

and its subheading or a more detailed level of the Harmonized System, a precise description of the proposed bilateral safeguard measure, its date of entry into force, and its expected duration.

9. A Party proposing to apply a bilateral safeguard measure shall provide adequate opportunity for prior consultations with the other Party on such measure with a view to, *inter alia*, reaching an agreement on compensation set out in paragraph 10 below.

10. A Party proposing to apply a bilateral safeguard measure shall offer the other Party adequate means of trade compensation in the form of additional concessions of customs duties whose levels are substantially equivalent to the value of the additional customs duties expected to result from such measure, and, in the case that room for such sufficient additional concessions of customs duties is already exhausted through overall reduction of customs duties, other concessions which the Parties may agree upon.

11. If the Parties are unable to agree on compensation within 60 days after the date when a Party initiates the application of the bilateral safeguard measure, the other Party shall be free to suspend, to the trade of the Party applying such measure, the application of concessions of customs duties under Article 5, which are substantially equivalent to such measure applied. For this purpose, the Party exercising the right of suspension may suspend the application of concessions of customs duties only for the minimum period necessary.

12. Upon termination of a bilateral safeguard measure, the rate of customs duty shall be the rate which would have been in effect but for such measure.

13. The Parties shall review the provisions of this Chapter, if necessary, after 10 years of the date of entry into force of this Agreement.

Article 54

Provisional Bilateral Safeguard Measures

1. In critical circumstances, where delay would cause damage which it would be difficult to repair, a Party may take a provisional bilateral safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury to a domestic industry.

2. A Party shall deliver a written notice in English to the other Party prior to applying a provisional bilateral safeguard measure. Consultations on such measure shall take place promptly after such measure is taken.

3. The duration of the provisional bilateral safeguard measure shall not exceed 200 days. During that period, the pertinent requirements of Articles 52 and 55 shall be met. The duration of such measure shall be counted as a part of the period referred to in paragraph 5 of Article 53.

4. Paragraphs 2 through 4 and 12 of Article 53 shall be applied *mutatis mutandis* to the provisional bilateral safeguard measure. The customs duty imposed as a result of such measure shall be refunded within 60 days if the subsequent investigation referred to in Article 55 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry.

Article 55

Bilateral Safeguard Measures Proceedings

1. Each Party shall adopt or maintain equitable, timely, transparent and effective proceedings relating to bilateral safeguard measures.
2. A Party shall apply a bilateral safeguard measure only following an investigation by its investigating authority pursuant to the provisions of this Chapter.
3. The investigating authority of a Party shall examine and ensure the existence of sufficient evidence that the increased imports of an originating good are causing serious injury or threat thereof to the domestic industry concerned, to justify the initiation of an investigation.
4. An investigation shall, except in special circumstances, be completed within 1 year, and in no case more than 18 months, following its date of initiation.
5. Upon initiation of an investigation, the investigating authority of a Party shall give a public notice of the initiation of the investigation through the official journal of that Party. The public notice shall identify the originating good subject to the investigation and its subheading or a more detailed level of the Harmonized System, the period of investigation, the date of initiation of the investigation, deadlines for filing statements and other documents, and the place at which documents filed during the investigation may be inspected.
6. Each Party shall establish procedure to allow an interested party to have access to information submitted by other interested parties to the investigating authority of that Party after submission of such information. The investigating authority shall, upon request of an interested party, provide timely access to the information, including documents, items of evidence, and non-confidential written summaries referred to in paragraph 7 below, which were submitted by other interested parties during the investigation. In particular, the investigating authority shall grant access to the interested parties to the following information related to the investigation:
 - (a) production processes for the good concerned;
 - (b) production costs of the good concerned and specifications of its components;
 - (c) distribution costs of the good concerned;
 - (d) terms and conditions of sale of the good concerned;
 - (e) selling prices of the good concerned;
 - (f) description of the category of individual customers, distributors, suppliers, and any other enterprises related to the good concerned;
 - (g) data considered for the injury analysis such as the level of sales, production, productivity, capacity utilization, profits and losses, and employment related to the domestic industry concerned; and
 - (h) any other information about the enterprise related to the good concerned.
7. Notwithstanding paragraph 6 above, each Party shall adopt or maintain procedures for the treatment of confidential information as specified by that Party in accordance with its domestic laws and regulations and which is provided in the course of an investigation. When the interested parties provide such information, they shall be required to furnish non-confidential written summaries

thereof, or if they indicate that the information cannot be summarized, the reasons why a summary cannot be provided.

8. During the course of each investigation, the investigating authority of a Party shall endeavor to hold a public hearing after providing reasonable notice, so that opposite views may be presented and rebuttal arguments offered. Such public hearing should allow interested parties to defend their interest and to question the other parties.

9. In the investigation to determine whether increased imports have caused serious injury or are threatening to cause serious injury to a domestic industry, the investigating authority of a Party shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that domestic industry, in particular, the rate and amount of the increase in imports of the originating good, in absolute terms, the share of the domestic market taken by increased imports, and changes in the level of sales, production, productivity, capacity utilization, profits and losses, employment, and prices.

10. The determination that increased imports have caused serious injury or are threatening to cause serious injury to a domestic industry shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the originating good and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

11. With regard to determination on whether increased imports have caused serious injury or are threatening to cause serious injury to a domestic industry, the investigating authority of a Party shall not arbitrarily modify a negative injury determination.

12. Upon decision to apply a bilateral safeguard measure, the investigating authority of a Party shall give a public notice through the official journal of that Party. The public notice shall identify the originating good subject to such measure and its subheading or a more detailed level of the Harmonized System, the duration of such measure, and the findings and reasoned conclusions reached on all pertinent issues of law and fact.

13. In the public notice the investigating authority of a Party shall not disclose any confidential information referred to in paragraph 7 above.

Article 56

Definitions

For the purposes of this Chapter:

- (a) the term “domestic industry” means the producers as a whole of the like or directly competitive goods operating in the Area of a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;
- (b) the term “serious injury” means a significant overall impairment in the position of a domestic industry; and
- (c) the term “threat of serious injury” means serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility.

CHAPTER 7: INVESTMENT

Section 1 - Investment

Article 57

Scope And Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) investments of investors of the other Party in the Area of the former Party; and
 - (c) with respect to Articles 65 and 74, all investments in the Area of the former Party.
2. A Party has the right to perform exclusively the economic activities set out in Annex 8 and to refuse to permit the establishment of investment in such activities.
3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter 9.
4. Nothing in this Chapter shall impose any obligation on either Party regarding measures pursuant to immigration laws and regulations.

Note: 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 58

National Treatment

1. Each Party shall accord to investors of the other Party and to their investments treatment no less favorable than the treatment it accords, in like circumstances, to its own investors and to their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, maintenance, use, enjoyment and sale or other disposition of investments (hereinafter referred to in this Chapter as “investment activities”).
2. The treatment accorded by a Party under paragraph 1 above means, with respect to a local government in the case of Japan, and with respect to a state in the case of Mexico, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that local government or state to investors, and to investments of investors, of the Party of which it forms a part.

Article 59

Most-Favored-Nation Treatment

Each Party shall accord to investors of the other Party and to their investments, treatment no less favorable than the treatment it accords, in like circumstances, to investors of a non-Party and to their investments with respect to investment activities.

Note 1: Each Party shall accord to investors of the other Party and to their investments the better of the treatment required by Articles 58 and 59.

Note 2: For greater certainty, it is confirmed by both Parties that in the application of Articles 58 and 59 a Party:

- (a) may not impose on an investor of the other Party a requirement that a minimum level of equity in an enterprise in the Area of the former Party be held by its nationals; or
- (b) may not require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment in the Area of the former Party.

Note 3: Each Party shall in its Area accord to investors of the other Party treatment no less favorable than the treatment which it accords, in like circumstances, to its own investors or investors of a non-Party with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction, both in pursuit and in defense of such investor's rights.

Article 60

General Treatment

Each Party shall accord to investments of investors of the other Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

Note: This Article prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to investments of investors of the other Party. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 61

Expropriation And Compensation

1. Neither Party shall expropriate or nationalize an investment of an investor of the other Party in its Area either directly or indirectly through measures tantamount to expropriation or nationalization (hereinafter referred to as "expropriation") except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and Article 60; and (d) on payment of compensation pursuant to paragraphs 2 through 5 below.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known earlier. Valuation criteria to

determine the fair market value may include declared tax value of tangible property. The compensation shall be paid without delay and be fully realizable.

3. If payment is made in a freely usable currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

4. If a Party elects to pay in a currency other than a freely usable currency, the compensation paid, converted into the currency of payment at the market rate of exchange prevailing on the date of payment, shall be no less than:

- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
- (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the actual date of payment.

5. On payment, compensation shall be freely transferable as provided in Article 63.

Article 62

Protection From Strife

Without prejudice to Article 60 and notwithstanding Article 66, each Party shall accord to investors of the other Party and to their investments treatment no less favorable than the treatment it accords to its own investors or investors of a non-Party and to their investments, whichever is more favorable to the investor of the other Party or its investments, with respect to measures, such as restitution, indemnification, compensation or any other settlement, it adopts or maintains relating to losses suffered by investments in its Area owing to armed conflict, civil strife or any other similar event.

Article 63

Transfers

1. Each Party shall allow all transfers relating to an investment in its Area of an investor of the other Party to be made freely and without delay. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase the investment;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance fees and other fees;
- (c) proceeds from the sale or liquidation of all or any part of the investment;
- (d) payments made under a contract including payments made pursuant to a loan agreement;
- (e) payments made in accordance with Article 61; and
- (f) payments arising out of the settlement of a dispute under Section 2.

2. Each Party shall allow transfers to be made without delay in a freely usable currency at the market rate of exchange prevailing on the date of the transfer with respect to spot transactions in the currency to be transferred.

3. Notwithstanding paragraphs 1 and 2 above, a Party may delay or 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 compliance with orders or judgments in adjudicatory proceedings.

