

FREE TRADE AGREEMENT BETWEEN THE UNITED MEXICAN STATES AND THE REPUBLIC OF PANAMA

Article 10. Investment

Section A. General Provisions

Article 10.1.: Definitions

For the purposes of this chapter:

Designated appointing authority means that the appointing authority according to the applicable arbitration rules or otherwise designated by the Parties shall appoint the or arbitrators necessary for the establishment of the arbitral tribunal.

ICSID means the International Centre for Settlement of Investment Disputes;

UNCITRAL means the United Nations Commission on International Trade Law;

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;

Inter-American Convention means the Inter-American Convention on International Commercial Arbitration, held in Panama; 30 January 1975

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;

Defendant means the respondent party that is a party to a dispute concerning an investment;

Applicant means the investor of a Party that is a party to an investment dispute with the other party;

Protected information:

(a) Confidential business information; or

(b) Information that is privileged or otherwise protected from disclosure is located in accordance with the national legislation of the Party;

Investment: the following assets owned or controlled by an investor of the same, directly or indirectly, that has the characteristics of an investment, including characteristics such as the commitment of capital or other resources, the expectation of gain or profit or the assumption of risk.

(a) An enterprise;

(b) Actions, capital and other forms of equity participation in an enterprise;

(c) Debt instruments of an enterprise:

(i) Where the enterprise is an affiliate of the investor, or

(ii) Where the original maturity of the debt instrument is at least 3 years;

But does not include a debt instrument of a party or a state enterprise, regardless of original maturity date;

(d) A loan to an enterprise:

(i) Where the enterprise is an affiliate of the investor, or

(ii) Where the original maturity of the loan is at least 3 years;

But does not include a loan to a party or a state enterprise, regardless of original maturity date;

(e) An interest in an enterprise that allow the owner to participate in its income or profits of enterprise, or the assets of the company in liquidation, provided that it does not result in a duty or a loan excluded under subparagraphs

(c) (d); or

(f) Real estate or other property, tangible or intangible rights (including intellectual property rights) movable or immovable property and related property rights, such as leases, mortgages, liens and pledges guarantees;

(g) Participation in of capital or other resources in the territory of a Party destined for the development of an economic activity in such territory, inter alia, under:

(i) Contracts involving the presence of an investor property in the territory of a party, including concessions and contracts for construction and turnkey or

(ii) Contracts where remuneration depends substantially on the production, income or profits of an enterprise;

(h) Concessions, licences, authorizations, permits and similar instruments issued in the territory of a party to the extent that generate rights protected under the domestic law of that Party; 1

But investment does not mean:

(i) An order or judgment in judicial or administrative proceedings;

(j) Loans granted by a party to the other party;

(k) Public debt and debt operations of public institutions;

(l) Monetary claims derived exclusively from:

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

(ii) The granting of credit in connection with a commercial transaction, such as trade financing, except a loan covered by the provisions of subparagraph (d), or

(m) Any other monetary claim that does not involve the kinds of interests set out in subparagraphs (a) to (h);

A change in the manner in which assets have been invested or reinvested does not affect their status of investment under this treaty, provided that such change falls within the definition of this article and shall be conducted in accordance with the national legislation of the Party in whose territory the investment has been admitted;

The fact that a licence, permit, concession permission, or a similar instrument has the characteristics of an investment depends such factors as the nature and extent of the Rights of the holder in accordance with the national legislation of the party. Among the concessions, licences, authorizations, permits or similar instruments that do not have the characteristics of an investment are those that do not create rights protected under domestic law. For greater certainty, this is without prejudice to an asset that associated with such permission, licence, permit, concession or similar instrument has the characteristics of an investment.

Covered investment means a Party with respect to an investment in its territory of an investor of the other party existing on the date of Entry into Force of this Treaty, as well as to investments made or acquired thereafter;

An investor of a Party means a Party or a state enterprise thereof, or a national of that Party or an enterprise that seeks to perform, through concrete action 2, is making or has made an investment in the territory of the other party; whereas, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the state of his or her dominant and effective nationality;

Investors of a non - Party with respect to a Party that seeks to perform an investor through concrete actions 3 is making or has made an investment in the territory of that Party that is not an investor of a party;

Currency of free use: "free currency" as determined by the International Monetary Fund under the articles of the agreement of the International Monetary Fund;

The opposing side: the claimant or respondent;

A Party not combatant: the Party that is not a party to an investment dispute under section C of this chapter;

Disputing parties: the claimant and the respondent;

UNCITRAL Arbitration Rules means the Arbitration Rules of the United Nations International Law Commission on International Trade Law adopted by the United Nations General Assembly on 15 December 1976;

ICSID Additional Facility Rules means the Rules of Arbitration of the additional facility for the administration of proceedings by ICSID of the Secretariat;

Secretary-General means the Secretary-General of ICSID; and

Tribunal means an arbitral tribunal established under article or 10.20 10.26.

1 The determination of a concessions, license, permit, authorization or a similar instrument depends on factors such as the nature and the scope of the owner of the right in accordance with the national legislation of one Party. Between the concessions, licenses, authorizations, permits or similar instruments that do not have the characteristics of an investment are those that do not create rights protected through the national legislation. The above mentioned is without a prejudgment that an asset related to that concession, license, authorization, permit or similar instrument has the characteristics of an investment.

2 means that an investor seeks to make an investment when carried out and essential actions necessary for carrying out the said investment, such as the provision of funds to constitute the capital of the company, permits and licences, among others.

