

LIMITED

Draft consolidated CETA text as at 13.1.10

(Place and date)

4

(Signature of the exporter, in addition to the name of the person signing the declaration has to be indicated in clear script)

CHAPTER [XX]
INVESTMENT AND SERVICES

EU TEXT

TRADE IN SERVICES, ESTABLISHMENT AND E-COMMERCE

SECTION 1

GENERAL PROVISIONS

ARTICLE 1: OBJECTIVE, SCOPE AND COVERAGE

1. The Parties, reaffirming their respective commitments under WTO Agreement hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and establishment and for co-operation on e-commerce.
2. Nothing in this Chapter shall be construed to require the privatisation of public undertakings or to impose any obligation with respect to government procurement.
3. The provisions of this Chapter shall not apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees, and insurance.
4. Consistent with the provisions of this Chapter, each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives.

omitted or the space left blank.

² Origin of products to be indicated. When the invoice declaration relates, in whole or in part, to products originating in Ceuta and Melilla, the exporter must clearly indicate them in the document on which the declaration is made out by means of the symbol "CM".

³ These indications may be omitted if the information is contained on the document itself.

⁴ In cases where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.

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5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment⁵.

ARTICLE 2: DEFINITIONS

For the purposes of this Chapter:

- (a) 'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) 'measures adopted or maintained by a Party' means measures taken by:
 - (i) central, regional or local governments and authorities, for Canada, this is understood to refer to federal or provincial or municipal governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities; for Canada, this is understood to cover a Crown Corporation within the meaning of the Financial Administration Act (Canada), and a Crown corporation within the meaning of comparable provincial law or any equivalent entity formed under other applicable provincial law;
- (c) 'person' means either a natural person or a juridical person
- (d) 'natural person' means a national of Canada or one of the Member States of the European Union according to their respective legislation;
- (e) 'juridical person' means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association
- (f) a 'European Union juridical person' or a 'Canadian juridical person' means:
 - (i) a juridical person set up in accordance with the laws of a Member State of the European Union or of Canada respectively, and having its registered office, central administration⁶, or principal place of business in the territory of the European Union or Canada, respectively; or
 - (ii) in the case of the supply of a service through establishment, a juridical person owned or controlled by natural persons of one of the Member States of the European Union or of Canada respectively or by European Union juridical persons or Canadian juridical persons respectively.

Should the juridical person have only its registered office or central administration in the territory of the European Union or of Canada respectively, it shall not be considered as a

⁵ The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

⁶ Central administration means the head office where ultimate decision making takes place.

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European Union or Canadian juridical person respectively, unless it engages in substantive business operations⁷ in the territory of the European Union or of Canada, respectively;

A juridical person is:

- (i) "owned" by natural or juridical persons of one of the Member States of the European Union or of Canada if more than 50 per cent of the equity interest in it is beneficially owned by persons of that/a Member State of the European Union or of Canada respectively; and
 - (ii) "controlled" by natural or juridical persons of one of the Member States of the European Union or of Canada if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.
- (g) Notwithstanding the preceding paragraph, shipping companies established outside the European Union or Canada and controlled by nationals of a Member State of the European Union or of Canada, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation in that Member State or in Canada and carry the flag of a Member State or Canada.
- h) 'economic integration agreement' means an agreement substantially liberalising trade in services and establishment pursuant to WTO rules.
- i) 'service supplier' means any person that supplies or seeks to supply a service, including as an investor

SECTION 2

CROSS BORDER SUPPLY OF SERVICES

ARTICLE 3: SCOPE AND COVERAGE

1. This Section applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:
- (a) audio-visual services;
 - (b) national maritime cabotage⁸ and.

⁷ The EC understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws of Canada and having only its registered office or central administration in the territory of Canada, the EC shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Canada.

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- (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) groundhandling services
 - (v) airport operation services

ARTICLE 4: DEFINITIONS

For the purposes of this Section

- (a) cross-border supply of services is defined as the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party
 - (ii) in the territory of a Party to the service consumer of the other Party
- (b) 'services' includes any service in any sector except services supplied in the exercise of governmental authority.

'a service supplied in the exercise of governmental authority' means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

ARTICLE 5: MARKET ACCESS

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for in the specific commitments contained in Annex 7A (Lists of Commitments).
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of an administrative subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7A (Lists of Commitments) are defined as:
- (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test⁹;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

⁸ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

⁹ This subparagraph includes measures which require a service supplier of the other Party to have an establishment within the meaning of Article 7.9 (a) or to be resident in its territory as a condition for the cross-border supply of a service.

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- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹⁰

ARTICLE 6: NATIONAL TREATMENT

1. In the sectors where market access commitments are inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.
2. The treatment accorded under paragraph 1 means, with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like services and service suppliers.
3. A Party may meet the requirement of paragraph 1 and 2 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.
5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

ARTICLE 7: LISTS OF COMMITMENTS

1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).
2. Neither Party may adopt new, or more discriminatory measures with regard to services or services suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

ARTICLE 8: MOST-FAVoured-NATION TREATMENT¹¹

1. With respect to any measures affecting cross-border supply of services covered by this Chapter, unless otherwise provided for in paragraphs 2 and 4, each Party shall accord to services and services suppliers of the other Party a treatment no less favourable than that it

¹⁰ Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

¹¹ Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

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accords to like services and services suppliers of a major trading economy in the context of an economic integration agreement.

