

ภาคผนวก

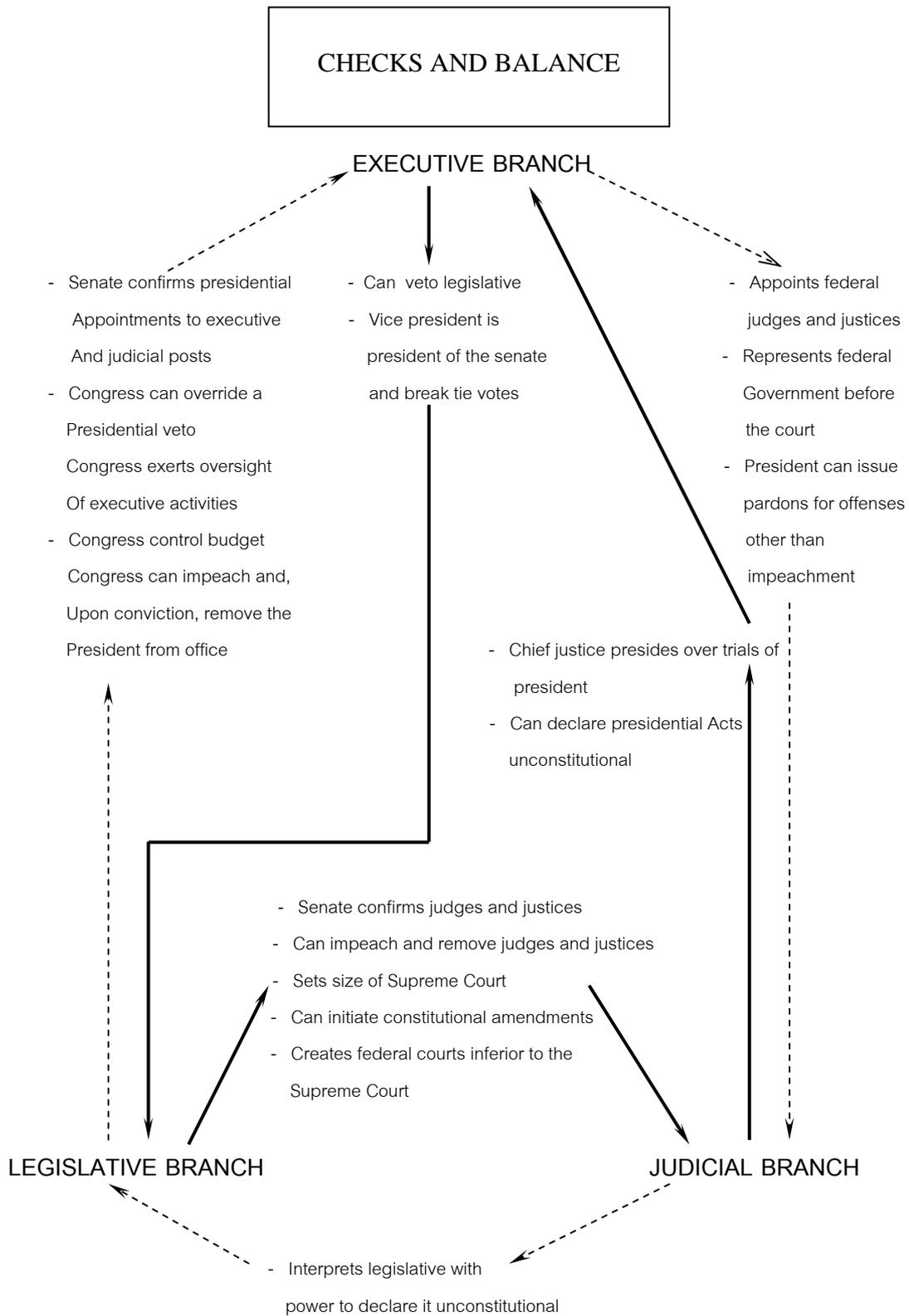
ตารางวิวัฒนาการของกรอบความร่วมมือในอเมริกาเหนือและเอเชียตะวันออกเฉียงใต้

ปี	GLC	MRC	GMS	ACMECS
1955	เกิด Great Lakes Basins Compact ภายใต้การเห็นชอบของรัฐบาลสหรัฐฯ			
1957		ก่อตั้ง MC ประกอบด้วย กัมพูชา, ลาว, เวียดนาม และไทย		
1968	ก่อตั้ง GLC อย่างถูกต้องตามกฎหมายของสหรัฐฯ			
1977		ก่อตั้ง IMC แทน MC โดยไม่ได้มี กัมพูชาเข้าร่วม เนื่องจากเหตุการณ์การเมืองภายใน กัมพูชาในปี ค.ศ. 1975		
1978	การลงนาม เรื่อง คุณภาพน้ำของ ทะเลสาบทั้ง 5 (Great Lakes Water Quality Agreement of 1978) เพื่อให้บรรลุ วัตถุประสงค์และ เป้าหมายของข้อตกลง ระหว่างสหรัฐฯ-			

	แคนาดา			
1983	มีการแก้ไขเพิ่มเติม ข้อตกลงเรื่อง คุณภาพ น้ำของทะเลสาบทั้ง 5 (Great Lakes Water Quality Agreement of 1978) ¹			
1909	ลงนามในสนธิสัญญา เรื่องน่านน้ำเขตแดน (Boundary Waters Treaty) ซึ่งทำขึ้น ระหว่างสหรัฐฯ- สหราชอาณาจักรอันมี ความเกี่ยวพันเรื่อง น่านน้ำเขตแดน และ ปัญหาระหว่าง สหรัฐฯ-แคนาดา ลง นามที่วอชิงตันใน เดือนมกราคม ค.ศ. 1909			
1992			ก่อตั้ง GMS	
1995		มีการลงนามใน “ข้อตกลงเรื่องความ ร่วมมือเพื่อการ พัฒนาอย่างยั่งยืน ของกลุ่มแม่น้ำโขง” ส่งผลให้เกิดการ ก่อตั้ง MRC โดยมี ประเทศสมาชิก คือ		

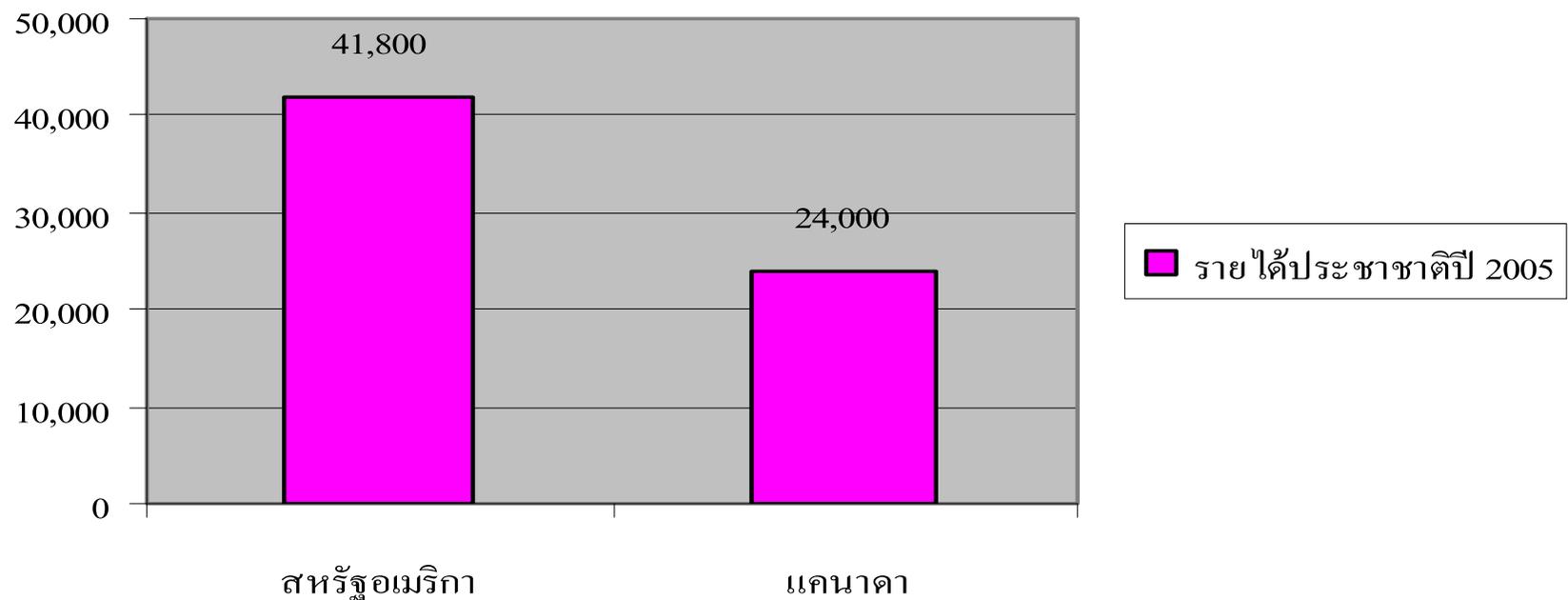
¹ ดูรายละเอียดในภาคผนวกหัวเรื่อง “Great Lakes Water Quality Agreement of 1978”

		กัมพูชา, ลาว, ไทย และเวียดนาม แทน IMC		
1999	มีการลงนามรับจังหวัด อนตารีโอและควิเบก ของ แคนาดาเป็นรัฐภาคี สมาชิก			
2003				ก่อตั้ง ECS ด้วย การลงนามใน “ปฏิญญาพุกาม” มีประเทศสมาชิก คือ กัมพูชา, ลาว, เมียนมาร์ และ ไทย
2004			กวางสีเข้าเป็นสมาชิก GMS	เวียดนามเข้าเป็น สมาชิก และ เปลี่ยนชื่อเป็น ACMECS



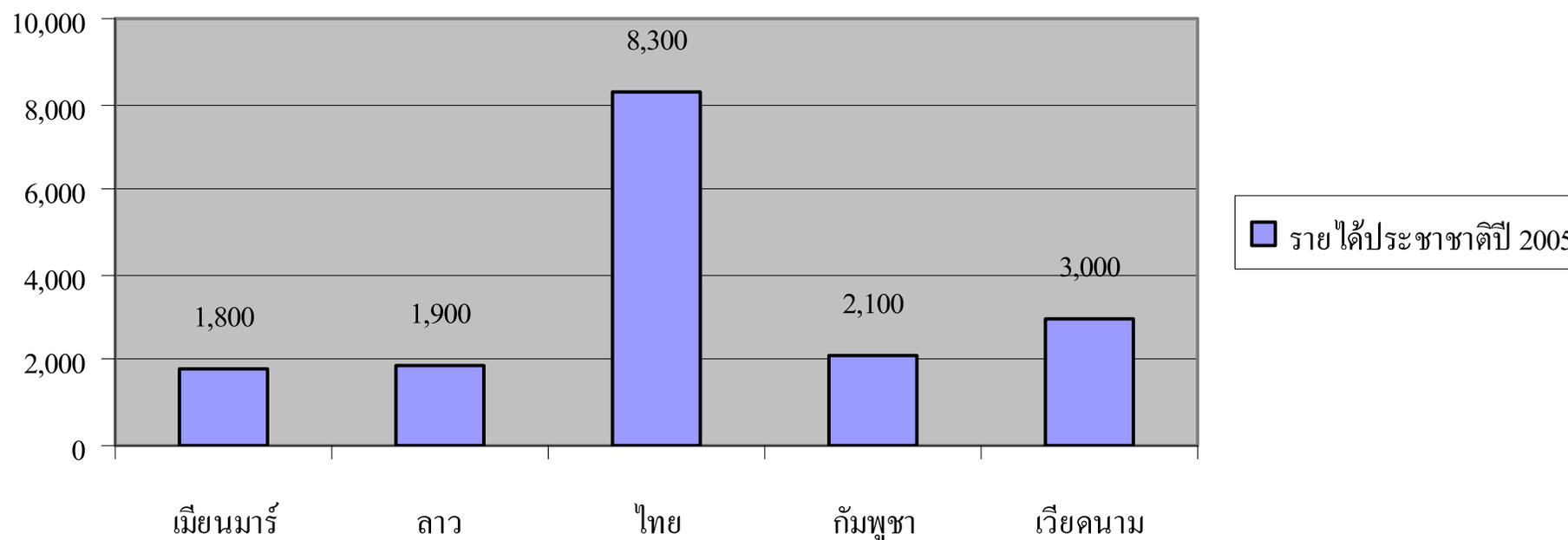
ที่มา : Paul A. Arnold. About America How the United State is Governed. Braddoc Communications. Virginia. 2004. pp 20

**แผนภูมิแสดงรายได้ประชาชาติต่อหัว (GDP per capital)
ของประชากรประเทศสมาชิกกรอบความร่วมมือในอเมริกา**



ที่มา : เรียบเรียงโดย นางสาวศุคนธา สุระเรืองชัย จาก The World Factbook, <http://www.odci.gov/cia> จากข้อมูลประเทศสหรัฐอเมริกาและแคนาดา

แผนภูมิแสดงรายได้ประชาชาติต่อหัว (GDP per capita) ของประชากรของ
ประเทศสมาชิกกรอบความร่วมมืออนุภูมิภาคทั้ง 3 กรอบ (ยกเว้นจีน)



ที่มา : เรียบเรียง โดย นางสาวสุนทร สุระเรืองชัย จาก The World Factbook, <http://www.odci.gov/cia> จากข้อมูลประเทศ เมียนมาร์, ลาว, ไทย, กัมพูชา และเวียดนาม



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Section A - Investment



Article 1101: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:

(a) investors of another Party;

(b) investments of investors of another Party in the territory of the Party; and

(c) with respect to Articles 1106 and 1114, all investments in the territory of the Party.

2. A Party has the right to perform exclusively the economic activities set out in Annex III and to refuse to permit the establishment of investment in such activities.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Fourteen (Financial Services).

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter.



Article 1102: National Treatment

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

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

3. The treatment accorded by a Party under paragraphs 1 and 2 means,

with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

4. For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.



Article 1103: Most-Favored-Nation Treatment

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

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



Article 1104: Standard of Treatment

Each Party shall accord to investors of another Party and to investments of investors of another Party the better of the treatment required by Articles 1102 and 1103.



Article 1105: Minimum Standard of Treatment

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

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).



Article 1106: Performance Requirements

1. No 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 territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the 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 other provisions of this Agreement; or

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

2. A 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 paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.

3. No Party may condition 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, 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 territory, or to purchase goods from producers in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

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

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

6. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;

(b) necessary to protect human, animal or plant life or health; or

(c) necessary for the conservation of living or non-living exhaustible natural resources.



Article 1107: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is an investment of an investor of another Party appoint to senior management positions individuals of any particular nationality.

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



Article 1108: Reservations and Exceptions

1. Articles 1102, 1103, 1106 and 1107 do not apply to:

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

(i) a Party at the federal level, as set out in its Schedule to Annex I or III,

(ii) a state or province, for two years after the date of entry into force of this Agreement, and thereafter as set out by a Party in its Schedule to Annex I in accordance with paragraph 2, or

(iii) a local government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1102, 1103, 1106 and 1107.

2. Each Party may set out in its Schedule to Annex I, within two years of the date of entry into force of this Agreement, any existing nonconforming measure maintained by a state or province, not including a local government.

3. Articles 1102, 1103, 1106 and 1107 do 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 II.

4. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

5. Articles 1102 and 1103 do not apply to any measure that is an exception to, or derogation from, the obligations under Article 1703 (Intellectual Property National Treatment) as specifically provided for in that Article.

6. Article 1103 does not apply to treatment accorded by a Party pursuant to

agreements, or with respect to sectors, set out in its Schedule to Annex IV.

7. Articles 1102, 1103 and 1107 do not apply to:

- (a) procurement by a Party or a state enterprise; or
- (b) subsidies or grants provided by a Party or a state enterprise, including government supported loans, guarantees and insurance.

8. The provisions of:

- (a) Article 1106(1)(a), (b) and (c), and (3)(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) Article 1106(1)(b), (c), (f) and (g), and (3)(a) and (b) do not apply to procurement by a Party or a state enterprise; and
- (c) Article 1106(3)(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.



Article 1109: Transfers

1. Each Party shall permit all transfers relating to an investment of an investor of another Party in the territory of the Party to be made freely and without delay. Such transfers include:

- (a) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
- (b) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
- (c) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
- (d) payments made pursuant to Article 1110; and
- (e) payments arising under Section B.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer with respect to spot transactions in the currency to be transferred.

3. No Party may require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of another Party.

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

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offenses;

(d) reports of transfers of currency or other monetary instruments;
or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

5. Paragraph 3 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters set out in subparagraphs (a) through (e) of paragraph 4.

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under this Agreement, including as set out in paragraph 4.

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-

discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.



Article 1111: Special Formalities and Information Requirements

1. Nothing in Article 1102 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of another Party, such as a requirement that investors be residents of the Party or that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and investments of investors of another Party pursuant to this Chapter.

2. Notwithstanding Articles 1102 or 1103, a Party may require an investor of another Party, or its investment in its territory, to provide routine information concerning that investment solely for informational 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 1112: Relation to Other Chapters

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

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



Article 1113: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another 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 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 in accordance with Articles 1803 (Notification and Provision of Information) and 2006 (Consultations), a Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.



Article 1114: Environmental Measures

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

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

Section B Settlement of Disputes between a Party and an Investor of Another Party



Article 1115: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.



Article 1116: Claim by an Investor of a Party on Its Own Behalf

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

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

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

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



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

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

(a) Section A or Article 1503(2) (State Enterprises), or

(b) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's

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

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

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 1116 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 1120, the claims should be heard together by a Tribunal established under Article 1126, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

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



Article 1118: Settlement of a Claim through Consultation and Negotiation

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



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

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

(a) the name and address of the disputing investor and, where a claim is made under Article 1117, 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 basis for the claim; and

(d) the relief sought and the approximate amount of damages claimed.



Article 1120: Submission of a Claim to Arbitration

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

(a) the ICSID Convention, provided that both the disputing Party and the Party of the investor are parties to the Convention;

(b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the investor, but not both, is a party to the ICSID Convention; or

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the

extent modified by this Section.

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

1. A disputing investor may submit a claim under Article 1116 to arbitration only if:

(a) the investor consents to arbitration in accordance with the procedures set out in this Agreement; and

(b) the investor and, where the claim is for loss or damage to an interest in an enterprise of another Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1116, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 1117 to arbitration only if both the investor and the enterprise:

(a) consent to arbitration in accordance with the procedures set out in this Agreement; and

(b) waive their right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 1117, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

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

4. Only where a disputing Party has deprived a disputing investor of control of an enterprise:

(a) a waiver from the enterprise under paragraph 1(b) or 2(b) shall not be required; and

(b) Annex 1120.1(b) shall not apply.



Article 1122: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Agreement.
2. The consent given by paragraph 1 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;
 - (b) Article II of the New York Convention for an agreement in writing; and
 - (c) Article I of the InterAmerican Convention for an agreement.



Article 1123: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 1126, and unless the disputing parties otherwise agree, the Tribunal shall comprise three 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.



Article 1124: 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 1126, has not been constituted within 90 days from the date that a claim is 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 3.
3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of any of the Parties.
4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 45 presiding arbitrators meeting the qualifications of the Convention and rules referred to in Article 1120 and experienced in international law and investment matters. The roster members shall be appointed by consensus and without regard to nationality.



Article 1125: Agreement to Appointment of Arbitrators

For 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 Article 1124(3) or on a ground other than nationality:

(a) the disputing Party agrees 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 1116 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 1117(1) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.



Article 1126: Consolidation

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

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 1120 that have a question of law or fact in common, 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 together, 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 the Secretary-General to establish a Tribunal and shall specify in the request:

(a) the name of the disputing Party or disputing investors against which the order is sought;

(b) the nature of the order sought; and

(c) the grounds on which the order is sought.

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

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

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 1116 or 1117 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is 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 1120 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 1120 be stayed, unless the latter Tribunal has already adjourned its proceedings.

10. A disputing Party shall deliver to the Secretariat, within 15 days of receipt by the disputing Party, a copy of:

- (a) a request for arbitration made under paragraph (1) of Article 36 of the ICSID Convention;
- (b) a notice of arbitration made under Article 2 of Schedule C of the ICSID Additional Facility Rules; or
- (c) a notice of arbitration given under the UNCITRAL Arbitration Rules.

11. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3:

- (a) within 15 days of receipt of the request, in the case of a request made by a disputing investor;
- (b) within 15 days of making the request, in the case of a request made by the disputing Party.

12. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 within 15 days of receipt of the request.

13. The Secretariat shall maintain a public register of the documents referred to in paragraphs 10, 11 and 12.



Article 1127: Notice

A disputing Party shall deliver to the other Parties:

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



Article 1128: Participation by a Party

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

**Article 1129: Documents**

1. A 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. A Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

**Article 1130: Place of Arbitration**

Unless the disputing parties agree 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 1131: 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 by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

**Article 1132: 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 I, Annex II, Annex III or Annex IV, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to Article 1131(2), a Commission interpretation 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 1133: 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 to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.



Article 1134: 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, including 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 1116 or 1117. For purposes of this paragraph, an order includes a recommendation.



Article 1135: Final Award

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

(a) monetary damages and any applicable interest;

(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, where a claim is made under Article 1117(1):

(a) an award of restitution of property shall provide that restitution be made to the enterprise;

(b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and

(c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

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



Article 1136: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award made under the ICSID Convention

(i) 120 days have elapsed from the date the award was

rendered and no disputing party has requested revision or annulment of the award, or

(ii) revision or annulment proceedings have been completed; and

(b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules

(i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or

(ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

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 Article 2008 (Request for an Arbitral Panel). The requesting Party may seek in such 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 enforcement of an arbitration award under the ICSID Convention, the New York Convention or the InterAmerican Convention regardless of whether proceedings have been taken under paragraph 5.

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



Article 1137: 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 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 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.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 1137.2.

Receipts under Insurance or Guarantee Contracts

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.

Publication of an Award

4. Annex 1137.4 applies to the Parties specified in that Annex with respect to publication of an award.



Article 1138: Exclusions

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

2. The dispute settlement provisions of this Section and of Chapter Twenty shall not apply to the matters referred to in Annex 1138.2.

