Agreement between the Government of Canada and the Government of Burkina Faso for the Promotion and Protection of Investments

THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF BURKINA FASO (the "Parties"),

SEEKING to promote and to protect investments at the national and international levels;

UNDERSTANDING that investment is a form of sustainable development that meets present needs without compromising the ability of future generations to meet their own needs and that it is critical for the future development of national and global economies as well as for the pursuit of national and global objectives for sustainable development;

RECOGNIZING that the promotion and the protection of investments of investors of one Party in the territory of the other Party help stimulate mutually beneficial business activity, develop economic cooperation between the two countries and promote sustainable development,

UNDERSTANDING further that the promotion and protection of these investments requires cooperation between investors, host governments, and home governments;

RECOGNIZING the development to date of means of protection for foreign investors in international law;

RECOGNIZING the undertakings in the United Nations Convention against Corruption; NOTING internationally recognized standards of corporate social responsibility;

RECOGNIZING the right of each Party to adopt or maintain any measures that are consistent with this Agreement and that relate to health, safety, the environment, or public welfare, as well as the difference in the Parties' respective economies; and

RECOGNIZING that an international investment agreement should reflect the basic principles of transparency, stability, predictability, accountability, and legitimacy that apply to foreign investment regimes,

HAVE AGREED as follows:

Section A. Definitions

Article 1. Definitions

For the purpose of this Agreement:

"competition authority" means:

(a) for Burkina Faso, the chairperson of the Commission Nationale de la Concurrence et de la Consommation ("National Commission on Competition and Consumer Affairs") or a successor to be notified to Canada by diplomatic note; and

(b) for Canada, the Commissioner of Competition or a successor to be notified to Burkina Faso by diplomatic note;

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

"covered investment" means, with respect to a Party, an investment in its territory that is owned or controlled, directly or indirectly, by an investor of the other Party existing on the date of entry into force of this Agreement, as well as an investment made or acquired thereafter;

"disputing party" means either the respondent Party or the investor that has made a claim under Section C (Settlement of Disputes between an Investor and the Host Party);

"enterprise" means an entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of any such entity;

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

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

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

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

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

‘information protected under its competition laws" means:

(a) for Burkina Faso, protected information provided under Loi n°15/94/ADP portant organisation de la concurrence au Burkina Faso [the Burkina Faso Competition Act], or a successor enactment; and

(b) for Canada, information within the scope of Section 29 of the Competition Act, R.S.C. 1985, c. 34, or a successor provision;

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

"investment" means any kind of assets that an investor of a Party owns or controls in the territory of the other Party that involves the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. An investment must be in one of the following forms:

(a) an enterprise;

(b) a share, stock or other form of equity participation in an enterprise;

(c) a bond, debenture or other debt instrument of an enterprise;

(d) a loan to an enterprise;

(e) notwithstanding subparagraphs (c) and (d) above, a loan to or debt security issued by a financial institution, only where the loan or debt security is treated as regulatory capital by the Party in whose territory the financial institution is located;

(f) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;

(g) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;

(h) an interest arising from the commitment of capital or other resources in the territory of a Party to economic activity in that territory, such as under:

(i) a contract involving the presence of an investor's property in the territory of the Party, including a turnkey or construction contract, or a concession, or

(ii) a contract where remuneration depends substantially on the production, revenues or profits of an enterprise;

(i) an intellectual property right; and

(j) any other tangible or intangible, moveable or immovable, property and any related property right acquired in the expectation of or used for the purpose of economic benefit or other business purpose;

but "investment" does not mean:

(k) a claim to money that arises solely from:

(i) a commercial contract for the sale of a good or service 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, including bank loans, in connection with a commercial transaction, such as trade financing; or

(l) any other claim to money, that does not involve the kinds of assets set out in subparagraphs (a) to (j);

"investor of a Party" means a Party, or a national or an enterprise of a Party, that seeks to make (1), is making or has made an investment, but excludes an enterprise of a Party if investors of a non-Party or of the other Party own or control that enterprise and the enterprise does not have substantial business activity in the territory of the Party under whose domestic law it is constituted or organized at the time of the events giving rise to the claim;