3 means an investor that seeks to make an investment when carried out and essential actions necessary for carrying out the said investment, such as the provision of funds to constitute the capital of the company, permits and licences, among others.

Article 10.2.: Scope of Application

1. This chapter applies 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 10.7 and 10.9, all investments in the territory of the party.

2. This chapter is subject and interpreted in accordance with annexes, and 10.5, 10.11 10.21 10.29.

3. The obligations of a Party under section B shall apply to a State enterprise or other person when it exercises a regulatory authority, administrative or other governmental authority delegated to it by that Party, such as the authority to expropriate, licensing, approve or commercial transactions; and fees impose quotas or other charges.

4. This chapter shall not apply to:

(a) A measure a party maintains that adopts or if such measure is covered by Chapter Eleven (Financial Services);

(b) A measure that adopts or maintains a party to restrict the participation of investments of the other party in its territory for reasons of national security or public order or in pursuance of its obligations to maintain or restore international peace and security, and

(c) Disputes and complaints, demands or any dispute which arose prior to the Entry into Force of this Treaty, even if their effects are thereafter.

5. For greater certainty, nothing in this chapter shall be construed as:

(a) Impose an obligation on a party to privatise any investment that owns or controls, or to prevent a party from designating a monopoly, or

(b) Prevent a party from providing social services or carry out functions such as the implementation and enforcement of laws, services of social rehabilitation, pension or unemployment insurance or social security services, social welfare, education, training

Public health and child protection when they play in a manner that is not inconsistent with this chapter.

6. In the event of any inconsistency between this chapter and another chapter of this chapter, the other treaty shall prevail to the extent of the inconsistency.

7. A requirement by a party that a service provider of the other party constitute a bond or other form of financial security as a condition for the provision of a cross-border service is not in itself that this chapter applies to measures adopted or maintained by the Party relating to the cross-border supply of the service. this chapter applies to measures adopted or maintained by the Party relating to the bond or financial security to the extent that such a bond or financial security is covered investment.

Section B. Substantive Obligations

Article 10.3.: National Treatment

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

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

3. The treatment accorded by a Party under paragraphs 1 and 2, with respect to means a State or government department at regional level, treatment no less favourable than the most favourable treatment that Department, State or Government at the regional level in like circumstances accorded to investors and investments covered by which form an integral part.

Article 10.4.:

"Most-favoured-nation treatment"

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

3. For greater certainty, treatment accorded by a Party under paragraphs 1 and 2 does not include dispute settlement procedures provided for in international treaties, as provided for under section C.

Article 10.5.: Minimum Standard of Treatment

1. Subject to the provisions of annex 10.5, each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. The treatment accorded by a Party under paragraph 1, means that the minimum standard of treatment of aliens as the Customary International Law minimum standard of treatment to be afforded to covered investments. The concepts of Fair and Equitable Treatment and full protection and security do not require additional treatment or beyond the standard that is required by and do not create additional rights. the obligation to provide in paragraph 1:

(a) Fair and Equitable Treatment includes the obligation not to deny justice in criminal, civil or administrative proceedings, in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) Full protection and security requires each party to provide the level of police protection that is required by the International Law.

3. A determination that there has been a breach of another provision of this Treaty or any other international agreement, does not establish that there has been a breach of this article.

Article 10.6.: Senior Management and Boards

1. No party may require that an enterprise of that Party that is a covered investment to appoint a particular nationality of

natural persons to senior management positions.

2. A Party may require that a majority of the members of the Boards or any committee, of an enterprise of that Party that is a covered investment 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 10.7.: Performance Requirements

1. Neither party may impose or enforce any requirement or enforce any commitment or obligation under the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of an investment of an investor of the other party or of a non-party in its territory:

(a) Export a given level or percentage of goods or services;

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

(c) To purchase or use a accord preference to goods produced in its territory or to purchase goods or services supplied by producers from providers in its territory;

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

(f) A particular technology transfer a production process or other proprietary knowledge to a person in its territory except that:

(i) The requirement is imposed or the commitment or enforced by a judicial or administrative tribunal or competition authority to remedy a practice which has been declared as anti-competitive according to the national competition laws of the Party, or 4

(ii) A Party authorizes use of an intellectual property right in accordance with article 31 of the TRIPS agreement or to measures requiring the disclosure of information

The Parties recognize that a patent does not necessarily confer market power.

Privately owned falling within the scope of and are consistent with article 39 of the TRIPS Agreement, 5

Or

(g) To act as the exclusive supplier in its territory of the goods that produces the investor or the services that it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use technology to meet a generally applicable regulations to health, safety or environmental, shall not be considered inconsistent with subparagraph 1 (f).

3. Nothing in paragraph 1 shall be construed as preventing a party with respect to the establishment, expansion and acquisition, administration, management, operation or sale or other disposition of a covered investment of an investor or an investment of a non- party in its territory impose or enforce any requirement or enforce a commitment or obligation to train workers in its territory.

4. No party may condition the receipt of an advantage or continued receipt of an advantage in connection with the establishment, acquisition, expansion, administration, management, operation and sale or other disposition of an investment in its territory by an investor of the other party or of a party, the non- compliance with any of the following requirements:

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

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

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

5. Nothing in paragraph 4 shall be construed to prevent a party from conditioning the receipt of an advantage or continued receipt of an advantage in connection with an investment in its territory by

For greater certainty, the reference to article 31 of the TRIPS Agreement includes the footnote to article 7 of this. Furthermore, the reference to the TRIPS Agreement in this paragraph includes as laid down in the Protocol amending the TRIPS Agreement done at Geneva on 6 December 2005.