Section C - Definitions



Article 1139: Definitions

For purposes of this Chapter:

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

disputing parties means the disputing investor and the disputing Party;

disputing party means the disputing investor or the disputing Party;

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

enterprise means an "enterprise" as defined in Article 201 (Definitions of General Application), and a branch of an enterprise;

enterprise of a Party means an enterprise constituted or organized under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there.

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

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

ICSID means 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, March 18, 1965;

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

investment means:

- (a) an enterprise;
- (b) an equity security of an enterprise;
- (c) a debt security of an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the debt security is at least three years,
 but does not include a debt security, regardless of original maturity, of a state enterprise;
- (d) a loan to an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the loan is at least three years,
 but does not include a loan, regardless of original maturity, to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;
- (f) 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 (c) or (d);
- (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; 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) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
 - (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but investment does not mean,

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

(j) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

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

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

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;

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

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 1120 or 1126; and

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

▲ Annex 1120.1

Submission of a Claim to Arbitration

Mexico

With respect to the submission of a claim to arbitration:

(a) an investor of another Party may not allege that Mexico has breached an obligation under:

(i) Section A or Article 1503(2) (State Enterprises), or

(ii) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

both in an arbitration under this Section and in proceedings before a Mexican court or administrative tribunal; and

(b) where an enterprise of Mexico that is a juridical person that an investor of another Party owns or controls directly or indirectly alleges in proceedings before a Mexican court or administrative tribunal that Mexico has breached an obligation under:

(i) Section A or Article 1503(2) (State Enterprises), or

(ii) Article 1502(3)(a) (Monopolies and State Enterprises) where the monopoly has acted in a manner inconsistent with the Party's obligations under Section A,

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

Section.

▲ Annex 1137.2

Service of Documents on a Party Under Section B

Each Party shall set out in this Annex and publish in its official journal by January 1, 1994, the place for delivery of notice and other documents under this Section.

▲ Annex 1137.4

Publication of an Award

Canada

Where Canada is the disputing Party, either Canada or a disputing investor that is a party to the arbitration may make an award public.

Mexico

Where Mexico is the disputing Party, the applicable arbitration rules apply to the publication of an award.

United States

Where the United States is the disputing Party, either the United States or a disputing investor that is a party to the arbitration may make an award public.

▲ Annex 1138.2

Exclusions from Dispute Settlement

Canada

A decision by Canada following a review under the *Investment Canada Act*, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).

Mexico

A decision by the National Commission on Foreign Investment ("Comisión Nacional de Inversiones Extranjeras") following a review pursuant to Annex I, page IM4, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B or of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures).



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Article 1401: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to:

- (a) financial institutions of another Party;
- (b) investors of another Party, and investments of such investors, in financial institutions in the Party's territory; and
- (c) cross-border trade in financial services.

2. Articles 1109 through 1111, 1113, 1114 and 1211 are hereby incorporated into and made a part of this Chapter. Articles 1115 through 1138 are hereby incorporated into and made a part of this Chapter solely

for breaches by a Party of Articles 1109 through 1111, 1113 and 1114, as incorporated into this Chapter.

3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory:

(a) activities or services forming part of a public retirement plan or statutory system of social security; or

(b) activities or services for the account or with the guarantee or using the financial resources of the Party, including its public entities.

4. Annex 1401.4 applies to the Parties specified in that Annex.



Article 1402: Self-Regulatory Organizations

Where a Party requires a financial institution or a cross-border financial service provider of another Party to be a member of, participate in, or have access to, a selfregulatory organization to provide a financial service in or into the territory of that Party, the Party shall ensure observance of the obligations of this Chapter by such selfregulatory organization.



Article 1403: Establishment of Financial Institutions

1. The Parties recognize the principle that an investor of another Party should be permitted to establish a financial institution in the territory of a Party in the juridical form chosen by such investor.

2. The Parties also recognize the principle that an investor of another Party should be permitted to participate widely in a Party's market through the ability of such investor to:

(a) provide in that Party's territory a range of financial services through separate financial institutions as may be required by that Party;

(b) expand geographically in that Party's territory; and

(c) own financial institutions in that Party's territory without being subject to ownership requirements specific to foreign financial institutions.

3. Subject to Annex 1403.3, at such time as the United States permits commercial banks of another Party located in its territory to expand through subsidiaries or direct branches into substantially all of the United States market, the Parties shall review and assess market access provided by each Party in relation to the principles in paragraphs 1 and 2 with a view to adopting arrangements permitting investors of another Party to choose the juridical form of establishment of commercial banks.

4. Each Party shall permit an investor of another Party that does not own or control a financial institution in the Party's territory to establish a financial institution in that territory. A Party may:

(a) require an investor of another Party to incorporate under the Party's law any financial institution it establishes in the Party's territory; or

(b) impose terms and conditions on establishment that are consistent with Article 1405.

5. For purposes of this Article, "investor of another Party" means an investor of another Party engaged in the business of providing financial services in the territory of that Party.



Article 1404: Cross-Border Trade

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

2. Each Party shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service providers of another Party located in the territory of that other Party or of another Party. This obligation does not require a Party to permit such providers to do business or solicit in its territory. Subject to paragraph 1, each Party may define "doing business" and "solicitation" for purposes of this obligation.

3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service providers of another Party and of financial instruments.

4. The Parties shall consult on future liberalization of cross-border trade in financial services as set out in Annex 1404.4.



Article 1405: National Treatment

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

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

3. Subject to Article 1404, where a Party permits the cross-border provision of a financial service it shall accord to the cross-border financial service providers of another Party treatment no less favorable than that it accords to its own financial service providers, in like circumstances, with respect to the provision of such service.

4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to a measure of any state or province:

(a) in the case of an investor of another Party with an investment in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in a state or province, treatment no less favorable than the treatment accorded to an investor of the Party in a financial institution, an investment of such investor in a financial institution, or a financial institution of such investor, located in that state or province, in like circumstances; and

(b) in any other case, treatment no less favorable than the most favorable treatment accorded to an investor of the Party in a

financial institution, its financial institution or its investment in a financial institution, in like circumstances.

For greater certainty, in the case of an investor of another Party with investments in financial institutions or financial institutions of such investor, located in more than one state or province, the treatment required under subparagraph (a) means:

(c) treatment of the investor that is no less favorable than the most favorable treatment accorded to an investor of the Party with an investment located in such states, or provinces in like circumstances; and

(d) with respect to an investment of the investor in a financial institution or a financial institution of such investor, located in a state or province, treatment no less favorable than that accorded to an investment of an investor of the Party, or a financial institution of such investor, located in that state or province, in like circumstances.

5. A Party's treatment of financial institutions and cross-border financial service providers of another Party, whether different or identical to that accorded to its own institutions or providers in like circumstances, is consistent with paragraphs 1 through 3 if the treatment affords equal competitive opportunities.

6. A Party's treatment affords equal competitive opportunities if it does not disadvantage financial institutions and cross-border financial services providers of another Party in their ability to provide financial services as compared with the ability of the Party's own financial institutions and financial services providers to provide such services, in like circumstances.

7. Differences in market share, profitability or size do not in themselves establish a denial of equal competitive opportunities, but such differences may be used as evidence regarding whether a Party's treatment affords equal competitive opportunities.



Article 1406: Most-Favored-Nation Treatment

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

2. A Party may recognize prudential measures of another Party or of a non-Party in the application of measures covered by this Chapter. Such recognition may be:

(a) accorded unilaterally;

(b) achieved through harmonization or other means; or

(c) based upon an agreement or arrangement with the other Party or non-Party.

3. A Party according recognition of prudential measures under paragraph 2 shall provide adequate opportunity to another Party to demonstrate that circumstances exist in which there are or would be equivalent regulation, oversight, implementation of regulation, and if appropriate, procedures concerning the sharing of information between the Parties.

4. Where a Party accords recognition of prudential measures under

paragraph 2(c); and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to another Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.



Article 1407: New Financial Services and Data Processing

1. Each Party shall permit a financial institution of another Party to provide any new financial service of a type similar to those services that the Party permits its own financial institutions, in like circumstances, to provide under its domestic law. A Party may determine the institutional and juridical form through which the service may be provided and may require authorization for the provision of the service. Where such authorization is required, a decision shall be made within a reasonable time and the authorization may only be refused for prudential reasons.

2. Each Party shall permit a financial institution of another Party to transfer information in electronic or other form, into and out of the Party's territory, for data processing where such processing is required in the ordinary course of business of such institution.



Article 1408: Senior Management and Boards of Directors

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

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



Article 1409: Reservations and Specific Commitments

1. Articles 1403 through 1408 do not apply to:

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

(i) a Party at the federal level, as set out in Section A of its Schedule to Annex VII,

(ii) a state or province, for the period ending on the date specified in Annex 1409.1 for that state or province, and thereafter as described by the Party in Section A of its Schedule to Annex VII in accordance with Annex 1409.1, or

(iii) a local government;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 1403 through 1408.

2. Articles 1403 through 1408 do not apply to any non-conforming measure that a Party adopts or maintains in accordance with Section B of its Schedule to Annex VII.

3. Section C of each Party's Schedule to Annex VII sets out certain specific commitments by that Party.

4. Where a Party has set out a reservation to Article 1102, 1103, 1202 or 1203 in its Schedule to Annex I, II, III or IV, the reservation shall be deemed to constitute a reservation to Article 1405 or 1406, as the case may be, to the extent that the measure, sector, subsector or activity set out in the reservation is covered by this Chapter.



Article 1410: Exceptions

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

(a) the protection of investors, depositors, financial market participants, policyholders, policy claimants, or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service provider;

(b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers; and

(c) ensuring the integrity and stability of a Party's financial system.

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

3. Article 1405 shall not apply to the granting by a Party to a financial institution of an exclusive right to provide a financial service referred to in Article 1401(3)(a).

4. Notwithstanding Article 1109(1), (2) and (3), as incorporated into this Chapter, and without limiting the applicability of Article 1109(4), as incorporated into this Chapter, a Party may prevent or limit transfers by a financial institution or cross-border financial services provider to, or for the benefit of, an affiliate of or person related to such institution or provider, through the equitable, non-discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service providers. This paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.



Article 1411: Transparency

1. In lieu of Article 1802(2) (Publication), each Party shall, to the extent practicable, provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:

(a) by means of official publication;

(b) in other written form; or

(c) in such other form as permits an interested person to make informed comments on the proposed measure.

2. Each Party's regulatory authorities shall make available to interested persons their requirements for completing applications relating to the provision of financial services.
3. On the request of an applicant, the regulatory authority shall inform the applicant of the status of its application. If such authority requires additional information from the applicant, it shall notify the applicant without undue delay.
4. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, a financial institution or a cross-border financial service provider of another Party relating to the provision of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.
5. Nothing in this Chapter requires a Party to furnish or allow access to:
 - (a) information related to the financial affairs and accounts of individual customers of financial institutions or cross-border financial service providers; or
 - (b) any confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of particular enterprises.
6. Each Party shall maintain or establish one or more inquiry points no later than 180 days after the date of entry into force of this Agreement, to respond in writing as soon as practicable, to all reasonable inquiries from interested persons regarding measures of general application covered by this Chapter.



Article 1412: Financial Services Committee

1. The Parties hereby establish the Financial Services Committee. The principal representative of each Party shall be an official of the Party's authority responsible for financial services set out in Annex 1412.1.
2. Subject to Article 2001(2)(d) (Free Trade Commission), the Committee shall:
 - (a) supervise the implementation of this Chapter and its further elaboration;
 - (b) consider issues regarding financial services that are referred to it by a Party; and
 - (c) participate in the dispute settlement procedures in accordance with Article 1415.
3. The Committee shall meet annually to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each annual meeting.



Article 1413: Consultations

1. A Party may request consultations with another Party regarding any

matter arising under this Agreement that affects financial services. The other Party shall give sympathetic consideration to the request. The consulting Parties shall report the results of their consultations to the Committee at its annual meeting.

2. Consultations under this Article shall include officials of the authorities specified in Annex 1412.1.

3. A Party may request that regulatory authorities of another Party participate in consultations under this Article regarding that other Party's measures of general application which may affect the operations of financial institutions or cross-border financial service providers in the requesting Party's territory.

4. Nothing in this Article shall be construed to require regulatory authorities participating in consultations under paragraph 3 to disclose information or take any action that would interfere with individual regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for supervisory purposes concerning a financial institution in another Party's territory or a cross-border financial service provider in another Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. Annex 1413.6 shall apply to further consultations and arrangements.



Article 1414: Dispute Settlement

1. Section B of Chapter Twenty (Institutional Arrangements and Dispute Settlement Procedures) applies as modified by this Article to the settlement of disputes arising under this Chapter.

2. The Parties shall establish by January 1, 1994 and maintain a roster of up to 15 individuals who are willing and able to serve as financial services panelists. Financial services roster members shall be appointed by consensus for terms of three years, and may be reappointed.

3. Financial services roster members shall:

(a) have expertise or experience in financial services law or practice, which may include the regulation of financial institutions;

(b) be chosen strictly on the basis of objectivity, reliability and sound judgment; and

(c) meet the qualifications set out in Article 2009(2)(b) and (c) (Roster).

4. Where a Party claims that a dispute arises under this Chapter, Article 2011 (Panel Selection) shall apply, except that:

(a) where the disputing Parties so agree, the panel shall be composed entirely of panelists meeting the qualifications in paragraph 3; and

(b) in any other case,

(i) each disputing Party may select panelists meeting the qualifications set out in paragraph 3 or in Article 2010(1) (Qualifications of Panelists), and

(ii) if the Party complained against invokes Article 1410, the

chair of the panel shall meet the qualifications set out in paragraph 3.

5. In any dispute where a panel finds a measure to be inconsistent with the obligations of this Agreement and the measure affects:

(a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

(b) the financial services sector and any other sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or

(c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.



Article 1415: Investment Disputes in Financial Services

1. Where an investor of another Party submits a claim under Article 1116 or 1117 to arbitration under Section B of Chapter Eleven (Investment Settlement of Disputes between a Party and an Investor of Another Party) against a Party and the disputing Party invokes Article 1410, on request of the disputing Party, the Tribunal shall refer the matter in writing to the Committee for a decision. The Tribunal may not proceed pending receipt of a decision or report under this Article.

2. In a referral pursuant to paragraph 1, the Committee shall decide the issue of whether and to what extent Article 1410 is a valid defense to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision shall be binding on the Tribunal.

3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, the disputing Party or the Party of the disputing investor may request the establishment of an arbitral panel under Article 2008 (Request for an Arbitral Panel). The panel shall be constituted in accordance with Article 1414. Further to Article 2017 (Final Report), the panel shall transmit its final report to the Committee and to the Tribunal. The report shall be binding on the Tribunal.

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



Article 1416: Definitions

For purposes of this Chapter:

cross-border financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of the Party and that seeks to provide or provides financial services through the cross-border provision of such services;

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

(a) from the territory of a Party into the territory of another Party,

(b) in the territory of a Party by a person of that Party to a person of

another Party, or

(c) by a national of a Party in the territory of another Party,

but does not include the provision of a service in the territory of a Party by an investment in that territory;

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

financial institution of another Party means a financial institution, including a branch, located in the territory of a Party that is controlled by persons of another Party;

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

financial service provider of a Party means a person of a Party that is engaged in the business of providing a financial service within the territory of that Party;

investment means "investment" as defined in Article 1139 (Investment Definitions), except that, with respect to "loans" and "debt securities" referred to in that Article:

(a) a loan to or debt security issued by a financial institution is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and

(b) a loan granted by or debt security owned by a financial institution, other than a loan to or debt security of a financial institution referred to in subparagraph (a), is not an investment;

for greater certainty:

(c) a loan to, or debt security issued by, a Party or a state enterprise thereof is not an investment; and

(d) a loan granted by or debt security owned by a cross-border financial service provider, other than a loan to or debt security issued by a financial institution, is an investment if such loan or debt security meets the criteria for investments set out in Article 1139;

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

new financial service means a financial service not provided in the Party's territory that is provided within the territory of another Party, and includes any new form of delivery of a financial service or the sale of a financial product that is not sold in the Party's territory;

person of a Party means "person of a Party" as defined in Chapter Two (General Definitions) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

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

self-regulatory organization means any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organization or association, that exercises its own or delegated regulatory or supervisory authority over financial service providers or financial institutions.

▲ Annex 1401.4

Country-Specific Commitments

For Canada and the United States, Article 1702(1) and (2) of the Canada United States Free Trade Agreement is hereby incorporated into and made a part of this Agreement.

▲ Annex 1403.3

Review of Market Access

The review of market access referred to in Article 1403(3) shall not include the market access limitations specified in Section B of the Schedule of Mexico to Annex VII.

▲ Annex 1404.4

Consultations on Liberalization of cross-border Trade

No later than January 1, 2000, the Parties shall consult on further liberalization of cross-border trade in financial services. In such consultations the Parties shall, with respect to insurance:

- (a) consider the possibility of allowing a wider range of insurance services to be provided on a cross-border basis in or into their respective territories; and
- (b) determine whether the limitations on cross-border insurance services specified in Section A of the Schedule of Mexico to Annex VII shall be maintained, modified or eliminated.

▲ Annex 1409.1

Provincial and State Reservations

1. Canada may set out in Section A of its Schedule to Annex VII by the date of entry into force of this Agreement any existing non-conforming measure maintained at the provincial level.
2. The United States may set out in Section A of its Schedule to Annex VII by the date of entry into force of this Agreement any existing non-conforming measures maintained by California, Florida, Illinois, New York, Ohio and Texas. Existing non-conforming state measures of all other states may be set out by January 1, 1995.

▲ Annex 1412.1

Authorities Responsible for Financial Services

The authority of each Party responsible for financial services shall be:

- (a) for Canada, the Department of Finance of Canada;
- (b) for Mexico, the Secretaría de Hacienda y Crédito Público; and
- (c) for the United States, the Department of the Treasury for banking and other financial services and the Department of Commerce for insurance services.

▲ Annex 1413.6**Further Consultations and Arrangements***Section A Limited Scope Financial Institutions*

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

Section B Payments System Protection

1. If the sum of the authorized capital of foreign commercial bank affiliates (as such term is defined in the Schedule of Mexico to Annex VII), measured as a percentage of the aggregate capital of all commercial banks in Mexico, reaches 25 percent, Mexico may request consultations with the other Parties on the potential adverse effects arising from the presence of commercial banks of the other Parties in the Mexican market and the possible need for remedial action, including further temporary limitations on market participation. The consultations shall be completed expeditiously.

2. In considering the potential adverse effects, the Parties shall take into account:

(a) the threat that the Mexican payments system may be controlled by non-Mexican persons;

(b) the effects foreign commercial banks established in Mexico may have on Mexico's ability to conduct monetary and exchange rate policy effectively; and

(c) the adequacy of this Chapter in protecting the Mexican payments system.

3. If no consensus is reached on the matters referred to in paragraph 1, any Party may request the establishment of an arbitral panel under Article 1414 or Article 2008 (Request for an Arbitral Panel). The panel proceedings shall be conducted in accordance with the Model Rules of Procedure established under Article 2012 (Rules of Procedure). The Panel shall present its determination within 60 days after the last panelist is selected or such other period as the Parties to the proceeding may agree. Article 2018 (Implementation of Final Report) and 2019 (Non-Implementation-Suspension of Benefits) shall not apply in such proceedings.

[Important Notices](#)

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PART SEVEN: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

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Article 1901: General Provisions

1. Article 1904 applies only with respect to goods that the competent investigating authority of the importing Party, applying the importing Party's antidumping or countervailing duty law to the facts of a specific case, determines are goods of another Party.

2. For purposes of Articles 1903 and 1904, panels shall be established in accordance with the provisions of Annex 1901.2.

3. Except for Article 2203 (Entry into Force), no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law.

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

1. Each Party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other Party. Antidumping law and countervailing duty law include, as appropriate for each Party, relevant statutes, legislative history, regulations, administrative practice and judicial precedents.

2. Each Party reserves the right to change or modify its antidumping law or countervailing duty law, provided that in the case of an amendment to a Party's antidumping or countervailing duty statute:

(a) such amendment shall apply to goods from another Party only if the amending statute specifies that it applies to goods from that Party or from the Parties to this Agreement;

(b) the amending Party notifies in writing the Parties to which the amendment applies of the amending statute as far in advance as possible of the date of enactment of such statute;

(c) following notification, the amending Party, on request of any Party to which the amendment applies, consults with that Party prior to the enactment of the amending statute; and

(d) such amendment, as applicable to that other Party, is not inconsistent with

(i) the *General Agreement on Tariffs and Trade* (GATT), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade* (the Antidumping Code) or the *Agreement on the Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade* (the Subsidies Code), or any successor agreement to which all the original signatories to this Agreement are party, or

(ii) the object and purpose of this Agreement and this Chapter, which is to establish fair and predictable conditions for the progressive liberalization of trade between the Parties to this Agreement while maintaining effective and fair disciplines on unfair trade practices, such object and purpose to be ascertained from the provisions of this Agreement, its preamble and objectives, and the practices of the Parties.



Article 1903: Review of Statutory Amendments

1. A Party to which an amendment of another Party's antidumping or countervailing duty statute applies may request in writing that such amendment be referred to a binational panel for a declaratory opinion as to whether:

(a) the amendment does not conform to the provisions of Article 1902(2)(d)(i) or (ii); or

(b) such amendment has the function and effect of overturning a prior decision of a panel made pursuant to Article 1904 and does not conform to the provisions of Article 1902(2)(d)(i) or (ii).

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

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

3. In the event that the panel recommends modifications to the amending statute to remedy a non-conformity that it has identified in its opinion:

(a) the two Parties shall immediately begin consultations and shall seek to achieve a mutually satisfactory solution to the matter within 90 days of the issuance of the panel's final declaratory opinion. Such solution may include seeking corrective legislation with respect to the statute of the amending Party;

(b) if corrective legislation is not enacted within nine months from the end of the 90day consultation period referred to in subparagraph (a) and no other mutually satisfactory solution has been reached, the Party that requested the panel may

(i) take comparable legislative or equivalent executive action, or

(ii) terminate this Agreement with regard to the amending Party on 60day written notice to that Party.



Article 1904: Review of Final Antidumping and Countervailing Duty Determinations

1. As provided in this Article, each Party shall replace judicial review of final antidumping and countervailing duty determinations with binational panel review.