"measure" includes a law, regulation, procedure, requirement or practice;

"national" means:

(a) for Burkina Faso, a physical person who is recognized as a national of Burkina Faso under the law in force; and

(b) for Canada, a natural person who is a citizen or permanent resident of Canada;

except that:

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

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

"national government" means:

(a) for Burkina Faso, the central government; and

(b) for Canada, the federal government;

"negotiated restructuring" means the restructuring or rescheduling of a debt instrument that has been effected through:

(a) a modification or amendment of that debt instrument, in accordance with its terms; or

(b) a comprehensive debt exchange or other similar process in which the holders of no less than 75 percent of the aggregate principal amount of the outstanding debt under that debt instrument have consented to that debt exchange or other process;

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

"person" means a natural person or an enterprise;

"respondent Party" means a Party against which a claim is made under Section C (Settlement of Disputes between an Investor and the Host Party);

"sub-national government" means:

(a) for Burkina Faso, a territorial community; and

(b) for Canada, a provincial, territorial or local government;

"territory" means:

(a) the land territory, internal waters and territorial sea, including the air space above these areas, of the Party;

(b) the exclusive economic zone of the Party, as determined by its domestic law, consistent with Part V of the United NationsConvention on the Law of the Sea, done at Montego Bay on 10 December 1982 (UNCLOS); and

(c) the continental shelf of a Party, as determined by its domestic law, consistent with Part VI of UNCLOS;

"Tribunal" means an arbitration tribunal established under Article 25 (Submission of a Claim to Arbitration) or Article 29 (Consolidation) of this Agreement;

"TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights;

"UNCITRAL Arbitration Rules" means the United Nations Commission on International Trade Law Arbitration Rules, in their

most recent form; and

"WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

(1) It is understood that an investor "seeks to make" an investment only when the investor takes concrete measures to make this investment.

Section B. Substantive Obligations

Article 2. Scope

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:

(a) an investor of the other Party; and

(b) a covered investment.

2. The obligations in Section B (Substantive Obligations) apply to a person of a Party when it exercises a regulatory, administrative or other governmental authority delegated to it by that Party.

3. It is understood that this Agreement does not apply to any act or fact that occurred or any situation that ceased prior to the date of entry into force of this Agreement.

Article 3. Promotion and Admission of Investment

1. Each Party shall encourage the creation of favourable conditions for investment in its territory by investors of the other Party. Each Party shall admit those investments in accordance with its laws and regulations otherwise consistent with this Agreement.

2. Each Party shall promote, to the extent possible, investment in its territory by the investors of the other Party.

3. Each Party may cooperate in the promotion of investment by its investors in the territory of the other Party. This cooperation may include events to promote joint investments, visits with industry leaders and investors, and other measures to promote investment.

4. Each Party may encourage its nationals who invest in the territory of the other Party to voluntarily transfer technology according to jointly determined terms and conditions.

5. Each Party shall encourage the sharing of information regarding investment opportunities.

6. Each Party shall encourage the creation of jobs in Burkina Faso through Canadian investments and the creation of jobs in Canada through investments from Burkina Faso, as well as the development of the skills related to these jobs.

Article 4. National Treatment

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

2. Each Party shall accord to a covered investment 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 an investment in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

Article 5. Most-favoured-nation Treatment

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

operation and sale or other disposition of an investment in its territory.

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

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

Article 6. Minimum Standard of Treatment

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

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

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

Article 7. Compensation for Losses

Notwithstanding Article 17(5)(b) (Reservations and Exceptions), each Party shall accord to an investor of the other Party, and to a covered investment, treatment no less favourable than that it accords, in like circumstances, to its own investors, to the investments of its own investors, and to non-Party investors and the investments made by non-Party investors with respect to measures it adopts or maintains relating to compensation for losses incurred by investments in its territory as a result of armed conflict, civil strife or a natural disaster.

Article 8. Senior Management, Boards of Directors and Entry of Personnel

1. A Party may not require that an enterprise of that Party that is a covered investment appoint to a senior management position an individual of any particular nationality.

