PART III
INVESTMENT, SERVICES AND RELATED MATTERS

CHAPTER 10
INVESTMENT

Section A - Definitions

Article 10.1: Definitions

For purposes of this Chapter:

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

disputing parties means the disputing investor and the disputing Party;

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

disputing party means the disputing investor or the disputing Party;

enterprise means an "enterprise" as defined in Article 2.1, and a branch of an enterprise;

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

financial institution means any natural person or enterprise of a Party wishing to supply or supplying financial services under the law of the Party in whose territory it is located;

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

ICSID means the International Center for Settlement of Investment Disputes;

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

investment means every kind of asset that an investor owns or controls, directly or indirectly, and that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits and the assumption of risk. Forms that an investment may take include, but are not limited to:

(a) an enterprise;
(b) shares, stocks, and other forms of equity participation in an enterprise;
(c) bonds, debentures, loans, and other debt instruments of an enterprise;
(d) rights under contracts, including turnkey, construction, management,

production, concession or revenue-sharing contracts;

(e) claims to money established and maintained in connection with the conduct of commercial activities;

(f) intellectual property rights;

(g) rights conferred pursuant to domestic law or contract such as concessions, licenses, authorizations and permits, except for those that do not create any rights protected by domestic law; and

(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens and pledges;

but **investment** does not mean,

(i) claims to money that arise solely from:

(i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party; or

(ii) the extension of credit in connection with a commercial transaction, such as trade financing; and

(j) an order entered in a judicial or administrative action.

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

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of such a Party, that makes a juridical act in the territory of the other Party, towards materializing an investment within it, that submits capital or, when applicable, is making or has made an investment;

investor of a non-Party means an investor other than an investor of a Party;

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

Secretary-General means the Secretary-General of ICSID;

transfers means transfers and international payments;

Tribunal means an arbitration tribunal established under Article 10.24 or 10.30;

TRIMS Agreement means Agreement on Trade-Related Investment Measures, which is part of the WTO Agreement; and

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

Section B - Investment

Article 10.2: Scope and Coverage

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

(a) investors of the other Party;

(b) investments of investors of the other Party in the territory of the Party; and
(c) with respect to Articles 10.7 and 10.18, all investments in the territory of the Party.

2. This Chapter applies to the existing investments at the date of the entry into force of this Agreement, as well as to the investments made or acquired after this date.

3. This Chapter does not apply to:
(a) measures adopted or maintained by a Party relating to investors of the other Party, and investments of such investors, in financial institutions in the Party's territory; and
(b) claims arising out of events which occurred, or claims which had been raised, prior to the entry into force of this Agreement.

4. Nothing in this Chapter shall be construed to prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

5. Notwithstanding paragraph 4, if services provided in the exercise of governmental authority are provided in the territory of a Party such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education**,** public training, health, and child care on a commercial basis or in competition with one or more service providers, those services are covered by the provisions of this Chapter.

Article 10.3: 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.

2. Each Party shall accord to investments of investors of the other Party 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.

Article 10.4: Most-Favoured-Nation Treatment

1. Each Party shall accord to investments of investors of the other Party made or materialized in accordance with the laws and regulations of the other Party, and investors of the other Party who have made or materialized such investments, treatment no less favorable than it accords, in like circumstances, to investments made or materialized by investors of any non-Party or investors of such investments.

2. If a Party accords more favorable treatment to investments of investors of a non- Party or investors of a non-Party by an agreement establishing, *inter alia*,

a free trade area, a customs union, a common market, an economic union or any other form of regional economic organization to which the Party is a member, it shall not be obliged to accord such treatment to investments of the investors of the other Party or the investors of the other Party.

3. Notwithstanding paragraph 2, if a Party makes any further liberalization, in conformity with Articles 10.9.1 and 10.9.2 by an agreement with a non-Party, it shall afford adequate opportunity to the other Party to negotiate treatment granted therein on a mutually advantageous basis with a view to securing an overall balance of rights and obligations.

Article 10.5: Minimum Standard of Treatment

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

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

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

Article 10.6: Losses and Compensation

Investors of a Party whose investments suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar situations, and such losses as ones resulting from requisition or destruction of property, which was not caused in combat action or was not required by the necessity of the situation, in the territory of the other Party, shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other forms of settlement, no less favorable than that which the latter Party accords to its own investors or to investors of any non-Party, whichever is more favourable to the investors concerned.