2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services, and to which a Party is a signatory.
3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:
 - a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services,
 - b) under any international agreement or arrangement relating wholly or mainly to taxation, or
 - c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)
4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1.12

SECTION 3

ESTABLISHMENT

ARTICLE 9: DEFINITIONS

For purposes of this Section

- (a) "establishment" means:
- (i) the constitution, acquisition or maintenance of a juridical person¹³, or
 - (ii) the creation or maintenance of a branch or representative office within the territory of a Party for the purpose of performing an economic activity;
- (b) "investor" of a Party means any person that seeks to perform or performs an economic activity through setting up an establishment¹⁴;

¹² For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

¹³ The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

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- (c) 'economic activity' includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators.
- (d) 'subsidiary' of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party;
- (e) 'branch' of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

ARTICLE 10: COVERAGE

This Section applies to measures adopted or maintained by the Parties affecting establishment¹⁵ in all economic activities with the exception of

- (a) mining, manufacturing and processing¹⁶ of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- [(d) national maritime cabotage¹⁷, and,]
- (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
 - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) groundhandling services
 - (v) airport operation services

¹⁴ Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor (i.e. the juridical person) shall, nonetheless, through such establishment be accorded the treatment provided for investors under the Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

¹⁵ Investment protection, other than the treatment deriving from Article 7.12 (National Treatment), including investor-state dispute settlement procedures, is not covered by this Chapter.

¹⁶ For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

¹⁷ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law on the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

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ARTICLE 11: MARKET ACCESS

1. With respect to market access through establishment, each Party shall accord establishments and investors of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex 7A (Lists of Commitments).
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of an administrative subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7A (Lists of Commitments) are defined as:
 - (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs tests;
 - (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹⁸.
 - (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
 - (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity.
 - (f) limitations on the total number of natural persons, other than key personnel and graduate trainees as defined in Article 7.17, that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test

ARTICLE 12: NATIONAL TREATMENT

1. In the sectors inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment,¹⁹ each Party shall grant to establishments and investors of the other Party treatment no less favourable than that it accords to its own like establishments and investors.
2. The treatment accorded under paragraph 1 means, with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like establishments and investors, or to those of other provinces or municipalities, whichever is the more favourable.

¹⁸ Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

¹⁹ The obligations in this provision apply also to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.

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3. A Party may meet the requirement of paragraph 1 and 2 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.
4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments and investors of the Party compared to like establishments and investors of the other Party.
5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant investors.

ARTICLE 13: LISTS OF COMMITMENTS

1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to establishments and investors of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).
2. Neither Party may adopt new, or more, discriminatory measures with regard to establishments and investors of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

ARTICLE 14: MOST-FAVOURABLE-NATION TREATMENT²⁰

1. With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in paragraphs 2 and 4, each Party shall accord to establishments and investors of the other Party a treatment no less favourable than that it accords to like establishments and investors of major trading economy in the context of an economic integration agreement.²¹
2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services and establishment, and to which a Party is a signatory.
3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:
 - a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in services or its Annex on Financial Services,
 - b) under any international agreement or arrangement relating wholly or mainly to taxation, or
 - c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)

²⁰ Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

²¹ The obligation contained in paragraph 1 does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

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4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1.22

ARTICLE 15: OTHER AGREEMENTS

Nothing in this Section shall be taken:

- (a) to limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Union and Canada are Parties, and
- (b) to derogate from the international legal obligations of the Parties under those agreements that provide investors of the Parties with more favourable treatment than that provided for under this Agreement.

SECTION 4

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 16: COVERAGE

1. This Section applies to measures of the Parties concerning the entry and temporary stay into their territories of key personnel, graduate trainees, business services sellers, contractual services suppliers and independent professionals in accordance with Article 1 paragraph 5, of this Agreement.
2. For the purpose of this Section:
 - (a) 'Key personnel' means natural persons employed within a juridical person of one Party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of an establishment.

'Key personnel' comprises 'business visitors' responsible for setting up an establishment and 'intra-corporate transferees'.
 - (i) 'Business visitors' means natural persons working in a senior position who are responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party.

²² For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

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- (ii) 'intra-corporate transferees' means natural persons who have been employed by a juridical person of one Party or have been partners in it for at least one year and who are temporarily transferred to an establishment (that may be a subsidiary, branch or head company of the enterprise) in the territory of the other Party. The natural person concerned must belong one of the following categories:

1. Managers:

Persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

- directing the establishment or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees;
- having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

2. Specialists:

Persons working within a juridical person who possess uncommon knowledge essential to the establishment's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

- (b) 'graduate trainees' means natural persons who have been employed by a juridical person of one Party for at least one year, who possess a university degree and who are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods²³.
- (c) 'business services sellers' means natural persons who are representatives of a service supplier of one Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party.
- (d) 'contractual services suppliers' means natural persons employed by a juridical person of one Party which has no establishment in the territory of the other Party and which has concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.²⁴

²³ The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that training be linked to the university degree which has been obtained.

²⁴ The service contract referred to under d) and e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

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- (e) 'independent professionals' means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services²⁵

ARTICLE 17: KEY PERSONNEL AND GRADUATE TRAINEES

1. For every sector liberalised in accordance with Section 3 of this Chapter and subject to any reservations listed in Annex 7A (Lists of Commitments), each Party shall allow investors of the other Party to employ in their establishment natural persons of that other Party provided that such employees are key personnel or graduate trainees as defined in Article 7.17. The temporary entry and stay of key personnel and graduate trainees shall be for a period of up to 3 years for intra-corporate transfers, 90 days in any twelve month period for business visitors, and 1 year for graduate trainees.
2. For every sector liberalised in accordance with Section 3 of this Chapter, the measures which a Party shall not maintain or adopt, unless otherwise specified in Annex 7A (Lists of Commitments), are defined as limitations on the total number of natural persons that an investor may transfer as key personnel or graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

ARTICLE 18: BUSINESS SERVICES SELLERS

For every sector liberalised in accordance with Section 2 or Section 3 of this Chapter and subject to any reservations listed in Annex 7A (Lists of Commitments), each Party shall allow the temporary entry and stay of business services sellers for a period of up to 90 days in any twelve month period.²⁶

ARTICLE 19: CONTRACTUAL SERVICES SUPPLIERS AND INDEPENDENT PROFESSIONALS

1. For the sectors specified in Annex [...] (contractual services suppliers), each Party shall allow the supply of services into its territory by contractual services suppliers of the other Party, through presence of natural persons, subject to the following conditions:
 - (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract for a period not exceeding twelve months.