An investor of the other party or of a non- on party compliance with a requirement to locate production provides services, train or employ workers, construct or expand particular facilities or carry out research and development in its territory.

6. Paragraphs 1 and 4 shall not apply to any requirement other than the commitment, obligation or requirements set out in those paragraphs. in particular, the provisions of:

(a) Subparagraphs 1 (a), 1 (b) and 1 (c), and 3 (a) and 4 (b) shall not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;

(b) Subparagraphs 4 (a) and 4 (b) shall not apply to requirements imposed by an importing party relating to the content of goods necessary to qualify for preferential tariffs or fees; and

(c) Subparagraphs 1 (b), 1 (c), 1 (f) and (g), and 3 (a) and 4 (b) shall not apply to government procurement.

7. Provided that such measures are not applied in an arbitrary or unjustifiable and provided that such measures do not constitute a disguised restriction on international trade or investment, nothing in subparagraphs 1 (b), 1 (c) and 1 (f) and 4 (a) and 4 (b) shall be construed to prevent a Party from adopting or maintaining measures including environmental nature:

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

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

(c) Related to the conservation of exhaustible natural living resources whether or not.

8. This article does not preclude enforcement of any commitment, obligation or requirement between private parties, when a party did not impose or require the commitment, obligation or requirement.

Article 10.8.: Dissenting Measures

1. Articles 10.3 and 10.4, 10.6 and 10.7 shall not apply to:

(a) Any Non-Conforming Measure existing Non-Conforming Measure maintained by or at a party:

(i) The Government of the central level, as set out by that party in its schedule to annex I;

(ii) The Government at the regional level, as set out by that party in its schedule to annex I; or

(iii) A local government;

(b) The continuation or prompt renewal of any Non-Conforming Measure referred to in subparagraph (a); or

(c) The modification of any Non-Conforming Measure referred to in subparagraph (a), provided that the amendment does not decrease the level of conformity of the measure as currently in force immediately before the amendment with Articles 10.6, 10.7, 10.3 and 10.4.

2. Articles 10.3 and 10.4, 10.6 and 10.7 shall not apply to any measure that adopts or maintains a Party with respect to the sectors or sub-sectors or activities as set out in annex II to its schedule.

3. Articles 10.3 and 10.4 do not apply to any measure that is an exception to or derogation from the obligations under the TRIPS Agreement), as specifically provided in this Agreement.

4. No party may require under any measure adopted after the date of Entry into Force of covered by this Agreement and its schedule to annex II, to an investor of the other party, by reason of their nationality, to sell or otherwise dispose of an existing investment at the time the measure copper.

5. Articles 10.3 and 10.4 and 10.6 do not apply to:

- (a) Subsidies or grants provided by a party, including loans, guarantees and insurance supported by the Government, or
- (b) Government procurement.

Article 10.9.: Environmental Measures

1. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections provided for in its domestic environmental laws. accordingly, each Party shall endeavour to ensure that not extinguish or repeal or offer to waive or derogate from such laws in a manner that reduces or weakens the protections afforded in those laws as an encouragement for the establishment, acquisition, expansion or retention of an investment in its territory.
2. Nothing in this chapter shall be construed as preventing a party from maintaining or enforcing any measure that otherwise consistent with this chapter considers it appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Article 10.10.: Treatment In Case of Strife

1. Without prejudice to article 10.8 (5) (a), each Party shall accord to investors of the other party and to covered investments, non-discriminatory treatment with respect to any measure that it adopts or maintains relating to losses suffered by investments in its territory owing to war, armed conflict or civil strife. to this end, the Parties shall grant the investor restitution or compensation in accordance with article 10.11.
2. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with article 10.3 but for article 10.8 (5) (a).

Article 10.11.: (6 Expropriation and Compensation

1. No party nacionalizará expropriated or a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization unless:

- (a) For reasons of public purpose or public purpose; 7
- (b) In a non-discriminatory manner;
- (c) In accordance with the principle of due process of law and article 10.5, and
- (d) Through the payment of compensation in accordance with paragraphs 2 to 5.

2. The compensation referred to in subparagraph 1 (d) shall:

- (a) Be paid without delay and be freely transferable fully realized;

10.11 greater certainty for Article 6 shall be interpreted in accordance with annex 10.11.

7 national legislation may express these concepts using different terms, such as public need, public interest, public order or social interest.

- (b) Be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (date of expropriation), and

- (c) Not reflect any change in value occurring because the intended expropriation had become known earlier date of expropriation.

3. Valuation criteria shall include the value, the value of assets (including declared value of tangible property tax), as well as the criteria that are relevant to determine fair market value.

4. If the fair market value is denominated in a free use of currency, the compensation referred to in subparagraph 1 (d) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

5. If the fair market value is denominated in a currency that is not freely use, the compensation referred to in subparagraph 1 (d) (converted into the currency of payment at the market exchange rate prevailing on the date of payment shall be no less than:

(a) The fair market value on the date of expropriation, in a currency made use of free, at the market exchange rate prevailing on that date; plus

(b) Include interest at a commercially reasonable rate for that currency Free use, accrued from the date of expropriation until the date of payment.