Article 10.7: 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:

(a) to export a given level or percentage of goods or services;
(b) to achieve a given level or percentage of domestic content;
(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
(d) to relate in any way the volume or value of imports to the volume

or value of exports or to the amount of foreign exchange inflows associated with such investment;

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

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition law or to act in a manner not inconsistent with other provisions of this Agreement; or

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

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 10.3 and 10.4 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, in compliance with any of the following requirements:

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

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

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

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

4. Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, in 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. In the event of any inconsistency between this paragraph and the TRIMS Agreement, the latter shall prevail to the extent of the inconsistency.

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

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

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

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

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

7. The provisions of:
   (a) subparagraphs 1(a), (b) and (c), and 3(a) and (b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
   (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b) shall not apply to procurement by a Party or a state enterprise; and
   (c) subparagraphs 3(a) and (b) shall not apply to requirements imposed by the importing Party relating to the content of goods necessary to qualify for preferential tariff or preferential quotas.

8. This Article does not preclude the application of any commitment, obligation or requisite between private parties.

Article 10.8: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of a Party that is an investment of an investor of the other Party appoint to senior management positions individuals of any particular nationality.

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

Article 10.9: Reservations and Exceptions

1. Articles 10.3, 10.7 and 10.8 shall not apply to:
   (a) any existing nonconforming measure that is maintained by:
      (i) a Party at the national level, as set out in its Schedule to Annex I; or
      (ii) a local government;
   (b) the continuation or prompt renewal of any nonconforming measure referred to in subparagraph (a); or
   (c) an amendment to any nonconforming 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 10.3, 10.7 and 10.8.

2. Articles 10.3, 10.7 and 10.8 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Neither Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

4. Nothing in this Chapter shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which both Parties are party, including TRIPS Agreement and other treaties concluded under the auspices of the World Intellectual Property Organization.

5. Articles 10.3 and 10.8 shall 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.

6. Articles 10.3, 10.7 and 10.8 shall not apply to any voluntary and special investment regime, as is established in Annex 10.9.6.

Article 10.10: Future Liberalization

Through future negotiations, to be scheduled every two years by the Commission after the date of entry into force of this Agreement, the Parties will engage in further liberalisation with a view to reaching the reduction or elimination of the remaining restrictions scheduled in conformity with paragraphs 1 and 2 of Article 10.9 on a mutually advantageous basis and securing an overall balance of rights and obligations.

Article 10.11: Transfers

1. Except as provided in Annex 10.11, each Party shall permit all transfers relating to an investment of an investor of the other Party in the territory of the Party to be made freely and without delay. Such transfers include:
   (a) the initial capital and additional amount to maintain or increase an investment;
   (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
   (c) proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;
   (d) payments made under a contract entered into by the investor, or its investment, including payments made pursuant to a loan agreement;
   (e) payments made pursuant to Article 10.13; and
   (f) payments arising under Section C.

2. Each Party shall permit transfers to be made in a freely usable or convertible currency at the market rate of exchange prevailing on the date of transfer.

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

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:
   (a) bankruptcy, insolvency or the protection of the rights of creditors;
   (b) issuing, trading or dealing in securities;
   (c) criminal or penal offenses;
   (d) reports of transfers of currency or other monetary instruments; or
   (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

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

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

Article 10.12: Exceptions and Safeguard Measures

1. Where, in exceptional circumstances, payments and capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party, the Party concerned may take safeguard measures with regard to capital movements that are strictly necessary for a period not exceeding one year. The application of safeguard measures may be extended through their formal reintroduction.

2. The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.

Article 10.13: Expropriation and Compensation

1. Neither Party may, directly or indirectly, nationalize or expropriate an investment of an investor of the other Party in its territory, except:
(a) for a public purpose;
(b) on a non-discriminatory basis;
(c) in accordance with due process of law and Article 10.5(1); and
(d) on payment of compensation in accordance with paragraphs 2 through 6.

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

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

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

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

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

Article 10.11.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the TRIPS Agreement.

Article 10.14: Subrogation

1. Where a Party or an agency authorized by that Party has granted a contract of insurance or any form of financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other Party and when payment has been made under this contract or financial guarantee by the former Party or the agency authorized by it, the latter Party shall recognize the rights of the former Party or the agency authorized by the Party by virtue of the principle of subrogation to the rights of the investor.

2. Where a Party or the agency authorized by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party making the payment, pursue those rights and claims against the other Party.

Article 10.15: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of investments by investors of the other Party, such as the 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 investments of investors of the other Party pursuant to this Chapter.

2. Notwithstanding Article 10.3 or 10.4, a Party may require an investor of the other Party, or its investment in its territory, to provide routine information concerning that investment solely for informational or statistical purposes. The Party shall protect such business information that is confidential from any disclosure that would prejudice the competitive position of the investor or the investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 10.16: Relation to Other Chapters

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

2. The 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 the provision of that cross-border service. This Chapter applies to that Party's treatment of the

posted bond or financial security.

