

CHAPTER TEN

INVESTMENT

Section A – Definitions

Article 10.1: Definitions

For the purposes of this Chapter:

confidential information means confidential business information or information that is privileged or otherwise protected from disclosure;

disputing investor means an investor that makes a claim under Section C;

disputing Party means a Party against which a claim is made under Section C;

disputing party means the disputing investor or the disputing Party;

enterprise means an enterprise as defined in Article 2.1 (General Definitions – Definitions of General Application), and a branch of any such entity;

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

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

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

intellectual property rights means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs on integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

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

investment means:

- (a) an enterprise;
- (b) a share, stock or other form of equity participation in an enterprise;
- (c) a bond, debenture, or other debt instrument of an enterprise:
 - (i) if the enterprise is an affiliate of the investor, or
 - (ii) if 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 state enterprise;
- (d) a loan to an enterprise:
 - (i) if the enterprise is an affiliate of the investor, or
 - (ii) if the original maturity of the loan is at least 3 years,but does not include a loan, regardless of original maturity, to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to a share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);
- (g) real estate or other property, tangible or intangible, acquired in the expectation of, or used for, economic benefit or another business purpose; and

- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:
 - (i) a contract involving the presence of an investor's property in the territory of the Party, including a turnkey or construction contract, or a concession, or
 - (ii) a contract in which remuneration depends substantially on the production, revenues or profits of an enterprise;

but **investment** does not mean:

- (i) a claim to money that arises solely from:
 - (i) a commercial contract for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or
 - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- (j) any other claim to money,

that does not involve the kinds of interests set out in subparagraphs (a) through (h);
- (k) for greater certainty, the following is not an investment:
 - (i) an order or judgment obtained in a judicial or administrative action,
 - (ii) a loan issued by one Party to the other Party,
 - (iii) a public debt operation of a Party or state enterprise, or
 - (iv) an investment allowed or made pursuant to fraudulent misrepresentation, bribery, or corruption,

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

investor of a non-Party means an investor other than an investor of a Party, that seeks to make, is making, or has made an investment; for greater certainty, an investor “seeks to make an investment” only when the investor has taken concrete steps to make the investment, such as when the investor has applied for a permit or license authorizing the establishment of an investment;

investor of a Party means a Party or state enterprise, or a national or an enterprise of that Party, that seeks to make, is making, or has made an investment; for greater certainty:

- (a) an investor “seeks to make an investment” only when the investor has taken concrete steps to make the investment, such as when the investor has applied for a permit or license authorizing the establishment of an investment;
- (b) a natural person who is a dual citizen is deemed to be exclusively a citizen of the State of their dominant and effective citizenship; a natural person who is a citizen of a Party and a permanent resident of the other Party is deemed to be exclusively a national of the Party of which that natural person is a citizen;

legal stability agreement means an agreement entered into by a national government authority of a Party and an investor of the other Party, or an investment of an investor of the other Party that accords certain benefits, including, but not limited to, a commitment to maintain an existing tax regime during a specified time;

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

non-disputing Party means the Party that is not a party to an investment dispute under Section C;

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 10.27 or 10.29; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

Section B – Investment

Article 10.2: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) an investor of the other Party;
 - (b) an investment of an investor of the other Party in the territory of the Party;
and
 - (c) with respect to Articles 10.7, 10.15 and 10.16, an investment in its territory.
2. This Chapter does not apply to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.3: Relation to Other Chapters

1. In the event of an inconsistency between this Chapter and another Chapter, the other Chapter prevails.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition for providing a service in its territory does not of itself make this Chapter applicable to the provision of that cross-border service. This Chapter applies to that Party's treatment of the posted bond or financial security if the bond or financial security is an investment of an investor of the other Party.
3. This Chapter does not apply to a measure adopted or maintained by a Party to the extent that the measure is covered by Chapter Thirteen (Financial Services).

Article 10.4: National Treatment

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
2. Each Party shall accord to an investment of an investor of the other Party in its territory treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.5: Most-Favoured-Nation Treatment

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

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

3. For greater certainty, treatment “with respect to establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments” referred to in paragraphs 1 and 2 does not include dispute settlement mechanisms, such as those referred to in Section C of this Chapter, that are provided for in an international treaty or trade agreement.

4. For greater certainty, the treatment accorded by a Party under this Article means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

Article 10.6: Minimum Standard of Treatment

1. Each Party shall accord to an investment of an investor of the other Party treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish a breach of this Article.