6. Nothing in this article shall not apply to the issuance of Complusory Licenses granted in relation to Intellectual Property Rights, limitation or revocation, or creation of Intellectual Property Rights to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Fifteen (intellectual property).

Article 10.12.: Transfers

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

(a) The initial capital and additional amounts to maintain or increase the investment;

(b) Profits, dividends, interests, capital gains, payment of royalties, fees, management technical assistance and other fees; returns and other amounts in kind derived from the investment;

(c) Products derived from the sale or liquidation of all or part of the covered investment;

(d) Payments made under a contract entered into by the investor or investment covered the including a loan agreement;

(e) Payments made pursuant to Articles 10.10 and 10.11; and

(f) Payments arising out of the application of section C.

2. Each Party shall permit transfers relating to a covered investment to be made in a currency of free use at the rate of exchange prevailing on the date of transfer.

3. Without prejudice to paragraphs 1 and 2, a Party may prevent or delay a transfer of money or in kind through the equitable and non-discriminatory and in good faith to its laws relating to:

(a) Bankruptcy or insolvency or the protection of the rights of creditors, including rights derived from social security and public or compulsory retirement savings schemes;

(b) Issuance, trade or operations of securities and futures, options or derivatives;

(c) Criminal offences, administrative or judicial;

(d) Financial reports or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

(e) The enforcement of awards rendered in contentious proceedings.

4. Neither party may require its investors to transfers carried out their income or profits, or other amounts derived profits from or attributable to investments in the territory of the other party; or in the event that shall not make the transfer.

Article 10.13.:

"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 related to a covered investment, such as a requirement that investors be residents of the party or that covered investments be 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 covered investments and the other party pursuant to this Treaty.

2. Notwithstanding articles 10.3 and 10.4, a Party may require an investor of the other party or its covered investment to provide information concerning that investment or informational solely for statistical purposes. the such Party shall protect any confidential information that is from that disclosure would prejudice the competitive position of the covered the investor or investment. nothing in this paragraph shall be construed as preventing a party from obtaining or disclosing information in connection with the good faith and equitable application of its domestic legislation.

Article 10.14.: Subrogation

1. If a party or a designated agency of a party makes a payment to any of its investors under a guarantee or a contract of insurance or other form of compensation granted in respect of an investment of an investor of that Party, the other party shall recognise the subrogation or transfer of any right or claim of such investment. the subrogation or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or a designated agency of a Party has made a payment to an investor of that Party and has taken the rights and claims of the investor, the investor shall not exercise those rights and claims against the other party, except that has been authorized to act on behalf of the party or the designated agency of the other Party that has made payment.

Article 10.15.: Denial of Benefits

A Party, subject to prior notification and consultation with the other 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 investors that investor if a Party of non-own or control the enterprise and that has no substantial business activities in the territory of the Party whose under domestic law it is constituted or organized.

Section C.

"investor - State dispute settlement

Article 10.16.: Consultation and Negotiation

1. In the event of a dispute concerning an opposing investment, Parties shall first seek to resolve the dispute through consultation and negotiation to settle the dispute amicably, which may include the use of non-binding procedures, such as good offices, conciliation and mediation.

2. The procedure for consultations and negotiations shall begin with the written request that shall be forwarded to the respondent and shall include the information specified in Article 10.17 (2) (a) and 2 (b) and a brief description of the events giving rise to the initiation of the consultations.

3. The consultations shall take place during a period of at least 6 months and may include face-to-face encounters in the capital of the respondent.

4. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the Court.

Article 10.17.:

"submission of a claim to arbitration

1. The minimum time period referred to in article 10.16 (3), in the event that a Party considers that litigants cannot be resolved a dispute relating to an investment by consultation and negotiation:

(a) The applicant, on their own account, may submit to arbitration a claim alleging:

(i) That the respondent has breached an obligation under section B. other than an obligation under article 10.8, and

(ii) That the claimant has incurred loss or damage by virtue of such violation or as a result of the latter.

(b) The applicant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls may directly or indirectly, in accordance with this section, to submit a claim alleging Arbitration:

(i) That the respondent has breached an obligation under section B. other than an obligation under article 10.8, and

(ii) That the enterprise has incurred loss or damage by virtue of such violation or as a result of the latter.

For greater certainty, no claim may be submitted to arbitration under this section alleging a violation of any provision of this Agreement other than an obligation under section B.

2. At least 90 days before submitting any claim to arbitration under this section, the claimant to the respondent shall deliver

a written notice of its intention to submit the claim to arbitration (notice of intent). the notice shall specify:

(a) The name and address of the claimant and, in the event that the claim is submitted on behalf of an enterprise), the name, address and place of incorporation of the enterprise;

(b) Each claim for the provision of section B which is alleged to have been breached and any other relevant provisions;

(c) The legal and factual basis for each claim;

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

(e) The evidence establishing that it is an investor of the other party or a covered investment.

3. Provided that at least 6 months have elapsed since the events giving rise to the claim, and provided that the applicant has complied with the conditions referred to in article 10.19, the claimant may submit a claim referred to in paragraph 1:

(a) In accordance with the ICSID Convention procedural rules and procedures applicable to the ICSID arbitration, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;

(b) In accordance with the ICSID Additional Facility Rules, provided that the respondent or the party of the claimant are parties to the ICSID Convention;

(c) In accordance with the UNCITRAL Arbitration Rules; or

(d) If the parties involved so agree to arbitration, any other institution or under any other arbitration rules.