Article 64

Senior Management And Boards Of Directors

1. Neither Party may require that an enterprise of that Party that is an investment of an investor of the other 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 that Party that is an investment of an investor of the other Party, be of a particular nationality, or resident of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 65

Performance Requirements

1. Neither Party may impose or enforce any of 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 Area:

- (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 Area, or to purchase goods or services from persons in its Area;
- (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 Area 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 Area, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with multilateral agreements in respect of protection of intellectual property rights. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent

with this paragraph. For greater certainty, Articles 58 and 59 shall apply to the measure; 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. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its Area of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its Area, or to purchase goods from producers in its Area;
- (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 Area 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.

3. Nothing in paragraph 2 above shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its Area of an investor of a Party or of a non-Party, on compliance with a requirement to:

- (a) locate production;
- (b) provide a service;
- (c) train or employ workers;
- (d) construct or expand particular facilities; or
- (e) carry out research and development

in its Area.

4. Paragraphs 1 and 2 above shall not apply to any requirement other than the requirements set out in those paragraphs.

5. 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 activities, nothing in subparagraph 1(b) or (c) or 2(a) or (b) above shall be construed to prevent any Party from adopting or maintaining 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 66

Reservations And Exceptions

1. Articles 58, 59, 64 and 65 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at the federal or central government level, as set out in its Schedule to Annex 6 or Annex 8; or
 - (b) any existing non-conforming measure that is maintained by:
 - (i) with respect to Mexico:
 - (AA) a state, for 6 months after the date of entry into force of this Agreement, and thereafter as to be set out by Mexico in its Schedule to Annex 6 in accordance with paragraph 2 below; or
 - (BB) a local government; and
 - (ii) with respect to Japan:
 - (AA) a prefecture, for 6 months after the date of entry into force of this Agreement, and thereafter as to be set out by Japan in its Schedule to Annex 6 in accordance with paragraph 2 below; or
 - (BB) a local authority other than prefectures;
 - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b) above; or
 - (d) an amendment or a modification to any non-conforming measure referred to in subparagraphs (a) and (b) above provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 58, 59, 64 and 65.
2. Each Party shall set out in its Schedule to Annex 6, within 6 months of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or a prefecture as referred to in subparagraphs 1(b)(i)(AA) and 1(b)(ii)(AA) above, and shall notify thereof the other Party by a diplomatic note.
3. Articles 58, 59, 64 and 65 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex 7.
4. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by Annex 7, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective.
5. Article 59 shall not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex 9.
6. Articles 58, 59 and 64 shall not apply to any measure adopted or maintained with respect to procurement by a Party or a state enterprise.
7. The provisions of:
 - (a) subparagraphs 1(a), (b) and (c), and 2(a) and (b) of Article 65 shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

- (b) subparagraphs 1(b), (c), (f) and (g), and 2(a) and (b) of Article 65 shall not apply to procurement by a Party or a state enterprise; and
- (c) subparagraphs 2(a) and (b) of Article 65 shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 67

Notification

To the maximum extent possible, each Party shall notify the other Party of any new measure that the former Party considers might materially affect the implementation and operation of this Chapter and of Annexes 6 to 9.

Article 68

Special Formalities And Information Requirements

1. Nothing in Article 58 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 the other Party, such as the compliance with registration requirements or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protection afforded by a Party to investors of the other Party and investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Article 58 or 59, a Party may require an investor of the other Party, or its investment in its Area, to provide routine information concerning that investment solely for information or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 69

Relation To Other Chapters

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

Article 70

Denial Of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to an investment of such investor if investors of a non-Party own or control the enterprise and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) 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, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investor if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the Area of the Party under whose law it is constituted or organized.

Article 71

Investment Support

1. An issuer may provide to investors of any Party, investment support in connection with projects or activities in the Area of the other Party. Investors and investments of investors of a Party in the Area of the other Party may enter into agreements for investment support with the issuer. The issuer will undertake investment support only in respect of projects and activities allowed by this Agreement.

2. If the issuer makes a payment to any person or entity, or exercises its rights as a creditor or subrogee, in connection with any investment support, the other Party shall recognize the transfer to, or acquisition by, the issuer of any cash, accounts, credits, instruments or other assets in connection with such payment or the exercise of such rights, as well as the succession of the issuer to any right, title, claim, privilege or cause of action, existing, or which may arise, in connection therewith.

3. With respect to any interests transferred to or acquired by the issuer or any interests to which the issuer succeeds, under this Article, in its own right or otherwise by contract or operation of law, the issuer shall assert no greater rights than those of the person or entity from whom such interests were received.

4. To the extent that the laws of a Party partially or wholly restrict ownership or acquisition by, or transfer or succession to, the issuer of any interests as described in paragraph 3 above, the Party shall permit the issuer to make appropriate arrangements to transfer such assets, interests or rights to a person or entity permitted to own them under the laws of that Party.

Article 72

Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 58 relating to cross-border capital transactions and Article 63:
 - (a) in the event of serious balance-of-payments and external financial difficulties or imminent threat thereof; or
 - (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.
2. Measures referred to in paragraph 1 above:
 - (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;
 - (b) shall not exceed those necessary to deal with the circumstances set out in paragraph 1 above;
 - (c) shall be temporary and shall be eliminated as soon as conditions permit; and
 - (d) shall be promptly notified to the other Party.
3. Nothing in this Chapter shall be regarded as altering the rights enjoyed and obligations undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund, as may be amended.

Article 73

Intellectual Property Rights

1. Nothing in this Chapter shall be construed so as to derogate from the rights and obligations under multilateral agreements in respect of protection of intellectual property rights to which the Parties are parties.
2. Nothing in this Chapter shall be construed so as to oblige either Party to extend to investors of the other Party and their investments treatment accorded to investors of a non-Party and their investments by virtue of multilateral agreements in respect of protection of intellectual property rights, to which the former Party is a party.

Article 74

Environmental Measures

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 Area of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.

Section 2 - Settlement Of Investment Disputes Between A Party
And An Investor Of The Other Party

Article 75

Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 15, this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties and due process before an impartial tribunal.

Article 76

Claim By An Investor

1. An investor of a Party:
 - (a) on its own behalf, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section 1 and that the investor has incurred loss or damage by reason of, or arising out of, that breach; and
 - (b) on behalf of an enterprise of the other Party that is a legal person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section 1 and that the enterprise has incurred loss or damages by reason of, or arising out of, that breach.
2. An investment may not make a claim under this Section.

Article 77

Consultation And Negotiation

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

Article 78

Written Request

1. The disputing investor shall submit to the disputing Party a written request for consultations with a view to settling the claim amicably at least 180 days before the claim may be submitted to arbitration. Such a request shall specify:
 - (a) the name and address of the disputing investor and, where a claim is submitted by an investor of a Party on behalf of an enterprise, the name and address of the enterprise;
 - (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
 - (c) the issues and the factual and legal basis for the claim, including specific measures adopted by the disputing Party; and
 - (d) the relief sought and the approximate amount of damages claimed.
2. The disputing investor may not submit its written request referred to in paragraph 1 above before the events giving rise to a claim have occurred.

Article 79

Submission Of A Claim To Arbitration

1. Subject to the compliance of the requirements established under Article 78 the disputing investor may submit the claim to:
 - (a) arbitration under the ICSID Convention provided that both the disputing Party and the Party of the investor are parties to the ICSID Convention;
 - (b) arbitration under the ICSID Additional Facility Rules, as may be amended, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention;
 - (c) arbitration under the UNCITRAL Arbitration Rules; or
 - (d) if agreed by the disputing parties, any arbitration in accordance with other arbitration rules.
2. The applicable arbitration rules shall govern the arbitration under this Section except to the extent modified by this Section.

Article 80

Consent To Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section.
2. The consent given by paragraph 1 above and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties; and
 - (b) Article II of the New York Convention for an agreement in writing.

Article 81

Conditions And Limitations On Consent Of Each Party

1. No claim may be submitted to arbitration under this Section if more than 3 years have elapsed from the date on which the investor (for claims brought under subparagraph 1 (a) of Article 76) or the enterprise (for claims brought under subparagraph 1(b) of Article 76) first acquired, or should have first acquired knowledge of the breach alleged under Article 76 and knowledge that the investor (for claims brought under subparagraph 1(a) of Article 76), or the enterprise (for claims brought under subparagraph 1(b) of Article 76) had incurred loss or damage.
2. No claim may be submitted to arbitration under this Section unless:
 - (a) (i) for claims submitted to arbitration under subparagraph 1(a) of Article 76, the investor consents in writing to arbitration in accordance with the procedures set out in this Section;

- (ii) for claims submitted to arbitration under subparagraph 1(b) of Article 76, the investor and the enterprise agree upon the submission of a claim on behalf of the enterprise by the investor with respect to the claim and both of them consent in writing to arbitration in accordance with the procedures set out in this Section;
 - (b) for claims submitted to arbitration under subparagraph 1(a) of Article 76, the investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a legal person that the investor owns or controls directly or indirectly, the enterprise, waive in writing their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach referred to in paragraph 1 of Article 76;
 - (c) for claims submitted to arbitration under subparagraph 1(b) of Article 76, both the investor and the enterprise waive in writing their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to any measure alleged to constitute a breach referred to in paragraph 1 of Article 76; and
 - (d) where the investor (for claims brought under subparagraph 1(a) of Article 76) or the enterprise (for claims brought under subparagraph 1(b) of Article 76) has initiated any proceedings before any administrative tribunal or court referred to in subparagraphs (b) and (c) above, those proceedings are withdrawn in accordance with the laws of that Party.
3. Notwithstanding subparagraphs (b) and (c) above, the investor (for claims submitted to arbitration under subparagraph 1(a) of Article 76) and both the investor and the enterprise (for claims submitted to arbitration under subparagraph 1(b) of Article 76), may initiate or continue an action that seeks interim injunctive relief or other extraordinary relief that does not involve the payment of damages before an administrative tribunal or court under the law of the disputing Party.
4. With respect to the submission of a claim to arbitration:
- (a) an investor of a Party may not allege that the other Party has breached an obligation under Section 1, both in an arbitration under this Section and in proceedings before an administrative tribunal or court under the law of either Party; and
 - (b) where an enterprise of a Party that is a legal person that an investor of the other Party owns or controls directly or indirectly alleges in proceedings before an administrative tribunal or court under the law of either Party that such a Party has breached an obligation under Section 1, the investor may not allege the breach in an arbitration under this Section.