²⁵ The service contract referred to under d) and e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

²⁶ This paragraph is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Canada and individual EU Member States.

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- (b) The natural persons entering the other Party must be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience²⁷ in the sector of activity which is the subject of the contract.
 - (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level²⁸ and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party applicable where the service is supplied.
 - (d) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during their stay in the other Party.
 - (e) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxemburg, twenty-five weeks, in any twelve month period or for the duration of the contract, whichever is less.
 - (f) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
 - (g) The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws, regulations and requirements of the Party where the service is supplied.
 - (h) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex [...].
2. For the sectors specified in Annex [] (independent professionals), each Party shall allow the supply of services into its territory by independent professionals of the other Party subject to the following conditions:
- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding twelve months.
 - (b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract.
 - (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level²⁹ and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party applicable where the service is supplied.
 - (d) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxemburg, twenty-

²⁷ Obtained after having reached the age of majority.

²⁸ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

²⁹ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

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- five weeks, in any twelve month period or for the duration of the contract, whichever is less.
- (e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract, it does not confer entitlement to exercise the professional title of the Party where the service is provided.
 - (f) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex [...]

SECTION 5

REGULATORY FRAMEWORK

SUB-SECTION 1

PROVISIONS OF GENERAL APPLICATION

ARTICLE 20: MUTUAL RECOGNITION

[text to be provided by Canada]

ARTICLE 21: TRANSPARENCY AND CONFIDENTIAL INFORMATION

1. The Parties shall respond promptly to all requests, by the other Party for specific information [this will need to be coordinated with the Chapter on Transparency]:
 - (a) on international agreements or arrangements, including on mutual recognition, which pertain to or affect this Chapter, and
 - (b) on standards and criteria for licensing and certification of services suppliers, including information concerning the appropriate regulatory or other body to consult regarding such standards and criteria. Such standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection
2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.
3. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of services.
4. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

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5. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.
6. A Party's regulatory authority shall make an administrative decision on a completed application of an investor or a cross-border service supplier of the other Party relating to the supply of a 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 possible 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.

ARTICLE 22: DOMESTIC REGULATION

[EC currently revising its standard text for December 2009]

SUB-SECTION 2

COMPUTER SERVICES

ARTICLE 23: COMPUTER SERVICES

1. In liberalising trade in computer services in accordance with Sections 2, 3 and 4 of this Chapter, the Parties shall comply with the following paragraphs.
2. CPC30 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programmes defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.
3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
 - (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
 - (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration,

³⁰ CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov, 1991.

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- testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or
 - (c) data processing, data storage, data hosting or database services; or
 - (d) maintenance and repair services for office machinery and equipment, including computers; or,
 - (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.
4. Computer and related services enable the provision of other services (e.g., banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g., web-hosting or application hosting) and the content or core service that is being delivered electronically (e.g., banking). In such cases, the content or core service is not covered by CPC 84.

SUB-SECTION 3

POSTAL AND COURIER SERVICES

ARTICLE 24: SCOPE AND DEFINITIONS

1. This Sub-section sets out principles of the regulatory framework for all postal and courier service liberalised in accordance with Sections 2, 3 and 4 of this Chapter.
2. For the purpose of this Sub-section :
 - (a) Universal service means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.
 - (b) A "licence" means an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service.

ARTICLE 25: PREVENTION OF ANTI-COMPETITIVE PRACTICES IN THE POSTAL AND COURIER SECTOR

Appropriate measures shall be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

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ARTICLE 26: UNIVERSAL SERVICES

Any Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

ARTICLE 27: LICENCES

1. Provision of services shall be authorised, wherever possible, upon simple notification. A licence shall only be required for services which fall within the scope of the universal service.
2. Where a licence is required, the following shall be made publicly available:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
 - (b) the terms and conditions of licences.
3. The reasons for the denial of a licence shall be made known to the applicant upon request, and an appeal procedure through an independent body will be established by the Party concerned. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

ARTICLE 28: INDEPENDENCE OF REGULATORY BODIES

The regulatory bodies shall be legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.

SUB-SECTION 4

TELECOMMUNICATIONS SERVICES

(See separate consolidated text)

SUB-SECTION 5

FINANCIAL SERVICES

ARTICLE 39: SCOPE AND DEFINITIONS

1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections 2, 3 and 4 of this Chapter.
2. For the purpose of this Chapter
 - (a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

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A. Insurance and insurance-related services

1. direct insurance (including co-insurance):
 - (a) life;
 - (b) non-life;
2. reinsurance and retrocession;
3. insurance inter-mediation, such as brokerage and agency; and
4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;
2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
3. financial leasing;
4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
5. guarantees and commitments;
6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
8. money broking;
9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

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Draft consolidated CETA text as at 13.1.10

10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 11. provision and transfer of financial information, and financial data processing and related software;
 12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) 'financial service supplier' means any natural or juridical person of a Party that seeks to provide or provides financial services. The term 'financial service supplier' does not include a public entity.
- (c) 'public entity' means:
1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) 'new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party

ARTICLE 40: PRUDENTIAL CARVE-OUT³¹

1. Each Party may adopt or maintain measures for prudential reasons, including:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) ensuring the integrity and stability of a Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.
4. 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 suppliers of the other Party and of financial instruments.