Article 10.17: Denial of Benefits

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

(a) does not maintain diplomatic relations with the non-Party; or

(b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. Subject to prior notification and consultation in accordance with Articles 17.4 and 19.4, a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 10.18: Environmental Measures

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

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

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

Article 10.19: Purpose

Without prejudice to the rights and obligations of the Parties under Chapter 19, this Section establishes a mechanism for the settlement of investment disputes that assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal.

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

1. Subject to Annex 10.20, an investor of a Party may submit to arbitration

under this Section a claim that the other Party has breached an obligation under Section B or Article 14.8, and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

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

Article 10.21: Claim by an Investor of a Party on Behalf of an Enterprise

1. Subject to Annex 10.20, an investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls, directly or indirectly, may submit to arbitration under this Section a claim that the other Party has breached an obligation under Section B or Article 14.8, and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

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

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 10.20 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 10.24, the claims should be heard together by a Tribunal established under Article 10.30, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

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

Article 10.22: Settlement of a Claim through Consultation and Negotiation

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

Article 10.23: Notice of Intent to Submit a Claim to Arbitration

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

(a) the name and address of the disputing investor and, where a claim is made under Article 10.21, the name and address of the enterprise;
(b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
(c) the issues and the factual basis for the claim; and
(d) the relief sought and the approximate amount of damages claimed.

Article 10.24: Submission of a Claim to Arbitration

1. Provided that six months have elapsed since the events giving rise to a claim, a disputing investor may submit the claim to arbitration under:

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

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

(c) the UNCITRAL Arbitration Rules.

2. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section.

Article 10.25: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim under Article 10.20 to arbitration only if:

(a) the investor and the enterprise, that is a juridical person that the investor owns or controls, directly or indirectly, have not submitted the same claim before any administrative tribunal or court of the disputing Party;

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

(c) the investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls, directly or indirectly, the enterprise, waive their right to initiate before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.20, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim under Article 10.21 to arbitration only if:

(a) both the investor and the enterprise that is a juridical person that the investor owns or controls, directly or indirectly, have not submitted the same claim before any administrative tribunal or court of the disputing Party;

(b) both the investor and the enterprise consent to arbitration in accordance with the procedures set out in this Agreement; and

(c) both the investor and the enterprise waive their rights to initiate before any administrative tribunal or court under the law of a Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 10.21, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. Once a disputing investor concerned submits the dispute for resolution before any administrative tribunal or court under the law of a Party, the investor may not thereafter allege the measure to be such a breach referred to in Article 10.20 or 10.21 in an arbitration under this Section.

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

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

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

(b) Article 10.24.1(b) shall not be applicable.

Article 10.26: Consent to Arbitration

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

2. The consent given under paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirements of:

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

(b) Article II of the New York Convention for an agreement in writing.

Article 10.27: Number of Arbitrators and Method of Appointment

Except in respect of a Tribunal established under Article 10.30, and unless the disputing parties otherwise agree, the Tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement between the disputing parties.

Article 10.28: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing Parties are Unable to Agree on a Presiding Arbitrator

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

2. If a Tribunal, other than a Tribunal established under Article 10.30, has not been constituted within 90 days from the date that a claim is submitted to arbitration, the Secretary-General, on the request of either disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall be appointed in accordance with paragraph 3.

3. The Secretary-General shall appoint the presiding arbitrator from the roster of presiding arbitrators referred to in paragraph 4, provided that the presiding arbitrator shall not be a national of the disputing Party or a national of the

Party of the disputing investor. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either of the Parties.

4. On the date of entry into force of this Agreement, the Parties shall establish, and thereafter maintain, a roster of 30 presiding arbitrators, none of whom may be a national of a Party, meeting the qualifications of the Convention and rules referred to in Article 10.24 and experienced in international law and investment matters. The roster members shall be appointed by mutual agreement.

Article 10.29: Agreement to Appointment of Arbitrators

For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on Article 10.28.3 or on a ground other than nationality:

(a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) a disputing investor referred to in Article 10.20 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor agrees in writing to the appointment of each individual member of the Tribunal; and

(c) a disputing investor referred to in Article 10.21.1 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the disputing investor and the enterprise agree in writing to the appointment of each individual member of the Tribunal.