4. A claim shall be deemed submitted to arbitration under this section when the notice of or request for arbitration (Notice of Arbitration) referred to the claimant:

(a) Paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;

(b) Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;

(c) Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in article 18 of the UNCITRAL Arbitration Rules is received by the respondent; or

(d) Any other arbitration institution or any other arbitration rules selected under paragraph 3 (d) is received by the institution of arbitration or by the respondent, as applicable.

The claimant shall provide with the Notice of Arbitration: the name of the arbitrator appointed by it or its written consent for the Secretary-General to appoint that arbitrator.

5. The arbitration rules applicable under paragraph 3. and in effect on the date the claim or claims that have been submitted to arbitration under this section shall govern the arbitration, including on the assumption expenses and, where appropriate, the costs, except insofar as may be amended or supplemented by this Treaty.

6. If, subsequent to the submission of a claim to arbitration a additional claim under the same arbitral proceedings, it shall be deemed submitted to arbitration under this section on the date of its receipt, subject to the applicable arbitration rules and conditions and limitations of article 10.19.

7. For greater certainty, when a claim is submitted to arbitration under subparagraph (1) (a) are only payment provision under this loss or damage suffered by the applicant as the investor with regard to an investment in the territory of the respondent party.

Article 10.18:.

"consent of each party to arbitration

1. Each party consents to the submission of a claim to arbitration under this section in accordance with this Treaty.

2. The consent under paragraph 1 and the submission of a claim to arbitration under this section shall comply with the requirements set out in:

(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;

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

(c) Article I of the Inter-American Convention, which requires an agreement.

Article 1019:.

Conditions and limitations on consent of each Party

1. No claim may be submitted to arbitration under this section if more than three years have elapsed from the date on which the claimant knew or should have had knowledge of the alleged breach under article 10.17 (1), and knowledge that the claimant or the enterprise, as appropriate, loss or damage incurred.

2. No claim may be submitted to arbitration under this section unless:

(a) The claimant consents in writing to arbitration in accordance with the procedures laid down in this Treaty; and

(b) The notice of arbitration referred to in article 4 (10.17 accompanied) is:

(i) For claims submitted to arbitration under article 10.17 (1) (a), by the claimant written waiver; and

(ii) For claims submitted to arbitration under article 10.17 (1) (b), of written waivers of the claimant and the enterprise;

Any right to initiate before any tribunal or administrative court under the domestic law of a party; or

Any other dispute settlement procedures proceedings with respect to any measure alleged to be a breach referred to in article 10.17 (1).

3. Without prejudice to subparagraph 2 (b), the claimant (for claims brought under article 10.17 (1) (a)) and the claimant or the enterprise (for claims brought under article 10.17 (1) (b)) may continue or initiate a procedure requesting the application of precautionary measures of any kind provided that does not involve the payment of monetary damages before a judicial or administrative tribunal of the defendant, provided that such procedure is filed with the sole purpose of preserving its rights and interests of the claimant or the Enterprise until the processing of arbitration. 8

4. No claim may be submitted to arbitration under this section when the claimant or the enterprise (for claims brought under article 10.17 (1) (a) (1) and (b)), as appropriate, has previously submitted the same alleged breach before a judicial or administrative tribunal of the defendant, or to any other binding dispute settlement procedure. for greater certainty, the choice and conducted by the claimant or the Enterprise shall be deemed final and may not submit the same claim under this section.

Article 10.20: Selection of Arbitrators

1. Unless the parties agree otherwise, the Tribunal shall comprise three arbitrators: one arbitrator appointed by each of the warring parties and the third, who shall be the chairman shall be appointed by agreement of the parties involved.

2. Unless the parties to the conflict to designate another appointing authority, the Secretary-General shall serve as appointing authority for arbitrators arbitration procedures established in accordance with this section.

3. In any arbitration conducted pursuant to this section, the arbitrators shall:

(a) Have experience or expertise in International Law, international investment rules, or

8 for greater certainty in a proceeding, requesting the application of a precautionary measure, including the measures to preserve evidence and property pending the processing of the claim submitted to arbitration, a judicial or administrative tribunal of the defendant in a dispute submitted to arbitration under section B apply national legislation of that Party.

Settlement of disputes arising under international investment agreements; and

(b) Not rely on any of the parties or of the applicant, inked or receive instructions from any of them.

4. Where a tribunal shall not be integrated within a period of 90 days from the date that the claim is submitted to arbitration under this section, the Secretary-General at the request of any of the Parties to the conflict, at its discretion, shall appoint the arbitrator or arbitrators not yet appointed. the President of the Tribunal shall not be a national of any of the Parties, unless the parties agree otherwise.

5. For the purposes of article 39 of the ICSID Convention and article 7 of part C of the ICSID Additional Facility Rules, and

without prejudice to an objection to an arbitrator on grounds that are not nationals of:

(a) The respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

(b) The claimant referred to in article 10.17 (1) (a) may submit a claim to arbitration under this section, or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only on condition that the claimant's consent in writing to the appointment of each member of the Tribunal; and

(c) The claimant referred to in article 10.17 (1) (b) may submit a claim to arbitration under this section, or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only on condition that the claimant and the enterprise consent in writing to the appointment of each member of the Tribunal.

Article 10.21: The Arbitration

1. The parties may agree on the legal place of any arbitration under the applicable arbitral rules under article 10.17 (3). in the absence of agreement between the warring parties, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A Party not litigants may make oral or written submissions to the Tribunal regarding the interpretation of this Treaty.