³¹ Any measure which is applied to financial service suppliers established in a Party's territory that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for the purposes of this Agreement. For greater certainty, any such measure shall be taken in line with the provisions of this article.

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ARTICLE 41: EFFECTIVE AND TRANSPARENT REGULATION

1. Each Party shall make its best endeavours to 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 an official publication; or
 - (b) in other written or electronic form.
2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, the Basel Committee's "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the OECD's "Agreement on exchange of information on tax matters", the G-20 "Statement on Transparency and exchange of information for tax purposes" and the Financial Action Task Force's "Forty Recommendations on Money Laundering" and "Nine Special recommendations on Terrorist Financing".

The Parties also take note of the "Ten Key Principles for Information Exchange" promulgated by the Finance Ministers of the G7 Nations, and will take all steps necessary to try to apply them in their bilateral contacts.

ARTICLE 42: SELF-REGULATORY ORGANISATIONS

When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Party in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles 7.6, 7.8, 7.12 and 7.14 by such self-regulatory organisation.

ARTICLE 43: PAYMENT AND CLEARING SYSTEMS

Under terms and conditions that accord national treatment, each Party shall grant to financial services suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to a Party's lender of last resort facilities.

ARTICLE 44: NEW FINANCIAL SERVICES

Each Party shall permit a financial service supplier of the other Party to provide any new financial service that the Party would permit its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for reasons mentioned under Article 40 of this Chapter.

ARTICLE 45: DATA PROCESSING

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.
2. Each Party, reaffirming its commitment³² to protect fundamental rights and freedom of individuals shall adopt adequate safeguards to protect privacy, in particular with regard to the transfer of personal data.

ARTICLE 46: SPECIFIC EXCEPTIONS

1. Nothing in this Section shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Section shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.

SUB-SECTION 6

INTERNATIONAL MARITIME TRANSPORT SERVICES

³² For greater certainty, this commitment indicates the rights and freedoms set out in the Universal Declaration of Human Rights, the UN Guidelines for the Regulation of Computerised Personal Data Files (UN General Assembly Resolution 45/95 of 14 December 1990), and the OECD Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data (adopted by the Council on 23 September 1980).

ARTICLE 47: SCOPE, DEFINITIONS AND PRINCIPLES

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Section 2, 3 and 4 of this Chapter.
2. For the purpose of this Subsection and Sections 2, 3 and 4 of this Chapter:
 - (a) "international maritime transport" includes door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect the right to directly contract with providers of other modes of transport;
 - (b) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - the loading/discharging of cargo to/from a ship;
 - the lashing/unlashing of cargo;
 - the reception/delivery and safekeeping of cargoes before shipment or after discharge;
 - (c) "customs clearance services" (alternatively 'customs house brokers' services') means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
 - (d) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
 - (e) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
 - (f) "freight forwarding services" means (the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information).
 - (g) "feeder services" means the pre- and onward transportation of international cargoes by sea, notably containerised, between ports located in a party.

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3. As regards international maritime transport, the parties agree to ensure effective application of the principle of unrestricted access to cargoes on a commercial basis, the freedom to provide international maritime services, as well as national treatment in the framework of the provision of such services.

In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships or those of any third country, whichever are the better, with regard to, *inter alia*, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.
4. In applying these principles, the parties shall:
- (a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and
- (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.
5. Each Party shall permit international maritime transport service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better.
6. The Parties shall make available to maritime transport service suppliers of the other Party on reasonable and non discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.
7. Each Party shall permit the movement of equipment such as empty containers, not being carried as cargo against payment, between ports of Canada or between ports of a Member State of the Community.
8. Each Party, subject to the authorisation of the competent authority shall permit international maritime transport service suppliers of the other Party to provide feeder services between their national ports.

SUB-SECTION 7

ENERGY

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[Text concerning the obligations and regulatory principles for energy services to be prepared by the EC for December 2009]

SECTION 6

ELECTRONIC COMMERCE

(See separate consolidated text)

SECTION 7

EXCEPTIONS

ARTICLE 50: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
- (a) necessary to protect public security or public morals or to maintain public order³³;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;

³³ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

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- (f) inconsistent with Articles 7.6 and 7.12 on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party³⁴.

ARTICLE 51: SECURITY EXCEPTIONS

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
- (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of supplying a military establishment;
- (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
- (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

[provisions of this article might have to be changed or moved depending on whether there is horizontal security exception]

³⁴ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

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ANNEX 7A

LISTS OF COMMITMENTS

EC PARTY

1. List of commitments in conformity with Article 7.7 (cross-border supply of services)
2. List of commitments in conformity with Article 7.13 (establishment)
3. List of reservations in conformity with Article 7.18 (key personnel and graduate trainees)

CANADA

4. List of commitments in conformity with Article 7.7 (cross-border supply of services)
5. List of commitments in conformity with Article 7.13 (establishment)
6. List of commitments in conformity with Article 7.18 (key personnel and graduate trainees)

INVESTMENT AND SERVICES

CAN TEXT

CROSS-BORDER TRADE IN SERVICES

Article X-01: Scope of Application

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:
 - (a) the production, distribution, marketing, sale and delivery of a service;
 - (b) the purchase or use of, or payment for, a service;
 - (c) the access to and use of distribution and transport systems in connection with the supply of a service;
 - (d) the presence in its territory of a service supplier of the other Party; and
 - (e) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. This Chapter does not apply to:
 - (a) financial services as defined in Chapter XX (Financial Services);
 - (b) air services and related services in support of air services, other than:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system services;
 - (c) procurement by a Party or a state enterprise; or
 - (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.
3. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or

Article X-02: National Treatment

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service suppliers of the Party of which it forms a part.