Article 10.30: Consolidation

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

2. Where a Tribunal established under this Article is satisfied that claims have been submitted to arbitration under Article 10.24 that have a question of law or fact in common, the Tribunal may, in the interests of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

(a) assume jurisdiction over, and hear and determine together, all or part of the claims; or

(b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request the Secretary-General to establish a Tribunal and shall specify in the request:

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

(b) the nature of the order sought; and

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

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

5. Within 60 days of receipt of the request, the Secretary-General shall establish a Tribunal comprising three arbitrators. The Secretary-General shall appoint the presiding arbitrator from the roster referred to in paragraph 4 of Article 10.28. In the event that no such presiding arbitrator is available to serve, the Secretary-General shall appoint, from the ICSID Panel of Arbitrators, a presiding arbitrator who is not a national of either Party. The Secretary-General shall appoint the two other members from the roster referred to in paragraph 4 of Article 10.28 and to the extent not available from that roster, from the ICSID Panel of Arbitrators, and to the extent not available from that Panel, in the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 10.20 or 10.21 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

(a) the name and address of the disputing investor;
(b) the nature of the order sought; and
(c) the grounds on which the order is sought.

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

8. A Tribunal established under Article 10.24 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 10.24 be stayed, unless the latter Tribunal has already adjourned its proceedings.

Article 10.31: Notice

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

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

2. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 3 of Article 10.30:

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

by the disputing Party.

3. A disputing Party shall deliver to the Secretariat a copy of a request made under paragraph 6 of Article 10.30 within 15 days of receipt of the request.

4. The Secretariat shall maintain a public register of the documents referred to in paragraphs 1, 2 and 3.

5. A disputing Party shall deliver to the other Party:
   (a) written notice of a claim that has been submitted to arbitration no later than 30 days after the date that the claim is submitted; and
   (b) copies of all pleadings filed in the arbitration.

Article 10.32: Participation by a Party

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

Article 10.33: Documents

1. A Party shall be entitled to receive from the disputing Party, at the cost of the requesting Party, a copy of:
   (a) the evidence that has been tendered to the Tribunal; and
   (b) the written argument of the disputing parties.

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

Article 10.34: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold an arbitration in the territory of a Party that is party to the New York Convention, selected in accordance with:
   (a) the ICSID Additional Facility Rules if the arbitration is under those Rules or the ICSID Convention; or
   (b) the UNCITRAL Arbitration Rules if the arbitration is under those Rules.

Article 10.35: Governing Law

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

2. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section.

Article 10.36: Interpretation of Annexes

1. Where a disputing Party asserts as a defense that the measure alleged to

be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, upon request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

2. Further to paragraph 2 of Article 10.35, a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 10.37: Expert Reports

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, a Tribunal, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 10.38: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 10.20 or 10.21. For purposes of this paragraph, an order includes a recommendation.

Article 10.39: Final Award

1. Where a Tribunal makes a final award against a Party, the Tribunal may award, separately or in combination, only:
   (a) monetary damages and any applicable interest; and
   (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

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

3. Subject to paragraphs 1 and 2, where a claim is made under Article 10.21.1:
   (a) an award of restitution of property shall provide that restitution be made to the enterprise;
   (b) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise; and
   (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic

law.

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

Article 10.40: Finality and Enforcement of an Award

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

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

3. A disputing party may not seek enforcement of a final award until:
   (a) in the case of a final award made under the ICSID Convention:
      (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
      (ii) revision or annulment proceedings have been completed; and
   (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
      (i) three months have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award; or
      (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. If a disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by a Party whose investor was a party to the arbitration, shall establish a panel under Article 19.6. The requesting Party may seek in such proceedings:
   (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
   (b) a recommendation that the Party abide by or comply with the final award.

6. A disputing investor may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 5.

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

Article 10.41: General Provision

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:
   (a) the request for arbitration under paragraph 1 of Article 36 of the

ICSID Convention has been received by the Secretary-General;

(b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules has been received by the Secretary-General; or

(c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10.41.2.

Receipts under Insurance or Guarantee Contracts

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

Publication of an Award

4. Annex 10.41.4 applies to the Parties specified in that Annex with respect to publication of an award.

Article 10.42: Exclusions

Without prejudice to the applicability or non-applicability of the dispute settlement provisions of this Section or of Chapter 19 to other actions taken by a Party pursuant to Article 20.2, 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 investment of such an investor, pursuant to that Article shall not be subject to such provisions.

Section D - Investment and Cross-Border Trade in Services Committee

Article 10.43:Investment and Cross-Border Trade in Services Committee

1. The Parties hereby establish an Investment and Cross-Border Trade in Services Committee, comprising representatives of each Party, in accordance with Annex 10.43.