2. A Party may require that a majority of the board of directors, or a committee thereof, 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.

3. Subject to its domestic law relating to the entry of aliens, each Party shall grant temporary entry to nationals employed by an investor of the other Party to render managerial or executive services, or services that require specialized knowledge, and who seek to provide services to an investment made by that investor in the territory of the Party.

Article 9. Performance Requirements

1. A Party may not impose the following requirements in connection with the establishment, acquisition, expansion, management, conduct or operation of a covered investment or any other investment in its territory:

(a) to export a given level or percentage of a good or service;

(b) to achieve a given level or percentage, in terms of volume or value, of domestic content;

(c) to purchase, use or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;

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

(e) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party a good that the investment produces or a service it provides to a specific regional market or to the world market.

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

3. A Party may not condition the receipt or continued receipt of an advantage, in connection with an investment made in its territory by an investor of the other Party ora non-Party investor, on compliance with the following requirements:

(a) to achieve a given level or percentage, in terms of volume or value, of domestic content;

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

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

(d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

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

(b) Subparagraph 1(f) does not apply if 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 domestic competition law.

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

6. The provisions of:

(a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to a qualification requirement for a good or service with respect to export promotion and foreign aid programs;

(b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a State enterprise; and

(c) subparagraphs 3(a) and (b) do not apply to a requirement imposed by an importing Party relating to the content of a good necessary to qualify for a preferential tariff or preferential quota.

Article 10. Expropriation

1. A Party may not nationalize or expropriate a covered investment either directly or indirectly through measures having an effect equivalent to nationalization or expropriation ("expropriation"), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex I (Expropriation).

2. The compensation referred to in paragraph 1 must be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and must not reflect a change in value occurring because the intended expropriation had become known earlier. Valuation criteria must include going concern value, asset value including the declared tax value of tangible property, and other criteria, including non-economic criteria, to determine fair market value.

3. Compensation shall be paid expeditiously and shall be fully realizable and freely transferable. Compensation shall be paid in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

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

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

Article 11. Transfers

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

(a) contributions to capital;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the covered investment;

(c) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made under Articles 7 (Compensation for Losses) and 10 (Expropriation); and

(f) payments arising under Section C (Settlement of Disputes between an Investor and the Host Party).

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

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

(a) bankruptcy, insolvency or the protection of the rights of a creditor;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

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

(e) ensuring compliance with an order or judgment in judicial or administrative proceedings.

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

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

6. Notwithstanding the provisions of paragraphs 1, 2 and 4, and without limiting the applicability of paragraph 5, a Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to that institution, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.

7. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict those transfers under the WTO Agreement and as set out in paragraph 3.

8. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining measures (2) that restrict transfers if the Party experiences serious balance of payments difficulties, or the threat thereof, provided that those measures:

(a) are in effect for a period not exceeding 18 months, and if exceptional circumstances arise such that a Party seeks to extend those measures, that Party shall coordinate in advance with the other Party concerning the implementation of any proposed extension;

(b) are not confiscatory;

(c) do not constitute a dual or multiple exchange rate practice;

(d) do not otherwise interfere with an investor's ability to earn a market rate of return on any restricted assets (3) in the territory of the Party;

(e) avoid unnecessary harm to the commercial, economic, or financial interests of the other Party;

(f) are temporary and phased out progressively as the situation that warrants the imposition of those measures improves;

(g) are applied on a national treatment or most-favoured-nation-treatment basis, whichever standard is more favorable;

(h) are promptly published by the government authorities responsible for financial services or central bank of the Party.

9. Paragraph 8 does not apply to measures that restrict:

(a) payments or transfers for current transactions (4), unless:

(i) the imposition of those measures complies with the procedures set out in the Articles of Agreement of the International Monetary Fund, adopted at Bretton Woods (New Hampshire) on 22 July 1944; and

(ii) the Party coordinates those measures in advance with the other Party; or

(b) payments or transfers associated with foreign direct investment.

(2) However, each Party shall endeavour to provide that these measures are price-based.