3. The Tribunal shall have the authority to accept and consider amicus curiae submissions written that can assist the Tribunal in the determination of the issues of fact or law related to the scope of the dispute arising from a person or entity that is not a party litigants. any person or entity who wish to make written submissions to a tribunal may apply for leave from the Tribunal in accordance with annex 10.21.

4. Where such submissions are admitted by the Tribunal, it shall accord to the warring parties an opportunity to respond to such written submissions.

5. Without prejudice to the power of the Tribunal to hear other objections as a preliminary issues, such as an objection that the dispute is not within the jurisdiction of the Court, a court shall hear and decide any question as a preliminary objection by the respondent that as a matter of law, a claim is not submitted a claim for which an award in favour of could be issued to the applicant, in accordance with article 10.27. it shall continue to the following rules:

(a) Such objection shall be submitted to the Tribunal as soon as possible after the Constitution of the Tribunal, and in no event later than the tribunal fixes the date for the respondent to submit its response to the demand; or in the case of an amendment to the notice of arbitration referred to in article 10.17 (4), the Tribunal fixes the date for the respondent to submit its response to the amendment;

(b) Upon receipt of an objection under this paragraph, the Tribunal shall suspend any proceedings on the merits, shall establish a schedule for the objection considering consistent with any schedule it has established for considering preliminary question and any other issue a decision or award on the objection, stating the grounds thereof;

(c) In deciding an objection under this paragraph, the Tribunal shall assume to certain factual arguments submitted by the claimant in support of any claim in the notice of arbitration (or any amendment thereof) and in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in article 18 of the UNCITRAL Arbitration Rules. the Tribunal may also consider any relevant fact that is not under dispute, and

(d) The respondent does not waive any objection as to competence or any argument on the merits merely because it has or has not formulated an objection under this paragraph or make use of the expedited procedure set out in paragraph 6.

6. In the event that the respondent so requests within 45 days after the date of establishment of the Court, the Tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the jurisdiction of the Court. the Tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds, no later than 150 days after the date of the request. however, if a Party requests a litigant the Tribunal hearing may take an additional 30 days to issue the decision or award. regardless of whether a hearing is requested, the Tribunal shall show a special reason, delay issuing its decision or award by an additional brief period which may not exceed 30 days.

7. If the Tribunal decides on the objection of the respondent in accordance with paragraphs 5 and 6, may, if warranted, awarded to the winner litigants party reasonable costs and fees incurred in submitting or opposing the objection. in determining whether such an award is justified, the tribunal shall determine whether the claim of the claimant or the

objection of the respondent was frivolous and shall accord to the warring parties a reasonable opportunity to present their comments.

8. A tribunal may order an interim measure of protection to preserve the rights of a combatant or with the aim of ensuring the full exercise of the jurisdiction of the Court, including an order to preserve evidence in the possession or control of combatant or a party to protect the Tribunal jurisdiction. the Tribunal may not order attachment or prevent the application of a measure that is deemed to be a breach referred to in article 10.17 (1). for the purposes of this paragraph, an order includes a recommendation.

9. At the request of either of the parties - the court before making a decision or award on liability, transmit its proposed decision or award to the parties to the conflict and the Party not litigants. within 60 days after such proposed decision or award warring parties may submit written comments to the Tribunal concerning any aspect of its proposed decision or award. the Tribunal shall consider any such comments and issue its decision or award not later than 45 days after the expiry of the period of sixty (60 days to submit comments).

Article 10.22.: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent after receiving the following documents available to litigants the party and the public.

(a) The notice of intent referred to in article 10.17 (2);

(b) The notice of arbitration referred to in article 10.17 (4);

(c) Written pleadings, demand and explanatory notes to the Tribunal submitted by a Party combatant and any written communication submitted in accordance with article and article 10.21 10.26;

(d) Awards and orders or decisions of the Tribunal, and

(e) The minutes or transcripts of hearings of the Tribunal, when available.

2. The Tribunal shall conduct hearings open to the public and shall, in consultation with the parties - the appropriate logistical arrangements. however, any Party that intends to use in a litigant information designated as protected information in a hearing shall so inform the Tribunal. the tribunal shall make appropriate arrangements to protect the information from disclosure, including closing the hearing for any discussion of confidential information.

3. Nothing in this section requires a respondent to provide or furnish or protected information to allow access to information that it may withhold in accordance with articles 19.3 (National Security (19.4) and disclosure of information).

4. Any protected information that is submitted to the Tribunal shall be protected from disclosure in accordance with the following procedures:

(a) In accordance with subparagraph (d), neither warring parties nor the Tribunal shall disclose to the Challenger no party or to the public any information protected where the opposing side that provided the information clearly designates it in accordance with subparagraph (b);

(b) Any litigant party claiming that certain information constitutes shall designate the protected information clearly to be submitted to the Tribunal;

(c) A combatant Party shall, at the same time that it submits a document containing information claimed as protected information, submit a redacted version of the document that does not

Containing the information. only the redacted version shall be provided to the parties involved and shall be made public in accordance with paragraph 1; and

(d) The Tribunal shall decide any objection regarding the designation of Information claimed as protected information. if the Tribunal determines that such information was not properly designated the opposing side that submitted the information may:

(i) Withdraw all or part of its submission containing such information; or

(ii) Agree to resubmit with complete and redacted documents corrected designations in accordance with the Tribunal determination and subparagraph (c).