Article X-03: Most-Favoured-Nation Treatment

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

Article X-04: Market Access

Neither Party may adopt or maintain, either on the basis of its entire territory or on the basis of the territory of a sub-national government, measures that:

- (a) impose limitations on:
 - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
 - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
 - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or,
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

Article X-05: Reservations

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1. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to:
- (a) any existing non-conforming measure that is maintained by a Party at:
 - (i) the national level of government, as set out by that Party in its Schedule to Annex I;
 - (ii) a sub-national level of government, as set out by that Party in its Schedule to Annex I; or
 - (iii) a local level of 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 X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access).
2. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

Article X-06: Domestic Regulation

The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the WTO General Agreement on Trade in Services (GATS) and reaffirm their commitment respecting the development of any necessary disciplines on domestic regulation. To the extent that any disciplines on domestic regulation are adopted under the

GATS, the Parties will, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

Article X-07: Denial of Benefits

A Party may deny the benefits of this Chapter to a service supplier of the other Party:

- (i) where the Party establishes that the service is being supplied by an enterprise owned or controlled by nationals of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or,
- (ii) if the service supplier is an enterprise owned or controlled by persons of a non-Party that has no substantial business activities in the territory of the other Party.

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Article X-08: Definitions

1. For purposes of this Chapter, a reference to a national or sub-national government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government;

2. For purposes of this Chapter:

aircraft repair and maintenance services mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

computer reservation system services mean services supplied by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

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

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party.

but does not include the supply of a service in the territory of a Party by a covered investment as defined in Chapter XY (Investment – [relevant article]), in that territory;

enterprise means an enterprise as defined in Chapter XY (General Definitions), and a branch of an enterprise;

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

selling and marketing of air transport services mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and

service supplier of a Party means a person of that Party that seeks to supply or supplies a service.

INVESTMENT

CHAPTER [XX]

INVESTMENT

Section A – Substantive Obligations

Article X.1: Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
 - (a) investors of the other Party;
 - (b) covered investments; and
 - (c) with respect to Articles X.8 (Performance Requirements), X.12 (Health, Safety and Environmental Measures) and X.13 (Corporate Social Responsibility), all investments in the territory of the Party.

Article X.2: 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 the other 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 measures adopted or maintained by the Party relating to the provision of that cross-border service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter [XY] (Financial Services).
4. Articles [X.04] (Cross-Border Trade in Services – Market Access) and [X.07] (Cross-Border Trade in Services – Domestic Regulation) are hereby incorporated into and made a part of this Chapter and apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.³⁵

Article X.3: National Treatment

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

³⁵ It is understood by the Parties that any reservation taken by a Party pursuant to Article [X.05] (Cross-Border Trade in Services – Reservations) against Article [X.04] (Cross-Border Trade in Services – Market Access) applies to measures of that Party covered under Paragraph 4.

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

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

Article X.4: Most-Favoured-Nation Treatment

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

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

3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

Article X.5: Minimum Standard of Treatment

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

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

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

Article X.6: Compensation for Losses

Notwithstanding paragraph 4(b) of Article X.14 (Reservations and Exceptions), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to compensation for losses suffered by investments in its territory owing to armed conflict, civil strife or a natural disaster.

Article X.7: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons 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 a covered investment be of a particular nationality or be 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 X.8: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory to:

- (a) export a given level or percentage of goods or services;
- (b) achieve a given level or percentage of domestic content;
- (c) 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) 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) 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) transfer technology, a production process or other proprietary knowledge to a person in its territory; or
- (g) supply exclusively from the territory of the Party the goods that such investment produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles X.03 (National Treatment) and X.04 (Most-Favoured-Nation Treatment) apply to the measure.

3. Neither 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. (a) 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.

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- (b) Subparagraph 1(f) does not apply 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.

5. Paragraphs 1 and 3 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

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

7. The provisions of:

- (a) subparagraphs 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) subparagraphs 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) subparagraphs 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 X.9: Expropriation

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex X.9.1 on the clarification of indirect expropriation.

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 the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

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

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

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5. 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 the WTO Agreement.

Article X.10: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the covered investment;
- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles X.6 (Compensation for Losses) and X.9 (Expropriation); and
- (f) payments arising under Section B.

2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange applicable on the date of transfer.

3. 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 offences;
- (d) reports of transfers of currency or other monetary instruments; or

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

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

5. Paragraph 4 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 in subparagraphs 3(a) through 3(e).

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under the WTO Agreement.

[NOTE: If the FTA does not include a Transparency Chapter, an article on transparency will be proposed as Article 11 of the Investment Chapter with its necessary exceptions.]

Article X.11: Subrogation

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency to any right or title held by the investor.

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.

Article X.12: Health, Safety and Environmental Measures

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, 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 the other 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.

Article X.13: Corporate Social Responsibility

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour,

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the environment, human rights, community relations and anti-corruption. The Parties remind those enterprises of the importance of incorporating such corporate social responsibility standards in their practices and internal policies.

Article X.14: Reservations and Exceptions

1. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Boards of Directors) and X.8 (Performance Requirements) do not apply to:

- (a) any existing non-conforming measure that is maintained by:
 - (i) the national level of government, as set out by that Party in its Schedule to Annex I,
 - (ii) a sub-national level of government, as set out by that Party in its Schedule to Annex I, or
 - (iii) a local level of 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 X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Board of Directors) and X.8 (Performance Requirements).

2. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Board of Directors) and X.8 (Performance Requirements) 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.

3. In respect of intellectual property rights, a Party may derogate from Article X.3 (National Treatment), Article X.4 (Most-Favoured-Nation Treatment) and subparagraph 1(f) of Article X.8 (Performance Requirements) in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

4. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment) and X.7 (Senior Management and Board of Directors) 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.