Article 10.7: Performance Requirements

1. A Party may not impose or enforce the following requirements, or enforce a commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

- (a) to export a given level or percentage of a good or service;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use, or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;
- (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;
- (e) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party a good that the investment produces or a service that the investment provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety, or environmental requirements is not inconsistent with paragraph 1(f). For greater certainty, Articles 10.4 and 10.5 apply to the measure.

3. A Party may not make the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, conditional 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 a good produced in its territory, or to purchase a good from a producer in its territory;
- (c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or
- (d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

4. Paragraph 3 does not prevent a Party from making the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, conditional on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or to carry out research and development, in its territory.

5. Paragraphs 1 and 3 do not apply to a requirement other than the requirements set out in those paragraphs.

6. This Article does not preclude enforcement of a commitment, undertaking, or requirement between private parties.

Article 10.8: Senior Management and Boards of Directors

1. A Party may not require an enterprise of that Party, that is also an investment of an investor of the other Party, to appoint individuals of a particular nationality to senior management positions.

2. A Party may require that a majority of the board of directors, or a committee, of an enterprise of that Party that is an investment of an investor of the other Party, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.9: Reservations and Exceptions

1. Articles 10.4, 10.5, 10.7 and 10.8 do not apply to:

(a) an existing non-conforming measure that is maintained by:

(i) the national government of a Party, as set out in its Schedule to Annex I, or

(ii) a sub-national government of a Party;

(b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or

(c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not diminish the conformity of the measure, with Articles 10.4, 10.5, 10.7 and 10.8, as it existed immediately before the amendment.

2. Articles 10.4, 10.5, 10.7 and 10.8 do not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. A Party may not, under a measure adopted after the date of entry into force of this Agreement and set out in its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. In respect of intellectual property rights, a Party may derogate from Articles 10.4, 10.5 and subparagraph 1(f) of 10.7 in a manner that is consistent with the TRIPS Agreement and with the waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

5. Article 10.5 does not apply to treatment accorded by a Party pursuant to agreements, or with respect to sectors, set out in its Schedule to Annex II.
6. Articles 10.4, 10.5 and 10.8 do not apply to:
 - (a) procurement by a Party or a state enterprise; or
 - (b) a subsidy or grant provided by a Party or a state enterprise, including a government-supported loan, guarantee or insurance.
7. The provisions of:
 - (a) Articles 10.7(1)(a), (b) and (c), and (3)(a) and (b) do not apply to a qualification requirement for a good or service with respect to export promotion and foreign aid programs;
 - (b) Articles 10.7(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement by a Party or a state enterprise; and
 - (c) Articles 10.7(3)(a) and (b) do not apply to a requirement imposed by an importing Party relating to the content of a good necessary to qualify for a preferential tariff or preferential quota.

Article 10.10: Transfers

1. Each Party shall permit transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Those transfers include:
 - (a) fees, returns in kind, and other amounts derived from the investment, including profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance;
 - (b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

- (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (d) payments made pursuant to Article 10.11 and Article 10.12;
- (e) payments arising under Section C; and
- (f) contributions to capital.

2. Each Party shall permit transfers relating to an investment of an investor of the other Party to be made in a freely usable currency at the market rate of exchange in effect on the date of transfer.

3. A Party may not require one of its investors to transfer or penalize one of its investors for failure to transfer the income, earnings, profits, or other amounts derived from, or attributable to, an investment in the territory of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its domestic law relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of a creditor;
- (b) issuing, trading, or dealing in securities;
- (c) a criminal or penal offence;
- (d) reports of transfers of currency or other monetary instruments; or
- (e) compliance with an order or judgment in judicial or administrative proceedings.

5. Paragraph 3 does not prevent a Party from imposing a measure through the equitable, non-discriminatory and good faith application of its domestic law relating to the matters referred to in paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under Article XI of the GATT 1994, and as set out in paragraph 4.

Article 10.11: Expropriation

1. A Party may not expropriate or nationalize an investment of an investor of the other Party in its territory, directly or indirectly, through a measure that has an effect equivalent to expropriation or nationalization (“expropriation”), except:

- (a) for a public purpose;
- (b) on a non-discriminatory manner;
- (c) in accordance with due process of law; and
- (d) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 6.

2. The compensation referred to in paragraph 1(d) shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value that occurs as a result of prior knowledge of the intended expropriation. The valuation criteria includes going concern value, asset value (including declared tax value of tangible property), and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of payment.