2. An involved Party may request that a panel review, based on the administrative record, a final antidumping or countervailing duty determination of a competent investigating authority of an importing Party to determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing Party. For this purpose, the antidumping or countervailing duty law consists of the relevant statutes, legislative history, regulations, administrative practice and judicial precedents to the extent that a court of the importing Party would rely on such materials in reviewing a final determination of the competent investigating authority. Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated into and made a part of this Agreement.

3. The panel shall apply the standard of review set out in Annex 1911 and the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.

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

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

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

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

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

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

10. This Agreement shall not affect:

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

with respect to determinations other than final determinations.

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

12. This Article shall not apply where:

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

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

- (a) (i) a member of the panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct,

(ii) the panel seriously departed from a fundamental rule of procedure, or

(iii) the panel manifestly exceeded its powers, authority or jurisdiction set out in this Article, for example by failing to apply the appropriate standard of review, and

(b) any of the actions set out in subparagraph (a) has materially affected the panel's decision and threatens the integrity of the binational panel review process,

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

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

(a) 30 days for the filing of the complaint;

(b) 30 days for designation or certification of the administrative record and its filing with the panel;

(c) 60 days for the complainant to file its brief;

(d) 60 days for the respondent to file its brief;

(e) 15 days for the filing of reply briefs;

(f) 15 to 30 days for the panel to convene and hear oral argument; and

(g) 90 days for the panel to issue its written decision.

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

(a) amend its statutes or regulations to ensure that existing procedures concerning the refund, with interest, of antidumping or countervailing duties operate to give effect to a final panel decision that a refund is due;

(b) amend its statutes or regulations to ensure that its courts shall give full force and effect, with respect to any person within its jurisdiction, to all sanctions imposed pursuant to the laws of the other Parties to enforce provisions of any protective order or undertaking that such other Party has promulgated or accepted in order to permit access for purposes of panel review or of the extraordinary challenge procedure to confidential, personal,

business proprietary or other privileged information;

(c) amend its statutes or regulations to ensure that

(i) domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel under paragraph 4 has expired, and

(ii) as a prerequisite to commencing domestic judicial review procedures to review a final determination, a Party or other person intending to commence such procedures shall provide notice of such intent to the Parties concerned and to other persons entitled to commence such review procedures of the same final determination no later than 10 days prior to the latest date on which a panel may be requested; and

(d) make the further amendments set out in its Schedule to Annex 1904.15.



Article 1905: Safeguarding the Panel Review System

1. Where a Party alleges that the application of another Party's domestic law:

(a) has prevented the establishment of a panel requested by the complaining Party;

(b) has prevented a panel requested by the complaining Party from rendering a final decision;

(c) has prevented the implementation of the decision of a panel requested by the complaining Party or denied it binding force and effect with respect to the particular matter that was before the panel; or

(d) has resulted in a failure to provide opportunity for review of a final determination by a panel or court of competent jurisdiction that is independent of the competent investigating authorities, that examines the basis for the competent investigating authority's determination and whether the competent investigating authority properly applied domestic antidumping and countervailing duty law in reaching the challenged determination, and that employs the relevant standard of review identified in Article 1911,

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

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

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

4. The roster for special committees shall be that established under Annex 1904.13.

5. The special committee shall comprise three members selected in accordance with the procedures set out in Annex 1904.13.

6. The Parties shall establish rules of procedure in accordance with the principles set out in Annex 1905.6.

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

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

(a) the operation of Article 1904 with respect to the Party complained against; or

(b) the application to the Party complained against of such benefits under this Agreement as may be appropriate under the circumstances.

If the complaining Party decides to take action under this paragraph, it shall do so within 30 days after the end of the 60day consultation period.

9. In the event that a complaining Party suspends the operation of Article 1904 with respect to the Party complained against, the latter Party may reciprocally suspend the operation of Article 1904 within 30 days after the suspension of the operation of Article 1904 by the complaining Party. If either Party decides to suspend the operation of Article 1904, it shall provide written notice of such suspension to the other Party.

10. At the request of the Party complained against, the special committee shall reconvene to determine whether:

(a) the suspension of benefits by the complaining Party pursuant to paragraph 8(b) is manifestly excessive; or

(b) the Party complained against has corrected the problem or problems with respect to which the committee has made an affirmative finding.

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

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

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

(i) in the case of review of any final determination of the complaining Party requested by the Party complained against, if such review was requested after the date on which consultations were requested pursuant to paragraph 1, and in no case more than 150 days prior to an affirmative finding by the special committee, or

(ii) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party; and

(b) the time set out in Article 1904(4) or Annex 1904.13 for requesting panel or committee review shall not run unless and until resumed in accordance with paragraph 12.

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

(a) in the case of review of any final determination of the complaining Party requested by the Party complained against, at the request of either Party, or of a party to the panel review under Article 1904; or

(b) in the case of review of any final determination of the Party complained against requested by the complaining Party, at the request of the complaining Party, or of a person of the complaining Party that is a party to the panel review under Article 1904.

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

If the suspension of the operation of Article 1904 does not become effective, panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

13. If the complaining Party suspends the application to the Party complained against of such benefits under the Agreement as may be appropriate under the circumstances pursuant to paragraph 8(b), panel or committee review stayed under paragraph 11(a), and any running of time suspended under paragraph 11(b), shall resume.

14. Each Party shall provide in its domestic legislation that, in the event of an affirmative finding by the special committee, the time for requesting judicial review of a final antidumping or countervailing duty determination shall not run unless and until the Parties concerned have negotiated a mutually satisfactory solution under paragraph 7, have suspended the operation of Article 1904 or the application of other benefits under paragraph 8.

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Article 1906: Prospective Application

This Chapter shall apply only prospectively to:

- (a) final determinations of a competent investigating authority made after the date of entry into force of this Agreement; and
- (b) with respect to declaratory opinions under Article 1903, amendments to antidumping or countervailing duty statutes enacted after the date of entry into force of this Agreement.

▲

Article 1907: Consultations

1. The Parties shall consult annually, or on the request of any Party, to consider any problems that may arise with respect to the implementation or operation of this Chapter and recommend solutions, where appropriate. The Parties shall each designate one or more officials, including officials of the competent investigating authorities, to be responsible for ensuring that consultations occur, when required, so that the provisions of this Chapter are carried out expeditiously.

2. The Parties further agree to consult on:

(a) the potential to develop more effective rules and disciplines concerning the use of government subsidies; and

(b) the potential for reliance on a substitute system of rules for dealing with unfair transborder pricing practices and government subsidization.

3. The competent investigating authorities of the Parties shall consult annually, or on the request of any Party, and may submit reports to the Commission, where appropriate. In the context of these consultations, the Parties agree that it is desirable in the administration of antidumping and countervailing duty laws to:

(a) publish notice of initiation of investigations in the importing Party's official journal, setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the goods at issue;

(b) provide notice of the times for submissions of information and for decisions that the competent investigating authorities are expressly required by statute or regulations to make;

(c) provide explicit written notice and instructions as to the information required from interested parties and reasonable time to respond to requests for information;

(d) accord reasonable access to information, noting that in this context

(i) "reasonable access" means access during the course of the investigation, to the extent practicable, so as to permit an opportunity to present facts and arguments as set out in paragraph (e); when it is not practicable to provide access to information during the investigation in such time as to permit an opportunity to present facts and arguments, reasonable access shall mean in time to permit the adversely affected party to make an informed decision as to whether to seek judicial or panel review, and

(ii) "access to information" means access to representatives determined by the competent investigating authority to be qualified to have access to information received by that competent investigating authority, including access to confidential (business proprietary) information, but does not include information of such high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner or which is required to be kept confidential in accordance with domestic law of a Party; any privileges arising under the domestic law of the importing Party relating to communications between the competent investigating authorities and a lawyer in the employ of, or providing advice to, those authorities may be maintained;

(e) provide an opportunity for interested parties to present facts and arguments, to the extent time permits, including an opportunity to comment on the preliminary determination of dumping or of subsidization;

(f) protect confidential (business proprietary) information received by the competent investigating authority to ensure that there is no disclosure except to representatives determined by the competent investigating authority to be qualified;

(g) prepare administrative records, including recommendations of official advisory bodies that may be required to be kept, and any record of *ex parte* meetings that may be required to be kept;

(h) provide disclosure of relevant information, including an explanation of the calculation or the methodology used to determine the margin of dumping or the amount of the subsidy, on which any preliminary or final determination of dumping or of subsidization is based, within a reasonable time after a request by interested parties;

(i) provide a statement of reasons concerning the final determination of dumping or subsidization; and

(j) provide a statement of reasons for final determinations concerning material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

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



Article 1908: Special Secretariat Provisions

1. Each Party shall establish a division within its section of the Secretariat established pursuant to Article 2002 to facilitate the operation of this Chapter, including the work of panels or committees that may be convened pursuant to this Chapter.

2. The Secretaries of the Secretariat shall act jointly to provide administrative assistance to all panels or committees established pursuant to this Chapter. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall prepare a record thereof and shall preserve an authentic copy of the same in that Party's Section office. Such Secretary shall, on request, provide to the Secretary for the Section of any other Party a copy of such portion of the record as is requested, except that only public portions of the record shall be provided to the Secretary for the Section of any Party that is not an involved Party.

3. Each Secretary shall receive and file all requests, briefs and other papers properly presented to a panel or committee in any proceeding before it that is instituted pursuant to this Chapter and shall number in numerical order all requests for a panel or committee. The number given to a request shall be the file number for briefs and other papers relating to such request.

4. The Secretary for the Section of the Party in which a panel or committee proceeding is held shall forward to the Secretary for the Section of the other involved Party copies of all official letters, documents or other papers received or filed with that Party's Section office pertaining to any proceeding before a panel or committee, except for the administrative record, which shall be handled in accordance with paragraph 2. The Secretary for the Section of an involved Party shall provide on request to the Secretary for the Section of a Party that is not an involved Party in the proceeding a copy of such public documents as are requested.



Article 1909: Code of Conduct

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

**Article 1910: Miscellaneous**

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

**Article 1911: Definitions**

For purposes of this Chapter:

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

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

(b) a copy of the final determination of the competent investigating authority, including reasons for the determination;

(c) all transcripts or records of conferences or hearings before the competent investigating authority; and

(d) all notices published in the official journal of the importing Party in connection with the administrative proceeding;

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

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

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

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

final determination means "final determination" of a Party as defined in Annex 1911;

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

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

goods of a Party means domestic products as these are understood in the

General Agreement on Tariffs and Trade;

importing Party means the Party that issued the final determination;

interested parties includes foreign interests;

involved Party means:

(a) the importing Party; or

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

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

standard of review means the "standard of review" for each Party as defined in Annex 1911.

▲ Annex 1901.2

Establishment of Binational Panels

1. On the date of entry into force of this Agreement, the Parties shall establish and thereafter maintain a roster of individuals to serve as panelists in disputes under this Chapter. The roster shall include judges or former judges to the fullest extent practicable. The Parties shall consult in developing the roster, which shall include at least 75 candidates. Each Party shall select at least 25 candidates, and all candidates shall be citizens of Canada, Mexico or the United States. Candidates shall be of good character, high standing and repute, and shall be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Candidates shall not be affiliated with a Party, and in no event shall a candidate take instructions from a Party. The Parties shall maintain the roster, and may amend it, when necessary, after consultations.

2. A majority of the panelists on each panel shall be lawyers in good standing. Within 30 days of a request for a panel, each involved Party shall appoint two panelists, in consultation with the other involved Party. The involved Parties normally shall appoint panelists from the roster. If a panelist is not selected from the roster, the panelist shall be chosen in accordance with and be subject to the criteria of paragraph 1. Each involved Party shall have the right to exercise four peremptory challenges, to be exercised simultaneously and in confidence, disqualifying from appointment to the panel up to four candidates proposed by the other involved Party. Peremptory challenges and the selection of alternative panelists shall occur within 45 days of the request for the panel. If an involved Party fails to appoint its members to a panel within 30 days or if a panelist is struck and no alternative panelist is selected within 45 days, such panelist shall be selected by lot on the 31st or 46th day, as the case may be, from that Party's candidates on the roster.

3. Within 55 days of the request for a panel, the involved Parties shall agree on the selection of a fifth panelist. If the involved Parties are unable to agree, they shall decide by lot which of them shall select, by the 61st day, the fifth panelist from the roster, excluding candidates eliminated by peremptory challenges.

4. On appointment of the fifth panelist, the panelists shall promptly appoint a chairman from among the lawyers on the panel by majority vote of the panelists. If there is no majority vote, the chairman shall be appointed by lot from among the lawyers on the panel.

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

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

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

(a) an application for protective order for information supplied by the United States or its persons covering business proprietary and other privileged information;

(b) an undertaking for information supplied by Canada or its persons covering confidential, personal, business proprietary and other privileged information; or

(c) an undertaking for information supplied by Mexico or its persons covering confidential, business proprietary and other privileged information.

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

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

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

11. While acting as a panelist, a panelist may not appear as counsel before another panel.

12. With the exception of violations of protective orders or disclosure undertakings, signed pursuant to paragraph 7, panelists shall be immune from suit and legal process relating to acts performed by them in their official capacity.

▲ Annex 1903.2

Panel Procedures Under Article 1903

1. The panel shall establish its own rules of procedure unless the Parties otherwise agree prior to the establishment of that panel. The procedures shall ensure a right to at least one hearing before the panel, as well as the opportunity to provide written submissions and rebuttal arguments. The proceedings of the panel shall be confidential, unless the two Parties otherwise agree. The panel shall base its decisions solely on the arguments and submissions of the two Parties.

2. Unless the Parties to the dispute otherwise agree, the panel shall, within 90 days after its chairman is appointed, present to the two Parties an initial written declaratory opinion containing findings of fact and its determination pursuant to Article 1903.

3. If the findings of the panel are affirmative, the panel may include in its

report its recommendations as to the means by which the amending statute could be brought into conformity with the provisions of Article 1902(2)(d). In determining what, if any, recommendations are appropriate, the panel shall consider the extent to which the amending statute affects interests under this Agreement. Individual panelists may provide separate opinions on matters not unanimously agreed. The initial opinion of the panel shall become the final declaratory opinion, unless a Party to the dispute requests a reconsideration of the initial opinion pursuant to paragraph 4.

4. Within 14 days of the issuance of the initial declaratory opinion, a Party to the dispute disagreeing in whole or in part with the opinion may present a written statement of its objections and the reasons for those objections to the panel. In such event, the panel shall request the views of both Parties and shall reconsider its initial opinion. The panel shall conduct any further examination that it deems appropriate, and shall issue a final written opinion, together with dissenting or concurring views of individual panelists, within 30 days of the request for reconsideration.

5. Unless the Parties to the dispute otherwise agree, the final declaratory opinion of the panel shall be made public, along with any separate opinions of individual panelists and any written views that either Party may wish to be published.

6. Unless the Parties to the dispute otherwise agree, meetings and hearings of the panel shall take place at the office of the amending Party's Section of the Secretariat.

▲ Annex 1904.13

Extraordinary Challenge Procedure

1. The involved Parties shall establish an extraordinary challenge committee, composed of three members, within 15 days of a request pursuant to Article 1904(13). The members shall be selected from a 15-person roster comprised of judges or former judges of a federal judicial court of the United States or a judicial court of superior jurisdiction of Canada, or a federal judicial court of Mexico. Each Party shall name five persons to this roster. Each involved Party shall select one member from this roster and the involved Parties shall decide by lot which of them shall select the third member from the roster.

2. The Parties shall establish by the date of entry into force of the Agreement rules of procedure for committees. The rules shall provide for a decision of a committee within 90 days of its establishment.

3. Committee decisions shall be binding on the Parties with respect to the particular matter between the Parties that was before the panel. After examination of the legal and factual analysis underlying the findings and conclusions of the panel's decision in order to determine whether one of the grounds set out in Article 1904(13) has been established, and on finding that one of those grounds has been established, the committee shall vacate the original panel decision or remand it to the original panel for action not inconsistent with the committee's decision; if the grounds are not established, it shall deny the challenge and, therefore, the original panel decision shall stand affirmed. If the original decision is vacated, a new panel shall be established pursuant to Annex 1901.2.

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▲ Annex 1904.15

Amendments to Domestic Laws

Schedule of Canada

1. Canada shall amend sections 56 and 58 of the *Special Import Measures Act*, as amended, to allow the United States with respect to goods of the United States or Mexico with respect to goods of Mexico or a United States or a Mexican manufacturer, producer, or exporter, without regard to payment of duties, to make a written request for a redetermination; and section 59 to require the Deputy Minister to make a ruling on a request for a redetermination within one year of a request to a designated officer or other customs officer.

2. Canada shall amend section 18.3(1) of the *Federal Court Act*, as amended, to render that section inapplicable to the United States and to Mexico; and shall provide in its statutes or regulations that persons (including producers of goods subject to an investigation) have standing to ask Canada to request a panel review where such persons would be entitled to commence domestic procedures for judicial review if the final determination were reviewable by the Federal Court pursuant to section 18.1(4).

3. Canada shall amend the *Special Import Measures Act*, as amended, and any other relevant provisions of law, to provide that the following actions of the Deputy Minister shall be deemed for the purposes of this Article to be final determinations subject to judicial review:

(a) a determination by the Deputy Minister pursuant to section 41;

(b) a redetermination by the Deputy Minister pursuant to section 59; and

(c) a review by the Deputy Minister of an undertaking pursuant to section 53(1).

4. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for binational panel review respecting goods of Mexico and the United States.

5. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for definitions related to this Chapter, as may be required.

6. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to permit the governments of Mexico and the United States to request binational panel review of final determinations respecting goods of Mexico and the United States.

7. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for the establishment of binational panels requested to review final determinations in respect of goods of Mexico and the United States.

8. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide that binational panel review of a final determination shall be conducted in accordance with this Chapter.

9. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide that an extraordinary challenge proceeding shall be requested and conducted in accordance with Article 1904 and Annex 1904.13.

10. Canada shall amend Part II of the *Special Import Measures Act*, as amended, to provide for a code of conduct, immunity for anything done or omitted to be done during the course of panel proceedings, the signing of and compliance with disclosure undertakings respecting confidential information, and remuneration for members of panels and committees established pursuant to this Chapter.

11. Canada shall make such amendments as are necessary to establish a Canadian Secretariat for this Agreement and generally to facilitate the operation of this Chapter and the work of the binational panels, extraordinary challenge committees and special committees convened under this Chapter.

Schedule of Mexico

Mexico shall amend its antidumping and countervailing duty statutes and regulations, and other statutes and regulations to the extent that they apply

to the operation of the antidumping and countervailing duty laws, to provide the following:

(a) elimination of the possibility of imposing duties within the five day period after the acceptance of a petition;

(b) substitution of the term *Initial Resolution* ("Resolución de Inicio") for the term *Provisional Resolution* ("Resolución Provisional") and the term *Provisional Resolution* ("Resolución Provisional") for the term *Resolution Reviewing the Provisional Resolution* ("Resolución que revisa a la Resolución Provisional");

(c) full participation in the administrative process for interested parties, as well as the right to administrative appeal and judicial review of final determinations of investigations, reviews, product coverage or other final decisions affecting them;

(d) elimination of the possibility of imposing provisional duties before the issuance of a preliminary determination;

(e) the right to immediate access to review of final determinations by binational panels for interested parties, without the need to exhaust first the administrative appeal;

(f) explicit and adequate timetables for determinations of the competent investigating authority and for the submission of questionnaires, evidence and comments by interested parties, as well as an opportunity for them to present facts and arguments in support of their positions prior to any final determination, to the extent time permits, including an opportunity to be adequately informed in a timely manner of and to comment on all aspects of preliminary determinations of dumping or subsidization;

(g) written notice to interested parties of any of the actions or resolutions rendered by the competent investigating authority, including initiation of an administrative review as well as its conclusion;

(h) disclosure meetings with interested parties by the competent investigating authority conducting its investigations and reviews, within seven calendar days after the date of publication in the *Federal Official Journal* ("Diario Oficial de la Federación") of preliminary and final determinations, to explain the margins of dumping and the amount of subsidies calculations and to provide the interested parties with copies of sample calculations and, if used, computer programs;

(i) timely access by eligible counsel of interested parties during the course of the proceeding (including disclosure meetings) and on appeal, either before a national tribunal or a panel, to all information contained in the administrative record of the proceeding, including confidential information, excepting proprietary information of such a high degree of sensitivity that its release would lead to substantial and irreversible harm to the owner as well as government classified information, subject to an undertaking for confidentiality that strictly forbids use of the information for personal benefit and its disclosure to persons who are not authorized to receive such information; and for sanctions that are specific to violations of undertakings in proceedings before national tribunals or panels;

(j) timely access by interested parties during the course of the proceeding, to all non-confidential information contained in the administrative record and access to such information by interested parties or their representatives in any proceeding after 90 days following the issuance of the final determination;

(k) a mechanism requiring that any person submitting documents to the competent investigating authority shall simultaneously serve on

interested persons, including foreign interests, any submissions after the complaint;

(l) preparation of summaries of *ex parte* meetings held between the competent investigating authority and any interested party and the inclusion in the administrative record of such summaries, which shall be made available to parties to the proceeding; if such summaries contain business proprietary information, the documents must be disclosed to a party's representative under an undertaking to ensure confidentiality;

(m) maintenance by the competent investigating authority of an administrative record as defined in this Chapter and a requirement that the final determination be based solely on the administrative record;

(n) informing interested parties in writing of all data and information the administering authority requires them to submit for the investigation, review, product coverage proceeding, or other antidumping or countervailing duty proceeding;

(o) the right to an annual individual review on request by the interested parties through which they can obtain their own dumping margin or countervailing duty rate, or can change the margin or rate they received in the investigation or a previous review, reserving to the competent investigating authority the ability to initiate a review, at any time, on its own motion and requiring that the competent investigating authority issue a notice of initiation within a reasonable period of time after the request;

(p) application of determinations issued as a result of judicial, administrative, or panel review, to the extent they are relevant to interested parties in addition to the plaintiff, so that all interested parties will benefit;

(q) issuance of binding decisions by the competent investigating authority if an interested party seeks clarification outside the context of an antidumping or countervailing duty investigation or review with respect to whether a particular product is covered by an antidumping or countervailing duty order;

(r) a detailed statement of reasons and the legal basis for final determinations in a manner sufficient to permit interested parties to make an informed decision as to whether to seek judicial or panel review, including an explanation of methodological or policy issues raised in the calculation of dumping or subsidization;

(s) written notice to interested parties and publication in the *Federal Official Journal* ("Diario Oficial de la Federación") of initiation of investigations setting forth the nature of the proceeding, the legal authority under which the proceeding is initiated, and a description of the product at issue;

(t) documentation in writing of all advisory bodies' decisions or recommendations, including the basis for the decisions, and release of such written decisions to parties to the proceeding; all decisions or recommendations of any advisory body shall be placed in the administrative record and made available to parties to the proceeding; and

(u) a standard of review to be applied by binational panels as set out in subparagraph (c) of the definition of "standard of review" in Annex 1911.