Article X.15: Special Formalities and Information Requirements

1. Nothing in Article X.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement 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 the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles X.3 (National Treatment) and X.4 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its covered investment, to provide information concerning that investment solely for informational or statistical purposes, provided that such requests are reasonable and not unduly burdensome. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered 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 laws.

Article X.16: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party or of the denying 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.

Section B – Settlement of Disputes between an Investor and the Host Party**Article X.17: Purpose**

Without prejudice to the rights and obligations of the Parties under Chapter [XY] (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

Article X.18: Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise

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

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

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

2. An investor of a Party, on behalf of an enterprise of the respondent 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 respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

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

3. An investor of a Party cannot submit or continue to pursue a claim under this Section where:

- (a) the investor is also a national of a non-Party and submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party; or
- (b) the investment of the investor in the territory of the respondent Party is held indirectly through an investor of a non-Party, and the investor of the non-Party submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party.

Article X.19: Conditions Precedent to Submission of a Claim to Arbitration

1. The disputing parties shall hold consultations in an attempt to resolve the issue amicably before an investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. The place of consultation shall be the capital of the respondent Party unless the disputing parties otherwise agree.

2. An investor may submit a claim to arbitration under Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

- (a) the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 90 days prior to submitting the claim, which notice shall specify:
 - (i) the name and address of the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,
 - (ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,
 - (iii) the legal and the factual basis for the claim, including the measures at issue, and
 - (iv) the relief sought and the approximate amount of damages claimed;

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- (d) the investor has delivered evidence establishing that it is an investor of the other Party with its notice of intent to submit a claim to arbitration under subparagraph 2(c);

and

- (e) in the case of a claim submitted under paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):
- (i) not 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 thereby, and
 - (ii) the investor and, where the claim is for loss or damage to an interest in an enterprise of the respondent 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 either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, 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 respondent Party;
- (f) in the case of a claim submitted under paragraph 2 of Article X.18 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):
- (i) not 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 thereby, and
 - (ii) both the investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, 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 respondent Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the respondent Party and shall be included in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(c)(ii) or 2(f)(ii) shall not be required only if a respondent Party has deprived the investor of control of an enterprise.

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Article X.20: Submission of a Claim to Arbitration

1. An investor that meets the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) may submit a claim to arbitration under:
 - (a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent Party and the Party of the investor are parties to the ICSID Convention;
 - (b) the Additional Facility Rules of ICSID, provided that either the respondent 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 Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any supplemental rules of its own making. Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.
3. The arbitration rules applicable under paragraph 1 shall govern the arbitration, except to the extent modified by this Agreement and as supplemented by any rules adopted by the Commission under paragraph 2.
4. 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 is received by the Secretary-General of ICSID;
 - (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or
 - (c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.
5. Each Party shall notify the other Party by diplomatic note of the place of delivery of notices and other documents.

Article X.21: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section. Failure to meet any of the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) shall nullify that consent.
2. The consent given in paragraph 1 and the submission by an investor of a claim to arbitration shall satisfy the requirement of:

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- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- (b) Article II of the New York Convention for an agreement in writing.

Article X.22: Arbitrators

1. Except in respect of a Tribunal established under Article X.24 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.
2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either disputing party.
3. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.
4. If a Tribunal, other than a Tribunal established under Article X.24 (Consolidation), has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General of ICSID to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

Article X.23: Agreement to Appointment of Arbitrators

1. 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 paragraph 2 of Article X.22 (Arbitrators) or on a ground other than nationality:
 - (a) the respondent Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
 - (b) an investor referred to in paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
 - (c) an investor referred to in paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

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Article X.24: 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 submitted to arbitration under Article X.20 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest 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 that the Secretary-General of ICSID establish a Tribunal and shall specify in the request:
 - (a) the name of the respondent Party or 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 a copy of the request to the respondent Party or investors against which the order is sought.
5. Within 60 days of receipt of the request, the Secretary-General of ICSID shall establish a Tribunal comprising three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent Party, one member who is a national of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a national of either Party.
6. Where a Tribunal has been established under this Article, an investor that has submitted a claim to arbitration under Article X.20 (Submission of a Claim to Arbitration) 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 any order made under paragraph 2, and shall specify in the request:
 - (a) the name and address of the investor;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.

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

8. A Tribunal established under Article X.20 (Submission of a Claim to Arbitration) shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established or instructed 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 X.20 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

Article X.25: Documents to, and Participation of, the Other Party

1. The respondent Party shall deliver to the other Party to this Agreement a copy of the notice of intent to submit a claim to arbitration and other documents no later than 30 days after the date that such documents have been delivered to the respondent Party. The other Party shall be entitled, at its cost, to receive from the respondent Party a copy of the evidence that has been tendered to the Tribunal, copies of pleadings filed in the arbitration, and written argument of the disputing parties. The Party receiving such information shall treat the information as if it were a respondent Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

Article X.26: Place of Arbitration

The disputing parties may agree on the place of arbitration under the arbitral rules applicable under paragraph 1 of Article X.20 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the Tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of either Party or of a non-Party that is a party to the New York Convention.

Article X.27: Public Access to Hearings and Documents

1. Any Tribunal award under this Section shall be publicly available, subject to the redaction of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available unless the disputing parties otherwise agree, subject to the redaction of confidential information.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

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4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Chapter, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section shall be construed to require a Party to furnish or allow access to information that it may withhold in accordance with Article [X.02] (Exceptions – National Security) or Article [X.05] (Exceptions – Disclosure of Information).

Article X.28: Submissions by a third party

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any third-party submission does not disrupt the proceedings and does not unduly burden or unfairly prejudice either disputing party.

2. An application to the Tribunal for leave to file a third-party submission, and the filing of a submission if allowed by the Tribunal, shall be made in accordance with Annex X.28.