4. The affected investor shall have the right under the law of the expropriating Party to a prompt review of its case and of the valuation of the investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

5. This Article does not apply to a compulsory license granted in relation to intellectual property rights, or to the revocation, limitation, or creation of an intellectual property right, provided that the issuance, revocation, limitation or creation is consistent with the WTO Agreement.

6. For the purposes of this Article, a non-discriminatory measure of general application is not be considered a measure equivalent to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes a cost on the debtor that causes the debtor to default on the debt.

7. For greater certainty, Article 10.11(1) shall be interpreted in accordance with Annex 10.11.

Article 10.12: Compensation for Losses

1. Notwithstanding Article 10.9(6)(b), each Party shall accord to an investor of the other Party, and to an investment of an investor of the other Party, non-discriminatory treatment with respect to a measure it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

2. Paragraph 1 does not apply to an existing measure relating to a subsidy or grant that would be inconsistent with Article 10.4, but for Article 10.9(6)(b).

Article 10.13: Special Formalities and Information Requirements

1. Article 10.4 does not prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of an investment by an investor of the other Party, such as a requirement that an agent of an investor be a resident of the Party or that an investment be legally constituted under the laws or regulations of the Party, provided that those formalities do not materially impair the protections afforded by a Party to investors of the other Party or investments of investors of the other Party under this Chapter.

2. Notwithstanding Articles 10.4 and 10.5, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential information from disclosure that would prejudice the competitive position of the investor or the investment. This paragraph does not prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.14: 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 that Party and to an investment of that investor if the investor of a non-Party owns or controls the enterprise and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investment.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to an investment of that investor if the investor of a non-Party or of the denying Party owns or controls the enterprise and the enterprise does not have substantial business activity in the territory of the Party under whose domestic law it is constituted or organized.

Article 10.15: Health, Safety and 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, those measures to encourage the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered this encouragement, it may request discussions with the other Party and the two Parties shall enter into discussions with a view to avoiding any such encouragement.

Article 10.16: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory, or enterprises subject to its jurisdiction, to voluntarily incorporate internationally recognized standards of corporate social responsibility in their internal policies, such as those statements of principle that are endorsed or supported by the Parties. These principles address issues such as labour, the environment, human rights, community relations, and anti-corruption.

Article 10.17: Subrogation

1. If a Party or an agency of a Party makes a payment to one of its investors under a guarantee or a contract of insurance that it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of that Party or agency to a right or title held by the investor.
2. A Party or an agency of a Party, which is subrogated to the rights of an investor in accordance with paragraph 1, is entitled the same rights as those of the investor in respect of the investment. These rights may be exercised by the Party or an agency of the Party, or by the investor if the Party or an agency of the Party so authorizes.

Section C – Settlement of Disputes between a Party and an Investor of the Other Party

Article 10.18: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes.

Article 10.19: Claim by an Investor of a Party on Its Own Behalf

1. An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached an obligation under:

- (a) Section B, other than an obligation under Articles 10.3(2), 10.10, 10.13, 10.15 or 10.16;
- (b) Article 15.3(a) (Competition Policy, Monopolies and State Enterprises – Monopolies) or Article 15.4(2) (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section B, other than an obligation under Article 10.10, 10.13, 10.15 or 10.16; or
- (c) a legal stability agreement referred to in paragraph 2,

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

2. A claim by an investor that a tax measure of a Party is in breach of a legal stability agreement between a national government authority of a Party and the investor concerning an investment may be submitted to arbitration under this Section unless:

- (a) the legal stability agreement between the national government authority of a Party and the investor precede the entry into force of this Agreement; or
- (b) the taxation authorities of the Parties, within 6 months of being notified by the investor of its intention to submit the claim to arbitration, jointly determine that the measure does not contravene that legal stability agreement. The investor shall refer the issue of whether a taxation measure does not contravene a legal stability agreement for a determination to the taxation authorities of the Parties when the investor gives notice under Article 10.21.