Article 82

Constitution Of A Tribunal

1. Except in respect of a Tribunal established under Article 83, and unless the disputing parties otherwise agree, the Tribunal shall comprise 3 arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If the Tribunal, other than the Tribunal established under Article 83, has not been constituted within 90 days from the date on which a claim was submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his discretion, the arbitrator or arbitrators not yet appointed except that the presiding arbitrator shall be appointed in accordance with paragraph 4 below.
4. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 5 below or, if not available, from the ICSID Panel of Arbitrators, provided that in both cases the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor.
5. The Parties may establish, and thereafter maintain, a roster of 20 presiding arbitrators experienced in international law and investment matters. The roster members shall be appointed by agreement of the Parties and without regard to nationality.

Article 83

Consolidation Of Multiple Claims

1. When a disputing party considers that two or more claims submitted to arbitration under Article 76 have a question of law or fact in common, the disputing party may seek a consolidation order in accordance with the terms of paragraphs 2 through 9 below.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General to establish a Tribunal under this Article. The request shall:
 - (a) specify the nature of the order sought and the grounds on which the order is sought; and
 - (b) be accompanied by a request for arbitration made under paragraph 1 of Article 36 of the ICSID Convention or a notice of arbitration submitted under Article 2 of Schedule C of the ICSID Additional Facility Rules, as may be amended.
3. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising 3 arbitrators. One arbitrator shall be a national of the disputing Party, the second arbitrator shall be a national of the Party of the disputing investor, and the presiding arbitrator shall not be a national of any of the Parties.
4. A Tribunal established under this Article shall be established under the ICSID Convention or the ICSID Additional Facility Rules as may be amended, as appropriate, and shall conduct its proceedings in accordance with the provisions thereof, except as modified by this Section.

5. Any disputing investor that has submitted a claim to arbitration and considers that such a claim raises questions of law or fact which are common to those upon which the consolidation under paragraph 2 above has been requested, but has not been named in a request made under paragraph 2 above, may request to the Tribunal established under this Article to consider the consolidation of his claim. The request shall comply with the requirements established in paragraph 2 above.

6. The disputing investor referred to in paragraph 5 above shall deliver to the disputing Party or disputing investors with respect to whom the order is sought, a copy of the request made under paragraph 5 above.

7. On application of a disputing party, a Tribunal established under this Article may order the adjourning of the proceedings related to claims referred to in paragraphs 1 and 5 above.

8. A Tribunal established under this Article may, in the interests of fair and efficient resolution of the dispute, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims referred to in paragraphs 1 and 5 above; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims referred to in paragraphs 1 and 5 above, the determination of which it believes would assist in the resolution of the others.

9. A Tribunal established under Article 79 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 in the terms of paragraph 8 above.

Article 84

Governing Law

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

2. An interpretation of a provision of this Agreement adopted by the Joint Committee shall be binding on a Tribunal established under this Section. Such interpretation shall be made publicly available through the means that each Party considers appropriate.

Article 85

Notice

A disputing Party shall deliver to the other Party:

- (a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date on which the claim was submitted; and
- (b) copies of all pleadings filed in the arbitration.

Article 86

Participation By A Party

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

Article 87

Documents

1. The Party other than the disputing Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party a copy of:
 - (a) the evidence that has been tendered to the Tribunal; and
 - (b) the written argument of the disputing parties.
2. The Party receiving information pursuant to paragraph 1 above shall treat the information as if it were a disputing Party.

Article 88

Place Of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in a country that is a party to the New York Convention.

Article 89

Interpretation Of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex 6, Annex 7, Annex 8 or Annex 9, on request of the disputing Party, the Tribunal shall request the Joint Committee to adopt an interpretation on the issue. The Joint Committee, within 60 days of delivery of the request, shall adopt an interpretation and submit in writing its interpretation to the Tribunal.
2. Further to Article 84, an interpretation adopted and submitted under paragraph 1 above shall be binding on the Tribunal. If the Joint Committee fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 90

Expert Reports

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 in the fields of environmental, health, safety or other scientific matters to report to it in writing on any factual issue concerning matters of their expertise raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 91

Interim Measures Of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of a disputing party. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in paragraph 1 of Article 76.

Article 92

Final Award

1. Where a Tribunal makes a final award against a disputing Party, the Tribunal may award, separately or in combination, 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.

A Tribunal may also award costs in accordance with the applicable arbitration rules.

2. Subject to paragraph 1 above, where a claim is made under subparagraph 1 (b) of Article 76:

- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
- (b) an award of restitution of property shall provide that restitution be made to the enterprise.

3. A Tribunal may not order a Party to pay punitive damages.

Article 93

Finality And Enforcement Of An Award

1. Any arbitral award rendered pursuant to Article 92 shall be final, and binding on the disputing parties in respect of the particular case.

2. Subject to the applicable revision, annulment or set aside procedures, a disputing party shall abide by and comply with an award without delay.

3. If a disputing Party fails to abide by or comply with a final award, the Party whose investor was a party to the arbitration may have recourse to the dispute settlement procedure under Chapter 15. In this event, the requesting Party may seek:

- (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
- (b) a recommendation that the Party abide by or comply with the final award.

Article 94

General

1. A claim is submitted to arbitration under this Section when:
 - (a) the request for arbitration under paragraph (1) of Article 36 of the ICSID Convention has been received by the Secretary-General;
 - (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules, as may be amended, has been received by the Secretary-General; or
 - (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

The disputing parties shall otherwise agree in relation to subparagraph 1 (d) of Article 79.

2. Delivery of notice and other documents on a Party shall be made:
 - (a) in the case of Mexico: through the Directorate General of Foreign Investment of the Ministry of Economy; and
 - (b) in the case of Japan: through the Ministry of Foreign Affairs.

3. In an arbitration under this Section, a Party shall not assert, as a defense, counterclaim, right of setoff or otherwise, that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

4. Either disputing party may make available to the public in a timely manner all documents, including an award, submitted to, or issued by, a Tribunal established under this Section, subject to redaction of:

- (a) confidential business information;
- (b) information which is privileged or otherwise protected from disclosure under the applicable law of either Party; and
- (c) information which the Party must withhold pursuant to the relevant arbitral rules, as applied.

Note: For greater certainty, it is confirmed by both Parties that a Party may share with officials of its central or local government in the case of Japan, and its federal or state government in the case of Mexico, all relevant documents in the course of dispute settlement under this Section, including confidential information and that the disputing parties may disclose to other persons in connection with the arbitral proceedings the documents submitted to, or issued by, a Tribunal established under this Section, as they consider necessary for the preparation of their cases; provided that they shall ensure that those persons protect the confidential information in such documents.

Article 95

Exceptions From Dispute Settlement Procedure

1. Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter 15 to other actions taken by a Party pursuant to Article 169, a decision by a Party to prohibit or restrict the acquisition of an investment in its Area by an investor of the other Party, or its investment, pursuant to that Article shall not be subject to such provisions.

2. In the case of Mexico, the dispute settlement provisions of this Section and of Chapter 15 shall not apply to a decision by the National Commission on Foreign Investment (“Comisión Nacional de Inversiones Extranjeras”) following a review pursuant to Annex 6, reservation 3 set out in the Schedule of Mexico, with respect to whether or not to permit an acquisition that is subject to review.

Section 3 - Definitions

Article 96

Definitions

For the purposes of this Chapter:

- (a) the term “disputing investor” means an investor that makes a claim under Section 2;
- (b) the term “disputing parties” means the disputing investor and the disputing Party;
- (c) the term “disputing party” means the disputing investor or the disputing Party;
- (d) the term “disputing Party” means a Party against which a claim is made under Section 2;
- (e) the term “equity or debt securities” includes voting and non-voting shares, bonds, convertible debentures, stock options and warrants;
- (f) the term “freely usable currency” means any currency designated as such by the International Monetary Fund from time to time;
- (g) the term “ICSID” means the International Centre for Settlement of Investment Disputes;
- (h) the term “ICSID Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of other States done at Washington, March 18, 1965, as may be amended;
- (i) the term “investment” means:
 - (AA) an enterprise;
 - (BB) an equity security of an enterprise;
 - (CC) a debt security of an enterprise:
 - (aa) where the enterprise is an affiliate of the investor, or
 - (bb) where the original maturity of the debt security is at least 3 years,

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

(DD) a loan to an enterprise:

(aa) where the enterprise is an affiliate of the investor, or

(bb) where the original maturity of the loan is at least 3 years,

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

(EE) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(FF) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (CC) or (DD) above;

(GG) real estate or other property, tangible or intangible, and any related property rights such as lease, liens and pledges, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

(HH) interests arising from the commitment of capital or other resources in the Area of a Party to economic activity in such Area, such as under:

(aa) contracts involving the presence of an investor's property in the Area of the Party, including turnkey or construction contracts, or concessions, or

(bb) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

(II) claims to money that arise solely from:

(aa) commercial contracts for the sale of goods or services by a national or enterprise in the Area of a Party to an enterprise in the Area of the other Party, or

(bb) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (DD) above; or

(JJ) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (AA) through (HH) above;

(j) the term "investment of an investor of a Party" means an investment owned or controlled directly or indirectly by an investor of such Party;

- (k) the term “investor of a Party” means a Party or state enterprise thereof, or a national or an enterprise of such Party, that seeks to make, is making or has made an investment;
- (l) the term “investment support” means any debt or equity investment, any investment guaranty and any investment insurance or reinsurance provided by the issuer in connection with projects or activities in the Area of a Party;
- (m) the term “issuer” means a designated agency of a Party, or any successor agency, and any agent of either, which provides investment support, but does not refer to the Government of any of the Parties;
- (n) the term “New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, as may be amended;
- (o) the term “Secretary-General” means the Secretary-General of ICSID;
- (p) the term “transfers” means transfers and international payments;
- (q) the term “Tribunal” means an arbitration tribunal established under Article 79 or 83; and
- (r) the term “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, as may be amended.