Schedule of the United States

1. The United States shall amend section 301 of the *Customs Courts Act* of

1980, as amended, and any other relevant provisions of law, to eliminate the authority to issue declaratory judgments in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian or Mexican merchandise.

2. The United States shall amend section 405(a) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that the interagency group established under section 242 of the *Trade Expansion Act of 1962* shall prepare a list of individuals qualified to serve as members of binational panels, extraordinary challenge committees and special committees convened under this Chapter.

3. The United States shall amend section 405(b) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that panelists selected to serve on panels or committees convened pursuant to this Chapter, and individuals designated to assist such appointed individuals, shall not be considered employees of the United States.

4. The United States shall amend section 405(c) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that panelists selected to serve on panels or committees convened pursuant to this Chapter, and individuals designated to assist the individuals serving on such panels or committees, shall be immune from suit and legal process relating to acts performed by such individuals in their official capacity and within the scope of their functions as such panelists or committee members, except with respect to the violation of protective orders described in section 777f(d)(3) of the *Tariff Act of 1930*, as amended.

5. The United States shall amend section 405(d) of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to establish a United States Secretariat to facilitate the operation of this Chapter and the work of the binational panels, extraordinary challenge committees and special committees convened under this Chapter.

6. The United States shall amend section 407 of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that an extraordinary challenge committee convened pursuant to Article 1904 and Annex 1904.13 shall have authority to obtain information in the event of an allegation that a member of a binational panel was guilty of gross misconduct, bias, or a serious conflict of interest, or otherwise materially violated the rules of conduct, and for the committee to summon the attendance of witnesses, order the taking of depositions and obtain the assistance of any district or territorial court of the United States in aid of the committee's investigation.

7. The United States shall amend section 408 of the *United States-Canada Free-Trade Agreement Implementation Act of 1988*, to provide that, in the case of a final determination of a competent investigating authority of Mexico, as well as Canada, the filing with the United States Secretary of a request for binational panel review by a person described in Article 1904(5) shall be deemed, on receipt of the request by the Secretary, to be a request for binational panel review within the meaning of Article 1904(4).

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

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

10. The United States shall amend section 516A(g) of the *Tariff Act of 1930*, as amended, to provide, in accordance with the terms of this Chapter, for binational panel review of antidumping and countervailing duty

cases involving Mexican or Canadian merchandise. Such amendment shall provide that if binational panel review is requested such review will be exclusive.

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

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

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

▲ Annex 1905.6

Special Committee Procedures

The Parties shall establish rules of procedure by the date of entry into force of this Agreement in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the special committee as well as the opportunity to provide initial and rebuttal written submissions;

(b) the procedures shall assure that the special committee shall prepare an initial report typically within 60 days of the appointment of the last member, and shall afford the Parties 14 days to comment on that report prior to issuing a final report 30 days after presentation of the initial report;

(c) the special committee's hearings, deliberations, and initial report, and all written submissions to and communications with the special committee shall be confidential;

(d) unless the Parties to the dispute otherwise agree, the decision of the special committee shall be published 10 days after it is transmitted to the disputing Parties, along with any separate opinions of individual members and any written views that either Party may wish to be published; and

(e) unless the Parties to the dispute otherwise agree, meetings and hearings of the special committee shall take place at the office of the Section of the Secretariat of the Party complained against.

▲ Annex 1911

Country Specific Definitions

For purposes of this Chapter:

antidumping statute means:

(a) in the case of Canada, the relevant provisions of the *Special Import Measures Act*, as amended, and any successor statutes;

(b) in the case of the United States, the relevant provisions of Title VII of the *Tariff Act of 1930*, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the *Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States* ("Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior"), as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations;

competent investigating authority means:

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

(b) in the case of the United States

(i) the International Trade Administration of the United States Department of Commerce, or its successor, or

(ii) the United States International Trade Commission, or its successor; and

(c) in the case of Mexico, the designated authority within the Secretariat of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), or its successor;

countervailing duty statute means:

(a) in the case of Canada, the relevant provisions of the *Special Import Measures Act*, as amended, and any successor statutes;

(b) in the case of the United States, section 303 and the relevant provisions of Title VII of the *Tariff Act of 1930*, as amended, and any successor statutes;

(c) in the case of Mexico, the relevant provisions of the *Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States* ("Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior"), as amended, and any successor statutes; and

(d) the provisions of any other statute that provides for judicial review of final determinations under subparagraph (a), (b) or (c), or indicates the standard of review to be applied to such determinations;

final determination means:

(a) in the case of Canada,

(i) an order or finding of the Canadian International Trade Tribunal under subsection 43(1) of the *Special Import Measures Act*,

(ii) an order by the Canadian International Trade Tribunal under subsection 76(4) of the *Special Import Measures Act*,

as amended, continuing an order or finding made under subsection 43(1) of the Act with or without amendment,

(iii) a determination by the Deputy Minister of National Revenue for Customs and Excise pursuant to section 41 of the *Special Import Measures Act*, as amended,

(iv) a redetermination by the Deputy Minister pursuant to section 59 of the *Special Import Measures Act*, as amended,

(v) a decision by the Canadian International Trade Tribunal pursuant to subsection 76(3) of the *Special Import Measures Act*, as amended, not to initiate a review,

(vi) a reconsideration by the Canadian International Trade Tribunal pursuant to subsection 91(3) of the *Special Import Measures Act*, as amended, and

(vii) a review by the Deputy Minister of an undertaking pursuant to subsection 53(1) of the *Special Import Measures Act*, as amended;

(b) in the case of the United States,

(i) a final affirmative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930*, as amended, including any negative part of such a determination,

(ii) a final negative determination by the International Trade Administration of the United States Department of Commerce or by the United States International Trade Commission under section 705 or 735 of the *Tariff Act of 1930*, as amended, including any affirmative part of such a determination,

(iii) a final determination, other than a determination in (iv), under section 751 of the *Tariff Act of 1930*, as amended,

(iv) a determination by the United States International Trade Commission under section 751(b) of the *Tariff Act of 1930*, as amended, not to review a determination based on changed circumstances, and

(v) a final determination by the International Trade Administration of the United States Department of Commerce as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order; and

(c) in the case of the Mexico,

(i) a final resolution regarding antidumping or countervailing duties investigations by the Secretaría de Comercio y Fomento Industrial ("Secretariat of Trade and Industrial Development"), pursuant to Article 13 of the Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior ("*Foreign Trade Act Implementing Article 131 of the Constitution of the United Mexican States*"), as amended,

(ii) a final resolution regarding an annual administrative review of antidumping or countervailing duties by the

Secretariat of Trade and Industrial Development ("Secretaría de Comercio y Fomento Industrial"), as described in paragraph (o) of its Schedule to Annex 1904.15, and

(iii) a final resolution by the *Secretariat of Trade and Industrial Development* ("Secretaría de Comercio y Fomento Industrial"), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing antidumping or countervailing duty resolution; and

standard of review means the following standards, as may be amended from time to time by the relevant Party:

(a) in the case of Canada, the grounds set out in subsection 18.1(4) of the *Federal Court Act*, as amended, with respect to all final determinations;

(b) in the case of the United States,

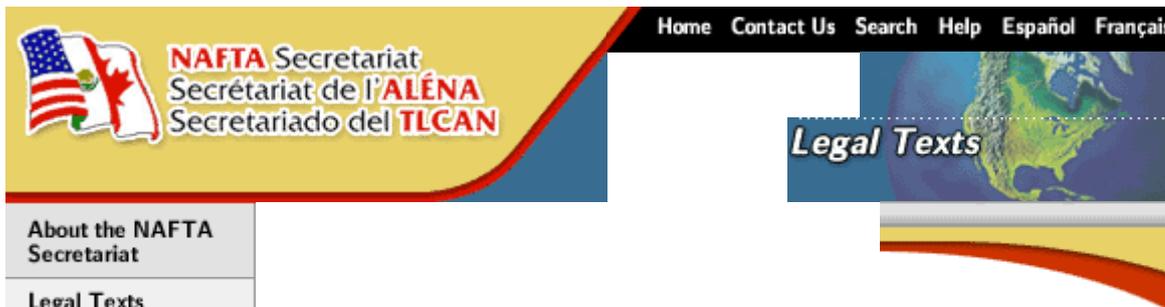
(i) the standard set out in section 516A(b)(l)(B) of the *Tariff Act of 1930*, as amended, with the exception of a determination referred to in (ii), and

(ii) the standard set out in section 516A(b)(l)(A) of the *Tariff Act of 1930*, as amended, with respect to a determination by the United States International Trade Commission not to initiate a review pursuant to section 751(b) of the *Tariff Act of 1930*, as amended; and

(c) in the case of the Mexico, the standard set out in Article 238 of the *Federal Fiscal Code* ("Código Fiscal de la Federación"), or any successor statutes, based solely on the administrative record.

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Section A - Institutions



Article 2001: The Free Trade Commission

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



Article 2002: The Secretariat

1. The Commission shall establish and oversee a Secretariat comprising national Sections.
2. Each Party shall:
 - (a) establish a permanent office of its Section;
 - (b) be responsible for
 - (i) the operation and costs of its Section, and
 - (ii) the remuneration and payment of expenses of panelists and members of committees and scientific review boards established under this Agreement, as set out in Annex 2002.2;
 - (c) designate an individual to serve as Secretary for its Section,

who shall be responsible for its administration and management;
and

(d) notify the Commission of the location of its Section's office.

3. The Secretariat shall:

(a) provide assistance to the Commission;

(b) provide administrative assistance to

(i) panels and committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), in accordance with the procedures established pursuant to Article 1908, and

(ii) panels established under this Chapter, in accordance with procedures established pursuant to Article 2012; and

(c) as the Commission may direct

(i) support the work of other committees and groups established under this Agreement, and

(ii) otherwise facilitate the operation of this Agreement.

Section B - Dispute Settlement



Article 2003: Cooperation

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



Article 2004: Recourse to Dispute Settlement Procedures

Except for the matters covered in Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters) and as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that an actual or proposed measure of another Party is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004.



Article 2005: GATT Dispute Settlement

1. Subject to paragraphs 2, 3 and 4, disputes regarding any matter arising under both this Agreement and the *General Agreement on Tariffs and Trade*, any agreement negotiated thereunder, or any successor agreement (GATT), may be settled in either forum at the discretion of the complaining Party.

2. Before a Party initiates a dispute settlement proceeding in the GATT against another Party on grounds that are substantially equivalent to those available to that Party under this Agreement, that Party shall notify any third Party of its intention. If a third Party wishes to have recourse to

dispute settlement procedures under this Agreement regarding the matter, it shall inform promptly the notifying Party and those Parties shall consult with a view to agreement on a single forum. If those Parties cannot agree, the dispute normally shall be settled under this Agreement.

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

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

(a) concerning a measure adopted or maintained by a Party to protect its human, animal or plant life or health, or to protect its environment, and

(b) that raises factual issues concerning the environment, health, safety or conservation, including directly related scientific matters,

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

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

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

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



Article 2006: Consultations

1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.

2. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.

3. Unless the Commission otherwise provides in its rules and procedures established under Article 2001(4), a third Party that considers it has a substantial interest in the matter shall be entitled to participate in the consultations on delivery of written notice to the other Parties and to its Section of the Secretariat.

4. Consultations on matters regarding perishable agricultural goods shall commence within 15 days of the date of delivery of the request.

5. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of any matter through consultations under this Article or other consultative provisions of this Agreement. To this end, the consulting Parties shall:

(a) provide sufficient information to enable a full examination of how the actual or proposed measure or other matter might affect the operation of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) seek to avoid any resolution that adversely affects the interests under this Agreement of any other Party.



Article 2007: Commission - Good Offices, Conciliation and Mediation

1. If the consulting Parties fail to resolve a matter pursuant to Article 2006 within:

(a) 30 days of delivery of a request for consultations,

(b) 45 days of delivery of such request if any other Party has subsequently requested or has participated in consultations regarding the same matter,

(c) 15 days of delivery of a request for consultations in matters regarding perishable agricultural goods, or

(d) such other period as they may agree,

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

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

(a) it has initiated dispute settlement proceedings under the GATT regarding any matter subject to Article 2005(3) or (4), and has received a request pursuant to Article 2005(5) for recourse to dispute settlement procedures under this Chapter; or

(b) consultations have been held pursuant to Article 513 (Working Group on Rules of Origin), Article 723 (Sanitary and Phytosanitary Measures Technical Consultations) and Article 914 (Standards-Related Measures Technical Consultations).

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

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

5. The Commission may:

(a) call on such technical advisers or create such working groups or expert groups as it deems necessary,

(b) have recourse to good offices, conciliation, mediation or such other dispute resolution procedures, or

(c) make recommendations,

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

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



Article 2008: Request for an Arbitral Panel

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

(a) 30 days thereafter,

(b) 30 days after the Commission has convened in respect of the matter most recently referred to it, where proceedings have been consolidated pursuant to Article 2007(6), or

(c) such other period as the consulting Parties may agree,

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

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

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

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

(a) a dispute settlement procedure under this Agreement, or

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

regarding the same matter in the absence of a significant change in economic or commercial circumstances.

5. Unless otherwise agreed by the disputing Parties, the panel shall be established and perform its functions in a manner consistent with the provisions of this Chapter.



Article 2009: Roster

1. The Parties shall establish by January 1, 1994 and maintain a roster of up to 30 individuals who are willing and able to serve as panelists. The roster members shall be appointed by consensus for terms of three years, and may be reappointed.

2. Roster members shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement or the resolution of disputes arising under international trade agreements, and shall be chosen strictly on the basis of objectivity, reliability and sound judgment;

(b) be independent of, and not be affiliated with or take instructions from, any Party; and

(c) comply with a code of conduct to be established by the Commission.



Article 2010: Qualifications of Panelists

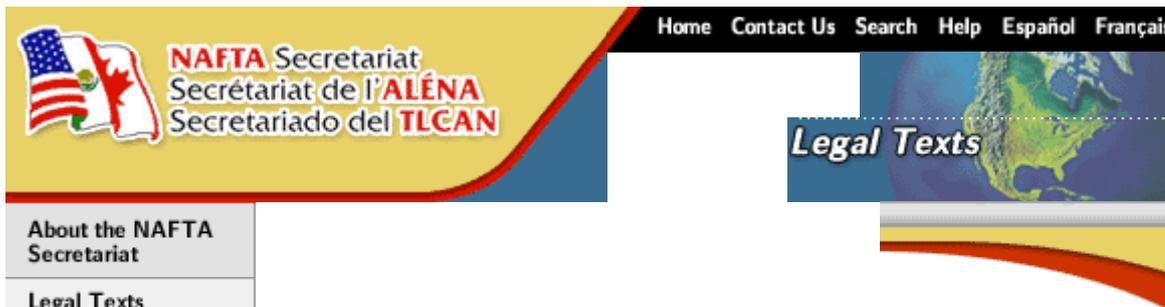
1. All panelists shall meet the qualifications set out in Article 2009(2).

2. Individuals may not serve as panelists for a dispute in which they have participated pursuant to Article 2007(5).

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Article 2011: Panel Selection

1. Where there are two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the disputing Party chosen by lot shall select within five days as chair an individual who is not a citizen of that Party.

(c) Within 15 days of selection of the chair, each disputing Party shall select two panelists who are citizens of the other disputing Party.

(d) If a disputing Party fails to select its panelists within such period, such panelists shall be selected by lot from among the roster members who are citizens of the other disputing Party.

2. Where there are more than two disputing Parties, the following procedures shall apply:

(a) The panel shall comprise five members.

(b) The disputing Parties shall endeavor to agree on the chair of the panel within 15 days of the delivery of the request for the establishment of the panel. If the disputing Parties are unable to agree on the chair within this period, the Party or Parties on the side of the dispute chosen by lot shall select within 10 days a chair who is not a citizen of such Party or Parties.

(c) Within 15 days of selection of the chair, the Party complained against shall select two panelists, one of whom is a citizen of a complaining Party, and the other of whom is a citizen of another complaining Party. The complaining Parties shall select two panelists who are citizens of the Party complained against.

(d) If any disputing Party fails to select a panelist within such period, such panelist shall be selected by lot in accordance with the citizenship criteria of subparagraph (c).

3. Panelists shall normally be selected from the roster. Any disputing Party may exercise a peremptory challenge against any individual not on the roster who is proposed as a panelist by a disputing Party within 15 days after the individual has been proposed.

4. If a disputing Party believes that a panelist is in violation of the code of conduct, the disputing Parties shall consult and if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with this Article.



Article 2012: Rules of Procedure

1. The Commission shall establish by January 1, 1994 Model Rules of Procedure, in accordance with the following principles:

(a) the procedures shall assure a right to at least one hearing before the panel as well as the opportunity to provide initial and rebuttal written submissions; and

(b) the panel's hearings, deliberations and initial report, and all written submissions to and communications with the panel shall be confidential.

2. Unless the disputing Parties otherwise agree, the panel shall conduct its proceedings in accordance with the Model Rules of Procedure.

3. Unless the disputing Parties otherwise agree within 20 days from the date of the delivery of the request for the establishment of the panel, the terms of reference shall be:

"To examine, in the light of the relevant provisions of the Agreement, the matter referred to the Commission (as set out in the request for a Commission meeting) and to make findings, determinations and recommendations as provided in Article 2016 (2)."

4. If a complaining Party wishes to argue that a matter has nullified or impaired benefits, the terms of reference shall so indicate.

5. If a disputing Party wishes the panel to make findings as to the degree of adverse trade effects on any Party of any measure found not to conform with the obligations of the Agreement or to have caused nullification or impairment in the sense of Annex 2004, the terms of reference shall so indicate.



Article 2013: Third Party Participation

A Party that is not a disputing Party, on delivery of a written notice to the disputing Parties and to its Section of the Secretariat, shall be entitled to attend all hearings, to make written and oral submissions to the panel and to receive written submissions of the disputing Parties.



Article 2014: Role of Experts

On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree.



Article 2015: Scientific Review Boards

1. On request of a disputing Party or, unless the disputing Parties disapprove, on its own initiative, the panel may request a written report of a scientific review board on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing Party in a proceeding, subject to such terms and conditions as such Parties may agree.

2. The board shall be selected by the panel from among highly qualified, independent experts in the scientific matters, after consultations with the disputing Parties and the scientific bodies set out in the Model Rules of Procedure established pursuant to Article 2012(1).

3. The participating Parties shall be provided:

(a) advance notice of, and an opportunity to provide comments to the panel on, the proposed factual issues to be referred to the board; and

(b) a copy of the board's report and an opportunity to provide comments on the report to the panel.

4. The panel shall take the board's report and any comments by the Parties on the report into account in the preparation of its report.



Article 2016: Initial Report

1. Unless the disputing Parties otherwise agree, the panel shall base its report on the submissions and arguments of the Parties and on any information before it pursuant to Article 2014 or 2015.

2. Unless the disputing Parties otherwise agree, the panel shall, within 90 days after the last panelist is selected or such other period as the Model Rules of Procedure established pursuant to Article 2012(1) may provide, present to the disputing Parties an initial report containing:

(a) findings of fact, including any findings pursuant to a request under Article 2012(5);

(b) its determination as to whether the measure at issue is or would be inconsistent with the obligations of this Agreement or cause nullification or impairment in the sense of Annex 2004, or any other determination requested in the terms of reference; and

(c) its recommendations, if any, for resolution of the dispute.

3. Panelists may furnish separate opinions on matters not unanimously agreed.

4. A disputing Party may submit written comments to the panel on its initial report within 14 days of presentation of the report.

5. In such an event, and after considering such written comments, the panel, on its own initiative or on the request of any disputing Party, may:

(a) request the views of any participating Party;

(b) reconsider its report; and

(c) make any further examination that it considers appropriate.



Article 2017: Final Report

1. The panel shall present to the disputing Parties a final report, including any separate opinions on matters not unanimously agreed, within 30 days of presentation of the initial report, unless the disputing Parties otherwise agree.

2. No panel may, either in its initial report or its final report, disclose which panelists are associated with majority or minority opinions.

3. The disputing Parties shall transmit to the Commission the final report of the panel, including any report of a scientific review board established under Article 2015, as well as any written views that a disputing Party desires to be appended, on a confidential basis within a reasonable period of time after it is presented to them.

4. Unless the Commission decides otherwise, the final report of the panel shall be published 15 days after it is transmitted to the Commission.



Article 2018: Implementation of Final Report

1. On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel, and shall notify their Sections of the Secretariat of any agreed resolution of any dispute.
2. Wherever possible, the resolution shall be non-implementation or removal of a measure not conforming with this Agreement or causing nullification or impairment in the sense of Annex 2004 or, failing such a resolution, compensation.



Article 2019: Non-Implementation-Suspension of Benefits

1. If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment in the sense of Annex 2004 and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution pursuant to Article 2018(1) within 30 days of receiving the final report, such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect until such time as they have reached agreement on a resolution of the dispute.
2. In considering what benefits to suspend pursuant to paragraph 1:
 - (a) a complaining Party should first seek to suspend benefits in the same sector or sectors as that affected by the measure or other matter that the panel has found to be inconsistent with the obligations of this Agreement or to have caused nullification or impairment in the sense of Annex 2004; and
 - (b) a complaining Party that considers it is not practicable or effective to suspend benefits in the same sector or sectors may suspend benefits in other sectors.
3. On the written request of any disputing Party delivered to the other Parties and its Section of the Secretariat, the Commission shall establish a panel to determine whether the level of benefits suspended by a Party pursuant to paragraph 1 is manifestly excessive.
4. The panel proceedings shall be conducted in accordance with the Model Rules of Procedure. The panel shall present its determination within 60 days after the last panelist is selected or such other period as the disputing Parties may agree.