3. An investor may not make a claim if more than 3 years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage.

Article 10.20: Claim by an Investor of a Party on Behalf of an Enterprise

1. An investor of a Party, on behalf of an enterprise of the other Party 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:

- (a) Section B other than an obligation under Articles 10.3(2), 10.10, 10.13, 10.15 or 10.16;
- (b) Article 15.3(a) (Competition Policy, Monopolies and State Enterprises – Monopolies) or Article 15.4(2) (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party’s obligations under Section B, other than an obligation under Article 10.10, 10.13, 10.15 or 10.16; or
- (c) a legal stability agreement referred to in paragraph 2, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party may submit a claim under this Section on behalf of an enterprise that the investor owns or controls directly or indirectly, that a tax measure of that Party is in breach of a legal stability agreement between a national government authority of that Party and the enterprise unless:

- (a) the legal stability agreement between the national government authority of a Party and the enterprise preceded the entry into force of this Agreement;
or

(b) the taxation authorities of the Parties, within 6 months of being notified by the investor of its intention to submit the claim to arbitration, jointly determine that the measure does not contravene that legal stability agreement. The investor shall refer the issue of whether a taxation measure contravenes a legal stability agreement for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 10.21.

3. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage.

4. If an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.19 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.23, the claims should be heard together by a Tribunal established under Article 10.29, unless the Tribunal finds that the interests of a disputing party would be prejudiced as a result.

5. An investment may not make a claim under this Section.

Article 10.21: Notice of Intent to Submit a Claim to Arbitration

1. The disputing investor shall deliver to the disputing Party written notice of its intent to submit a claim to arbitration at least 6 months before submitting the claim. The notice shall include the following:

- (a) the name and address of the disputing investor and, if a claim is made under Article 10.20, 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 legal and the factual basis for the claim, including the measures at issue; and
 - (d) the relief sought and the approximate amount of damages claimed.
2. The disputing investor shall also deliver, with its notice of intent to submit a claim to arbitration, evidence that it is an investor of the other Party.

Article 10.22: Settlement of a Claim through Consultation

1. Before a disputing investor may submit a claim to arbitration, the disputing parties shall first hold consultations to attempt to settle a claim amicably.
2. Consultations shall be held within 6 months of the submission of the notice under Article 10.21, unless the disputing parties decide otherwise.
3. The place of consultation shall be the capital of the disputing Party, unless the disputing parties decide otherwise.

Article 10.23: Submission of a Claim to Arbitration

1. Except as provided in Annex 10.23, a disputing investor who meets the conditions precedent provided for in Article 10.24 may submit the claim to arbitration under:
- (a) the ICSID Convention, if both Parties are party to the Convention;
 - (b) the ICSID Additional Facility Rules , if only one Party is a party to the ICSID Convention;
 - (c) the UNCITRAL Arbitration Rules; or

- (d) any other rules designated by the Commission that are available for arbitration under this Section.

2. The Commission has the power to make rules supplementing the applicable arbitral rules and may amend any rules of its own making. Those rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on that Tribunal.

3. The applicable arbitration rules shall govern the arbitration unless they are modified by this Agreement or supplemented by any rules adopted by the Commission under this Section.

Article 10.24: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim to arbitration under Article 10.19 only if:
 - (a) the disputing investor consents to arbitration in accordance with the procedures set out in this Agreement;
 - (b) at least 6 months have elapsed since the events giving rise to the claim;
 - (c) not more than 3 years have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the disputing investor has incurred loss or damage;
 - (d) the disputing investor has delivered the notice required under Article 10.21, in accordance with the requirements of that Article, at least 6 months prior to submitting the claim; and

- (e) the disputing investor and, if the claim is for loss or damage to an interest in an enterprise of the other Party that the disputing investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before an administrative tribunal or court under the domestic law of the other Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.19, except for proceedings for injunctive, declaratory, or other extraordinary relief, not involving the payment of monetary damages, before an administrative tribunal or court under the domestic law of the disputing Party.
2. A disputing investor may submit a claim to arbitration under Article 10.20 only if:
- (a) both the disputing investor and the enterprise consent to arbitration in accordance with the procedures set out in this Agreement;
 - (b) at least 6 months have elapsed since the events giving rise to the claim;
 - (c) not more than 3 years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby;
 - (d) the disputing investor has delivered the notice required under Article 10.21, in accordance with the requirements of that Article, at least 6 months prior to submitting the claim; and

(e) both the disputing investor and the enterprise waive their right to initiate or continue before an administrative tribunal or court under the domestic law of the other Party, or other dispute settlement procedures, proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.19, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of monetary damages, before an administrative tribunal or court under the domestic law of the disputing Party.

3. A consent and waiver required by this Article shall be in the form provided for in Annex 10.24, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. A waiver from the enterprise under paragraph 1(e) or 2(e) shall not be required if a disputing Party has deprived a disputing investor of control of an enterprise.