CHAPTER 8: CROSS-BORDER TRADE IN SERVICES

Article 97

Scope And Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures respecting:

- (a) the supply of a service;

Note: The measures respecting the supply of a service include those respecting the provision of any financial security as a condition for the supply of a service.

- (b) the purchase or use of, or payment for, a service;
- (c) the access to services offered to the public generally and the use of them, in connection with the supply of a service; and
- (d) the presence in its Area of a service supplier of the other Party.

2. This Chapter shall not apply to:

- (a) financial services, as defined in Chapter 9;
- (b) cabotage in maritime transport services, including navigation in inland waters;

- (c) with respect to air transport services, measures affecting traffic rights, however granted; or measures affecting services directly related to the exercise of traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system (CRS) services;

Note: The term “traffic rights” means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of air lines, including such criteria as number, ownership, and control.

- (d) procurement by a Party or a state enterprise;
- (e) subsidies provided by a Party or a state enterprise thereof, including grants, government-supported loans, guarantees and insurance;
- (f) measures pursuant to immigration laws and regulations;
- (g) services supplied in the exercise of governmental authority; and

Note: For the purposes of this Chapter, services supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

- (h) measures of a Party with respect to a national of the other Party seeking access to its employment market, or employed on a permanent basis in that Party.

Article 98

National Treatment

1. Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to its own services and service suppliers.

Note: Nothing in this Article shall be construed to require either Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

2. The treatment accorded by a Party under paragraph 1 above means, with respect to a local government in the case of Japan, and with respect to a state in the case of Mexico, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that local government or state to services and service suppliers of the Party of which it forms a part.

Article 99

Most-Favored-Nation Treatment

Each Party shall accord to services and service suppliers of the other Party treatment no less favorable than that it accords, in like circumstances, to services and service suppliers of any non-Party.

Note: Each Party shall accord to services and service suppliers of the other Party the better of the treatment required by Articles 98 and 99.

Article 100

Local Presence

Neither Party shall require a service supplier of the other Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its Area as a condition for the cross-border supply of a service.

Article 101

Reservations

1. Articles 98, 99 and 100 shall not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at the federal or central government level, as set out in its Schedule to Annex 6;
 - (b) any existing non-conforming measure that is maintained by:
 - (i) with respect to Mexico:
 - (AA) a state, for 6 months after the date of entry into force of this Agreement, and thereafter as to be set out by Mexico in its Schedule to Annex 6 in accordance with paragraph 2 below; or
 - (BB) a local government; and
 - (ii) with respect to Japan:
 - (AA) a prefecture, for 6 months after the date of entry into force of this Agreement, and thereafter as to be set out by Japan in its Schedule to Annex 6 in accordance with paragraph 2 below; or
 - (BB) a local authority other than prefectures;
 - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b) above; or
 - (d) an amendment or a modification to any non-conforming measure referred to in subparagraphs (a) and (b) above provided that the amendment or modification does not decrease the conformity of the measure, as it existed immediately before the amendment or modification, with Articles 98, 99 and 100.
2. Each Party shall set out in its Schedule to Annex 6, within 6 months of the date of entry into force of this Agreement, any existing non-conforming measure maintained by a state or prefecture referred to in subparagraphs 1(b)(i)(AA) and 1(b)(ii)(AA) above, and shall notify thereof the other Party by a diplomatic note.

3. Articles 98, 99 and 100 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex 7.

Article 102

Notification

To the maximum extent possible, each Party shall notify the other Party of any new measure that the Party considers might materially affect the implementation and operation of this Chapter and of Annexes 6 and 7.

Article 103

Sub-Committee On Cross-Border Trade In Services

1. For the purposes of the effective implementation and operation of this Article, a Sub-Committee on Cross-Border Trade in Services (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 165.

2. The functions of the Sub-Committee shall be:

- (a) reviewing the implementation and operation of this Chapter;
- (b) discussing any issues related to this Chapter;
- (c) reporting the findings of the Sub-Committee and making recommendations to the Joint Committee; and
- (d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

Article 104

Licensing And Certification

1. With a view to ensuring that any measure adopted or maintained by a Party relating to the licensing, certification, or technical standards of service suppliers of the other Party does not constitute an unnecessary barrier to cross-border trade in services, each Party shall endeavor to ensure that such measure:

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

2. Where a Party recognizes, unilaterally or by agreement, education, experience, licenses or certifications obtained in a non-Party, nothing in Article 99 shall be construed to require the Party to accord such recognition to education, experience, licenses or certifications obtained in the other Party.

Article 105

Denial Of Benefits

- (c) enhancing mutual understanding between the Parties on credentials and other qualifications relevant to entry and temporary stay of nationals under this Chapter;
- (d) reporting the findings of the Sub-Committee and making recommendations to the Joint Committee; and
- (e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165. Such functions may include reporting to the Joint Committee on options for possible modifications or additions to this Chapter.

Article 118

Dispute Settlement

1. Notwithstanding the provisions of Article 152, a Party may not request consultations with the other Party regarding refusal to grant entry and temporary stay under this Chapter unless:

- (a) the matter involves a pattern of practice; and
- (b) the nationals concerned have exhausted the administrative remedies, where available, regarding the particular matter.

2. The remedies referred to in subparagraph 1(b) above shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority of a Party within one year after the date of the institution of an administrative remedy, and the failure to issue a determination is not attributable to delay caused by the nationals concerned.

CHAPTER 11: GOVERNMENT PROCUREMENT

Article 119

Scope And Coverage

1. This Chapter shall apply to any measures adopted or maintained by a Party relating to government procurement:

- (a) by entities specified in Annex 11;
- (b) of goods specified in Annex 12, services specified in Annex 13, or construction services specified in Annex 14; and
- (c) where the value of the contracts to be awarded is estimated to be not less than the thresholds specified in Annex 15 at the time of publication of an invitation to participate for procurement.

2. Paragraph 1 above is subject to the General Notes set out in Annex 16.

3. This Chapter shall apply to government procurement by any contractual means, including through such methods as purchase or as lease, rental or hire purchase, with or without an option to buy, including any combination of goods and services.

4. Subject to paragraph 5 below, where a contract to be awarded by an entity is not covered by this Chapter, this Chapter shall not be construed to cover any good or service component of that contract.

5. Neither Party shall prepare, design or otherwise structure any government procurement contract in order to avoid the obligations of this Chapter.

Article 120

National Treatment

1. With respect to any measures regarding government procurement covered by this Chapter, each Party shall provide immediately and unconditionally to the goods, services and suppliers of the other Party offering goods or services of the other Party, treatment no less favorable than that accorded to domestic goods, services and suppliers.

2. With respect to any measures regarding government procurement covered by this Chapter, each Party shall ensure:

- (a) that its entities shall not treat a locally-established supplier less favorably than another locally-established supplier on the basis of the degree of affiliation to, or ownership by, a person of the other Party; and
- (b) that its entities shall not discriminate against locally-established suppliers on the basis of the country of production of the goods or service being supplied, provided that the country of production is the other Party in accordance with the provisions of Article 121.

3. The provisions of paragraphs 1 and 2 above shall not apply to customs duties and charges of any kind imposed on or in connection with importation, the method of levying such duties and charges, other import regulations and formalities, and measures affecting trade in services other than measures regarding government procurement covered by this Chapter.

Article 121

Rules Of Origin

1. A Party shall not apply rules of origin to goods or services imported or supplied for purposes of government procurement covered by this Chapter from the other Party which are different from the rules of origin applied by the former Party in the normal course of trade.

Note: Rules of origin to services applied in the normal course of trade shall be understood in accordance with paragraph (f) "service of another Member" and (g) "service supplier" of Article XXVIII "Definitions" of the GATS.

2. Subject to prior notification and consultation, a Party may deny the benefits of this Chapter to a service supplier of the other Party where the denying Party establishes that the service is being provided by an enterprise that is owned or controlled by persons of a non-Party and that has no substantial business activities in the Area of any Party.

3. A Party may deny to an enterprise of the other Party the benefits of this Chapter if nationals 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.

Article 122

Procurement Procedures And Other Provisions

1. Each Party shall apply the respective rules and procedures set up in accordance with the provisions, as may be amended, specified in Annex 18.
2. Where a Party considers that a modification to rules and procedures of the other Party corresponding to an amendment of the provisions specified in Annex 18 affects access to the other Party's government procurement market considerably, the former Party can request consultations in order to maintain equivalence between the treatments under the rules and procedures of the Parties. If no satisfactory solution can be found, the former Party may have recourse to the dispute settlement procedure under Chapter 15, with a view to maintaining an equivalent level of access to the other Party's government procurement market.
3. The Party concerned shall notify the other Party of any modification to the rules and procedures referred to in paragraph 1 above no later than 30 days prior to the date of entry into force of such modification.
4. If, in tendering procedures, an entity allows tenders to be submitted in several languages, one of those languages shall be English.
5. No entity of either Party shall make it a condition for the qualification of suppliers and for the awarding of a contract that the supplier has previously been awarded one or more contracts by an entity of that Party or that the supplier has prior work experience in the Area of that Party.