Section C - Domestic Proceedings and Private Commercial Dispute Settlement



Article 2020: Referrals of Matters from Judicial or Administrative Proceedings

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that any Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties and its Section of the Secretariat. The Commission shall endeavor to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the Commission to the court or

administrative body in accordance with the rules of that forum.

3. If the Commission is unable to agree, any Party may submit its own views to the court or administrative body in accordance with the rules of that forum.



Article 2021: Private Rights

No Party may provide for a right of action under its domestic law against any other Party on the ground that a measure of another Party is inconsistent with this Agreement.



Article 2022: Alternative Dispute Resolution

1. Each Party shall, to the maximum extent possible, encourage and facilitate the use of arbitration and other means of alternative dispute resolution for the settlement of international commercial disputes between private parties in the free trade area.

2. To this end, each Party shall provide appropriate procedures to ensure observance of agreements to arbitrate and for the recognition and enforcement of arbitral awards in such disputes.

3. A Party shall be deemed to be in compliance with paragraph 2 if it is a party to and is in compliance with the 1958 *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* or the 1975 *InterAmerican Convention on International Commercial Arbitration*.

4. The Commission shall establish an Advisory Committee on Private Commercial Disputes comprising persons with expertise or experience in the resolution of private international commercial disputes. The Committee shall report and provide recommendations to the Commission on general issues referred to it by the Commission respecting the availability, use and effectiveness of arbitration and other procedures for the resolution of such disputes in the free trade area.

▲ **Annex 2001.2**

Committees and Working Groups

A. Committees:

1. Committee on Trade in Goods (Article 316)
2. Committee on Trade in Worn Clothing (Annex 300-B, Section 9.1)
3. Committee on Agricultural Trade (Article 706)
 - Advisory Committee on Private Commercial Disputes Regarding Agricultural Goods (Article 707)
4. Committee on Sanitary and Phytosanitary Measures (Article 722)
5. Committee on Standards-Related Measures (Article 913)
 - Land Transportation Standards Subcommittee (Article 913 (5))

- Telecommunications Standards Subcommittee (Article 913(5))
 - Automotive Standards Council (Article 913(5))
 - Subcommittee on Labelling of Textile and Apparel Goods (Article 913(5))
6. Committee on Small Business (Article 1021)
 7. Financial Services Committee (Article 1412)
 8. Advisory Committee on Private Commercial Disputes (Article 2022(4))

B. Working Groups:

1. Working Group on Rules of Origin (Article 513)
 - Customs Subgroup (Article 513(6))
2. Working Group on Agricultural Subsidies (Article 705(6))
3. Bilateral Working Group (Mexico United States) (Annex 703.2(A)(25))
4. Bilateral Working Group (Canada Mexico) (Annex 703.2(B)(13))
5. Working Group on Trade and Competition (Article 1504)
6. Temporary Entry Working Group (Article 1605)

C. Other Committees and Working Groups Established under this Agreement

▲ **Annex 2002.2**

Remuneration and Payment of Expenses

1. The Commission shall establish the amounts of remuneration and expenses that will be paid to the panelists, committee members and members of scientific review boards.
2. The remuneration of panelists or committee members and their assistants, members of scientific review boards, their travel and lodging expenses, and all general expenses of panels, committees or scientific review boards shall be borne equally by:
 - (a) in the case of panels or committees established under Chapter Nineteen (Review and Dispute Settlement in Antidumping and Countervailing Duty Matters), the involved Parties, as they are defined in Article 1911; or
 - (b) in the case of panels and scientific review boards established under this Chapter, the disputing Parties.
3. Each panelist or committee member shall keep a record and render a final account of the person's time and expenses, and the panel, committee or scientific review board shall keep a record and render a final account of all general expenses. The Commission shall establish amounts of remuneration and expenses that will be paid to panelists and committee members.

▲ **Annex 2004**

Nullification and Impairment

1. If any Party considers that any benefit it could reasonably have expected to accrue to it under any provision of:

- (a) Part Two (Trade in Goods), except for those provisions of Annex 300-A (Automotive Sector) or Chapter Six (Energy) relating to investment,
- (b) Part Three (Technical Barriers to Trade),
- (c) Chapter Twelve (Cross-Border Trade in Services), or
- (d) Part Six (Intellectual Property),

is being nullified or impaired as a result of the application of any measure that is not inconsistent with this Agreement, the Party may have recourse to dispute settlement under this Chapter.

2. A Party may not invoke:

- (a) paragraph 1(a) or (b), to the extent that the benefit arises from any crossborder trade in services provision of Part Two, or
- (b) paragraph 1(c) or (d),

with respect to any measure subject to an exception under Article 2101 (General Exceptions).

[Important Notices](#)

Date Modified: 2004-12-(



For Immediate Release
Office of the Press Secretary
December 6, 2002

U.S. - Canada Smart Border/30 Point Action Plan Update

In December 2001, Governor Tom Ridge and Deputy Prime Minister John Manley Signed the Smart Border Declaration and Associated 30-Point Action Plan to Enhance the Security of Our Shared Border While Facilitating the Legitimate Flow of People and Goods. the Action Plan Has Four Pillars the Secure Flow of People, the Secure Flow Of Goods, Secure Infrastructure, and Information Sharing and coordination in the enforcement of these objectives.

On September 9, 2002, President Bush and Prime Minister Chrétien met to discuss progress on the Smart Border Action Plan and asked that they be updated regularly on the work being done to modernize our common border. This report is the first update since the meeting of the President and the Prime Minister.

#1 BIOMETRIC IDENTIFIERS

The United States and Canada have agreed to develop common standards for the biometrics that we use and have also agreed to adopt interoperable and compatible technology to read these biometrics. In the interest of having cards that could be used across different modes of travel, we have agreed to use cards that are capable of storing multiple biometrics.

Our countries have begun to integrate biometric capabilities into new programs being deployed. For example, the NEXUS-Air pilot program will evaluate iris scanning technology and the new Canadian Permanent Resident Card is biometric-ready.

#2 PERMANENT RESIDENT CARDS

Since June 28, 2002, Permanent Resident Cards have been issued to all new immigrants arriving in Canada, replacing the IMM 1000. On October 15, 2002, Canada began processing applications for the Permanent Resident Card, for the purposes of travel, from immigrants

with permanent resident status already in Canada. Effective December 31, 2003, the IMM 1000 will no longer be recognized as a document valid for travel.

The Canadian permanent resident card contains features that make it one of the most fraud-resistant documents in the world. The card has been recognized by the International Card Manufacturers Association, winning the Elan Award for Technical Achievement.

#3 SINGLE ALTERNATIVE INSPECTION SYSTEM

NEXUS is functional at Port Huron-Sarnia (since November 2000), at Blaine-Pacific Highway and Blaine-Douglas (since June 26, 2002) and Point Roberts-Boundary Bay (since July 29, 2002). NEXUS will be operational at both the Detroit-Windsor and Buffalo-Fort Erie bridges on January 23, 2003, and at the Detroit-Windsor tunnel in March 2003.

NEXUS will be expanded to the Lewiston-Queenston Bridge, the Rainbow Bridge and to the Whirlpool Bridge by Spring 2003. NEXUS will also be expanded to all other high-volume crossings between the two countries by the end of 2003. NEXUS enrollment centers opened in Detroit-Windsor and in Buffalo-Fort Erie on October 24, 2002.

The United States and Canada are also working to implement a joint NEXUS - Air program for air travellers. NEXUS - Air will be piloted at Ottawa and Dorval International Airports. Enrollment will begin in April 2003.

#4 REFUGEE/ASYLUM PROCESSING

The United States and Canada have made significant progress on a Statement of Mutual Understanding (SMU) which will allow them to more effectively exchange information on immigration-related issues. The two countries are also very close to an agreement which will permit the systematic sharing of information relating to asylum seekers. This will help each country identify potential security and criminality threats and expose "forum shoppers" who seek asylum in both systems. This exchange of information will be in accordance with the privacy laws of both countries.

#5 MANAGING OF REFUGEE/ASYLUM CLAIMS

The United States and Canada have signed a Safe Third Country Agreement that allows both countries to manage the flow of individuals seeking to access their respective asylum systems. The agreement will cover asylum claims made at land border ports of entry.

The Agreement is bound by the principle of family re-unification in determining whether an individual would be exempted from the requirement of making a claim in the first country of arrival. The Agreement also clearly identifies that individuals making a claim in either country would not be removed to another country until a determination of that person's claim has been made.

Both countries will now finalize the regulatory framework and standard operating procedures necessary to implement this Agreement.

#6 VISA POLICY COORDINATION

The United States and Canada have agreed to enhance cooperation between our respective Embassies overseas, which will allow our officials to more routinely and more efficiently share information on intelligence and specific data concerning high-risk individuals. The two countries have also agreed to formally consult one another during the process of reviewing a third country for the purpose of either a visa imposition or visa exemption.

The United States and Canada are also continuing to work together to identify countries that pose security concerns with a view toward further cooperation on visa policy. In February 2002, the United States announced that nationals of Argentina would require a visa to travel to the United States. In September 2002, Canada announced that citizens of Saudi Arabia and Malaysia would require visas to travel to Canada. The United States and Canada currently have common visa policies for 144 countries.

#7 AIR PRECLEARANCE

The in-transit preclearance project in Vancouver, suspended as a result of the events of September 11, was re-instated on February 14, 2002. In support of the preclearance program, the two countries signed "The Agreement on Air Transport Preclearance between The Government of Canada and The Government of the United States of America" on January 18, 2001. It allows for the expansion of in-transit preclearance to other Canadian airports and also has provisions that modernize the regime governing preclearance.

U.S. government agencies are seeking the authority from Congress to offer reciprocal authorities and immunities for Canadian customs and immigration officials in the United States.

#8 ADVANCE PASSENGER INFORMATION / PASSENGER NAME RECORD

The United States and Canada have agreed to share Advance Passenger Information and Passenger Name Records (API/PNR) on high-risk travelers destined to either country. Canada implemented its Passenger Information system (PAXIS) at Canadian airports on October 8, 2002 to collect Advance Passenger Information. The automated U.S. -Canada API/PNR data-sharing program will be in place by Spring 2003.

#9 JOINT PASSENGER ANALYSIS UNITS

The United States and Canada have agreed to a co-location of customs and immigration officers in Joint Passenger Analysis Units to more intensively cooperate in identifying potentially high-risk travelers.

Pilot joint passenger analysis units became operational at the Vancouver and Miami international airports on September 30, 2002, staffed with U.S. and Canadian officials. The pilot sites will be evaluated at the end of six months to determine the feasibility of expanding the units to other locations.

#10 MARITIME SECURITY AND FERRY TERMINALS

We have completed a marine benchmark study to enhance U.S. and Canadian border security at seaports aimed at improving security and contraband interception. Agencies have begun to make improvements based on this study.

#11 COMPATIBLE IMMIGRATION DATABASES

The United States and Canada have begun discussions towards developing parallel immigration databases to facilitate regular information exchange. The United States is studying the feasibility of duplicating Canadian intelligence gathering software at six pilot sites. Other examples of information exchange include lookouts from our respective databases and automating existing exchanges.

#12 IMMIGRATION OFFICERS OVERSEAS

The United States and Canada have begun deploying new immigration officers overseas to deal with document fraud, liaison with airlines and local authorities, and work with other countries to ensure intelligence liaison and to interrupt the flow of illegal migrants to North America.

In the past year, Canada has deployed additional officers for this purpose, bringing to 74 the total number of officers engaged in these areas. In 2002 and 2003, the United States will deploy 85 new temporary officials with 40 new officials being deployed permanently.

Working together, the United States and Canada will continue to strengthen their capacity to ensure the integrity of their immigration programs, to combat document fraud, and to interdict irregular migrants.

#13 INTERNATIONAL COOPERATION

The United States and Canada have worked together to provide technical assistance to developing countries to deal with threats to our shared security. These cooperative efforts will continue. Joint interdiction exercises and joint training programs will assist other countries to combat document fraud and irregular migration. Such assistance includes improving document integrity, providing expertise on border controls, and joint training.

In addition, the United States and Canada conducted a joint presentation to the European Community CIREFI (Immigration Center of the Council of the European Union) meeting in June, regarding the immigration items in the Smart Border Action Plan.

#14 HARMONIZED COMMERCIAL PROCESSING

The United States and Canada have established a joint program for low-risk companies that will expedite the movement of low-risk shipments in either direction across the border. The program, known as Free and Secure Trade (FAST), will be available at the following high-volume border crossings:

- Blaine, Washington / Douglas, British Columbia (December 31, 2002)
- Port Huron, Michigan / Sarnia, Ontario (December 16, 2002)
- Detroit, Michigan / Windsor, Ontario (December 16, 2002)
- Buffalo, New York / Fort Erie, Ontario (December 16, 2002)

- Lewiston, New York / Queenston, Ontario (December 31, 2002)
- Champlain, New York / Lacolle, Quebec (December 31, 2002)
- The United States and Canada are working to align other customs processes for all commercial shipments by 2005.

#15 CLEARANCE AWAY FROM THE BORDER

The United States and Canada are developing approaches to move customs and immigration inspection activities away from the border to improve security and relieve congestion where possible. The United States and Canada have completed a joint analysis of the operational benefits that could be achieved with the implementation of small and large shared facilities located in one country or the other. Both governments continue to explore approaches to the legal challenges that flow from border inspection services of one country operating in the other.

We are considering innovative procedures to improve rail enforcement activities and at the same time facilitate the flow of rail traffic, such as conducting rail enforcement activities before the border and trade compliance processes at the destination.

#16 JOINT FACILITIES

The United States and Canada have agreed to consider the following locations for joint or shared facilities pending the outcome of feasibility studies:

- Calais, ME / St. Stephen, NB
- Easton, ME / River de Chute, NB
- Monticello, ME / Bloomfield, NB
- Vanceboro, ME / St. Croix, NB
- Morses Line, VT / Morses Line, QC
- North Troy, VT/ Highwater, QC
- Walhalla, ND / Winkler, MB
- Northgate, ND / Northgate, SK
- Hanna, ND / Snowflake, MB
- Opheim, MT / West Poplar River, SK
- Nighthawk, WA / Chopaka, BC
- Porthill, ID / Rykerts, BC

#17 CUSTOMS DATA

U.S. and Canadian Customs agencies have extended the scope of information they share through:

- the Cooperation Arrangement for the Exchange of Information for the Purposes of Inquiries Related to Customs Fraud, signed in December 2001; and
- an agreement, reached by our customs agencies, on the principles to be included in the exchange of information related to NAFTA rules of origin. The agreement will be signed in March 2003, and includes audit plans, audit reports, the results of advance rulings, and origin determinations and re-determinations.

#18 CONTAINER TARGETING AT SEAPORTS

Through an innovative solution to ensure that containers can be examined where they first arrive, regardless of their ultimate destination in North America, U.S. and Canadian Customs agencies have created joint targeting teams at five marine ports. In the ports of Vancouver, Montreal and Halifax, U.S. officials aid Canadian customs officials in identifying which containers to examine. In the ports of Newark and Seattle-Tacoma, Canadian officials provide the same assistance to U.S. Customs agents. The work of these teams will be facilitated through the electronic transmission of advance manifest data for incoming ships and the containers they carry.

#19 INFRASTRUCTURE IMPROVEMENTS

Both governments have committed funds for border infrastructure. Under Canada's new Border Infrastructure Fund, C\$600 million will be provided over five years for physical and technological improvements at key border crossings. The United States Transportation Efficiency Act for the 21st Century also funds transportation projects along U.S. corridors and at border points along the United States-Canada border.

New funding will support FAST and NEXUS and facilitate the secure and efficient cross-border movement of people and goods, for example through dedicated lanes for commercial and passenger vehicles at the border between the British Columbia Lower Mainland and Washington state.

The United States and Canada are working together at key border crossings to develop computer simulations aimed at ensuring that border infrastructure investments are put to the most effective use. The two countries will establish a binational border modeling group to analyze border congestion on an ongoing basis.

#20 INTELLIGENT TRANSPORTATION SYSTEMS

The United States and Canada are piloting the Automatic Identification System (AIS) on the St. Lawrence Seaway, which uses transponder and Global Position System (GPS) technologies to allow for more effective monitoring of ships. The Cascade Gateway Advanced Traveler Information System (ATIS) will be installed at the Pacific Highway and Peace Arch crossings to enhance the mobility of people and commercial goods between the United States and Canada. We will also invest in high-energy gamma-ray systems to support joint efforts in screening marine containers arriving at marine ports in both countries.

#21 CRITICAL INFRASTRUCTURE PROTECTION

Our governments have agreed on a Joint Framework for United States-Canada Cooperation on Critical Infrastructure Protection and have established a Binational Steering Committee to assess threats to our shared critical infrastructure and ensure an ongoing, high-level focus on the issue by both governments. The Committee has developed detailed workplans for collaboration in the areas of energy, telecommunications and transportation, and has established working groups to address horizontal issues such as research and development, interdependencies, mapping and threat information sharing. The next meeting of the Steering Committee will be held in early 2003.

#22 AVIATION SECURITY

We have agreed to recognize each other's national standards for security in airports and on board flights, and to coordinate measures that are essential to protecting our citizens. With the creation of the new federal transportation security agencies and the augmentation of existing departments, the two governments have strengthened their respective capacities to set regulations, review standards, and monitor and inspect all air security services. The two governments have also assumed direct responsibility for security standards, and will work to identify best practices with a view to improving them.

#23 INTEGRATED BORDER AND MARINE ENFORCEMENT TEAMS

The United States and Canada have identified 14 geographical areas for the deployment or enhancement of Integrated Border Enforcement Teams (IBETs). IBETs are currently operational in 10 of the 14 geographic areas, and will be operational in all 14 geographical areas by December 2003. IBETs will focus on criminals and terrorists that may attempt to cross the United States-Canada border.

The two countries have also begun comprehensive training programs for IBET personnel, from both the United States and Canada, to enhance their awareness and understanding of one another's laws and regulations. Two joint training sessions have been held with additional sessions planned in the near future. These initial training sessions will form the foundation of a long-term integrated training plan.

#24 JOINT ENFORCEMENT COORDINATION

The latest United States-Canada Cross-Border Crime Forum (CBCF) took place on July 21-22, 2002. The participants at the CBCF reiterated the importance of the role of Project Northstar. Since becoming formally aligned with the CBCF in early 2001, the role of Project Northstar as a mechanism for joint law enforcement coordination has been significantly enhanced. Project Northstar will have a border-wide meeting in Winnipeg in April 2003.

Project North Star will continue to:

- identify and prioritize joint obstacles for law enforcement at the border;
- bring these obstacles to policy makers at the United States-Canada Cross-Border Crime Forum for resolution; and
- work to increase and establish new, joint representation of the American and Canadian law enforcement community at the binational, regional, and local levels.

Planning is currently underway for the next Cross-Border Crime Forum, which will be hosted by the United States, in late Spring 2003.

#25 INTEGRATED INTELLIGENCE

The Government of Canada has established Integrated National Security Enforcement Teams (INSETs), which will include representatives from federal enforcement and intelligence agencies, as well as international law enforcement partners such as the U.S., on a case-by-case basis. Canada has also been participating since April 9, 2002, in the U.S. Foreign Terrorist Tracking Task Force (FTTTF) in Washington, to detect, interdict, and remove foreign terrorist threats.

#26 FINGERPRINTS

With the development of a Memorandum of Cooperation, the RCMP and the FBI will implement an electronic system for the exchange of criminal records information, including fingerprints, using a standard communication interface.

#27 REMOVAL OF DEPORTEES

The United States and Canada are continuing cooperation in removing individuals to source countries. To date, the United States and Canada have conducted 5 joint operations resulting in 313 removals.

#28 COUNTER-TERRORISM LEGISLATION

President Bush signed anti-terrorism legislation on October 26, 2001. In Canada, the Anti-Terrorism Act came into force on December 24, 2001.

#29 FREEZING OF TERRORIST ASSETS

The United States and Canada have a working process in place to share advance information on individuals and organizations that may be designated as terrorist in order to coordinate the freezing of their assets. To date, the United States and Canada have designated or listed over 360 individuals and organizations.

#30 JOINT TRAINING AND EXERCISES

The United States and Canada have been conducting a series of counter-terrorism exercises of increasing complexity that will culminate in the full-scale TOPOFF II exercise in May 2003. TOPOFF II will include a wide range of participants, from first responders to senior government leaders at the local, state/province, and federal levels and ask them to respond to multiple terrorist attacks within the United States which have cross-border implications. This exercise will provide the foundation for an ongoing program of joint training activities.

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The Great Lakes Basin Compact

Overview

The Great Lakes Commission is the only regional organization with a statutory mandate to represent the eight Great Lakes states on a variety of environmental and economic issues.

The Great Lakes Basin Compact -- created through the collective legislative action of its member states and later granted congressional consent through Public Law 90-419 -- established five general areas of responsibility for the Great Lakes Commission, listed in Article I (*see Compact, below*).

Great Lakes Basin Compact

With State & Federal Legislative History

The party states solemnly agree:

Article I

The purposes of this compact are, through means of joint or cooperative action:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).
2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.
3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.
4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.
5. To establish and maintain an intergovernmental agency the end that the purposes of this compact may be accomplished more effectively.

Article II

A. This compact shall enter into force and become effective and binding when it has been enacted by the legislature of any four of the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin and thereafter shall enter into force and become effective and binding as to any other of said states when enacted by the legislature thereof.

B. The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the Government of Canada may prescribe for adherence thereto. For the purposes of this compact the word "state" shall be construed to include a Province of Canada.

Article III

The Great Lakes Commission created by Article IV of this compact shall exercise its powers and perform its functions in respect to the Basin which, for the purposes of this compact shall consist of so much of the following as may be within the party states:

1. Lakes Erie, Huron, Michigan, Ontario, St. Clair, Superior, and the St. Lawrence River, together with any and all natural or manmade water interconnections between or among them.
2. All rivers, ponds, lakes, streams, and other watercourses which, in their natural state or in their prevailing conditions, are tributary to Lakes Erie, Huron, Michigan, Ontario, St. Clair, and Superior or any of them or which comprise

part of any watershed draining into any of said lakes.

Article IV

A. There is hereby created an agency of the party states to be known as The Great Lakes Commission (hereinafter called the Commission). In that name the Commission may sue and be sued, acquire, hold and convey real and personal property and any interest therein. The Commission shall have a seal with the words, "The Great Lakes Commission" and such other design as it may prescribe engraved thereon by which it shall authenticate its proceedings. Transactions involving real or personal property shall conform to the laws of the state in which the property is located, and the Commission may by by-laws provide for the execution and acknowledgement of all instruments in its behalf.