5. Failure to meet any of the conditions precedent provided for in paragraphs 1 through 3 nullifies the consent of the Parties given in Article 10.25.

6. An investor may submit a claim relating to a taxation measure covered by this Agreement to arbitration, only if the taxation authorities of the Parties fail to reach the joint determinations specified in Article 22.4 (Exceptions – Taxation), Articles 10.19(2) or 10.20(2) within 6 months of being notified in accordance with these provisions.

Article 10.25: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the terms set out in this Agreement.

2. The consent given in paragraph 1 and a disputing investor's submission of a claim to arbitration satisfies the following requirements:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties;

- (b) Article II of the New York Convention for an agreement in writing; and
- (c) Article 1 of the Inter-American Convention for an agreement.

Article 10.26: Arbitrators

1. Except in respect of a Tribunal established under Article 10.29, and unless the disputing parties decide otherwise, the Tribunal shall consist of 3 arbitrators. Each disputing party shall appoint one arbitrator. The disputing parties shall jointly appoint the third, who shall be the presiding arbitrator.
2. Arbitrators shall:
 - (a) have expertise or experience in public international law, international trade or international investment rules, or the settlement of disputes arising under international trade or international investment agreements;
 - (b) be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor; and
 - (c) comply with the Code of Conduct for Dispute Settlement established by the Commission.
3. If the disputing parties do not agree on the remuneration of the arbitrators before the Tribunal is constituted, the prevailing ICSID rate for arbitrators applies.
4. The Commission may establish rules relating to the expenses incurred by the Tribunal.

Article 10.27: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties Are Unable to Agree on a Presiding Arbitrator

1. The Secretary-General shall serve as appointing authority for an arbitration under this Section.

2. If a Tribunal, other than a Tribunal established under Article 10.29, is not constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, at the request of either disputing party, shall appoint the arbitrator or arbitrators not yet appointed. The presiding arbitrator shall not be a national of either Party.

Article 10.28: Decision to Appoint Arbitrators

For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on a ground other than citizenship or permanent residence:

- (a) the disputing Party consents to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 10.19 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor consents in writing to the appointment of each individual member of the Tribunal; and
- (c) a disputing investor referred to in Article 10.20(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise consent in writing to the appointment of each individual member of the Tribunal.

Article 10.29: Consolidation

The consolidation of claims shall be governed by the rules set out in Annex 10.29.

Article 10.30: Notice to the Non-Disputing Party

A disputing Party shall deliver to the non-disputing Party a copy of the notice under Article 10.21 and other documents, within 30 days of the date that those documents are delivered to the disputing Party.

Article 10.31: Participation of the Non-Disputing Party

1. The non-disputing Party may make submissions to a Tribunal on a question of interpretation of this Agreement, if it gives notice in writing to the disputing parties.
2. The non-disputing Party has the right to attend a hearing held under this Section, whether or not it makes submissions to the Tribunal.

Article 10.32: Documents

1. The non-disputing Party is entitled, at its cost, to receive from the disputing Party, a copy of:
 - (a) the evidence that has been tendered to the Tribunal;
 - (b) the written argument of the disputing parties; and
 - (c) all pleadings filed in the arbitration.
2. The non-disputing Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 10.33: Place of Arbitration

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

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

Article 10.34: Preliminary Objections to Jurisdiction or Admissibility

1. The Tribunal shall have the power to rule on issues of jurisdiction and admissibility.
2. If those issues are raised as preliminary objections, the Tribunal shall, whenever possible, decide the matter before proceeding to the merits.

Article 10.35: Public Access to Hearings and Documents

1. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of the hearings *in camera* to the extent necessary to protect confidential information, including business confidential information.
2. The Tribunal shall, in consultation with the disputing parties, establish procedures to protect confidential information and make logistical arrangements for open hearings.
3. The Tribunal or the disputing Party shall make publicly available all documents submitted to, or issued by, the Tribunal, unless the disputing parties decide otherwise, subject to the redaction of confidential information.