2. The Committee shall meet at least once a year, or in any time at request of a Party or the Commission.

3. The Committee shall perform, *inter alia,* the following functions:

(a) to overlook the execution and administration of this Chapter and Chapter 11;

(b) to discuss the subjects of bilateral interest regarding investment and cross-border services; and

(c) to examine subjects related to investment and cross-border services, which are being discussed at other international fora.

Annex 10.9.6

1. Decree Law 600 (1974), the Foreign Investment Statute, is a voluntary and special investment regime for Chile.

2. As an alternative to the common regime for the entry of capital into Chile, potential investors may apply to the Foreign Investment Committee to be subject to the regime set out in Decree Law 600.

3. The obligations and commitments contained in this Chapter, do not apply to Decree Law 600, Foreign Investment Statute, to Law 18.657 Foreign Capital Investment Fund Law, to the continuation or prompt renewal of such laws, to amendments to those laws or to any special and/or voluntary investment regime that may be adopted in the future by Chile.

4. For greater certainty, it is understood that the Foreign Investment Committee of Chile has the right to reject applications to invest through Decree Law 600 and Law 18.657. Additionally, the Foreign Investment Committee has the right to regulate the terms and conditions of foreign investment under Decree Law 600 and Law 18.657.

Annex 10.11

With respect to its obligations under Article 10.11, Chile reserves:

1. The right, without prejudice to paragraph 3 of this Annex, to maintain existing requirements that transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Korea or from the partial or complete liquidation of the investment may not take place until a period not to exceed:
   (a) in the case of an investment made pursuant to Decree Law 600 Foreign Investment Statute (Decreto Ley 600, Estatuto de la Inversion Extranjera), one year has elapsed from the date of transfer to Chile; or
   (b) in the case of an investment made pursuant to Law 18657 Foreign Capital Investment Fund Law (Ley 18.657, Ley Sobre Fondo de Inversiones de Capitales Extranjeros), five years have elapsed from the date of transfer to Chile;

2. The right to adopt measures, consistent with this Annex, establishing future special voluntary investment programs in addition to the general regime for foreign investment in Chile, except that any such measures may restrict transfers from Chile of proceeds from the sale of all or any part of an investment of an investor of Korea or from the partial or complete liquidation of the investment for a period not to exceed five years from the date of transfer to Chile; and

3. The right of the Central Bank of Chile to maintain or adopt measures in conformity with the Constitutional Organic Law of the Central Bank of Chile ("Ley Organica Constitucional del Banco Central de Chile, Ley 18.840" (hereinafter, Law 18.840) or other legislation, in order to ensure

currency stability and the normal operation of domestic and foreign payments. For this purpose, the Central Bank of Chile is empowered to regulate the supply of money and credit in circulation and international credit and foreign exchange operations. The Central Bank of Chile is empowered as well to issue regulations governing monetary, credit, financial, and foreign exchange matters. Such measures include, *inter alia*, the establishment of restrictions or limitations on current payments and transfers (capital movements) to or from Chile, as well as transactions related to them, such as requiring that deposits, investments or credits from or to a foreign country, be subject to a reserve requirement ("encaje").

Notwithstanding the above, the reserve requirement that the Central Bank of Chile can apply pursuant to Article 49 No. 2 of Law 18.840, shall not exceed 30 per cent of the amount transferred and shall not be imposed for a period which exceeds two years.

Annex 10.20

1. An investor of a Party, on its own behalf or on behalf of an enterprise, may only make a claim under Section C of this Chapter, in relation to investments made and materialized in accordance with the laws and regulations of the other Party.

2. Both Parties shall negotiate the coverage of Section C of this Chapter, as well as the modification of any other Articles in Section C they deem appropriate, taking into account the outcome of bilateral, regional or multilateral negotiations that address relevant issues, no later than one year after the entry into force of this Agreement.

Annex 10.41.2
Service of Documents

Chile

The place for the delivery of notice and other documents under Section C for Chile is:

Direccion de Asuntos Juridicos del Ministerio de Relaciones Exteriores de la Republica de Chile
Morande 441
Santiago, Chile

Korea

The place for the delivery of notice and other documents under Section C for Korea is:

Office of International Legal Affairs, Ministry of Justice of the Republic of Korea
Government Complex, Kwacheon
Korea

Annex 10.41.4
Publication of an Award

Chile

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

Korea

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

Annex 10.43
Composition of the Investment and Cross-Border Trade in Services Committee

For purposes of Article 10.43, the Committee shall comprise:

(a) in the case of Chile, the General Directorate of International Economic Affairs of the Ministry of Foreign Affairs, or its successor; and
(b) in the case of Korea, the Director General of International Economic Cooperation Bureau of the Ministry of Finance and Economy, or its successor.