(3) For greater certainty, the term "restricted assets" in subparagraph (d) refers only to assets invested in the territory of the Party by an investor of the other Party that are restricted from being transferred out of the territory of the Party.

(4) "Current transactions" has the meaning set forth in Article 30(d) of the Articles of Agreement of the International Monetary Fund and, for greater certainty, includes interest pursuant to a loan or bond on any restricted amortization payments that are due during the period in which the controls on capital transactions are applied.

Article 12. Transparency

1. The Parties shall progressively endeavour to improve the transparency of their legislative, regulatory, administrative, and judicial processes in compliance with their respective domestic acts and regulations.

2. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting a matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

3. To the extent possible, each Party shall:

(a) publish in advance any measure referred to in paragraph 2 that it proposes to adopt; and

(b) provide interested persons and the other Party a reasonable opportunity to comment on that proposed measure.

4. Upon request by a Party, the other Party shall provide information on a measure that may have an impact on a covered investment.

Article 13. Subrogation

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

2. A Party or an agency of a Party that is subrogated to a right of an investor in accordance with paragraph 1 is entitled to the same rights as those of the investor regarding the investment. Those rights may be exercised by the Party or an agency of the Party or by the investor if the Party or its agency so authorizes.

Article 14. Taxation Measures

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.

2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails.

3. This Agreement does not require a Party to furnish or allow access to information that, if disclosed, would be contrary to the Party's law protecting information concerning the taxation affairs of a taxpayer.

4. Subject to paragraph 2, the provisions of Articles 4 (National Treatment) and 5 (Most- Favoured-Nation Treatment) apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations, except that nothing in those Articles shall apply:

(a) to a non-conforming provision of an existing taxation measure;

(b) to the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;

(c) to an amendment to a non-conforming provision of an existing taxation measure to the extent that the amendment does not decrease its conformity at the time of the amendment with those Articles; or

(d) to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties.

5. Provided that the conditions in paragraph 6 are met:

(a) a claim by an investor that a taxation measure of a Party is in breach of an agreement between a national government authority of that Party and the investor concerning an investment shall be considered a claim for breach of this Agreement; and

(b) the provisions of Article 10 (Expropriation) apply to taxation measures.

6. An investor may not make a claim under paragraph 5 unless:

(a) the investor provides a copy of the notice of claim to the taxation authorities of the Parties; and

(b) six months after receiving notification of the claim by the investor, the taxation authorities of the Parties fail to reach a joint determination that, in the case of subparagraph 5(a), the measure does not contravene that agreement, or in the case of subparagraph 5(b), the measure in question is not an expropriation.

7. If, in connection with a claim by an investor of a Party or a dispute between the Parties, an issue arises as to whether a measure of a Party is a taxation measure, a Party may refer the issue to the taxation authorities of the Parties. A decision of the taxation authorities shall bind a Tribunal formed pursuant to Section C (Settlement of Disputes between an Investor and the Host Party) or arbitral panel formed pursuant to Section D (State-to-State Dispute Settlement Procedures). A Tribunal or arbitral panel seized of a claim or a dispute in which the issue arises may not proceed until it receives the decision of the taxation authorities. If the taxation authorities have not decided the issue within six months of the referral, the Tribunal or arbitral panel shall decide the issue.

8. Each Party shall notify the other Party by diplomatic note of the identity of the taxation authorities referred to in this Article.

Article 15. Health, Safety and Environmental Measures

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

Article 16. Corporate Social Responsibility

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

Article 17. Reservations and Exceptions

1. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors and Entry of Personnel) and 9 (Performance Requirements) shall not apply to:

(a)(i) any existing non-conforming measure, maintained in the territory of a Party;

(ii) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity:

- prohibits or imposes limitations on the ownership or control of equity interests or assets, or

- imposes nationality requirements relating to senior management or members of the board of directors;

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

(c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Boards of Directors and Entry of Personnel) and 9 (Performance Requirements).

2. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment), 8 (Senior Management, Board of Directors and Entry of Personnel) and 9 (Performance Requirements) 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 (Reservations for Future Measures).