4. Notwithstanding paragraph 3, the Tribunal or the disputing party shall make publicly available a Tribunal award under this Section, subject to the redaction of confidential information.
5. A disputing party may disclose to other persons in connection with the arbitral proceedings any unredacted documents that it considers necessary to prepare its case, but it shall ensure that those persons protect the confidential information in those documents.
6. The Parties may share relevant unredacted documents with officials of their respective national and sub-national governments in the course of dispute settlement under this Chapter, but they shall ensure that those persons protect any confidential information in those documents.
7. As provided under Article 22.3 (Exceptions – National Security) and Article 22.6 (Exceptions – Disclosure of Information), the Tribunal may not require a Party to furnish or allow access to information which, if disclosed, would impede law enforcement or would be contrary to the Party’s domestic law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.
8. If a Tribunal’s confidentiality order designates information as confidential and a Party’s domestic law on access to information requires public access to that information, the Party’s domestic law on access to information prevails. However, a Party should endeavour to apply its domestic law on access to information to protect information that is designated confidential by the Tribunal.

Article 10.36: Submission by a Non-Disputing Party

1. Any person or entity of a Party, or a person with a significant presence in the territory of a Party, that wishes to file a written submission with the Tribunal (the “applicant”) may apply for leave from the Tribunal to file a non-disputing party submission, in accordance with Annex 10.36. The applicant shall attach the submission to the application.

2. The applicant shall provide the application for leave to file a non-disputing party submission and the submission to all disputing parties and the Tribunal.
3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave to file a non-disputing party submission.
4. In determining whether to grant leave to file a non-disputing party submission, the Tribunal shall consider, among other things, the extent to which:
 - (a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
 - (b) the non-disputing party submission would address a matter within the scope of the dispute;
 - (c) the non-disputing party has a significant interest in the arbitration; and
 - (d) there is a public interest in the subject-matter of the arbitration.
5. The Tribunal shall ensure that:
 - (a) a non-disputing party submission does not disrupt the proceedings; and
 - (b) the submission does not unduly burden or unfairly prejudice either disputing party.
6. The Tribunal shall decide whether to grant leave to file a non-disputing party submission. If leave to file a non-disputing party submission is granted, the Tribunal shall set an appropriate date for the disputing parties to respond in writing to the non-disputing party submission. By that date, the non-disputing Party may, pursuant to Article 10.31, address any issues raised in the non-disputing party submission regarding the interpretation of this Chapter.

7. The Tribunal that grants leave to file a non-disputing party submission is not required to address the submission at any point in the arbitration, and the non-disputing party that files the submission is not entitled to make further submissions in the arbitration.

8. The provisions pertaining to public access to hearings and documents under Article 10.35 govern access to hearings and documents by non-disputing parties that file applications under this Article.

Article 10.37: 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. Subject to the other terms of this Section, a Tribunal shall apply the following when a claim is submitted to arbitration for a breach of a legal stability agreement referred to in Articles 10.19(2) or 10.20(2):

- (a) the rules of law specified in the legal stability agreement, or as the disputing parties may otherwise decide; or
- (b) if the rules of law have not been specified or otherwise decided:
 - (i) the law that a domestic court or tribunal of proper jurisdiction of the disputing Party would apply in the same case, including its rules on the conflict of laws, and
 - (ii) the rules of international law that may apply.

3. The Commission's interpretation of a provision of this Agreement shall be binding on a Tribunal established under this Section and an award under this Section shall be consistent with that interpretation.

Article 10.38: Interpretation of Annexes

1. If 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 I or Annex II, the Tribunal shall, at the request of that disputing Party, request the Commission to interpret the issue. Within 60 days of delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal.
2. Further to Article 10.37(2), an interpretation of the Commission submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 10.39: Expert Reports

1. Subject to paragraph 2, a Tribunal may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may decide.
2. The Tribunal may not exercise the power conferred to it under paragraph 1 if the disputing parties decide the Tribunal may not do so.
3. Paragraph 1 does not affect the appointment of other kinds of experts where the appointment is authorized by the applicable arbitration rules.

Article 10.40: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective. This interim measure may include an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.19 or 10.20. For the purposes of this paragraph, an order includes a recommendation.

Article 10.41: Final Award

1. If 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) the 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.

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

2. Subject to paragraph 1, if a claim is made under Article 10.20(1):

- (a) an award of monetary damages and any applicable interest shall state that the monetary damages and interest are payable to the enterprise;
- (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
- (c) the award shall provide that it is made without prejudice to a right that a person may have in monetary damages or property awarded under subparagraphs (a) or (b) under domestic law.

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

Article 10.42: Finality and Enforcement of an Award

1. An award made by a Tribunal does not have binding force except between the disputing parties and in respect of that particular case.