Article 123

Offsets

Each Party shall ensure that its entities do not, in the qualification and selection of suppliers, goods or services, in the evaluation of bids or the award of contracts, consider, seek or impose offsets, except as set out in the General Notes of Annex 16. For the purpose of this Article, offsets means conditions considered, sought or imposed by an entity prior to or in the course of its procurement process that encourage local development or improve its Party's balance of payments accounts, by means of requirements of local content, licensing of technology, investment, counter-trade or similar requirements.

Article 124

Provision Of Information

1. Each Party shall promptly publish any law, regulation, judicial decision, administrative ruling of general application, and any procedure (including standard contract clauses) regarding government procurement covered by this Chapter, in the appropriate publications listed in Annex 17 and in such a manner as to enable the other Party and suppliers to become acquainted with them.
2. The Party of an unsuccessful tenderer may seek, without prejudice to the provisions under Chapter 15, such additional information on the contract award as may be necessary to ensure that the procurement was made fairly and impartially. To this end, the Party of the procuring entity shall provide information on both the characteristics and relative advantages of the winning tender and the contract price. Normally this latter information may be disclosed by the former Party provided it exercises this right with discretion. In cases where release of this information would prejudice competition in future tenders, this information shall be confidential and not be disclosed except after consultation with and agreement of the latter Party which gave the information to the former Party.

3. Available information concerning procurement by covered entities and their individual contract awards shall be provided, upon request, to the Party requesting the information.
4. Confidential information provided to a Party which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, or might prejudice fair competition between suppliers shall not be revealed without formal authorization from the other Party.
5. With a view to ensuring effective monitoring of government procurement covered by this Chapter, each Party shall collect statistics and provide to the other Party on a reciprocal basis an annual report which shall contain the following information to the extent that such information is available:
 - (a) statistics on the number and total value of contracts above and below the applicable threshold values broken down by entities;
 - (b) statistics on the number and total value of contracts above the applicable threshold values, broken down by entities, by categories of goods and services and by the country of origin of the goods and services procured; and
 - (c) statistics on the number and total value of contracts awarded under limited tendering procedures, broken down by entities, and by country of origin of the goods and services procured.

Article 125

Challenge Procedures

1. In the event of a complaint by a supplier that there has been a breach of this Chapter in the context of a government procurement, each Party shall encourage the supplier to seek resolution of its complaint in consultation with the procuring entity. In such instances the procuring entity shall accord impartial and timely consideration to any such complaint, in a manner that is not prejudicial to obtaining corrective measures under the challenge system.
2. Each Party shall provide non-discriminatory, timely, transparent and effective procedures enabling suppliers to challenge alleged breaches of this Chapter arising in the context of government procurements in which they have, or have had, an interest.
3. Each Party shall provide its challenge procedures in writing and make them generally available.
4. Each Party shall ensure that documentation relating to all aspects of the process concerning government procurements covered by this Chapter shall be retained for 3 years.
5. The interested supplier may be required to initiate a challenge procedure and notify the procuring entity within specified time-limits from the time when the basis of the complaint is known or reasonably should have been known, but in no case within a period of less than 10 days.
6. A Party may require that a challenge procedure be initiated only after the notice of procurement has been published or, where a notice is not published, after tender documentation has been made available. Where a Party imposes such a requirement, the 10 day period described in paragraph 5 above shall begin no earlier than the date that the notice is published or the tender documentation is made available.

7. Challenges shall be heard by an impartial and independent reviewing authority with no interest in the outcome of the government procurement and the members of which are secure from external influence during the term of appointment. A reviewing authority which is not a court shall either be subject to judicial review or shall have procedures which provide that:

- (a) participants can be heard before an opinion is given or a decision is reached;
- (b) participants can be represented and accompanied;
- (c) participants shall have access to all proceedings;
- (d) proceedings can take place in public;
- (e) opinions or decisions are given in writing with a statement describing the basis for the opinions or decisions;
- (f) witnesses can be presented; and
- (g) documents are disclosed to the reviewing authority.

8. Challenge procedures shall provide for:

- (a) rapid interim measures to correct breaches of this Chapter and to preserve commercial opportunities. Such action may result in suspension of the procurement process. However, procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account in deciding whether such measures should be applied. In such circumstances, just cause for not acting shall be provided in writing;
- (b) an assessment and a possibility for a decision on the justification of the challenge; and
- (c) where appropriate, correction of the breach of this Chapter or compensation for the loss or damages suffered, which may be limited to costs for tender preparation or protest.

9. With a view to the preservation of the commercial and other interests involved, the challenge procedure shall normally be completed in a timely fashion.

*Article 126*Exceptions

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.
2. Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties where the same conditions prevail, or a disguised restriction on trade between the Parties, nothing in this Chapter shall be construed to prevent a Party from imposing, enforcing or maintaining measures:
 - (a) necessary to protect public morals, order or safety;
 - (b) necessary to protect human, animal or plant life or health;
 - (c) necessary to protect intellectual property; or
 - (d) relating to goods or services of handicapped persons, of philanthropic institutions or of prison labor.

*Article 127*Sub-Committee On Government Procurement

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Government Procurement (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 165.
2. The functions of the Sub-Committee shall be:
 - (a) analyzing available information on each Party’s government procurement market including the statistical information provided under paragraph 5 of Article 124;
 - (b) evaluating the effective access of suppliers of a Party to government procurement market of the other Party covered by this Chapter;
 - (c) monitoring the application of the provisions of this Chapter and providing a forum to identify and address any problems or other issues that may arise;
 - (d) reporting the findings of the Sub-Committee to the Joint Committee; and
 - (e) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.
3. The Parties shall cooperate, on mutually agreed terms, to increase understanding of their respective government procurement systems, with a view to maximizing for the suppliers of both Parties the access to their respective government procurement market. For this purpose, each Party shall develop and implement, within one year after the entry into force of this Agreement, concrete measures for the cooperation, which may include training and orientation programs for government personnel or interested suppliers regarding such aspects as how to identify government procurement opportunities and how to participate in the respective government procurement markets. In developing such measures, special attention should be given to small businesses in each Party.

Article 128

Rectifications Or Modifications

1. A Party shall notify the other Party of its rectifications, or in exceptional cases, other modifications relating to Annexes 11, 12, 13, 14, 16 and 17 along with the information as to the likely consequences of the change for the mutually agreed coverage provided in this Chapter. If the rectifications or other modifications are of a purely formal or minor nature, notwithstanding paragraph 1 of Article 174, they shall become effective provided that no objection from the other Party has been raised within 30 days. In other cases, both Parties shall consult the proposal and any claim for compensatory adjustments with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter prior to such rectification or other modification. In the event of an agreement between the Parties not being reached, the Party which has received such notification may have recourse to the dispute settlement procedure under Chapter 15.

2. Notwithstanding any other provision of this Chapter, a Party may undertake reorganizations of its entities covered by this Chapter, including programs through which the procurement of such entities is decentralized or the corresponding government functions cease to be performed by any government entity, whether or not subject to this Chapter. In cases of reorganizations, compensation need not be proposed. Neither Party shall undertake such reorganizations or programs to avoid the obligations of this Chapter.

Article 129

Privatization Of Entities

When government control at the federal or central government level over an entity specified in Annex 11 has been effectively eliminated, notwithstanding that the government may possess holding thereof or appoint member of the board of directors thereto, this Chapter shall no longer apply to that entity. A Party shall notify the other Party of the name of such entity before elimination of government control or as soon thereafter as possible.

Article 130

Miscellaneous Provisions

1. The Joint Committee may make recommendations to the Parties to adopt appropriate measures to enhance the conditions for effective access to a Party's covered government procurement or, as the case may be, to adjust a Party's coverage so that such conditions for effective access are maintained on an equitable basis.

2. In the event that after the entry into force of this Agreement a Party offers a non-Party specified in paragraph 3 below additional advantages of access to its government procurement market beyond what the other Party has been provided with under this Chapter, the former Party shall consent to enter into negotiations with the other Party with a view to extending these advantages to the other Party on a reciprocal basis.

3. A non-Party referred to in paragraph 2 above shall be, in the case of Japan, a Party to the Agreement on Government Procurement in Annex 4 to the WTO Agreement, as may be amended, (hereinafter referred to as "the GPA") or a party to an existing Economic Partnership Agreement with Japan and in the case of Mexico, a party to the North American Free Trade Agreement, as may be amended, (hereinafter referred to as "the NAFTA") or the European Communities.

CHAPTER 12: COMPETITION

Article 131

Anticompetitive Activities

Each Party shall, in accordance with its applicable laws and regulations, take measures which it considers appropriate against anticompetitive activities, in order to facilitate trade and investment flows between the Parties and the efficient functioning of its market.

Article 132

Cooperation On Controlling Anticompetitive Activities

1. The Parties shall, in accordance with their respective laws and regulations, cooperate in the field of controlling anticompetitive activities.
2. The details and procedures of cooperation under this Article shall be specified in an implementing agreement.

Article 133

Non-Discrimination

Each Party shall apply its competition laws and regulations in a manner which does not discriminate between persons in like circumstances on the basis of their nationality.

Article 134

Procedural Fairness

Each Party shall implement administrative and judicial procedures in a fair manner to control anticompetitive activities, pursuant to its relevant laws and regulations.

Article 135

Non-Application Of Article 164 And Chapter 15

Article 164 and the dispute settlement procedure provided for in Chapter 15 shall not apply to this Chapter.

CHAPTER 13: IMPROVEMENT OF THE BUSINESS ENVIRONMENT

Article 136

Consultations For The Improvement Of The Business Environment

The Parties, confirming their interest in creating a more favorable business environment with a view to promoting trade and investment activities by their private enterprises, shall from time to time have consultations in order to address issues concerning the improvement of the business environment in the Parties.

Article 137

Committee For The Improvement Of The Business Environment

1. For the purposes of addressing issues concerning the improvement of the business environment, a Committee for the Improvement of the Business Environment (hereinafter referred to in this Article as “the Committee”) shall be established.