Article X.29: 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. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award under this Section shall be consistent with such interpretation.

2. Where a respondent Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the respondent Party, the Tribunal shall request the interpretation of the Commission on the issue. Within 60 days of the delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Commission fails to submit its interpretation within 60 days, the Tribunal shall decide the issue.

Article X.30: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless both disputing parties disagree, a Tribunal may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and

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conditions as the disputing parties may agree.

Article X.31: Interim Measures of Protection and Final Award

1. 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 X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For purposes of this paragraph, an order includes a recommendation.

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

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.

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

3. Subject to paragraph 2, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Behalf of an Enterprise):

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

4. A Tribunal may not award punitive damages.

Article X.32: 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 that 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

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

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

- (i) 90 days have elapsed from the date the award 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. 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.

Article X.33: Receipts under Insurance or Guarantee Contracts

In an arbitration under this Section, a **respondent Party** shall not assert as a defence, counterclaim, right of setoff, or for any other reason 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.

Article X.34: Exclusions

The dispute settlement provisions of this Section and of Chapter [XY] (Dispute Settlement) do not apply to the matters referred to in Annex X.34 (Exclusions from Dispute Settlement).

Section C – Definitions

Article X.35: Definitions

For the purpose of this Chapter:

confidential information means confidential business information and information that is privileged or otherwise protected from disclosure under the law of a Party;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

disputing party means either the respondent Party or the investor that has made a claim under Section B;

enterprise means an enterprise as defined in Article [X.05] (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;

existing means in effect on the date of entry into force of this Agreement;

ICSID means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

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

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

investment means:

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise;
- (d) a loan to an enterprise;
- (e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that

enterprise on dissolution;

- (g) 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;
- (h) intellectual property rights; and
- (i) any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;

but **investment does not mean**,

- (j) claims to money arising 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 the other Party, or
 - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- (k) any other claims to money,

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

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 a national or an enterprise of a Party, that seeks to make, is making or has made an investment;

measure includes any law, regulation, procedure, requirement or practice;

national means:

- (a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada, and
- (b) in the case of ...

except that:

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a natural person who is a dual citizen of Canada and shall be deemed to be exclusively a national of the Party of his or her dominant and effective nationality; and

a natural person who is a citizen of one Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of his or her citizenship;

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

person means a natural person or an enterprise;

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

Tribunal means an arbitration tribunal established under Article X.20 (Submission of a Claim to Arbitration) or X.24 (Consolidation); 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 15 December 1976.

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Annex X.9.1

Indirect Expropriation

The Parties confirm their shared understanding that:

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

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Submissions by a third party

1. The application for leave to file a third-party submission shall:
 - (a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;
 - (b) be no longer than five typed pages;
 - (c) describe the applicant, including, where relevant, its membership and legal status (*e.g.*, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
 - (d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;
 - (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
 - (f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;
 - (g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;
 - (h) explain why the Tribunal should accept the submission; and
 - (i) be made in a language of the arbitration.
2. The submission filed by a third party shall:
 - (a) be dated and signed by the person filing the submission;
 - (b) be concise, and in no case longer than 20 typed pages, including any appendices;
 - (c) set out a precise statement supporting the applicant's position on the issues; and
 - (d) only address matters within the scope of the dispute.

Exclusions from Dispute Settlement

1. 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 of this Chapter or of Chapter [XY] (Dispute Settlement).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article [X.02] (Exceptions – National Security) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement).

CAN TEXT

TEMPORARY ENTRY FOR BUSINESS PERSONS

Article X-01: General Principles

This Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and to establish transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

Article X-02: General Obligations

Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article X-01 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

Article X-03: Grant of Temporary Entry

1. Each Party shall grant temporary entry to business persons who otherwise comply with its immigration measures applicable to temporary entry in accordance with this Chapter, including the provisions of Annex X-03.
2. A Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might affect adversely:
 - (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
 - (b) the employment of any person who is involved in such dispute.
3. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

Article X-04: Provision of Information

1. Further to Article X (Transparency - Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:
 - (a) provide to the other Party relevant materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and

- (b) no later than six months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable business persons of the other Party to become acquainted with those requirements.

2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

Article X-05: Contact Points

1. The Parties hereby establish the following Contact Points:
 - (a) in the case of Canada:

Director
Temporary Resident Policy
Immigration Branch
Citizenship and Immigration Canada
 - (b) in the case of the European Commission:

[...]or their respective successors.
2. The Contact Points shall exchange information as described in Article X-04 and shall meet as required to consider matters pertaining to this Chapter, such as:
 - (a) the implementation and administration of this Chapter;
 - (b) the development and adoption of common criteria as well as interpretations for the implementation of the Chapter;
 - (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; and
 - (d) proposed modifications to this Chapter.

Article X-06: Dispute Settlement

1. A Party may not initiate proceedings under Chapter XY (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
 - (a) the matter involves a pattern of practice;
 - (b) the business person of that Party has exhausted the normal administrative remedies regarding the particular matter; and
 - (c) the Contact Points have been unable to resolve the issue.

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2. The remedies referred to in paragraph (1) (b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

Article X-07: Relation to Other Chapters

Except for:

(a) this Chapter and other Chapters in this Agreement, that is, Chapters XY (Objectives), XY (General Definitions), XY (Transparency), XY (Institutional Arrangements) and XY (Final Provisions), and

(b) Articles X-1(Contact Points) and X-4 (Administrative Proceedings),

no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

Article X-08: Definitions

For purposes of this Chapter:

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

management trainee on professional development means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

professional means a national of a Party who is engaged in a specialty occupation³⁶ requiring:

(a) theoretical and practical application of a body of specialized knowledge, and the appropriate certification or license to practice; and

(b) attainment of a post-secondary degree in the specialty requiring four or more years of study as a minimum for entry into the occupation³⁷ ;

specialist means an employee who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures;

technician means a national of a Party who is engaged in a specialty occupation³⁸ requiring:

³⁶ With respect to Canada, a professional specialty occupation shall mean an occupation which falls within the National Occupation Classification (NOC) levels O and A.