2. A disputing party shall abide by and comply with an award without delay, subject to paragraph 3, and the applicable review procedure for an interim award.
3. A disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award is rendered, provided that a disputing party does not request the revision or annulment of the award, or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
 - (i) 90 days have elapsed from the date the award is rendered, and a disputing party has not commenced a proceeding to revise, set aside or annul the award, or
 - (ii) a court dismisses or allows an application to revise, set aside or annul the award and there is no further appeal.
4. Each Party shall provide for the enforcement of an award in its territory.
5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures). The requesting Party may seek the following in these proceedings:
 - (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.

6. A disputing investor may seek to enforce an arbitration award under the ICSID Convention, the New York Convention or the Inter-American Convention, regardless of whether proceedings are taken under paragraph 5.

7. A claim that is submitted to arbitration under this Section is considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article 1 of the Inter-American Convention.

Article 10.43: General

Time When a Claim Is Submitted to Arbitration

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

Service of Documents

2. Notices and other documents shall be delivered to a Party at the place named for that Party below:

For Canada:

Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, Ontario K1A 0H8
Canada

For Honduras:

Dirección General de Integración Económica y Política Comercial
Secretaría de Estado en los Despachos de Industria y Comercio
Edificio San José
Boulevard José Cecilio del Valle
Tegucigalpa, Honduras

Receipts under Insurance or Guarantee Contracts

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

Article 10.44: Exclusions

The dispute settlement provisions of this Section and of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures) do not apply to the matters referred to in Annex 10.44.

Annex 10.11

Indirect Expropriation

The Parties confirm their shared understanding that:

- (a) indirect expropriation results from a Party's a measure or series of measures that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- (b) the determination of whether a measure or series of measures by a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of a measure or a series of measures, although the sole fact that a measure or series of measures by a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,
 - (ii) the extent to which the measure or series of measures interferes with distinct, reasonable, investment-backed expectations, and
 - (iii) the character of the measure or series of measures; and
- (c) except in rare circumstances, such as when a measure or series of measures is so severe in light of its purpose that it cannot be reasonably viewed to have been adopted and applied in good faith, a non-discriminatory measure of a Party that is designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute an indirect expropriation.

Annex 10.23

Submission of a Claim to Arbitration

1. An investor of Canada may not submit to arbitration under Section C a claim that Honduras has breached an obligation under Section B:

- (a) on the investor's own behalf under subparagraphs 1(a) or (b) of Article 10.19; or
- (b) on behalf of an enterprise of Honduras that the investor owns or controls, directly or indirectly, under subparagraphs 1(a) or (b) of Article 10.20,

if the investor or the enterprise, respectively, has alleged that breach in proceedings before a court or administrative tribunal of Honduras.

2. An investor of Canada may not submit to arbitration under Section C a claim that Honduras has breached a legal stability agreement referred to in paragraph 3 of Article 10.19 or paragraph 3 of Article 10.20:

- (a) on the investor's own behalf under subparagraph 1(c) of Article 10.20; or
- (b) on behalf of an enterprise of Honduras that the investor owns or controls directly or indirectly under subparagraph 1(c) of Article 10.20,

if the investor or the enterprise, respectively, has alleged that breach in proceedings before a court or administrative tribunal of Honduras or has submitted that claim to any other binding dispute settlement proceedings.

3. For greater certainty, if an investor of Canada elects to submit:
 - (a) a claim described in paragraph 1 to a court or administrative tribunal of the Honduras; or
 - (b) a claim described in paragraph 2 to a court or administrative tribunal of Honduras or to any other binding dispute settlement proceedings,

that election is definitive and the investor may not then submit the same claim to arbitration under Section C.

Annex 10.24

Standard Waiver and Consent in Accordance with Article 10.24

1. In the interest of facilitating the filing of a waiver as required by Article 10.24, and to facilitate the orderly conduct of the dispute settlement procedures set out in Section C, the following standard waiver forms shall be used, depending on the type of claim.
2. Claims filed under Article 10.19 must be accompanied by Form 1, if the investor is a national of a Party, or Form 2, if the investor is a Party, a state enterprise of a Party, or an enterprise of that Party.
3. If the claim is based on loss or damage to an interest in an enterprise of the other Party that the investor owns or controls, directly or indirectly, Form 1 or 2 must be accompanied by Form 3.
4. Claims made under Article 10.20 must be accompanied by Form 4 and:
 - (a) Form 1, if the investor is a national of a Party; or
 - (b) Form 2, if the investor is a Party, a state enterprise of a Party, or an enterprise of a Party.