In any case, the other party combatant shall, where necessary, resubmit to complete and redacted documents which

omitted information withdrawn in accordance with the sub-subpárrafo (d) (i) by the Party that submitted the first information litigants, or designation of new information consistent with the designation under the sub-subpárrafo (d) (ii) of the Party that submitted the first information litigants.

5. Nothing in this section requires a respondent to deny public access to information, in accordance with their national legislation, should be disclosed.

Article 10.23:. Applicable Law

1. Subject to paragraph 2, when a claim is submitted under article 10.17, the Tribunal shall decide the issues in dispute in accordance with this Treaty and applicable rules of international law.

2. A decision of the Commission declaring its interpretation of a provision of this Treaty, in accordance with article 17.1 (3) (c) (commission administering) shall be binding on a tribunal established under this section and any decision or award issued by a tribunal must be consistent with that decision.

Article 10.24:. Interpretation of Annexes

1. If the respondent raise as a defence that the measure is alleged to be a breach within the scope of its schedules to annexes I and II, the Tribunal shall request the Commission, at the request of the defendant, an interpretation on the issue. within 60 days of the delivery of the request, the Commission shall submit in writing to any decision declaring the Tribunal in its interpretation under article 17.1 (3) (c) (commission administering).

2. A decision issued by the Commission under paragraph 1 shall be binding on the Tribunal and any decision or award issued by the Tribunal must be consistent with that decision. if the Commission fails to issue such a decision within 60 days referred to in paragraph 1, the Tribunal shall decide on the matter.

Article 10.25:. Expert Reports

Without prejudice to the appointment of other kinds of experts where this is authorized by the applicable arbitration rules, the Tribunal, at the request of a party or on its own initiative litigants unless both parties agree not disputants shall appoint one or more experts to inform in writing on any factual issue concerning environmental affairs, health, safety or other scientific matters raised by a Party in a proceeding litigants, in accordance with the terms and conditions to be agreed upon between the warring parties.

Article 10.26:. Cumulation of Procedures

1. In cases in which they have been submitted to arbitration two or more claims separately under article 10.17 (1), and the claims raised in a common question of fact or law and arise out of the same events or circumstances litigants, any Party may seek a consolidation order in accordance with the agreement of all parties involved in respect of which the order is sought or cumulation in accordance with paragraphs 2 to 10.

2. The opposing side seeking a consolidation order under this article shall deliver a written request to the Secretary General copies of all the other parties fighting against which the order is sought. the request shall specify:

(a) The names and addresses of all the warring parties against which the order is sought cumulation;

(b) The nature of the order sought and cumulation;

(c) The rationale underlying the request.

3. Unless the Secretary-General determines within 30 days of receipt of a request under paragraph 2 that it is manifestly unfounded, a Tribunal shall be established under this article.

4. Unless all the warring parties against which the order is sought cumulation agree otherwise, the Tribunal established under this article shall be 3 by arbitrators.

(a) One arbitrator appointed by agreement of the claimants;

(b) One arbitrator appointed by the respondent; and

(c) The presiding arbitrator appointed by the Secretary-General who shall not be a national of any of the Parties.

5. If within 60 days of the receipt by the Secretary-General of the request made in accordance with paragraph 2, the respondent or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, at the request of any party litigants against which the order is sought cumulation, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the respondent and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a party of the claimants.

6. In the event that the Tribunal established under this article is satisfied that have been submitted to arbitration two or more claims under article 10.17 (1), which pose a question of fact or law in common and arising out of the same events or circumstances, the Tribunal may in the interest of fair and efficient resolution of the claims and after hearing the parties - through a procedural order:

(a) Assume jurisdiction to hear and determine together on all or part of the claims;

(b) Assume jurisdiction and hear and determine one or more of the claims the determination of which it believes would assist in the resolution of the others; or

(c) To instruct a tribunal established under article 10.20 to assume jurisdiction to hear and determine jointly, on all or part of the claims, provided that:

(i) The Tribunal, at the request of any claimant previously not opposing side before that Court recover, with its original Members except that the arbitrator shall be appointed for the claimants pursuant to subparagraph 4 (a) and paragraph 5; and

(ii) That Tribunal shall decide whether any prior hearing repeat.

7. Where a tribunal has been established in accordance with this article, that a claimant has submitted a claim to arbitration under article 10.17 (1), and whose name is not mentioned in a request made under paragraph 2 may make a written request to the Tribunal that it be included in any applicant procedural order rendered in accordance with paragraph 6 and in the request shall specify:

(a) The name and address of the claimant;

(b) The nature of the order sought; and

(c) The reasons for the request.

The claimant shall deliver a copy of its request to the Secretary-General and to the parties to the conflict in accordance with paragraph 2.

8. A tribunal established under article 10.20 shall not have jurisdiction to decide a claim, or a part of a claim, over which has assumed jurisdiction instructed or a tribunal established under this article.

9. At the request of a party litigants, a tribunal established under this article may, pending its decision under paragraph 6, provided that the proceedings of a tribunal established under article 10.20 be postponed, unless the latter Tribunal already has adjourned its proceedings.

10. A tribunal established under this article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this section.

Article 10.27: Awards

1. Where a tribunal for a final award unfavourable to the defendant, the Tribunal may award separately or in combination, only:

(a) Monetary damages and interest, and

(b) Restitution of property in which case the award shall provide that the respondent may pay monetary damages as appropriate, plus interest in lieu of restitution.

