existing measures described in the Schedule of Mexico to enterprises of another Party ultimately controlled by nationals of that Party.



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**ANNEX VII**

**PART D**

**Schedule of Mexico**

The agency of the government of Mexico responsible for financial services is the Secretaría de Hacienda y Crédito Público.

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**ANNEX VII**  
**PART A**  
**Schedule of the United States**

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking

**TYPE OF RESERVATION:** Article 1409 (Staffing)

**MEASURE:** U.S. citizenship requirements for chief executive officers of national banks not affiliated or owned by foreign banks

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** The National Bank Act, 12 U.S.C. § 72.

**DESCRIPTION:** All directors of a national bank must be citizens of the United States. Because it is also required that chief executive officers of all national banks be directors, a chief executive officer of a national bank must be a citizen of the United States. An exception from these requirements exists for national banks affiliated or owned by foreign banks. Such banks are only required to have citizens constitute a simple majority of the directors and need not employ citizens as chief executive officers.

**DURATION:** Indeterminate

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**ANNEX VII**  
**PART A**  
**Schedule of the United States**

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking

**TYPE OF RESERVATION:** Article 1409 (Staffing)

**MEASURE:** Residency requirements on boards of directors of national banks

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** The National Bank Act, 12 U.S.C. § 72.

**DESCRIPTION:** Two-thirds of the directors of a national bank must have (i) resided for one year prior to their election, and (ii) continue to reside, in the state in which the bank is located or within 100 miles of the national bank.

**DURATION:** Indeterminate

September 6, 1992

ANNEX VII  
PART A  
Schedule of the United States

SECTOR:	Financial Services
SUB-SECTOR:	Banking
TYPE OF RESERVATION:	Article 1407 (National Treatment)
MEASURE:	Limitations on acquisition of interests in banks on an interstate basis
LEVEL OF GOVERNMENT:	Federal
LEGAL CITATION:	Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1842(d); International Banking Act of 1978, as amended, 12 U.S.C. § 3103(a)(5).
DESCRIPTION:	<p>Federal authorities may not approve the establishment of, or acquisition of an interest in, a bank subsidiary within a state ("the host state") by a foreign bank that has a full-service branch or bank subsidiary in the United States, unless the measures of the host state expressly permit the transaction. Thus, foreign banks may not acquire interests in banks in some states on the same basis as domestic bank holding companies from the foreign bank's home state. For purposes of determining national treatment under paragraph 6(b) of Article 1407, foreign banks are located in their "home state," as that term is used in the International Banking Act of 1978.</p> <p>The following types of measures, <i>inter alia</i>, fall into this category:</p> <ul style="list-style-type: none"><li>(a) Foreign banks are expressly excluded from the authority to own banks in certain regional holding company laws.</li><li>(b) Foreign banks are implicitly excluded</li></ul>

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through a definition of eligible owner in certain state laws that requires a majority of the parent bank's deposits to be in the United States, in a particular region of the United States, or in a particular state.

- (c) Foreign banks that do not already own a banking subsidiary in the United States are interpreted as not qualifying as an eligible "bank holding company" entitled to own a bank.

**DURATION:**

Indeterminate

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ANNEX VII  
PART A  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:** Limitations on ownership of corporations organized under section 25A of the Federal Reserve Act ("Edge corporations")

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Federal Reserve Act, 12 U.S.C. § 619.

**DESCRIPTION:** Edge corporations (specialized international banking companies chartered under Federal law) may be owned by domestically-owned banks and bank holding companies, and by domestic non-bank companies willing to restrict their business activities to those closely related to banking. Foreign ownership of Edge corporations is limited to foreign banks and U.S. subsidiaries of foreign banks. Other foreign persons may neither directly nor indirectly own Edge corporations.

**DURATION:** Indeterminate

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**ANNEX VII**  
**PART A**  
**Schedule of the United States**

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:** Exemption from limitations for federal- and state-owned companies that own banks

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841(b)

**DESCRIPTION:** The Bank Holding Company Act does not apply to companies that are majority-owned by the Federal and state governments, whereas companies owned by foreign governments are not excepted.