Form 1

Consent and waiver for an investor of a Party that submits a claim under Article 10.19 or Article 10.20 (if the investor is a national of a Party) of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive my right to initiate or continue before an administrative tribunal or court under the law of a Party to the Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 10.19 or Article 10.20, except for a proceeding for injunctive, declaratory or other extraordinary relief that does not involve the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party).

(To be signed and dated)

Form 2

Consent and waiver for an investor of a Party that submits a claim under Article 10.19 or Article 10.20 (if the investor is a Party, a state enterprise of a Party, or an enterprise of a Party) of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of declarant), on behalf of (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of investor) to initiate or continue before an administrative tribunal or court under the law of a Party to the Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 10.19 or Article 10.20, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of investor).

(To be signed and dated)

Form 3

Waiver of an enterprise that is the subject of a claim submitted by an investor of a Party under Article 10.19 of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of declarant), waive the right of (Name of the enterprise) to initiate or continue before an administrative tribunal or court under the law of a Party to this Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 10.19, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of (Name of the enterprise).

(To be signed and dated)

Form 4

Consent and waiver of an enterprise that is the subject of a claim by an investor of a Party under Article 10.20 of the *Free Trade Agreement between Canada and Honduras*:

I, (Name of declarant), on behalf of (Name of enterprise), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of (Name of enterprise) to initiate or continue before an administrative tribunal or court under the law of a Party to the Agreement, or other dispute settlement procedures, a proceeding with respect to the measure of (Name of disputing Party) that is alleged by (Name of investor) to be a breach referred to in Article 10.20, except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of (Name of the enterprise).

(To be signed and dated)

Annex 10.29

Consolidation

1. A Tribunal established under this Annex shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, unless otherwise provided in this Section.

2. If a Tribunal established under this Annex is satisfied that claims submitted to arbitration under Article 10.23 have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:
 - (a) assume jurisdiction over, and hear and determine, all or part of the claims;
or
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General establish a Tribunal and shall specify in the request:
 - (a) the name of the disputing Party or disputing investor against which the order is sought;
 - (b) the nature of the order sought; and
 - (c) the grounds for the order sought.

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

5. The Secretary-General shall, within 60 days of the receipt of the request, establish a Tribunal consisting of 3 arbitrators. The Secretary-General shall appoint one member who is a national of the disputing Party, one member who is a national of the Party of the disputing investor and a presiding arbitrator, who is not a national of either Party.

6. If a Tribunal is established under this Annex, a disputing investor that submits a claim to arbitration under Article 10.19 or 10.20 and that has not been named in a request made under paragraph 3 may submit a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and
- (c) the grounds for the order sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 10.23 does not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under Article 10.29 has assumed jurisdiction.

9. On the application of a disputing party, a Tribunal established under this Annex may stay the proceedings of a Tribunal established under Article 10.23 pending its decision under paragraph 2, unless those proceedings have already been adjourned.

Annex 10.36

Submission by a Non-Disputing Party

1. An application for leave to file a non-disputing party submission must:
 - (a) be made in writing, and be dated and signed by the person filing the application, and include the address and other contact details of the applicant;
 - (b) not exceed 5 typed pages;
 - (c) describe the applicant, including, if relevant, its membership and legal status (for example, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
 - (d) disclose whether or not the applicant has an affiliation, direct or indirect, with a disputing party;
 - (e) identify any government, person or organization that has provided financial or other assistance to prepare the submission;
 - (f) specify the nature of the applicant's interest in the arbitration;
 - (g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;
 - (h) explain, by referring to the factors specified in Article 10.36(4), why the Tribunal should accept the submission; and
 - (i) be made in a language of the arbitration.

2. The submission filed by a non-disputing party must:
 - (a) be dated and signed by the person filing the submission;
 - (b) be concise, and not exceed 20 typed pages, including any appendices;
 - (c) set out a precise statement supporting the applicant's position on the issues; and
 - (d) only address matters within the scope of the dispute.

Annex 10.44

Exclusions from Dispute Settlement

1. A decision by Canada following a review under the *Investment Canada Act*, R.S.C. 1985, c.28, 1st supp., with respect to whether to permit an acquisition that is subject to review, is not subject to the dispute settlement provisions of Section C of this Chapter or of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, under Article 22.3. (Exceptions – National Security) is not subject to the dispute settlement provisions of Section C of this Chapter or of Chapter Twenty-One (Institutional Arrangements and Dispute Settlement Procedures).