

AGREEMENT BETWEEN JAPAN AND THE UNITED MEXICAN STATES
FOR THE STRENGTHENING OF THE ECONOMIC PARTNERSHIP

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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.