**DURATION:** Indeterminate

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**ANNEX VII**  
**PART A**  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:** Limitations on the ability of foreign banks to accept certain types of deposits through any form other than an insured banking subsidiary

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** International Banking Act of 1978, 12 U.S.C. §3104 (as amended by The Federal Deposit Insurance Corporation Improvement Act of 1991, Pub.L. 102-242, Title II, § 214(a)).

**DESCRIPTION:** After December 19, 1991, in order to accept or maintain deposit accounts having balances of less than \$100,000, a foreign bank must establish an insured banking subsidiary. As a result, foreign bank branches are prohibited from taking insured deposits unless engaged in that activity on December 19, 1991.

**DURATION:** Indeterminate



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**ANNEX VII**  
**PART A**  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking and Securities

**TYPE OF RESERVATION:** Articles 1407, 1408 and 1409 (National Treatment, MFN Treatment, Staffing)

**MEASURE:** Eligibility of foreign trust indentures

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Trust Indenture Act of 1939, 15 U.S.C. § 77jjj(a)(1) and rules thereunder.

**DESCRIPTION:** Under the Trust Indenture Act of 1939, foreign firms located outside the United States may be prohibited from acting as sole trustees under an indenture for debt securities sold in the United States if U.S. institutional trustees cannot act as sole trustee for securities sold in the foreign country.

**DURATION:** Indeterminate

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**ANNEX VII**  
**PART A**  
**Schedule of the United States**

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Banking and Securities
<b>TYPE OF RESERVATION:</b>	Article 1409 (MFN Treatment)
<b>MEASURE:</b>	Special reserve bank account
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	Rule 15c3-3 of the Securities Exchange Act of 1934, 17 C.F.R. § 240.15c3-3.
<b>DESCRIPTION:</b>	Broker-dealers that maintain their principal place of business in Canada may maintain their reserve requirement at a Canadian bank subject to supervision by an authority of Canada; however, other foreign broker-dealers not in the U.S. or Canada must maintain reserves in the U.S.
<b>DURATION:</b>	Indeterminate

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**ANNEX VII**  
**PART A**  
**Schedule of the United States**

**SECTOR:** Financial Services

**SUB-SECTOR:** Commodity Futures and Options

**TYPE OF RESERVATION:** Articles 1405 and 1406 (Cross-Border Trade, New Financial Services)

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Commodity Exchange Act, 7 U.S.C. § 2.

**DESCRIPTION:** Federal law prohibits the offer or sale of futures contracts on onions, options contracts on onions and options on futures contracts on onions in the United States and services related thereto.

**DURATION:** Indeterminate

September 6, 1992

**ANNEX VII  
PART A  
Schedule of the United States**

**SECTOR:** Financial Services

**SUB-SECTOR:** Insurance

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:**

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** 31 U.S.C. § 9304

**DESCRIPTION:** Branches of foreign insurance companies are not permitted to provide surety bonds for U.S. Government contracts.

**DURATION:** Indeterminate

September 6, 1992

**ANNEX VII**  
**PART A**  
**Schedule of the United States**

<b>SECTOR:</b>	Financial Services
<b>SUB-SECTOR:</b>	Banking and Securities
<b>TYPE OF RESERVATION:</b>	Article 1407 (National Treatment)
<b>MEASURE:</b>	Differential treatment of foreign and domestic banks under the federal securities laws
<b>LEVEL OF GOVERNMENT:</b>	Federal
<b>LEGAL CITATION:</b>	Investment Advisors Act of 1940, 15 U.S.C. § 80b-2 and § 80b-3 and the rules thereunder.
<b>DESCRIPTION:</b>	Foreign banks may be required to register as investment advisers under the Investment Advisors Act of 1940 to engage in securities advisory services in the United States, while domestic banks are exempt from registration.
<b>DURATION:</b>	Indeterminate

September 6, 1992

**ANNEX VII**  
**PART A**  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:** Securities

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:** Application of the disclosure provisions of the federal securities laws to the U.S. government, government-owned enterprises, and state and local governments.