2. The Committee:

- (a) shall discuss ways and means to improve the business environment in the Parties;
- (b) may, as needed, make recommendations on appropriate measures to be taken by the Parties. Such recommendations should be taken into consideration by the Parties;
- (c) shall be provided with information on the implementation of such recommendations;
- (d) may make public such recommendations in an appropriate manner; and
- (e) may give the Joint Committee advisory opinions, where appropriate.

3. The Committee:

- (a) shall be composed of representatives of the Governments of the Parties;
- (b) may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed; and
- (c) shall establish its rules and procedures.

Article 138

Non-Application Of Chapter 15

The dispute settlement procedure provided for in Chapter 15 shall not apply to this Chapter.

CHAPTER 14: BILATERAL COOPERATION

Article 139

Cooperation In The Field Of Trade And Investment Promotion

1. The Parties shall cooperate in promoting trade and investment activities by private enterprises of the Parties, recognizing that the joint efforts of the Parties to facilitate exchange and collaboration between private enterprises will act as a catalyst to further promote trade and investment between the Parties. Such cooperation between the Parties includes:

- (a) encouraging the exchange of trade, investment and marketing experts and trainees to foster business opportunities;
- (b) exchanging information concerning laws, regulations and practices in relation to bilateral trade and investment;
- (c) encouraging the joint organization of trade and investment missions, seminars, fairs and exhibitions;
- (d) encouraging the sharing, through electronic linkages, of online databases of private enterprises of the Parties keen to establish business ties; and
- (e) encouraging the exchange of information, for the identification of investment opportunities and the promotion of business alliances, for the establishment of joint ventures between private enterprises of both Parties.

2. For the purposes of the effective implementation and operation of this Article, a Sub-Committee on Cooperation in the Field of Trade and Investment Promotion (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 165.

3. The functions of the Sub-Committee shall be:

- (a) reviewing the implementation and operation of this Article;
- (b) discussing any issues related to this Article;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

Article 140

Cooperation In The Field Of Supporting Industries

The Parties shall cooperate in promoting the development of supporting industries of both Parties with a view to improving the business environment and to promoting bilateral trade and investment. Such cooperation includes encouraging appropriate entities to:

- (a) assist private enterprises of either Party to enter supporting industries’ market of the other Party through direct investment or joint ventures;
- (b) assist private enterprises of supporting industries to establish their business ties with other private enterprises of supporting industries, as well as final goods suppliers;

- (c) assist actual or potential private enterprises of supporting industries through financial and technological support; and
- (d) exchange experts and information on best practices and methodologies for the development of supporting industries.

Article 141

Cooperation In The Field Of Small And Medium Enterprises

The Parties shall cooperate in promoting the development of small and medium enterprises of both Parties (hereinafter referred to in this Article as “SMEs”) in order to maintain the dynamism of their respective economies and promote favorable environment for bilateral trade and investment. Such cooperation may include:

- (a) exchange of information on SMEs policies for:
 - (i) strengthening competitiveness of SMEs;
 - (ii) assisting SMEs to start up businesses; and
 - (iii) promoting entrepreneurial networks of SMEs;
- (b) encouragement of establishment of networks among appropriate entities of both Parties that provide assistance to SMEs; and
- (c) encouragement of the exchange of experts on the development of SMEs.

Article 142

Cooperation In The Field Of Science And Technology

1. The Parties, recognizing that science and technology will contribute to the continued expansion of their respective economies in the medium and long term, shall develop and promote cooperative activities between the Governments of the Parties for peaceful purposes in the field of science and technology on the basis of equality and mutual benefit.

2. Forms of the cooperative activities under this Article may include:

- (a) exchange of information regarding science and technology policies and programs and data;
- (b) joint seminars, workshops and meetings;
- (c) visits and exchanges of scientists, technical personnel or other experts;
- (d) implementation of joint projects and programs;
- (e) encouragement of cooperation for research and development related to industrial technologies; and
- (f) encouragement of cooperation between educational and research institutions.

3. Scientific and technological information of a non-proprietary nature arising from the cooperative activities under this Article may be made available to the public by the Government of either Party.

4. In accordance with the applicable laws and regulations of the Parties and with relevant international agreements to which the Parties are parties, the Parties shall ensure the adequate and effective protection, and give due consideration to the distribution, of intellectual property rights or other rights of a proprietary nature resulting from the cooperative activities under this Article. The Parties shall consult for this purpose as necessary.

5. The implementation of this Article shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

6. Costs of the cooperative activities under this Article shall be borne in such manner as may be mutually agreed.

7. Implementing arrangements setting forth the details and procedures of the cooperative activities under this Article may be made between the government agencies of the Parties.

Article 143

Cooperation In The Field Of Technical And Vocational Education And Training

The Parties, recognizing that sustainable economic growth and prosperity largely depend on people's knowledge and skills, in order to raise the productivity and competitiveness of private enterprises of either Party, shall develop cooperation between the Governments of the Parties in the field of technical and vocational education and training. Such cooperation may include:

- (a) exchange of information related to best practices on technical and vocational education and training including labor policy;
- (b) encouragement of technical and vocational education and training, including training of related instructors and development of training programs, particularly for the development of higher technological education and distance education; and
- (c) encouragement of exchange of scholars, teachers, instructors and students.

Article 144

Cooperation In The Field Of Intellectual Property

The Parties, recognizing the growing importance of intellectual property (hereinafter referred to in this Article as "IP") as a factor of economic competitiveness in the knowledge-based economy, and of IP protection in this new environment, shall develop their cooperation in the field of IP. Such cooperation may include the exchange of information on:

- (a) public awareness activities of the importance of IP protection and the function of IP protection systems to their respective nationals;
- (b) improvement of IP protection systems and their operation;
- (c) policy measures conducive to ensuring adequate enforcement of IP rights; and
- (d) automation of administrative processes of IP authority in order to enhance its efficiency.

Note: Information provided from a Party to the other Party pursuant to this Article shall not include information regarding individual cases of infringement of intellectual property

rights so as not to be used by the receiving Party in criminal proceedings carried out by a court or a judge.

Article 145

Cooperation In The Field Of Agriculture

1. The Parties, recognizing that the development in the field of agriculture in both Parties is of mutual interest and of economic and social importance for the rational and sustainable use of natural resources, shall cooperate in the field of agriculture. Such cooperation may include:

- (a) exchange of information and data regarding experience of rural development, know-how of financial assistance to farmers and the agricultural cooperatives system;
- (b) encouragement of dialogues and exchange of information between entities other than the Governments of the Parties concerning agriculture; and
- (c) encouragement of joint scientific and technological research in agriculture including new technologies.

2. For the purposes of the effective implementation and operation of this Article, a Sub-Committee on Cooperation in the Field of Agriculture (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 165.

3. The functions of the Sub-Committee shall be:

- (a) reviewing the implementation and operation of this Article;
- (b) discussing any issues related to this Article;
- (c) reporting the findings of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

Article 146

Cooperation In The Field Of Tourism

1. The Parties, recognizing that tourism will contribute to the enhancement of mutual understanding between them and that tourism is an important industry for their economies, shall cooperate to promote and develop tourism in the Parties. Such cooperation may include:

- (a) exchange of information on:
 - (i) activities and policies, including best practices, concerning market research, sustainable development of tourism and the strengthening of the competitiveness of the tourism industry; and
 - (ii) laws, regulations and statistics on tourism;
- (b) provision of appropriate assistance for tourism promotion campaigns;
- (c) encouragement of cooperation between entities other than the Governments of the Parties concerning the promotion and development of tourism; and

- (d) encouragement of training of persons engaged in the tourism industry.
2. For the purposes of the effective implementation and operation of this Article, a Sub-Committee on Cooperation in the Field of Tourism (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 165.
3. The functions of the Sub-Committee shall be:
- (a) reviewing the implementation and operation of this Article;
 - (b) discussing any issues related to this Article;
 - (c) reporting the findings of the Sub-Committee to the Joint Committee; and
 - (d) carrying out other functions which may be delegated by the Joint Committee pursuant to Article 165.

Article 147

Cooperation In The Field Of Environment

1. The Parties, recognizing the need for environmental preservation and improvement to promote sound and sustainable development, shall cooperate in the field of environment. Cooperative activities under this Article may include:
- (a) exchange of information on policies, laws, regulations and technology related to the preservation and improvement of the environment, and the implementation of sustainable development;
 - (b) promotion of capacity and institutional building to foster activities related with the Clean Development Mechanism under the Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended, by means of workshops and dispatch of experts, and exploration of appropriate ways to encourage the implementation of the Clean Development Mechanism projects;
 - (c) encouragement of trade and dissemination of environmentally sound goods and services; and
 - (d) encouraging the exchange of information for the identification of investment opportunities and the promotion and development of business alliances in the field of environment.
2. Implementing arrangements setting forth the details and procedures of cooperative activities under this Article may be made between the government agencies of the Parties.

Article 148

Non-Application Of Chapter 15

The dispute settlement procedure provided for in Chapter 15 shall not apply to this Chapter.

Article 149

Relation To Other Agreements

1. The Agreement between the Government of Japan and the Government of the United Mexican States concerning Cooperation in the Field of Tourism signed in Tokyo, on November 1, 1978 shall expire upon the date of entry into force of this Agreement.

2. It is confirmed by both Parties that nothing in this Chapter prejudices the rights and obligations of the Parties under the Agreement on Technical Cooperation between the Government of Japan and the Government of the United Mexican States signed in Tokyo, on December 2, 1986, as may be amended.

CHAPTER 15: DISPUTE SETTLEMENT

Article 150

Scope And Coverage

Except as otherwise provided for in this Agreement, this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement.

Article 151

Choice Of Dispute Settlement Procedure

1. Nothing in this Chapter shall prejudice any rights of the Parties to have recourse to dispute settlement procedures available under any other international agreement to which both Parties are parties.