B. The Commission shall be composed of not less than three commissioners nor more than five commissioners from each party state designated or appointed accordance with the law of the state which they represent and serving and subject to removal in accordance with such law.

C. Each state delegation shall be entitled to three votes in the Commission. The presence of commissioners from a majority of the party states shall constitute a quorum for the transaction of business at any meeting of the Commission. Actions of the Commission shall be by a majority of the votes cast except that any recommendations made pursuant to Article VI of this compact shall require an affirmative vote of not less than a majority of the votes cast from each of a majority of the states present and voting.

D. The commissioners of any two or more party states may meet separately to consider problems of particular interest to their states but no action taken at any such meeting shall be deemed an action of the Commission unless and until the Commission shall specifically approve the same.

E. In the absence of any commissioner, his vote may be cast by another representative or commissioner of his state provided that said commissioner or other representative casting said vote shall have a written proxy in proper form as may be required by the Commission.

F. The Commission shall elect annually from among its members a chairman and vice-chairman. The Commission shall appoint an Executive Director who shall also act as secretary-treasurer, and who shall be bonded in such amount as the Commission may require. The Executive Director shall serve at the pleasure of the Commission and at such compensation and under such terms and conditions as may be fixed by it. The Executive Director shall be custodian of the records of the Commission with authority to affix the Commission's official seal and to attest to and certify such records or copies thereof.

G. The Executive Director, subject to the approval of the Commission in such cases as its by-laws may provide, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Commission's function. Subject to the aforesaid approval, the Executive Director may fix their compensation, define their duties, and require bonds of such of them as the Commission may designate.

H. The Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may borrow, accept, or contract for the services of personnel from any state or government or any subdivision or agency thereof, from any inter-governmental agency, or from any institution, person, firm or corporation; and may accept for any of the

Commissions purposes and functions under this compact any and all donations, gifts, and grants of money, equipment, supplies, materials, and services from any state or government of any subdivision or agency thereof or inter-governmental agency or from any institution, person, firm or corporation and may receive and utilize the same.

I. The Commission may establish and maintain one or more offices for the transacting of its business and for such purposes the Executive Director, on behalf of, as trustee for, and with the approval of the Commission, may acquire, hold and dispose of real and personal property necessary to the performance of its functions.

J. No tax levied or imposed by any party state or any political subdivision thereof shall be deemed to apply to property, transactions, or income of the Commission.

K. The Commission may adopt, amend and rescind by-laws, rules and regulations for the conduct of its business.

L. The organization meeting of the Commission shall be held within six months from the effective date of the compact.

M. The Commission and its Executive Director shall make available to the party states any information within its possession and shall always provide free access to its records by duly authorized representatives of such party states.

N. The Commission shall keep a written record of its meetings and proceedings and shall annually make a report thereof to be submitted to the duly designated official of each party state.

O. The Commission shall make and transmit annually to the legislature and Governor of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been adopted by the Commission. The Commission may issue such additional reports as it may deem desirable.

Article V

A. The members of the Commission shall serve without compensation, but the expenses of each commission shall be met by the state which he represents in accordance with the law of that state. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this compact, unless met in some other manner specifically provided by this compact, shall be paid by the Commission out of its own funds.

B. The Commission shall submit to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

C. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Detailed commission budgets shall be recommended by a majority of the votes cast, and the costs shall be allocated equitably among the party states in accordance with their respective interests.

D. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article IV(H) of this compact, provided that the Commission takes specific action setting aside such funds prior to

the incurring of any obligations to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV (H) hereof, the Commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

E. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under the by-laws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

F. The accounts of the Commission shall be open at any reasonable time for inspection by such agency, representative of the party states as may be duly constituted for that purpose and by others who may be authorized by the Commission.

Article VI

The Commission shall have power to:

1. Collect, correlate, interpret, and report on data relating to the water resources and the use thereof in the Basin or any portion thereof.
2. Recommend methods for the orderly, efficient, and balanced development, use and conservation of the water resources of the Basin or any portion thereof to the party state and to any other governments or agencies having interests in or jurisdiction over the Basin or any portion thereof.
3. Consider the need for and desirability of public works and improvements relating to the water resources in the Basin or any portion thereof.
4. Consider means of improving navigation and port facilities in the Basin or any other portion thereof.
5. Consider means of improving and maintaining the fisheries of the Basin or any portion thereof.
6. Recommend policies relating to water resources including the institution and alteration of flood plain and other zoning laws, ordinances and regulations.
7. Recommend uniform or other laws, ordinances, or regulations relating to the development, use and conservation of the Basin's water resources to the party states or any of them and to other governments, political subdivisions, agencies of inter-governmental bodies having interests or in jurisdiction sufficient to affect conditions in the Basin or any portion thereof.
8. Consider and recommend amendments or agreements supplementary to this compact to the party states or any of them, and assist in the formulation and drafting of such amendments or supplementary agreements.
9. Prepare and publish reports, bulletins, and publications appropriate to this work and fix reasonable sales prices therefore.
10. With respect to the water resources of the Basin or any portion thereof, recommend agreements between the governments of the United States and Canada.
11. Recommend mutual arrangements expressed by concurrent or reciprocal legislation on the part of Congress and the Parliament of Canada including but not limited to such agreements and mutual arrangements as are provided for by Article XIII of the Treaty of 1909 Relating to Boundary Waters and Questions Arising Between the United States and Canada. (Treaty Series, No 548).
12. Cooperate with the governments of the United States and of Canada, the party states and any public or private agencies or bodies having interests in or jurisdiction sufficient to affect the Basin or any portion thereof.
13. At the request of the United States, or in the event that a Province shall be a party state, at the request of the Government of Canada, assist in the negotiation and formulation of any treaty or other mutual agreement between the United States and Canada with reference to the Basin or any portion thereof.
14. Make any recommendation and do all things necessary and proper to carry out the powers conferred upon the Commission by this compact, provided that no action of the Commission shall have the force of law in, or be binding upon, any party state.

Article VII

Each party state agrees to consider the action the Commission

recommends in respect to:

1. Stabilization of lake levels.
2. Measures for combating pollution, beach erosion, floods and shore inundation.
3. Uniformity in navigation regulations within the constitutional powers of the states.
4. Proposed navigation aids and improvements.
5. Uniformity or effective coordinating action in fishing laws and regulations and cooperative action to eradicate destructive and parasitical forces endangering the fisheries, wildlife and other water resources.
6. Suitable hydroelectric power developments.
7. Cooperative programs for control of soil and bank erosion for the general improvement of the Basin.
8. Diversion of waters from and into the Basin.
9. Other measures the Commission may recommend to the states pursuant to Article VI of this compact.

Article VIII

This compact shall continue in force and remain upon each party state until renounced by the act of the legislature of such state, in such form and manner as it may choose and as may be valid and effective to repeal a statute of said state, provided that such renunciation shall not become effective until six months after notice of such action shall have been officially communicated in writing to the executive head of the other party states.

Article IX

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or the applicability thereof to any state, agency, person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to any state, agency, person or circumstance shall not be affected thereby, provided further that if this compact shall be held contrary to the constitution of the United States, or in the case of a Province, to the British North America Act of 1867 as amended, or of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

State Legislative History

Illinois: (69th GA House Bill, No. 983, 1955)

Indiana: (Chapter 220 (H. 216, Approved March 10, 1955)

Michigan: (Act No. 28, Public Acts of 1955, Approved by Governor April 14, 1955)

Minnesota: (Laws of Minnesota 1955, Chapter 691; S.F. No. 1982)

New York: (Chapter 643, Laws of 1960)

Ohio: (Amended House Bill 415, Effective October 9, 1963, 105 General Assembly)

Pennsylvania: (Act of Pennsylvania General Assembly, No. 421, 1955-56 Session)

Wisconsin: (No. 294 A, Chapter 275, Laws of 1955)

The Commission was officially organized and established December 12, 1955 subsequent to ratification of the compact by five states (Illinois, Indiana, Michigan, Minnesota and Wisconsin). The Commission office was established on the Campus of the University of Michigan in early 1956.

Congressional Consent: Legislation

All interstate compacts require Congressional consent (Article I, Sec. 10, Clause 3, Constitution of the United States) in order to achieve full force and effect. Numerous bills were considered beginning in 1956. In 1968, Congress enacted S. 660 (PL 90-419) giving limited consent to the compact as follows:

"Public Law 90-419
90th Congress, S 660
July 24, 1968

"An Act

"Granting the consent of Congress to a Great Lakes Basin Compact, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given, to the extent and subject to the conditions hereinafter set forth, to the Great Lakes Basin Compact which has been entered into by the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin in the form as follows:

"Great Lakes Basin Compact"

(The full text of the State adopted Compact text is included in PL 90-419 at this point.)

"**SEC. 2.** The consent herein granted does not extend to paragraph B of article II or to paragraphs J, K, and M or article VI of the compact, or to other provisions of article VI of the compact which purpose to authorize recommendations to, or cooperation with, any foreign or international governments, political subdivisions, agencies or bodies. In carrying out its functions under this Act the Commission shall be solely a consultative and recommendatory agency which will cooperate with the agencies of the United States. It shall furnish to the Congress and to the President, or to any official designated by the President, copies of its reports submitted to the party states pursuant to paragraph O of article IV of the compact.

"**SEC. 3.** Nothing contained in this Act or in the compact consented to hereby shall be construed to affect the jurisdiction on, powers, or prerogatives of any department, agency, or officer of the United States Government or of the Great Lakes Basin Committee established under title II of the Water Resources Planning Act, or of any international commission or agency over or in the Great Lakes Basin or any portion thereof, nor shall anything contained herein be construed to establish an international agency or to limit or affect in any way the exercises of the treaty-making power or any other power or right of the United States.

"**SEC 4.** The right to alter, amend, or repeal this Act is expressly reserved.
"Approved July 24, 1968."

Federal Legislative History

Public Law 90-419 (90th Congress, S 660)

House Report No. 1640 (Comm. on Foreign Affairs)

Senate Report No. 1178 (Comm. on the Judiciary)

Congressional Record, Vol. 114 (1968):

- **June 12:** Considered and passed Senate
- **July 15:** Considered and passed House
- **July 24:** Signed by the President

Declaration of Partnership



Declaration of Partnership

Whereas, the informed use, management and protection of the water and related land resources of the Great Lakes St. Lawrence Basin is essential in maintaining a healthy environment, strong economy and high quality of life for all Basin residents; and

Whereas, the Basin is a shared, binational resource that requires a spirit of collaboration among multiple jurisdictions to ensure an efficient and effective approach to shared goals; and

Whereas, the Great Lakes states and the Governments of Ontario and Quebec have demonstrated their stewardship responsibility for Basin resources through a strong and growing partnership; and

Whereas, this partnership is recognized in the Great Lakes Basin Compact, as signed into law by the legislature in every Great Lakes state; and

Whereas, the Governments of Ontario and Quebec presently enjoy "Observer" status within the Great Lakes Commission; and

Whereas, the Great Lakes states and the Governments of Ontario and Quebec share an interest in strengthening and formalizing this relationship.

Therefore, Be It Resolved, that the eight member states of the Great Lakes Commission extend, and the Governments of Ontario and Quebec accept, Associate Member status on the Great Lakes Commission; and

Be It Further Resolved, that the Great Lakes states invite the Governments of Ontario and Quebec to appoint a delegation of representatives to the Great Lakes Commission, for the purpose of participating in meetings and activities as provided for in the Great Lakes Basin Compact; and

Be It Finally Resolved, that the Great Lakes states and Governments of Ontario and Quebec view Associate Member status as an important step toward the goal of a stronger partnership as provided for in the Great Lakes Basin Compact adopted by the eight Great Lakes states.

State of Illinois

State of Louisiana

State of Michigan

State of Minnesota

State of New York

State of Ohio

Government of Ontario

Commonwealth of Pennsylvania

Government of Quebec

State of Wisconsin





**AGREEMENT
ON THE
COOPERATION
FOR THE
SUSTAINABLE
DEVELOPMENT OF
THE MEKONG
RIVER BASIN
5 APRIL 1995**

MEKONG RIVER COMMISSION

AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN

The Governments of The Kingdom of Cambodia, The Lao People's Democratic Republic, The Kingdom of Thailand, and The Socialist Republic of Viet Nam, being equally desirous of continuing to cooperate in a constructive and mutually beneficial manner for sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources, have resolved to conclude this Agreement setting forth the framework for cooperation acceptable to all parties hereto to accomplish these ends, and for that purpose have appointed as their respective plenipotentiaries:

The Kingdom of Cambodia:

H.E. Mr. Ing Kieth

Deputy Prime Minister and Minister of Public Works and Transport

The Lao People's Democratic Republic:

H.E. Mr. Somsavat Lengsavad

Minister of Foreign Affairs

The Kingdom of Thailand:

H.E. Dr. Krasae Chanawongse

Minister of Foreign Affairs

The Socialist Republic of Viet Nam:

H.E. Mr. Nguyen Manh Cam

Minister of Foreign Affairs

Who, having communicated to each other their respective full powers and having found them in good and due form, have agreed to the following:

CHAPTER I. PREAMBLE

RECALLING the establishment of the Committee for the Coordination of Investigations of the Lower Mekong Basin on 17 September 1957 by the Governments of these countries by Statute endorsed by the United Nations,

NOTING the unique spirit of cooperation and mutual assistance that inspired the work of the Committee for the Coordination of Investigations of the Lower Mekong Basin and the many accomplishments that have been achieved through its efforts,

ACKNOWLEDGING the great political, economic and social changes that have taken place in these countries of the region during this period of time which necessitate these efforts to re-assess, re-define and establish the future framework for cooperation,

RECOGNIZING that the Mekong River Basin and the related natural resources and environment are natural assets of immense value to all the riparian countries for the economic and social well-being and living standards of their peoples,

REAFFIRMING the determination to continue to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources for navigational

and non-navigational purposes, for social and economic development and the well-being of all riparian States, consistent with the needs to protect, preserve, enhance and manage the environmental and aquatic conditions and maintenance of the ecological balance exceptional to this river basin,

AFFIRMING to promote or assist in the promotion of interdependent sub-regional growth and cooperation among the community of Mekong nations, taking into account the regional benefits that could be derived and/or detriments that could be avoided or mitigated from activities within the Mekong River Basin undertaken by this framework of cooperation,

REALIZING the necessity to provide an adequate, efficient and functional joint organizational structure to implement this Agreement and the projects, programs and activities taken thereunder in cooperation and coordination with each member and the international community, and to address and resolve issues and problems that may arise from the use and development of the Mekong River Basin water and related resources in an amicable, timely and good neighbourly manner,

PROCLAIMING further the following specific objectives, principles, institutional framework and ancillary provisions in conformity with the objectives and principles of the Charter of the United Nations and international law.

CHAPTER II. DEFINITIONS OF TERMS

For the purposes of this Agreement, it shall be understood that the following meanings to the underlined terms shall apply except where otherwise inconsistent with the context:

Agreement under Article 5: A decision of the Joint Committee resulting from prior consultation and evaluation on any Proposed use for inter-basin diversions during the wet season from the mainstream as well as for intra-basin use or inter-basin diversions of these waters during the dry season. The objective of this agreement is to achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.

Acceptable minimum monthly natural flow: The acceptable minimum monthly natural flow during each month of the dry season.

Acceptable natural reverse flow: The wet season flow level in the Mekong River at Kratie that allows the reverse flow of the Tonle Sap to an agreed upon optimum level of the Great Lake.

Basin Development Plan: The general planning tool and process that the Joint Committee would use as a blueprint to identify, categorize and prioritize the projects and programs to seek assistance for and to implement the plan at the basin level.

Environment: The conditions of water and land resources, air, flora, and fauna that exists in a particular region.

Notification: Timely providing information by a riparian to the Joint Committee on its Proposed use of water according to the format, content and procedures set forth in the Rules for Water Utilization and Inter-Basin Diversions under Article 26.

Prior consultation: Timely **notification** plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the **Proposed use** upon their uses of water and any other affects, which is the basis for arriving at an agreement. **Prior consultation** is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.

Proposed use: Any proposal for a definite use of the waters of the Mekong River system by any riparian, excluding domestic and minor uses of water not having a significant impact on mainstream flows.

CHAPTER III. OBJECTIVES AND PRINCIPLES OF COOPERATION

The parties agree:

Article 1. Areas of Cooperation

To cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin including, but not limited to irrigation, hydro-power, navigation, flood control, fisheries, timber floating, recreation and tourism, in a manner to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.

Article 2. Projects, Programs and Planning

To promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of Mekong River Basin waters, with emphasis and preference on joint and/or basin-wide development projects and basin programs through the formulation of a basin development plan, that would be used to identify, categorize and prioritize the projects and programs to seek assistance for and to implement at the basin level.

Article 3. Protection of the Environment and Ecological Balance

To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.

Article 4. Sovereign Equality and Territorial Integrity

To cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin.

Article 5. Reasonable and Equitable Utilization

To utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories, pursuant to all relevant factors and circumstances, the Rules for Water Utilization and Inter- basin Diversion provided for under Article 26 and the provisions of A and B below:

- A. On tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee.
- B. On the mainstream of the Mekong River:
1. During the wet season:
 - a) Intra-basin use shall be subject to notification to the Joint Committee.
 - b) Inter-basin diversion shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.
 2. During the dry season:
 - a) Intra-basin use shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.
 - b) Any inter-basin diversion project shall be agreed upon by the Joint Committee through a specific agreement for each project prior to any proposed diversion. However, should there be a surplus quantity of water available in excess of the proposed uses of all parties in any dry season, verified and unanimously confirmed as such by the Joint Committee, an inter-basin diversion of the surplus could be made subject to prior consultation.

Article 6. Maintenance of Flows on the Mainstream

To cooperate in the maintenance of the flows on the mainstream from diversions, storage releases, or other actions of a permanent nature; except in the cases of historically severe droughts and/or floods:

- A. Of not less than the acceptable minimum monthly natural flow during each month of the dry season;
- B. To enable the acceptable natural reverse flow of the Tonle Sap to take place during the wet season; and,
- C. To prevent average daily peak flows greater than what naturally occur on the average during the flood season.

The Joint Committee shall adopt guidelines for the locations and levels of the flows, and monitor and take action necessary for their maintenance as provided in Article 26.

Article 7. Prevention and Cessation of Harmful Effects

To make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment, especially the water quantity and quality, the aquatic (eco-system) conditions, and ecological balance of the river system, from the development and use of the Mekong River Basin water resources or discharge of wastes and return flows. Where one or more States is notified with proper and valid evidence that it is causing substantial damage to one or more riparians from the use of and/or discharge to water of the Mekong River, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8.

Article 8. State Responsibility for Damages

Where harmful effects cause substantial damage to one or more riparians from the use of and/or discharge to waters of the Mekong River by any riparian State, the party(ies) concerned shall determine all relative factors, the cause, extent of damage and responsibility for damages caused by that State in conformity with the principles of international law relating to state responsibility, and to address and resolve all issues, differences and disputes in an amicable and timely manner by peaceful means as provided in Articles 34 and 35 of this Agreement, and in conformity with the Charter of the United Nations.

Article 9. Freedom of Navigation

On the basis of equality of right, freedom of navigation shall be accorded throughout the mainstream of the Mekong River without regard to the territorial boundaries, for transportation and communication to promote regional cooperation and to satisfactorily implement projects under this Agreement. The Mekong River shall be kept free from obstructions, measures, conduct and actions that might directly or indirectly impair navigability, interfere with this right or permanently make it more difficult. Navigational uses are not assured any priority over other uses, but will be incorporated into any mainstream project. Riparians may issue regulations for the portions of the Mekong River within their territories, particularly in sanitary, customs and immigration matters, police and general security.

Article 10. Emergency Situations

Whenever a Party becomes aware of any special water quantity or quality problems constituting an emergency that requires an immediate response, it shall notify and consult directly with the party(ies) concerned and the Joint Committee without delay in order to take appropriate remedial action.

CHAPTER IV. INSTITUTIONAL FRAMEWORK

A. MEKONG RIVER COMMISSION

Article 11. Status

The institutional framework for cooperation in the Mekong River Basin under this Agreement shall be called the **Mekong River Commission** and shall, for the purpose of the exercise of its functions, enjoy the status of an international body, including entering into agreements and obligations with the donor or international community.

Article 12. Structure of Mekong River Commission

The Commission shall consist of three permanent bodies:

- Council
- Joint Committee, and
- Secretariat

Article 13. Assumption of Assets, Obligations and Rights

The Commission shall assume all the assets, rights and obligations of the Committee for the Coordination of Investigations of the Lower Mekong Basin (Mekong Committee/Interim Mekong Committee) and Mekong Secretariat.

Article 14. Budget of the Mekong River Commission

The budget of the Commission shall be drawn up by the Joint Committee and approved by the Council and shall consist of contributions from member countries on an equal basis unless otherwise decided by the Council, from the international community (donor countries), and from other sources.

B. COUNCIL

Article 15. Composition of Council

The Council shall be composed of one member from each participating riparian State at the Ministerial and Cabinet level, (no less than Vice-Minister level) who would be empowered to make policy decisions on behalf of his/her government.

Article 16. Chairmanship of Council

The Chairmanship of the Council shall be for a term of one year and rotate according to the alphabetical listing of the participating countries.

Article 17. Sessions of Council

The Council shall convene at least one regular session every year and may convene special sessions whenever it considers it necessary or upon the request of a member State. It may invite observers to its sessions as it deems appropriate.

Article 18. Functions of Council

The functions of the Council are:

- A. To make policies and decisions and provide other necessary guidance concerning the promotion, support, cooperation and coordination in joint activities and projects in a constructive and mutually beneficial manner for the sustainable development, utilization, conservation and management of the Mekong River Basin waters and related resources, and protection of the environment and aquatic conditions in the Basin as provided for under this Agreement;
- B. To decide any other policy-making matters and make decisions necessary to successfully implement this Agreement, including but not limited to approval of the Rules of Procedures of the Joint Committee under Article 25, Rules of Water Utilization and Inter-Basin Diversions proposed by the Joint CQmmittee under Article 26, and the basin development plan and major component projects/programs; to establish guidelines for financial and technical assistance of development projects and programs; and if considered necessary, to invite the donors to coordinate their support through a Donor Consultative Group; and,

C. To entertain, address and resolve issues, differences and disputes referred to it by any Council member, the Joint Committee, or any member State on matters arising under this Agreement.