³⁷ With respect to Canada, these requirements are defined in the NOC.

³⁸ With respect to Canada, a technical specialty occupation is an occupation which falls within the NOC level B.

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(a) theoretical and practical application of a body of specialized knowledge, and the appropriate certification or license to practice; and

(b) attainment of a post-secondary or technical degree requiring one or more years of study, or the equivalent of such a degree, as a minimum for entry into the occupation³⁹; and

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

³⁹ With respect to Canada, these requirements are defined in the NOC.

CAN TEXT

TEMPORARY ENTRY FOR BUSINESS PERSONS

Section A - Business Visitors

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix X-03.A.1, without requiring that person to obtain a work permit or other authorization, provided that the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship or permanent resident status of a Party;
- (b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix X-03.A.1 and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

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

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Neither Party may:

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

4. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section B – [Traders and]40 Investors

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to:

- (a) [carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought, or]41
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

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

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

40 This category, including the definition, is currently under review.

41 Ibid

Section C - Intra-Company Transferees

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person employed by an enterprise in the territory of the other Party who seeks to render services to that enterprise's subsidiary or affiliate in its territory as an executive or manager, a specialist or a management trainee on professional development, provided that the business person otherwise complies with the immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.
2. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
 - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.
3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section D – Professionals and Technicians

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to engage in an occupation at a professional or technical level in accordance with Appendix X-03.D.1, provided the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:
 - (a) proof of citizenship or permanent resident status of a Party; and
 - (b) documentation demonstrating that the business person is seeking to enter the other Party to provide pre-arranged professional services in the field for which the business person has the appropriate qualifications.
2. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
 - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.
3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

Section E – Spouses

1. Each Party shall grant temporary entry and provide a work permit or other authorization to the spouse of a business person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees) or Section D (Professionals and Technicians), provided the spouse otherwise complies with existing immigration measures applicable to temporary entry.
2. Neither Party may:
 - (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
 - (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.
3. Notwithstanding paragraph 2, a Party may require the spouse of a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose nationals would be affected with a view to avoiding the imposition of the requirement.

Meetings and Consultations

Business persons attending meetings, seminars or conferences, or engaged in consultations with business associates.

Research and Design

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

Growth, Manufacture and Production

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

Marketing

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

Trade-fair and promotional personnel attending a trade convention.

Sales

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

Buyers purchasing for an enterprise located in the territory of the other Party.

Distribution

Transportation operators transporting goods or passengers from the territory of a Party to the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

After-Sales or After-Lease Service

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

General Service

Professionals and technicians engaging in a business activity at a professional or technician level as set out in Appendix X-03.D.

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

APPENDIX [X-03.D.1]
PROFESSIONALS AND TECHNICIANS

1. Professionals

Professionals, as defined in Article X-08, may seek temporary entry under Section C of Annex X-03, except the following professionals:

(a) professionals in all health, education and social services sectors and related sectors, including:

- (i) managers in health/education/social & community services;
- (ii) physicians/dentists/optometrists/chiropractors/other health professions;
- (iii) pharmacists, dietitians & nutritionists;
- (iv) therapy & assessment professionals;
- (v) nurse supervisors & registered nurses;
- (vi) psychologists/social workers;
- (vii) university professors & assistants;
- (viii) college & other vocational instructors; and
- (ix) secondary/elementary school teachers & counsellors;

(b) professionals engaged in activities related to cultural industries as defined in Article X (Exceptions - Definitions) as well as:

- (i) managers in libraries, archives, museums and art galleries; and
- (ii) creative & performing artists;

(c) recreation, sports and fitness program and service directors;

(d) managers in telecommunication carriers;

(e) managers in postal and courier services;

(f) Managers in Manufacturing;

(g) Managers in Utilities;

(h) Managers in Construction and Transportation; and

(i) Judges, Lawyers and Notaries except foreign legal consultants.

2. Technicians

Technicians, as defined in Article X-08, who may seek temporary entry under Section D of Annex X-03 are only:

(a) civil engineering technologists and technicians;

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- (b) electrical and electronics engineering technologists and technicians⁴²;
- (c) mechanical engineering technologists and technicians;
- (d) industrial engineering and manufacturing technologists and technicians;
- (e) construction inspectors and estimators;
- (f) engineering inspectors, testers and regulatory officers;
- (g) supervisors in the following fields: machining and related activities; printing and related activities; mining and quarrying; oil and gas drilling and service; mineral and metal processing; petroleum, gas and chemical processing and utilities; food, beverage and tobacco processing; plastic and rubber products manufacturing; forest products processing; and textile processing;
- (h) contractors and supervisors in the following fields: electrical trades and telecommunications; pipefitting trades; metal forming, shaping and erecting trades; carpentry trades; mechanic trades; heavy construction equipment crews; and other construction trades, installers, repairers and servicers;
- (i) electricians⁴³;
- (j) plumbers;
- (k) industrial instrument technicians and mechanics;
- (l) aircraft instrument, electrical and avionics mechanics, technicians and inspectors;
- (m) underground production and development miners;
- (n) oil and gas well drillers, servicers and testers;
- (o) graphic designers and illustrators;
- (p) interior designers;
- (q) chefs;
- (r) computer and information system technicians; and
- (s) international selling and purchasing agents.

⁴² This includes electronic service technicians.

⁴³ This includes industrial electricians.