2. Notwithstanding paragraph 1 above, once a dispute settlement procedure has been initiated under this Chapter or under any other international agreement to which both Parties are parties with respect to a particular dispute, that procedure shall be used to the exclusion of any other procedure for that particular dispute. However, this does not apply if substantially separate and distinct rights or obligations under different international agreements are in dispute.

3. For the purposes of paragraph 2 above, a dispute settlement procedure under this Chapter shall be deemed to be initiated by a Party's request for the establishment of an arbitral tribunal pursuant to paragraph 1 of Article 153.

4. For the purposes of paragraph 2 above, a dispute settlement procedure under the WTO Agreement shall be deemed to be initiated by a Party's request for the establishment of a panel pursuant to Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement, as may be amended.

Article 152

Consultations

1. Each Party may request in writing consultations with the other Party regarding any matter on the interpretation or application of this Agreement.

2. When a Party requests consultations pursuant to paragraph 1 above, the other Party shall reply to the request and enter into consultations in good faith within 30 days after the date of receipt of the request, with a view to a prompt and satisfactory resolution of the matter. In a case of consultations regarding perishable goods, the requested Party shall enter into consultations within 15 days after the date of receipt of the request.

*Article 153*Establishment Of Arbitral Tribunals

1. The complaining Party that requested consultations under Article 152 above may request in writing the establishment of an arbitral tribunal to the Party complained against:

- (a) if the Party complained against does not enter into such consultations within 30 days after the date of its receipt of the request for consultations under that Article; or
- (b) if the Parties fail to resolve the dispute through such consultations under that Article within 60 days after the date of receipt of the request for such consultations,

provided that the complaining Party considers that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired as a result of the failure of the Party complained against to carry out its obligations, or as a result of the application by the Party complained against of measures which are in conflict with the obligations of that Party, under this Agreement.

2. Any request for the establishment of an arbitral tribunal pursuant to this Article shall identify:

- (a) the legal basis of the complaint, including the provisions of this Agreement alleged to have been breached and any other relevant provisions; and
- (b) the factual basis for the complaint.

3. The arbitral tribunal shall comprise 3 arbitrators.

4. Each Party shall, within 30 days after the date of receipt of the request for the establishment of an arbitral tribunal, appoint one arbitrator who may be its national and propose up to 3 candidates to serve as the third arbitrator who shall be the chair of the arbitral tribunal. The third arbitrator shall not be a national of either Party, nor have his or her usual place of residence in either Party, nor be employed by either Party.

5. The Parties shall agree on and appoint the third arbitrator within 45 days after the date of receipt of the request for the establishment of an arbitral tribunal, taking into account the candidates proposed pursuant to paragraph 4 above.

6. If a Party has not appointed one arbitrator pursuant to paragraph 4 above or if the Parties fail to agree on and appoint the third arbitrator pursuant to paragraph 5 above, such arbitrator or such third arbitrator shall be chosen by lot within further 7 days from the candidates proposed pursuant to paragraph 4 above.

7. The date of the establishment of an arbitral tribunal shall be the date on which the chair is appointed.

8. Unless the Parties otherwise agree within 20 days from the date of receipt of the request for the establishment of the arbitral tribunal, the terms of reference of such arbitral tribunal shall be:

“To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of an arbitral tribunal pursuant to this Article, to rule on the consistency of the measures at issue with this Agreement, and, where the arbitral tribunal reaches the conclusion that the measure is inconsistent with this Agreement, to make recommendations that the Party complained against bring the measure into conformity with this Agreement. When making

recommendations, the arbitral tribunal may not suggest specific ways in which the Party complained against could implement the recommendations.”

9. The Parties shall promptly deliver the terms of reference pursuant to paragraph 8 above to the arbitral tribunal.

10. If an arbitrator dies, withdraws or is removed, a replacement shall be appointed within 30 days in accordance with the appointment procedure provided for in paragraphs 4 to 6 above, which shall be applied, respectively, *mutatis mutandis*. In such a case, any time period applicable to the arbitral tribunal proceeding shall be suspended for a period beginning on the date the arbitrator dies, withdraws or is removed and ending on the date the replacement is appointed.

Article 154

Award Of Arbitral Tribunals

1. The arbitral tribunal shall meet in closed session.

2. The deliberations of the arbitral tribunal, the documents submitted to it and the draft award referred to in paragraph 4 below shall be kept confidential.

3. Nothing in this Chapter shall preclude a Party from disclosing statements of its own position to the public. Each Party shall treat as confidential, information submitted by the other Party to the arbitral tribunal which that other Party has designated as confidential. A Party shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

4. The arbitral tribunal shall, within 90 days after the date of its establishment, submit to the Parties its draft award, including both descriptive part and its findings and conclusions, for the purposes of enabling the Parties to review precise aspects of the draft award. When the arbitral tribunal considers that it cannot submit to the Parties its draft award within the aforementioned 90 day period, it may extend that period with the consent of the Parties. However, in no case should the period from the establishment of the arbitral tribunal to the submission of the draft award to the Parties exceed 150 days. A Party may submit comments in writing to the arbitral tribunal on the draft award within 15 days after the date of the submission of the draft award.

5. The arbitral tribunal shall issue its award within 30 days after the date of the submission of the draft award.

6. In the case that the matters referred to the arbitral tribunal are those concerning perishable goods, the arbitral tribunal shall make every effort to issue its award to the Parties within 90 days after the date of its establishment. In no case should it do so later than 120 days.

7. The arbitral tribunal shall take its decisions including its award by majority vote.

8. The award of the arbitral tribunal shall be final and binding on the Parties.

Article 155

Termination Of Proceedings Of The Arbitral Tribunal

While the proceedings of the arbitral tribunal are in progress, the Parties may agree to terminate the proceedings at any time by jointly so notifying the chair of the arbitral tribunal.

Article 156

Implementation Of Award

1. The Party complained against shall promptly comply with the award of the arbitral tribunal issued pursuant to Article 154.
2. The Party complained against shall, within 20 days after the date of issuance of the award, notify the complaining Party of the period of time for implementing the award. If the complaining Party considers the period of time notified to be unacceptable, it may refer the matter to an arbitral tribunal.
3. If the Party complained against fails to comply with the award within the implementation period as determined pursuant to paragraph 2 above, the Party complained against shall no later than the expiry of that implementation period enter into consultations with the complaining Party, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of that implementation period, the complaining Party may notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.
4. If the complaining Party considers that measures taken by the Party complained against for implementing the award do not comply with the award within the implementation period as determined pursuant to paragraph 2 above, it may refer the matter to an arbitral tribunal.
5. If the arbitral tribunal to which the matter is referred pursuant to paragraph 4 above confirms that the Party complained against has failed to comply with the award within the implementation period as determined pursuant to paragraph 2 above, the complaining Party may, within 30 days after the date of such confirmation by the arbitral tribunal, notify the Party complained against that it intends to suspend the application to the Party complained against of concessions or other obligations under this Agreement.
6. Suspension of the application of concessions or other obligations under paragraphs 3 and 5 above may only be implemented at least 30 days after the date of the notification in accordance with those paragraphs. Such suspension shall:
 - (a) not be effected if, in respect of the dispute to which the suspension relates, consultations, or proceedings before an arbitral tribunal are in progress;
 - (b) be temporary, and be discontinued when the Parties reach a mutually satisfactory resolution or where compliance with the award is effected;
 - (c) be restricted to the same level of nullification or impairment that is attributable to the failure to comply with the award; and
 - (d) be restricted to the same sector or sectors to which the nullification or impairment relates, unless it is not practicable or effective to suspend the application of concessions or other obligations in such sector or sectors.
7. If the Party complained against considers that the requirements for the suspension of the application to it of concessions or other obligations under this Agreement by the complaining Party set out in paragraph 3, 5 or 6 above have not been met, it may refer the matter to an arbitral tribunal.
8. The arbitral tribunal that is established for the purposes of this Article shall, wherever possible, have as its arbitrators, the arbitrators to the original arbitral tribunal. If this is not possible, then the arbitrators to the arbitral tribunal that is established for the purposes of this Article shall be appointed pursuant to paragraphs 4 to 6 of Article 153. Unless the Parties agree to a different period,

such arbitral tribunal shall issue its award within 30 days after the date when the matter is referred to it. The award of the arbitral tribunal established under this Article shall be binding on the Parties.

Article 157

Modification Of Time Periods

Any time period provided for in this Chapter may be modified by mutual consent of the Parties.

Article 158

Expenses

Unless the Parties agree otherwise, the expenses of the arbitral tribunal, including the remuneration of its arbitrators, shall be borne by the Parties in equal shares.

Article 159

Rules Of Procedure

Unless the Parties agree otherwise, the details and procedures for the arbitral tribunal provided for in this Chapter shall be in accordance with the Rules of Procedure to be adopted by the Joint Committee within the first year of the date of entry into force of this Agreement.

CHAPTER 16: IMPLEMENTATION AND OPERATION OF THE AGREEMENT

Article 160

Transparency

1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party, respecting any matter covered by this Agreement.
2. Each Party shall, upon request by the other Party, promptly respond to specific questions from, and provide information to, the other Party with respect to matters referred to in paragraph 1 above.
3. Nothing in this Article shall prejudice as to whether a measure adopted by a Party is consistent with this Agreement.

Article 161

Public Comment Procedures

The Government of each Party shall, in accordance with the domestic laws and regulations of the Party, endeavor to maintain public comment procedures, except in cases of emergency, *inter alia*, a real or imminent danger to the health, safety, or welfare of persons, to the preservation of the environment or to the conservation of exhaustible natural resources, in order to:

- (a) make public in advance regulations of general application that affect any matter covered by this Agreement, accompanied by an explanation of their rationale and potential effects, when the Government adopts, amends or repeals them;
- (b) provide a reasonable opportunity for comments by the public and give consideration to those comments before the adoption of such regulations; and
- (c) make public those comments. Where appropriate, those comments should be compiled and accompanied by the views of the Government on them.