Article 19. Rules of Procedures

The Council shall adopt its own Rules of Procedures, and may seek technical advisory services as it deems necessary.

Article 20. Decisions of Council

Decisions of the Council shall be by unanimous vote except as otherwise provided for in its Rules of Procedures.

C. JOINT COMMITTEE

Article 21. Composition of Joint Committee

The Joint Committee shall be composed of one member from each participating riparian State at no less than Head of Department level.

Article 22. Chairmanship of Joint Committee

The Chairmanship of the Joint Committee will rotate according to the reverse alphabetical listing of the member countries and the Chairperson shall serve a term of one year.

Article 23. Sessions of Joint Committee

The Joint Committee shall convene at least two regular sessions every year and may convene special sessions whenever it considers it necessary or upon the request of a member State. It may invite observers to its sessions as it deems appropriate.

Article 24. Functions of Joint Committee

The functions of the Joint Committee are:

- A. To implement the policies and decisions of the Council and such other tasks as may be assigned by the Council.
- B. To formulate a basin development plan, which would be periodically reviewed and revised as necessary; to submit to the Council for approval the basin development plan and joint development projects/programs to be implemented in connection with it; and to confer with donors, directly or through their consultative group, to obtain the financial and technical support necessary for project/program implementation.
- C. To regularly obtain, update and exchange information and data necessary to implement this Agreement.
- D. To conduct appropriate studies and assessments for the protection of the environment and maintenance of the ecological balance of the Mekong River Basin.
- E. To assign tasks and supervise the activities of the Secretariat as is required to imple-

ment this Agreement and the policies, decisions, projects and programs adopted thereunder, including the maintenance of databases and information necessary for the Council and Joint Committee to perform their functions, and approval of the annual work program prepared by the Secretariat.

- F. To address and make every effort to resolve issues and differences that may arise between regular sessions of the Council, referred to it by any Joint Committee member or member state on matters arising under this Agreement, and when necessary to refer the matter to the Council.
- G. To review and approve studies and training for the personnel of the riparian member countries involved in Mekong River Basin activities as appropriate and necessary to strengthen the capability to implement this Agreement.
- H. To make recommendations to the Council for approval on the organizational structure, modifications and restructuring of the Secretariat.

Article 25. Rules of Procedures

The Joint Committee shall propose its own Rules of Procedures to be approved by the Council. It may form ad hoc and/or permanent sub-committees or working groups as considered necessary, and may seek technical advisory services except as may be provided for in the Council's Rules of Procedures or decisions.

Article 26. Rules for Water Utilization and Inter- Basin Diversions

The Joint Committee shall prepare and propose for approval of the Council, inter alia, Rules for Water Utilization and Inter-Basin Diversions pursuant to Articles 5 and 6, including but not limited to: 1) establishing the time frame for the wet and dry seasons; 2) establishing the location of hydrological stations, and determining and maintaining the flow level requirements at each station; 3) setting out criteria for determining surplus quantities of water during the dry season on the mainstream; 4) improving upon the mechanism to monitor intra-basin use; and, 5) setting up a mechanism to monitor inter-basin diversions from the mainstream.

Article 27. Decisions of the Joint Committee

Decisions of the Joint Committee shall be by unanimous vote except as otherwise provided for in its Rules of Procedures.

D. SECRETARIAT

Article 28. Purpose of Secretariat

The Secretariat shall render technical and administrative services to the Council and Joint Committee, and be under the supervision of the Joint Committee.

Article 29. Location of Secretariat

The location and structure of the permanent office of the Secretariat shall be decided by the Council, and if necessary, a headquarters agreement shall be negotiated and entered into with the host government.

Article 30. Functions of the Secretariat

The functions and duties of the Secretariat will be to:

- A. Carry out the decisions and tasks assigned by the Council and Joint Committee under the direction of and directly responsible to the Joint Committee;
- B. Provide technical services and financial administration and advise as requested by the Council and Joint Committee;
- C. Formulate the annual work program, and prepare all other plans, project and program documents, studies and assessments as may be required;
- D. Assist the Joint Committee in the implementation and management of projects and programs as requested;
- E. Maintain databases of information as directed;
- F. Make preparations for sessions of the Council and Joint Committee; and,
- G. Carry out all other assignments as may be requested.

Article 31. Chief Executive Officer

The Secretariat shall be under the direction of a Chief Executive Officer (CEO), who shall be appointed by the Council from a short-list of qualified candidates selected by the Joint Committee. The Terms of Reference of the CEO shall be prepared by the Joint Committee and approved by the Council.

Article 32. Assistant Chief Executive Officer

There will be one Assistant to the CEO, nominated by the CEO and approved by the Chairman of the Joint Committee. Such Assistant will be of the same nationality as the Chairman of the Joint Committee and shall serve for a co-terminus one-year term.

Article 33. Riparian Staff

Riparian technical staff of the Secretariat are to be recruited on a basis of technical competence, and the number of posts shall be assigned on an equal basis among the members. Riparian technical staff shall be assigned to the Secretariat for no more than two three- year terms, except as otherwise decided by the Joint Committee.

CHAPTER V. ADDRESSING DIFFERENCES AND DISPUTES

Article 34. Resolution by Mekong River Commission

Whenever any difference or dispute may arise between two or more parties to this Agreement regarding any matters covered by this Agreement and/or actions taken by the implementing organization through its various bodies, particularly as to the interpretations of the Agreement and the legal rights of the parties, the Commission shall first make every effort to resolve the issue as provided in Articles 18.C and 24.F.

Article 35. Resolution by Governments

In the event the Commission is unable to resolve the difference or dispute within a timely manner, the issue shall be referred to the Governments to take cognizance of the matter for resolution by negotiation through diplomatic channels within a timely manner, and may communicate their decision to the Council for further proceedings as may be necessary to carry out such decision. Should the Governments find it necessary or beneficial to facilitate the resolution of the matter, they may, by mutual agreement, request the assistance of mediation through an entity or party mutually agreed upon, and thereafter to proceed according to the principles of international law.

CHAPTER VI. FINAL PROVISSIONS

Article 36. Entry into Force and Prior Agreements This Agreement shall:

- A. Enter into force among all parties, with no retroactive effect upon activities and projects previously existing, on the date of signature by the appointed plenipotentiaries.
- B. Replace the Statute of the Committee for Coordination of Investigations of the Lower Mekong Basin of 1957 as amended, the Joint Declaration of Principles for Utilization of the Waters of the Lower Mekong Basin of 1975, the Declaration Concerning the Interim Committee for Coordination of Investigations of the Lower Mekong Basin of 1978, and all Rule\$ of Procedures adopted under such agreements. This Agreement shall not replace or take precedence over any other treaties, acts or agreements entered into by and among any of the parties hereto, except that where a conflict in terms, areas of jurisdiction of subject matter or operation of any entities created under existing agreements occurs with any provisions of this Agreement, the issues shall be submitted to the respective governments to address and resolve.

Article 37. Amendments, Modification, Supersession and Termination

This Agreement may be amended, modified, superceded or terminated by the mutual agreement of all parties hereto at the time of such action.

Article 38. Scope of Agreement

This Agreement shall consist of the Preamble and all provisions thereafter and amendments thereto, the Annexes, and all other agreements entered into by the Parties under this Agreement. Parties may enter into bi- or multi-lateral special agreements or arrange-

ments for implementation and management of any programs and projects to be undertaken within the framework of this Agreement, which agreements shall not be in conflict with this Agreement and shall not confer any rights or obligations upon the parties not signatories thereto, except as otherwise conferred under this Agreement.

Article 39. Additional Parties to Agreement

Any other riparian State, accepting the rights and obligations under this Agreement, may become a party with the consent of the parties.

Article 40. Suspension and Withdrawal

Any party to this Agreement may withdraw or suspend their participation under present Agreement by giving written notice to the Chairman of the Council of the Mekong River Commission, who shall acknowledge receipt thereof and immediately communicate it to the Council representatives of all remaining parties. Such notice of withdrawal or suspension shall take effect one year after the date of acknowledgment or receipt unless such notice is withdrawn beforehand or the parties mutually agree otherwise. Unless mutually agreed upon to the contrary by all remaining parties to this Agreement, such notice shall not be prejudicial to nor relieve the noticing party of any commitments entered into concerning programs, projects, studies or other recognized rights and interests of any riparians, or under international law.

Article 41. United Nations and International Community Involvement

The member countries to this Agreement acknowledge the important contribution in the assistance and guidance of the United Nations, donors and the international community and wish to continue the relationship under this Agreement.

Article 42. Registration of Agreement

This Agreement shall be registered and deposited, in English and French, with the Secretary General of the United Nations.

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

DONE on 5 April 1995 at Chiang Rai, Thailand, in English and French, both texts being equally authentic in the case of any inconsistency, the text in the English language, in which language the Agreement was drawn up, shall prevail.

For The Kingdom of Cambodia:



Ing Kieth

**Deputy Prime Minister and
Minister of Public Works and Transport**

For The Lao People's Democratic Republic:



Somsavat Lengsavad

Minister of Foreign Affairs

For the Kingdom of Thailand:



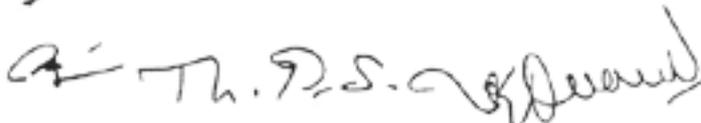
Krasae Chanawongse

Minister of Foreign Affairs

**For the Socialist Republic of
Viet Nam:**



Nguyen Manh Cam
Ministry of Foreign Affairs



PROTOCOL TO THE AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN FOR THE ESTABLISHMENT AND COMMENCEMENT OF THE MEKONG RIVER COMMISSION

The Governments of the Kingdom of Cambodia, Lao People's Democratic Republic, Kingdom of Thailand, and Socialist Republic of Viet Nam, have signed on this day the AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN.

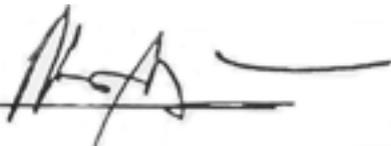
Said AGREEMENT provides for in Chapter IV the establishment of the Mekong River Commission as the institutional framework through which the AGREEMENT will be implemented.

BY THIS PROTOCOL, the signatory parties to the AGREEMENT do hereby declare the establishment and commencement of the MEKONG RIVER COMMISSION, consisting of three permanent bodies, the COUNCIL, JOINT, COMMITTEE and SECRETARIAT, effective on this date with the full authority and responsibility set forth under the AGREEMENT.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments have signed this Protocol.

DONE on 5 April 1995 at Chiang Rai, Thailand.

For The Kingdom of Cambodia:



Ing Kieth

**Deputy Prime Minister and
Minister of Public Works and Transport**

For The Lao People's Democratic Republic:



Somsavat Lengsavad
Minister of Foreign Affairs

For the Kingdom of Thailand:

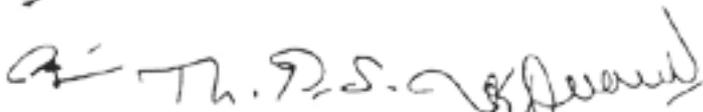


Krasae Chanawongse
Minister of Foreign Affairs

**For the Socialist Republic of
Viet Nam:**



Nguyen Manh Cam
Ministry of Foreign Affairs





The Greater Mekong Subregion Program and ASEAN Free Trade Area: An Overview

A. The GMS Program

The origins of the GMS can be traced to the 1957 establishment of the Mekong Committee, which then comprised the four riparian countries of the lower Mekong Basin. The region was, however, racked by conflict, so there was little cooperation over the following three decades. The process gained substance only in 1992 when ADB initiated a more organized program of cooperation among its members. The original members of the GMS were Cambodia, the Lao People's Democratic Republic (Lao PDR), Myanmar, Thailand, Viet Nam, and Yunnan Province of the People's Republic of China (PRC). In 2004, Guangxi Zhuang Autonomous Region of the PRC also joined the GMS.

The GMS program is a classic case of market as opposed to institutional integration. While institutional integration is characterized by legal agreements and institutional arrangements that promote preferential trade among members of the agreement, market integration relies on nonofficial institutions that provide public and quasi-public goods that reduce transaction costs associated with the international movement of goods, services, and other production factors (Cooper 1968; Garnaut and Drysdale 1994).

As a program of market-based integration, the GMS agenda has concentrated on the provision of physical infrastructure that has public good characteristics, e.g., crossborder infrastructure. Indeed, essential infrastructure of all types remains underdeveloped in most of the GMS economies, and the GMS program has focused on overcoming this constraint. Initiatives such as the east-west, north-south, and southern economic corridors are creating a network of roads that connect the region, reducing the cost of transporting goods and people from one corner of the region to the other.⁵

Options for interconnections for power transmission and the development of fiber optic transmission links—both covered through the GMS flagship programs on power and telecommunications—also fall within the geographic scope of these corridors. As argued by Mussa (2000), the role that transport and communication infrastructure plays in driving economic integration should not be under-estimated. In many ways, the reductions in transport and communication costs taking place in much of the Mekong region today parallel those that took place in the industrialized world decades ago.

Apart from “hardware” in the form of physical infrastructure, the GMS program has also tried to address complementary “software” issues. The facilitation of cross-border trade and investment is another key feature of increasing subregional economic integration in the GMS. The GMS program supports a range of measures to facilitate trade and investment that are designed to promote integration. These include improving procedures and transparency for customs clearance and enhancing technical skills to improve the application of various regulatory systems. Included in these efforts is the pilot testing of single-stop procedures of customs inspection at selected border sites. Research conducted by UNCTAD and cited in the Joint Study Group (2000) suggests that customs paperwork and procedures costs add up to about 7% of the global value of trade (see also Hertel et al., 2001). This is likely to be an understatement of these costs in the case of the Mekong region given initial conditions, or the relatively poor state of such systems and procedures at present. The GMS program is also helping member

economies prepare for a single GMS visa system. Besides promoting tourism and reducing the direct cost of cross-border control and management, a single-visa system would have indirect but positive effects on trade and investment.

The direct impact of interventions through the GMS program is already being reflected in trade and investment statistics for the subregion. Cross-border trade among the six GMS economies has increased sharply. For example, Thailand's imports from its three neighboring countries, Lao PDR, Myanmar, and Cambodia has been increasing by an annual compound growth rate of almost 10% since 2000. More than two thirds of Lao PDR's trade is with other GMS economies; more than a third is with Myanmar, and about a fourth is with Cambodia. In 2004, these three countries conducted more than 40% of their trade with each other. Nonetheless, a significant portion of trade among the GMS economies is not recorded. The nature of this type of trade makes it difficult to know its magnitude, but estimates range from about 30–50% or more of total recorded trade.

The trend is similar for intra-GMS net foreign direct investment (FDI) flows. Net FDI flows from the six GMS economies to Cambodia, Lao PDR, Myanmar, Thailand, and Viet Nam combined rose sharply from \$130 million in 2000 to about \$210 million in 2002, and estimates suggest that this growth trend has continued since. That trade and investment are growing hand-in-hand in the subregion is no coincidence. Early signs of a trade-investment nexus are emerging whereby trade not only encourages investment, but investment, in turn, encourages trade. This is a virtuous circle that links back to economic growth (Athukorala and Menon 1997).

B. AFTA

Although the origins of ASEAN date back to the early 1960s, it was officially launched in August 1967 as a result of the Bangkok Declaration. The original members were Indonesia, Malaysia, Philippines, Singapore, and Thailand. Brunei's accession in 1984 brought the total membership to six nations. During its early phase, ASEAN operated as a consensus-based, politico-security community with little attention paid to economic issues. On the economic front, ASEAN was dormant for its first 10 years.

The first attempt at promoting intra-ASEAN trade through institutional integration via regional trade preferences occurred at the Bali Summit in 1976 when ASEAN adopted preferential trading arrangements (PTA). Despite some initial promise and enthusiasm, the arrangements had little impact on intra-regional trade. In short, they were a failure. There were a number of reasons for this. First, the commodity coverage was narrow, and implementation was half-hearted. Second, the size of the proposed tariff cuts was too small to have any discernable effect on trade flows. On top of this, the PTA failed to deal adequately with non-tariff barriers, which were a greater impediment to trade than tariffs were (see Menon 1996 for a fuller discussion of these issues).

It took until the early 1990s before the next formal attempt was made to pursue intra-ASEAN trade liberalization. At the summit meeting of ASEAN heads of state in January 1992, the six agreed to establish AFTA by the year 2008. This deadline was subsequently moved forward to 2003. AFTA represents the most ambitious attempt at regional integration by ASEAN thus far. It is also the first political attempt to bring about regional free trade in Asia.

The centerpiece of the AFTA proposal is the common effective preference tariff (CEPT). It differs from the PTA in that its approach is essentially by sectors, making it more comprehensive and less cumbersome than the item-by-item approach of the PTA. The objective of the CEPT scheme is to lay the foundation for the creation of a single ASEAN market. Under the revised AFTA plan, tariffs were to be reduced to 20% within a time frame of 5–8 years (beginning in January 1993) before they were cut to 0–5% by the year 2003. This target has already been virtually realized for the six original

members of ASEAN.

The first step in the widening of AFTA took place at the Fifth ASEAN Summit on 15 December 1995 when Viet Nam joined and acceded to the CEPT agreement. Lao PDR and Myanmar joined in 1997 while Cambodia came on board in 2000. For Viet Nam, the target date when 0–5% tariffs will apply to most intra-ASEAN trade is 2006. Lao PDR and Myanmar must adopt these tariff rates by 2008, and Cambodia by 2010.

Besides having tariff lines with strictly reciprocal preferences, the ASEAN integration system of preferences (AISP) was initiated to accelerate integration of the CLMV countries (Cambodia, Lao PDR, Myanmar and Viet Nam) into the regional market for trade in goods. At the 15th AFTA Council Ministerial Meeting in 2001, the original ASEAN members agreed to unilaterally extend tariff preferences to ASEAN's new members beginning 1 January 2002. This move is unprecedented for ASEAN, which has always operated on the basis of equal partnership. Although the AISP is implemented bilaterally and voluntarily, it is based on products that the CLMV countries themselves propose — not on those proposed by the providing countries. This provision was designed to avoid the so-called “snow-plow effect” whereby providing countries tend to extend preferences on tariff lines where there is little or no intra-regional trade.

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(as of 26 June 2005)

Building on Success **GMS Flagship Programs and Development Matrix**

The Strategic Framework for the Greater Mekong subregion (GMS) adopted by the 10th GMS Ministerial Conference in November 2001 envisions a well-integrated and prosperous Mekong subregion – free of poverty and committed to protecting the environment so vital to the subregion’s future wellbeing. The GMS Program focuses on five strategic development thrusts to achieve these goals:

- Strengthen infrastructure linkages through a multisectoral approach,
- Facilitate cross-border trade and investment,
- Enhance private sector participation in development and improve its competitiveness,
- Develop human resources and skill competencies, and
- Protect the environment and promote sustainable use of the subregion’s shared natural resources.

‘Flagship’ programs in key areas will be implemented in pursuit of these strategic thrusts. They include transportation/economic corridors, tele-communications and energy interchanges, cross-border trade and investment, support for greater private sector participation in development, development of human resources, and joint initiatives for the management of the subregion’s shared environment and natural resources. An 11th flagship program on tourism development in the GMS was endorsed by the 11th GMS Ministerial Conference in September 2002 in Phnom Penh.

Rationale for the Flagship Programs

The ‘Flagship Initiatives’ or programs aim to more closely link the six Mekong countries and facilitate cross-border trade and investment in a manner that promotes sustainable development. The opportunities and challenges presented by globalization encourage economic cooperation among neighboring countries, enabling thereby greater specialization, improved productivity, new opportunities for employment and other benefits, including opportunities to conserve the environment that sustains the subregion, reverse degradation and contribute significantly to reducing poverty in the GMS. All six countries – Cambodia, Yunnan Province/People’s Republic of China (PRC), Lao People’s Democratic Republic, Union of Myanmar, and the Socialist Republic of Viet Nam – stand to benefit from building on the gains of the first decade of economic cooperation among each other.

The GMS Program launched in 1992 is necessarily multidimensional. Several Mekong countries are in transition to more market-based and diversified economies. Although some areas of the Mekong subregion are highly developed and competitive, much of the subregion remains poor and dependent on

subsistence farming. In part because of this, complementarities exist among member countries of the GMS. Progress in developing these complementarities has been impressive; however, much remains to be done to improve the subregion's basic infrastructure. Further, policy and regulatory frameworks need to be harmonized to facilitate trade and investment.

Road, rail, water and air transport systems, together with telecommunications systems, must be strengthened to set up better networks among the six GMS countries and to strengthen linkages with other networks in Asia and the rest of the world. Energy projects, in many cases, can only proceed on a regional basis. "Soft" infrastructures – that is, policies and regulations that determine to great extents the form, level, and use of infrastructure investments – play increasingly important roles. Various elements of human resource development, disease and drug control, tourism promotion, and protection of the environment, can also best be addressed on a regional basis by countries agreeing on common frameworks and platforms. In the case of the environment in particular, it is increasingly evident that regional and global cooperation will be crucial to national and long-term measures to protect and conserve it.

Inevitably, there will be gray areas between issues and interests best addressed on a regional basis and others best addressed on a broader basis – such as by the Association of Southeast Asian Nations (ASEAN) or by the World Trade Organization (WTO). Overlaps between regional and purely national initiatives will also be inevitable. Global, regional, and national initiatives must be structured so that they interlock in a building block and complementary manner.

The Development Matrix

To fine-tune the GMS Strategic Framework, the Ministers concluded their 10th GMS Conference by calling for preparation of a long-term development matrix. Accordingly, senior officials with the assistance of ADB, have guided the preparation of such a matrix, a first working draft of which is now available. The matrix provides a synopsis for each of the flagship programs, including their respective components, description, status and scope, estimated costs and possible financing sources, implementing agencies, completion schedules, and issues and constraints.

The matrix is very much a "work in progress," open to suggestions and proposals for additional projects and financing. In future versions, distinctions will be drawn between purely subregional projects involving two or more countries, and national projects with valuable contributions to the GMS Strategy and its flagship programs.