The Tribunal may also award costs and attorney fees in accordance with this section and the applicable arbitration rules.

2. Subject to paragraph 1, when a claim is submitted to arbitration under article 10.17 (1) (b):

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

(b) The award granted monetary damages and 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 has in the relief under applicable domestic law.

3. For greater certainty, the Tribunal is not authorized to award punitive damages which are or will be competent to rule on the Legality of the measure in respect of national legislation.

Article 10.28:.

"finality and enforcement of an award

1. An award made by a tribunal shall be binding only on the parties to the conflict and only in respect of the particular case.

2. Subject to paragraph 3 and the review procedure applicable for a final award, the opposing side abide by and comply with an award without delay.

3. The opposing side shall 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 litigant and no party has requested revision or annulment of the same, or

(ii) Procedures have been concluded or annulment, and revision

(b) In the case of a final award made under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules, the rules selected under Article 10.17 (3) (d):

(i) 90 days have elapsed from the date the award was rendered and no party litigant has commenced a proceeding revised to set aside or annul it, or

(ii) A court has dismissed or allowed an application for revision or annulment of the award, revocation and this resolution cannot be made in accordance with the applicable legislation.

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

5. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant shall establish an arbitral panel in accordance with article 18.8 (request for establishment of the arbitral panel). the requesting party may invoke Chapter 18 (dispute settlement) for:

(a) A determination that the failure or refusal of the terms of the final award is inconsistent with the obligations of this Treaty; and

(b) A recommendation that abide by the respondent or comply with the final award in accordance with article 6 (Final Report).

6. A Party may apply a litigant enforcement of an arbitration award under the ICSID Convention or the New York Convention, if both parties are parties to such treaties, or the Inter-American Convention, as appropriate, whether or not commenced the procedures referred to in paragraph 5.

7. For the purposes of article I of the New York Convention and article I of the Inter-American Convention shall be considered a claim that is submitted to arbitration under this section arises out of a commercial relationship or transaction.

Article 10.29: Service of Documents

Delivery of notice and other documents on a party shall be done in the place designated by it in Annex 10.29 under section C.

Annex 10.5

International Law

1. The Parties confirm their mutual understanding that customary international law in general and as is specifically mentioned in article 10.5 of is a general practice and bottleoperative States, followed by them in the context of a legal

obligation.

2. With respect to article 10.5, the minimum standard of treatment of aliens by customary international law, refers to all customary international law principles that protect the economic rights of aliens.

(expropriation and compensation

The Parties confirm their mutual understanding that:

(a) Article 10.11 addresses two situations:

(i) The first is where an expropriation, direct investment is expropriated or nationalized otherwise directly through formal transfer of title or the right of ownership, and

(ii) The second is indirect expropriation measure or, where a series of measures of a Party has an effect equivalent to expropriation without direct formal transfer of title or the right of ownership;

(b) An action or series of actions by a party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or with the essential attributes or powers of the domain of an investment;

(c) The determination of whether a measure or series of measures of a Party in a specific fact situation, constitutes an indirect expropriation requires a case by case factual investigation consider, among other factors:

(i) The economic impact of the measure or series of measures of a party, 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 alone does not establish that an indirect expropriation has occurred; and

(ii) The extent to which the measure or series of measures of a Party interferes with clear and reasonable expectations of investment, and

(d) Except in exceptional circumstances, such as when a measure or series of measures are disproportionate in light of its purpose in such a way that it cannot be reasonably that were adopted and applied in good faith, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives such as the 9

For greater certainty, the list of legitimate public welfare objectives in this subparagraph is not exhaustive.

Public health, safety and the environment, inter alia, do not constitute an indirect expropriation.

Parties

1. The application for leave to file written submissions of persons or entities which are not parties to the conflict must be made within the period set by the Tribunal and:

(a) Done in writing, be dated and signed by the applicant, and include the address and other contact details of the applicant;

(b) Having a length not exceeding 5 pages;

(c) Describe the applicant, including where appropriate, its membership and legal status (for example, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, as well as any parent organization (including any organization that directly or indirectly controls the applicant);

(d) Disclose whether the applicant has any membership, directly or indirectly, to any opposing side;

(e) To identify any government, person or organization that has provided financial assistance or any other during the preparation of the submission;

(f) Specify the nature of the interest that the applicant has in the arbitration;

(g) To identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission; and

(h) Submitted in the language of the arbitration.

2. The written submission of a person or entity that is not opposing side shall:

- (a) Submitted within the time limit set by the Tribunal;
- (b) Be dated and signed by the applicant;
- (c) Be concise and in no case shall exceed 20 pages, including annexes and appendices;
- (d) Duly substantiated its position, and
- (e) Only refer to the items listed in its request pursuant to subparagraph 1 (g).

Service of documents

Notices and other documents in disputes between an investor and a party of the other party arising out of an alleged breach of an obligation under section B, shall be assisted by delivery to:

(a) In the case of Mexico, the General Directorate of International Trade (legal consultancy dgcjci) of the Ministry of Economy, Alfonso Reyes not located in Mexico. 30 17 flat, Delegación Cuauhtémoc, Mexico, Federal District, and

(b) In the case of Panama, the national administration of international trade and trade defence (dinatradec) of the Ministry of Trade and Industry of Panama, located in Building Plaza Edison, second floor, Avenue paical, Panama, the Republic of Panama;

Or their successors.