Article 162

Administrative Proceedings

1. Where measures are to be adopted which pertain to or affect the implementation and operation of this Agreement, the competent authorities of a Party shall, in accordance with the domestic laws and regulations of the Party:
 - (a) inform the applicant of the decision concerning the application within a reasonable period of time after the submission of an application considered complete under the domestic laws and regulations of the Party; and
 - (b) provide, without undue delay, information concerning the status of the application, at the request of the applicant.
2. Where measures are to be adopted by the competent authorities of a Party which pertain to or affect the implementation and operation of this Agreement and which impose obligations on or

restrict rights of a person, such competent authorities shall, prior to any final decision, when time, the nature of the measures and public interest permit and in accordance with the domestic laws and regulations of the Party, provide that person with:

- (a) a reasonable notice, including a description of the nature of the measure, specific provisions upon which such measure will be based, and the facts which may be a cause of taking such measure; and
- (b) a reasonable opportunity to present facts and arguments in support of the position of such person.

Article 163

Review And Appeal

1. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of prompt review and, where warranted, correction of administrative actions regarding matters covered by this Agreement. Such tribunals or procedures shall be impartial and independent of the authorities entrusted with the administrative enforcement.
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.
3. Each Party shall ensure, subject to appeal or further review as provided in its domestic laws and regulations, that such decisions are implemented by the competent authorities of the Party with respect to the administrative action at issue.

Article 164

Confidential Information

1. Unless otherwise provided for in this Agreement, neither Party shall be required by this Agreement to provide confidential information, the disclosure of which would impede the enforcement of its domestic laws and regulations, including the law protecting the information relating to personal privacy or the financial affairs or accounts of individual customers of financial institutions, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.
2. Each Party shall, in accordance with its domestic laws and regulations, maintain the confidentiality of information provided in confidence by the other Party pursuant to this Agreement.

Article 165

Joint Committee

1. The Joint Committee composed of representatives of the Governments of the Parties shall be established under this Agreement.
2. The functions of the Joint Committee shall be:

- (a) reviewing the implementation and operation of this Agreement and, when necessary, making appropriate recommendations to the Parties;
 - (b) considering and recommending to the Parties any amendments to this Agreement;
 - (c) by mutual consent of the Parties, serving as a forum for consultations referred to in Article 152;
 - (d) supervising the work of all Sub-Committees established under this Agreement;
 - (e) adopting:
 - (i) modifications to Annexes referred to in Articles 8 and 37;
 - (ii) the Uniform Regulations referred to in Article 10;
 - (iii) an interpretation of a provision of this Agreement referred to in Articles 84 and 89;
 - (iv) the Rules of Procedure referred to in Article 159; and
 - (v) any necessary decisions; and
 - (f) carrying out other functions as the Parties may agree.
3. The Joint Committee may:
- (a) establish and delegate its responsibilities to Sub-Committees for the purposes of the effective implementation and operation of this Agreement; and
 - (b) take such other action in the exercise of its functions as the Parties may agree.
4. The following Sub-Committees shall be established on the date of entry into force of this Agreement:
- (a) Sub-Committee on Trade in Goods.
 - (b) Sub-Committee on Sanitary and Phytosanitary Measures.
 - (c) Sub-Committee on Technical Regulations, Standards and Conformity Assessment Procedures.
 - (d) Sub-Committee on Rules of Origin, Certificate of Origin and Customs Procedures.
 - (e) Sub-Committee on Cross-Border Trade in Services.
 - (f) Sub-Committee on Entry and Temporary Stay.
 - (g) Sub-Committee on Government Procurement.
 - (h) Sub-Committee on Cooperation in the Field of Trade and Investment Promotion.
 - (i) Sub-Committee on Cooperation in the Field of Agriculture.
 - (j) Sub-Committee on Cooperation in the Field of Tourism.

Other Sub-Committees may be established as the Parties may agree.

5. The Joint Committee shall establish its rules and procedures.
6. The Joint Committee shall meet alternately in Japan and Mexico at the request of either Party.

Article 166

Communications

Each Party shall designate a contact point to facilitate communications between the Parties on any matter relating to this Agreement.

Article 167

Relation To Other Agreements

1. The Parties reaffirm their rights and obligations under the WTO Agreement.
2. Nothing in Chapters 3, 7 and 8 shall be construed to prevent either Party from taking any necessary action as may be authorized by Article 22 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to the WTO Agreement, as may be amended.
3. The Convention on Commerce between Japan and the United Mexican States signed at Tokyo on January 30, 1969 shall expire upon the date of entry into force of this Agreement.

CHAPTER 17: EXCEPTIONS

Article 168

General Exceptions

1. For the purposes of Chapters 3, 4, 5, and 6, Article XX of the GATT 1994 is incorporated into and made part of this Agreement, mutatis mutandis.
2. For the purposes of Chapters 8 and 10, paragraphs (a), (b) and (c) of Article XIV of the GATS are incorporated into and made part of this Agreement, mutatis mutandis.

Article 169

National Security

For the purposes of Chapters 3, 4, 5, 6, 7, 8, 10 and 16, nothing in this Agreement shall be construed:

- (a) to require a Party to furnish or allow access to any information the disclosure of which it considers contrary to its essential security interests;
- (b) to prevent a Party from taking any action 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 or services undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

- (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 relating to fissionable and fusionable materials or the materials from which they are derived; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter, as may be amended, for the maintenance of international peace and security.

Article 170

Taxation

1. Except as otherwise provided for in this Article, nothing in this Agreement shall apply to taxation measures.

2. Nothing in this Agreement shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

Note: The term “tax convention” means a convention for the avoidance of double taxation or other international taxation agreement or arrangement.

3. Notwithstanding paragraph 2 above:

- (a) Article 3 shall apply to taxation measures to the same extent as does Article III of the GATT 1994; and
- (b) Article 6 shall apply to taxation measures.

4. (a) Article 61 shall apply to taxation measures except that no investor may invoke that Article as the basis for a claim under Article 76, where it has been determined pursuant to subparagraph (b) below that the measure is not an expropriation.

(b) The investor shall refer the issue, at the time that it gives a written request under Article 78, to the competent authorities of both Parties to determine whether such measure is not an expropriation. If the competent authorities of both Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within a period of 180 days of such referral, the investor may submit its claim to arbitration under Article 79.

(c) For the purposes of subparagraph (b) above, the term “competent authorities” means:

- (i) in the case of Mexico, the Ministry of Finance and Public Credit; and
- (ii) in the case of Japan, the Minister of Finance or his authorized representative.

Article 171

Payments And Transfers And Restrictions
To Safeguard The Balance Of Payments

1. For the purposes of Chapter 3:

- (a) nothing in this Agreement shall be construed to prevent a Party from taking any measure for balance-of-payments purposes;
- (b) a Party taking such measure shall do so in accordance with the conditions established under Article XII of the GATT 1994, and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, as may be amended; and
- (c) nothing in this Agreement shall preclude the use by a Party of exchange controls or exchange restrictions in accordance with the Articles of Agreement of the International Monetary Fund, as may be amended.

2. For the purposes of Chapter 8:

- (a) except under the circumstances envisaged in subparagraph (d) below, a Party shall not apply restrictions on international transfers and payments for current transactions relating to cross-border trade in services under Chapter 8;
- (b) nothing in this Agreement shall affect the rights and obligations of the Parties as members of the International Monetary Fund under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, as may be amended;
- (c) notwithstanding subparagraph (b) above, a Party shall not impose restrictions on any capital transactions inconsistently with its obligations regarding such transactions under Chapter 8 except under subparagraph (d) below or at the request of the International Monetary Fund;
- (d) in the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services, including on payments or transfers for transactions;
- (e) the restrictions referred to in subparagraph (d) above:
 - (i) shall ensure that the other Party is treated as favorably as any non-Party;
 - (ii) shall be consistent with the Articles of Agreement of the International Monetary Fund, as may be amended;
 - (iii) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
 - (iv) shall not exceed those necessary to deal with the circumstances described in subparagraph (d) above; and
 - (v) shall be temporary and be phased out progressively as the situation specified in subparagraph (d) above improves;
- (f) in determining the incidence of such restrictions referred to in subparagraph (d) above, a Party may give priority to the supply of services which are more essential to their economic or development programs. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector; and

- (g) any restrictions adopted or maintained under subparagraph (d) above, or any changes therein, shall be promptly notified to the other Party.

CHAPTER 18: FINAL PROVISIONS

Article 172

Table Of Contents And Headings

The table of contents and the headings of the Chapters, Sections and Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

Article 173

Annexes And Notes

The Annexes and Notes to this Agreement shall constitute an integral part of this Agreement.

Article 174

Amendment

1. Unless otherwise provided for in this Agreement, this Agreement may be amended by agreement between the Parties. Such amendment shall be approved by the Parties in accordance with their respective legal procedures. Such amendment shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.
2. Any amendment to this Agreement shall constitute an integral part of this Agreement.

Article 175

Entry Into Force

This Agreement shall enter into force on the thirtieth day after the date on which the Government of Japan and the Government of Mexico exchange diplomatic notes informing each other that their respective legal procedures necessary for entry into force of this Agreement have been completed. It shall remain in force unless terminated as provided for in Article 176 below.

Article 176

Termination

Either Party may terminate this Agreement by giving one year's advance notice in writing to the other Party.

Article 177

Authentic Texts

1. The texts of this Agreement in the Japanese, Spanish and English languages shall be equally authentic. In case of differences of interpretation, the English text shall prevail.
2. Notwithstanding paragraph 1 above:
 - (a) Section 2 of Annex 1 is written in the Japanese and English languages, such texts being equally authentic; and
 - (b) Section 3 of Annex 1 is written in the Spanish and English languages, such texts being equally authentic.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Mexico City, on this seventeenth day of September, 2004, in duplicate.

FOR JAPAN:

FOR THE UNITED MEXICAN STATES:

□□□□□

Fox