Mechanisms will be established to regularly update and make the matrix current – identifying priority projects based on continuing consultations with GMS countries and with active public and private partners in the subregion. The

development matrix serves as a planning and information tool to generate direct investments and cofinancing, and to promote greater private sector investment and participation in the subregion's development.

In order to facilitate its use, the matrix has been divided and assembled to complement the summaries for each of the flagship programs. The summaries and associated matrices are included in the accompanying package. A digest of these summaries follows.

The 'Flagship' Programs

As cross-border trade is highly dependent on road transportation, the GMS Program highlights the following three corridors, illustrated in the accompanying map:

- ***The North-South Economic Corridor***
- ***The East-West Economic Corridor***
- ***The Southern Economic Corridor***

The objective is a highly efficient system – allowing for goods and people to circulate or travel around the Mekong subregion without significant impediment, excessive cost, or delay – which will form the basis of corridors of economic growth and social development in the subregion, attracting investment and skills.

When completed, the growth corridors will transform Northern Lao PDR and Yunnan Province into vital gateways between the People's Republic of China (PRC) and Southeast Asia, and will inaugurate east-west trade linking Viet Nam, Lao PDR, Thailand and Myanmar, as well as trade among southern Viet Nam, Cambodia, and Thailand. Together with improved national highways, such as Highway 1 running the length of Viet Nam, this network will facilitate trade in the subregion and broaden trade reach, including in its network other ASEAN members and South Asia.

The economic corridors are destined to be more than just transportation corridors. In the case of the East-West Corridor, a preinvestment study has completed identifying potential trade and production opportunities when linked to improvements in transportation and other infrastructure within the growth corridor. Policy, regulatory and financing initiatives will also be required to transform the transportation corridors into complex but more rewarding economic corridors. Accordingly, each of the three corridor programs have important subcomponents. For example, the Thai-Cambodia Joint Development Study for Economic Cooperation identifies programs and investments in infrastructure, agro-industry and fisheries, light manufacturing and industry, and tourism and trade, for the Southern Economic Corridor.

Common to all three economic corridors is the *Framework Agreement for the Facilitation of the Cross-Border Movement of Goods and People*. This landmark agreement among GMS countries is expected to be fully operational by 2005 and will simplify customs procedures, facilitate cross-border truck travel as well as minimize the need for transshipment, among other important advantages.



Telecommunications Backbone and Information and Communications Technology (ICT)

An efficient and effective telecommunications network is central to the information/communications industry and critical, therefore, to future growth prospects for the Mekong subregion. The “Digital Divide” must be bridged.

The objective is a subregional telecommunications network that enables universal access to voice and data services – including the Internet – at affordable yet commercially-based rates.

The Telecommunications Backbone and ICT Flagship Program is designed to establish the basic infrastructure needed to interconnect the national networks of the six GMS countries. In addition to investment in “backbone” facilities, the Program includes important policy reforms, and much-needed capacity building initiatives expected to pave the way for private sector participation.

Regional Power Interconnection and Trading Arrangements

Major benefits to GMS countries can be gained by cooperating in the development and use of the subregion’s natural resources. This is especially true of the energy sector, where some countries have substantial surplus energy potential, while others are in a deficit position.

Subregional cooperation in energy development and supply will reduce the cost of electricity and assure more stable supply.

The objective is a commercially-based energy system that reliably supplies electricity and other forms of energy at reasonable cost to all areas of the subregion, and in a manner that minimizes environmental and social costs.

Rural electrification is of special concern, as this relates importantly to poverty reduction.

This Flagship Program entails many components, notably, mobilizing private sector interest in developing and managing the energy potential of the subregion. Towards this end, the program focuses on ensuring construction of transmission lines and other investments (for example, switching stations) fundamental to a regional approach to energy supply. Significantly, the *GMS Inter-Governmental Agreement on Power Trade* paves the way for the development of a power trade operating agreement. Yet another dimension of the Program is development of a corps of engineers and technical personnel for integrated GMS power system operation and management.

Facilitating Cross-Border Trade and Investment

Increased trade and investment in the Mekong subregion will be the main drivers of economic growth. Carefully supported by policy and appropriate regulatory frameworks, and infrastructure linking rural areas to national and regional markets, trade and investment will also be the main drivers for reducing poverty.

These initiatives must be closely interrelated with those of ASEAN and be made consistent with the WTO framework. The ASEAN/Free Trade Agreement (AFTA) agreement will result in a free trade area involving five of the six GMS countries. ASEAN protocols also address harmonizing foreign investment regimes. In addition, ASEAN and PRC are working on an ASEAN-PRC free trade agreement. These developments and proposals, together with PRC's newly established membership in the WTO, open great opportunities and challenges.

By and large, the Trade and Investment Flagship Program aims to minimize trade impediments among GMS countries and create a favorable investment climate, thereby encouraging strong participation by domestic and foreign commercial interests.

The Program entails important subcomponents, including improving the data system for trade and investment, establishing single-stop customs inspection stations and products and services in support of small and medium enterprises (SMEs), and reducing barriers to trade in agricultural products. The Program also relates closely to the other flagship programs, such as transportation, telecommunications and energy cooperation initiatives, and the all-important *Framework Agreement for the Facilitation of the Cross-Border Movement of Goods and People*.

Enhancing Private Sector Participation and Competitiveness

Private sector enterprise is acknowledged by all GMS countries to be the engine of economic growth.

A unifying theme for the GMS Program, therefore, is creating an enabling environment for business enterprise, especially for the private sector.

GMS countries can benefit from sharing experiences in determining the proper role of government in a more market-based economy. A supportive framework for private enterprise is essential, including a strong financial sector, greater transparency and the rule of law, privatized state enterprises, investment in the education and health of the subregion's labor force, and an appropriate regulatory framework for protecting the environment.

The flagship programs are collectively relevant because they are based fundamentally on providing a supportive framework for private enterprise. The Flagship Program for Enhancing Private Sector Participation and Competitiveness addresses additional, sometimes very specific factors. A particular concern is the managerial, marketing, and other skills of SMEs and accessibility of financial services. To help SMEs and other commercial interests find a "voice" for their needs and views, the GMS Business Forum is being strengthened and its activities expanded.

Developing Human Resources and Skills Competencies

Just as the private sector is viewed as the engine of growth, human resource development may be regarded as the main "building block" for the subregion's development. The fundamental importance of HRD, and the information/communications revolution, underscore the need for proactive regional cooperation initiatives in this field. Differences in language and culture normally favor national programs in these areas. Regional initiatives should focus on factors related to education, training, labor markets, and health that can be addressed most effectively and efficiently through subregional cooperation.

The objective is to strengthen the subregion's most valuable resource – its people – and strengthen their capacities.

The Flagship Program on Developing Human Resources and Skills Competencies provides a framework for wide-ranging cooperation. Pipeline projects include support systems for harmonizing training standards and skills certification systems, a system for accrediting training institutions, and capacity building concerning vocational training institutions. Pipeline projects concerning health include cross-border migration and communicable diseases such as HIV/AIDS.

Strategic Environment Framework

The GMS is endowed with a rich natural resource base that sustains economic development and helps maintain rural livelihoods.

A major challenge facing the GMS Program is to assist GMS countries maintain these and other crucial environmental resources on which depend much of the subregion's social and economic development.

The primary objective of the flagship program on Strategic Environment Framework (SEF) is to help integrate environmental considerations in economic development planning. The flagship program includes: (i) identifying opportunities for improving environmental management in the GMS, (ii) building awareness and capacity in regional environmental assessment; (iii) enhancing public participation in GMS decision making, and (iv) defining a set of environmental parameters and mechanisms to initiate an environmental monitoring program.

The SEF flagship program combines analytical, participatory, and policy-oriented processes that together constitute a strategic platform for guiding investment decisions in the GMS. The first phase developed a strategic platform to guide infrastructure investment decisions in the GMS, consistent with the demands of environmental and social sustainability. The second phase facilitates decision making, *first* by creating a data warehouse which will structure and organize relevant data and information at the national and subregional levels to make them readily accessible to the decision maker; *second*, by providing performance assessment methodologies; and *third*, by establishing a framework and platform through which knowledge will constantly be added to the existing database.

Flood Control and Water Resource Management

The goal for subregional cooperation in flood control and water resource management is to prevent or minimize social and economic losses due to floods through a combination of sustainable resource and floodplain management measures.

This flagship program complements the initiatives of the Mekong River Commission (MRC) and includes four major groups of floodplain management measures: (i) *land use planning*, to minimize risks to people living in vulnerable floodplain areas; (ii) *structural measures*, such as building platforms for dwellings and making roads flood-proof to minimize hazards to people living in floodplains, and construction of flood mitigation structures such as dams and embankments to reduce flood damage to urban settlements; (iii) *flood preparedness*, to strengthen institutional capacities to prepare for floods; and (iv) *flood emergency*, to build capacity for responding to flood emergencies.

GMS Tourism Development

Tourism is a major industry in the countries of the GMS. This presents great potential for further expansion, especially for relatively undeveloped GMS countries and areas. Over the past decade, efforts to develop and promote tourism through regional cooperation have achieved significant success. The GMS Tourism Development Flagship Program builds upon this achievement.

The objective is to make the subregion an internationally recognized “single destination site,” enabling domestic and foreign tourists to take maximum advantage of the subregion’s features and attractions.

Key infrastructure critical to promoting the subregion as a “single destination site” will be supported. “Soft infrastructure” will also be improved, including inter-country visa recognition and greater mobility for tour operators and guides. Special effort will be directed at extending tourism to poor and remote areas, including through the development of eco-tourism. The quality of tourism services will be improved through training and other measures. The private sector will be encouraged to “take charge” of tourism development within a well-defined social and environmental regulatory framework.

Linkages and Milestones

The flagship programs constitute an ambitious and demanding strategy in which all stakeholders will need to play active and committed roles. The challenges involved are all the more demanding as the various program elements are closely linked and interdependent.

Logically, many of the feasibility studies and “soft” initiatives are preconditions or necessary complements to infrastructure projects. In some cases, the flagship programs themselves are closely interlinked, as in the case of two programs concerning the environment (Strategic Environment Framework, and Flood Control and Water Resource Management). The three economic corridor projects are linked to the telecommunications backbone project: both are prerequisites for attracting public and private investment needed to promote economic and social development along these Corridors. Also, construction of the transport components of the corridors will facilitate laying down the fiber optic cable necessary for the telecommunications backbone.

The development matrices for the flagship programs provide a preliminary roadmap for future subregional economic cooperation. Continuing dialogue and analyses are constantly needed to ensure that subregional projects interlock and lead effectively to fulfilling the GMS program goals. The subregional programs should be complementary to the countries’ national development programs. Continuing assessment, in this respect, is necessary.

To spur and monitor progress over the next five to 10 years, GMS Ministers have identified milestone goals for the GMS Program, an initial list of which includes the following:

- Completion of major transport corridors linking the subregion,
- Full implementation of GMS agreement for facilitating the cross-border transport of goods and people,
- Single-stop customs inspection procedures and other measures to facilitate trade,
- New air routes and visa agreement to facilitate tourism in the GMS,
- Certification/accreditation of trade skills to enable labor mobility,
- Subregional control of communicable diseases (notably, HIV/AIDS) and drug trade,
- Implementation of power trade agreements for the subregion,
- Completion of telecommunications backbone and adoption of a subregional policy and regulatory framework for the sector,
- Application of the Strategic Environment Framework for sustainable development, and
- Integrated expansion of the agricultural sector and agro-industry.

Resource Mobilization for Subregional Economic Cooperation

Mobilizing resources for subregional economic cooperation among GMS countries has succeeded in supporting a wide array of initiatives. Significantly, the GMS Program has been an important catalyst in this. The Asian Development Bank is the lead development partner in the GMS Program. As of April 2005, ADB had provided \$1.4 billion in loans for 19 projects worth \$5.2 billion. ADB has also provided technical assistance amounting to \$ 60 million to over 100 projects with a total cost of \$105 million. ADB also plays a major role in mobilizing the participation of other development partners in the GMS.

Other subregional initiatives include the Forum for the Comprehensive Development of Indochina, the ASEAN-Mekong Basin Development Cooperation Initiative, and the ASEAN/Japan Economic and Industrial Cooperation Committee. Note that ASEAN and GMS Program initiatives for the subregion are fully complementary.

Most prominently, the GMS Program has encouraged the six member countries to initiate on their own accord new cooperation agreements. Examples include the opening of new air routes and international airport designations in the subregion, and energy purchase agreements between Thailand/Lao PDR, Viet Nam/Lao PDR, and Thailand/Cambodia.

Resource Needs for the Future

While it is clear that economic cooperation among GMS countries has advanced remarkably over the past decade, much remains to be accomplished. Subregional infrastructure projects for the transport, energy, and telecommunications sectors are costly, but they cannot be made at the expense of vital initiatives in support of “soft infrastructure,” such as harmonized customs procedures, human resource development, protection of the environment, or promotion of trade, tourism, investment, and private sector enterprise.

The resource demands are not purely financial. Technical assistance, often small-scale, is needed in all dimensions of regional cooperation. This is especially the case for initiatives relating to HRD and the environment. Another dimension of resource mobilization is organizational. The GMS countries must have the appropriate institutional structures and processes for promoting and facilitating subregional cooperation. In addition to intergovernmental coordination, processes and mechanisms should include civil society, NGOs, and the business and donor communities.

The private sector is expected to play a key role in formulating and financing subregional initiatives, including for the energy and telecommunications sectors. Already it has played an important role, as illustrated by cofinancing of the Theun Hinboun hydropower project in Lao PDR. The next phase of the GMS Program must succeed in further strengthening private sector involvement.

Financial Resource Needs for the GMS Program

Overall financial requirements for the GMS Program over the next ten years could exceed US\$10-15 billion if all the program proposals are acted upon. This projection may, however, exaggerate actual requirements as various proposals have yet to be fully rationalized. This is particularly the case with regards to the transport and energy sectors, where decisions have to be weighed over competing routes or initiatives. On the other hand, some financing requirements have yet to be estimated, or to be included – such as private sector investment and costing for industrial estates.

Sequencing the flagship components is necessary, both to ensure effective use of scarce resources, and to provide the proper basis for the interlocking components. In this manner, the course of action is fully transparent and open to all development partners.

Opportunities for Development Partners

Strong partnerships are needed among GMS countries as well as with development partners to achieve the vision of the GMS countries of a prosperous and equitable subregion. The Program is ambitious but realistic, and ample opportunities in the flagship programs exist for development partners to make important contributions. These may be large or small in monetary terms – all are

important in terms of effective partnership. Actual contributions and activities depend, of course, on the development partners' own priorities, expertise, and availability of finances.

ตลาดส่งออกสำคัญของไทย ปี 2537-2549 (ม.ค.-พ.ค.)

ปี	รวม	มูลค่า : ล้านเหรียญสหรัฐฯ					อัตราการขยายตัว : ร้อยละ						สัดส่วน : ร้อยละ					
		ญี่ปุ่น	สหรัฐ อเมริกา	สหภาพ ยุโรป	อาเซียน	ประเทศ อื่นๆ	รวม	ญี่ปุ่น	สหรัฐ อเมริกา	สหภาพ ยุโรป	อาเซียน	ประเทศ อื่นๆ	รวม	ญี่ปุ่น	สหรัฐ อเมริกา	สหภาพ ยุโรป	อาเซียน	ประเทศ อื่นๆ
2537	45,430.0	7,756.3	9,549.4	7,099.4	9,058.4	11,966.5	21.7	22.6	19.0	9.3	37.6	20.9	100.0	17.1	21.0	15.6	19.9	26.3
2538	56,725.3	9,524.7	10,113.2	8,558.4	12,325.3	16,203.7	24.9	22.8	5.9	20.6	36.1	35.4	100.0	16.8	17.8	15.1	21.7	28.6
2539	55,941.4	9,417.1	10,061.3	8,916.6	12,113.4	15,433.0	-1.4	-1.1	-0.5	4.2	-1.7	-4.8	100.0	16.8	18.0	15.9	21.7	27.6
2540	58,328.6	8,837.3	11,340.9	9,285.7	12,734.0	16,130.7	4.3	-6.2	12.7	4.1	5.1	4.5	100.0	15.2	19.4	15.9	21.8	27.7
2541	54,490.1	7,469.3	12,167.2	9,718.1	9,895.9	15,239.6	-6.6	-15.5	7.3	4.7	-22.3	-5.5	100.0	13.7	22.3	17.8	18.2	28.0
2542	58,463.4	8,261.3	12,654.3	9,828.7	10,871.6	16,847.5	7.3	10.6	4.0	1.1	9.9	10.6	100.0	14.1	21.6	16.8	18.6	28.8
2543	69,624.2	10,232.4	14,870.1	11,001.3	13,482.2	20,038.2	19.1	23.9	17.5	11.9	24.0	18.9	100.0	14.7	21.4	15.8	19.4	28.8
2544	65,183.2	9,945.4	13,199.6	10,551.9	12,599.1	18,887.2	-6.4	-2.8	-11.2	-4.1	-6.6	-5.7	100.0	15.3	20.3	16.2	19.3	29.0
2545	68,156.3	9,950.0	13,509.4	10,214.6	13,568.9	20,913.4	4.6	0.0	2.3	-3.2	7.7	10.7	100.0	14.6	19.8	15.0	19.9	30.7
2546	80,040.0	11,356.2	13,596.2	11,747.7	16,486.0	26,853.9	17.4	14.1	0.6	15.0	21.5	28.4	100.0	14.2	17.0	14.7	20.6	33.6
2547	96,531.0	13,498.5	15,508.5	13,815.8	21,241.0	32,467.2	20.6	18.9	14.1	17.6	28.8	20.9	100.0	14.0	16.1	14.3	22.0	33.6
2548	110,883.2	15,156.4	17,064.4	14,294.9	24,137.0	40,230.5	14.9	12.3	10.0	3.5	13.6	23.9	100.0	13.7	15.4	12.9	21.8	36.3
2549																		
(ม.ค.-พ.ค.)	49,601.40	6,389.10	7,547.30	6,482.40	10,430.30	18,752.30	16.5	4.4	17.6	10.4	11.5	26.8	100.0	12.9	15.2	13.1	21.0	37.8

ที่มา : ศูนย์เทคโนโลยีสารสนเทศและการสื่อสาร โดยความร่วมมือจากกรมศุลกากร

หมายเหตุ : ปี 2548 , 2549 เป็นตัวเลขเบื้องต้น

ศูนย์เทคโนโลยีสารสนเทศและการสื่อสาร

สำนักงานปลัดกระทรวงพาณิชย์

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แหล่งนำเข้าสำคัญของไทย ปี 2537-2549 (ม.ก.-พ.ค.)

ปี	มูลค่า : ล้านเหรียญสหรัฐฯ						อัตราการขยายตัว : ร้อยละ						สัดส่วน				
	รวม	ญี่ปุ่น	สหรัฐ อเมริกา	สหภาพ ยุโรป	อาเซียน	ประเทศ อื่นๆ	รวม	ญี่ปุ่น	สหรัฐ อเมริกา	สหภาพ ยุโรป	อาเซียน	ประเทศ อื่นๆ	รวม	ญี่ปุ่น	สหรัฐ อเมริกา	สหภาพ ยุโรป	อาเซียน
2537	54,346.5	16,405.5	6,432.4	8,175.9	7,450.4	15,882.3	17.7	17.7	20.0	6.4	25.4	20.0	100.0	30.2	11.8	15.0	13.7
2538	70,718.0	21,605.8	8,494.2	11,281.4	9,422.5	19,914.1	30.1	31.7	32.1	38.0	26.5	25.4	100.0	30.6	12.0	16.0	13.3
2539	72,247.7	20,424.1	9,026.0	10,885.9	9,639.6	22,272.1	2.2	-5.5	6.3	-3.5	2.3	11.8	100.0	28.3	12.5	15.1	13.3
2540	63,180.7	16,246.6	8,713.5	8,895.7	8,127.6	21,197.3	-12.5	-20.5	-3.5	-18.3	-15.7	-4.8	100.0	25.7	13.8	14.1	12.9
2541	42,434.5	10,041.0	5,963.1	5,281.0	6,401.1	14,748.3	-32.8	-38.2	-31.6	-40.6	-21.2	-30.4	100.0	23.7	14.1	12.4	15.1
2542	49,914.6	12,145.3	6,384.7	5,858.5	7,906.4	17,619.7	17.6	21.0	7.1	10.9	23.5	19.5	100.0	24.3	12.8	11.7	15.8
2543	62,180.4	15,378.0	7,316.6	6,323.7	10,346.1	22,815.9	24.6	26.6	14.6	7.9	30.9	29.5	100.0	24.7	11.8	10.2	16.6
2544	61,729.2	13,764.6	7,159.4	7,570.3	10,010.4	23,224.3	-0.7	-10.5	-2.1	19.7	-3.2	1.8	100.0	22.3	11.6	12.3	16.2
2545	64,239.3	14,803.4	6,147.0	7,038.8	10,818.3	25,431.8	4.1	7.5	-14.1	-7.0	8.1	9.5	100.0	23.0	9.6	11.0	16.8
2546	75,034.0	18,074.4	7,092.6	7,503.7	12,489.2	29,874.1	16.8	22.1	15.4	6.6	15.4	17.5	100.0	24.1	9.5	10.0	16.6
2547	94,037.0	22,293.8	7,206.4	9,073.9	15,835.4	39,627.5	25.3	23.3	1.6	20.9	26.8	32.6	100.0	23.7	7.7	9.6	16.8
2548	118,223.0	26,065.7	8,683.9	10,465.6	21,634.1	51,373.7	25.7	16.9	20.5	15.3	36.6	29.6	100.0	22.0	7.3	8.9	18.3
2549																	
(ม.ก.-พ.ค.)	51,203.1	10,310.9	3,477.1	4,678.4	9,317.4	23,419.3	5.4	-4.3	-3.7	10.3	4.9	11.0	100.0	20.1	6.8	9.1	18.2

ที่มา : ศูนย์เทคโนโลยีสารสนเทศและการสื่อสาร โดยความร่วมมือจากกรมศุลกากร
หมายเหตุ : ปี 2548, 2549 เป็นตัวเลขเบื้องต้น

ศูนย์เทคโนโลยีสารสนเทศและ
สำนักงานปลัดกระทรวง

20/06/49/

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การสื่อสาร

วงพาณิชย์

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