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Securities Exchange Act of 1934, 15 U.S.C. §§ 78c(a)(12)(A)(i), 78c(a)(12)(A)(ii) and the rules thereunder; Securities Act of 1933, 15 U.S.C. §§ 77c(a)(2) and the rules thereunder.

**DESCRIPTION:** U.S. federal, state and local government securities are exempt from the registration and disclosure provisions of the federal securities laws.

**DURATION:** Indeterminate

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ANNEX VII  
PART A  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:** Securities

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:** Application of the federal securities laws to the U.S. government, government owned enterprises, and state and local governments

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Investment Company Act of 1940, 15 U.S.C. §§ 80a-2(b), and the rules thereunder; Investment Advisers Act of 1940, 15 U.S.C. § 80-2(b), and the rules thereunder.

**DESCRIPTION:** The Investment Company Act of 1940 and the Investment Advisers Act of 1940 do not apply to investment companies and investment advisers, respectively, that are owned by the federal, state and local governments, whereas investment companies and investment advisers owned by foreign governments are not excepted.

**DURATION:** Indeterminate

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**ANNEX VII**  
**PART A**  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:** Banking and Securities

**TYPE OF RESERVATION:** Article 1407 (National Treatment).

**MEASURE:** Application of the federal securities laws to the U.S. government, government-owned enterprises, and state and local governments.

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:** Securities Exchange Act of 1934, 15 U.S.C. §§ 78c(a)(43)(A), 78c(a)(44)(A) and 78c(d) the rules thereunder.

**DESCRIPTION:** No provision of the Exchange Act applies to the U.S. government. Thus, U.S.-owned exchanges, clearing agencies, brokers, dealers, and banks are not regulated under the Exchange Act. In addition, U.S. government enterprises are exempt from government securities broker and dealer registration and regulation. State and local government officials are also exempted from the registration as brokers, dealers, and municipal securities dealers.

**DURATION:** Indeterminate



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ANNEX VII  
PART A  
Schedule of the United States

**SECTOR:** Financial Services

**SUB-SECTOR:**

**TYPE OF RESERVATION:** Article 1407 (National Treatment)

**MEASURE:**

**LEVEL OF GOVERNMENT:** Federal

**LEGAL CITATION:**

**DESCRIPTION:** Foreign government owned firms are not entitled to extend credit backed by the guarantees of the Commodity Credit Corporation.

**DURATION:** Indeterminate

September 6, 1992

**ANNEX VII**  
**PART A**  
**Schedule of the United States**

The United States shall set out any existing non-conforming measures maintained by California, Florida, Illinois, New York, Ohio, and Texas by the date of entry into force of this Agreement. Existing non-conforming state measures of all other states shall be set out by January 1, 1995.

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**ANNEX VII**  
**PART B**  
**Schedule of the United States**

The United States reserves the right to derogate from Articles 1405(1) and 1408 for the securities sector with respect to Canada. With respect to these Articles, the United States may adopt or maintain measures affecting cross-border trade in securities services that are more restrictive than measures existing on the date of entry into force of this Agreement.

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ANNEX VII  
PART C  
Schedule of the United States

The United States commits to permit an eligible *grupo financiero* that, in formation of the *grupo* in Mexico before the entry into force of this Agreement, lawfully acquires an eligible Mexican bank and a Mexican securities firm which owns or controls a securities company in the United States, to continue to engage through that U.S. securities company in the activities in which that securities company was engaged on the date of acquisition by the *grupo* for a time period of five years from the date of such acquisition. The U.S. securities firm: (i) shall not be permitted to expand through acquisition in the United States during such period; and (ii) shall be subject to measures consistent with national treatment that restrict transactions between the firms and their affiliates. For purposes of this paragraph: an "eligible *grupo financiero*" is a Mexican financial group that has not previously benefitted from this commitment; and an "eligible Mexican bank" means any Mexican *institución de crédito* that owned or controlled a subsidiary bank, or operated a branch or agency, in the United States on January 1, 1992.

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**ANNEX VII**  
**PART D**  
**Schedule of the United States**

For the purposes of Article 1413(2), the United States designates the Department of the Treasury as its governmental agency responsible for banking and other financial services, and the United States Department of Commerce for insurance services.

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