3. Article 5 (Most-Favoured-Nation Treatment) shall not apply to treatment accorded by a Party pursuant to agreements set out in Annex III (Exceptions from Most-Favoured-Nation Treatment).

4. In respect of intellectual property rights, a Party may derogate from Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 9(1)(f) (Performance Requirements) in a manner that is consistent with:

(a) the TRIPS Agreement;

(b) an amendment to the TRIPS Agreement in force for both Parties; and

(c) a waiver to the TRIPS Agreement granted pursuant to Article IX of the WTO Agreement.

5. Articles 4 (National Treatment), 5 (Most-Favoured-Nation Treatment) and 8 (Senior Management and Board of Directors) do not apply to:

(a) procurement by a Party or a State enterprise; or

(b) a subsidy or grant provided by a Party or a State enterprise, including a government- supported loan, a guarantee or insurance.

6. Article 5 (Most-Favoured-Nation Treatment) of this Agreement does not apply to financial services.

Article 18. General Exceptions

1. For the purpose of this Agreement:

(a) a Party may adopt or enforce a measure necessary:

(i) to protect human, animal or plant life or health,

(ii) to ensure compliance with domestic law that is not inconsistent with this Agreement, or

(iii) to conserve living or non-living exhaustible natural resources;

(b) provided that the measure referred to in subparagraph (a) is not:

(i) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors, or

(ii) a disguised restriction on investment or investment-related international trade.

2. This Agreement does not prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

(a) protecting investors, depositors, financial market participants, policy-holders, policy- claimants, or persons to whom a fiduciary duty is owed by a financial institution;

(b) maintaining the safety, soundness, integrity or financial responsibility of financial institutions; and

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

3. This Agreement does not apply to non-discriminatory measures of general application taken by a public entity in pursuit of monetary and related credit or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 9 (Performance Requirements) or 11 (Transfers).

4. This Agreement does not:

(a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;

(b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent a Party from fulfilling its obligations under the United Nations Charter for the maintenance of international peace and security.

5. This Agreement does not require a Party to furnish or allow access to information that, if disclosed, would impede law enforcement or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.

6. In the course of a dispute settlement procedure under this Agreement:

(a) a Party is not required to furnish or allow access to information protected under its competition law;

(b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

7. This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry. "Person engaged in a cultural industry" means a person engaged in the following activities:

(a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, except when printing or typesetting any of the foregoing is the only activity;

(b) the production, distribution, sale or exhibition of film or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine-readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

8. If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure adopted by a Party in conformity with a waiver decision granted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with the present Agreement. Such conforming measure of either Party may not give rise to a claim by an investor of one Party against the other under Section C (Settlement of Disputes between an Investor and the Host Party) of this Agreement.

Article 19. Denial of Benefits

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

Section C. Settlement of Disputes between an Investor and the Host Party

Article 20. Purpose

Without prejudice to the rights and obligations of the Parties under Section D (State-to- State Dispute Settlement Procedures), this Section establishes a mechanism for the settlement of investment disputes.

Article 21. Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise

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

(a) the respondent Party has breached an obligation under Section B (Substantive Obligations), other than an obligation under:

(i) Article 4 (National Treatment), with respect to the establishment and acquisition of an investment (5),

(ii) Article 8(3) (Senior Management, Boards of Directors and Entry of Personnel), or

(iii) Article 12 (Transparency) or 15 (Health, Safety and Environmental Measures); and

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

2. An investor of a Party, on behalf of an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that:

(a) the respondent Party has breached an obligation under Section B (Substantive Obligations), other than an obligation under:

(i) Article 4 (National Treatment), with respect to the establishment and acquisition of an investment (6),

(ii) Article 8(3) (Senior Management, Boards of Directors and Entry of Personnel), or

(iii) Article 12 (Transparency) or 15 (Health, Safety and Environmental Measures); and

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

3. A claim to the effect that a restructuring of debt issued by a Party breaches an obligation under this Agreement may not be submitted to arbitration or, if the claim is already submitted to arbitration, may not continue in arbitration under this Section, if the restructuring is a negotiated restructuring at the time of submission, or if the restructuring becomes a negotiated restructuring after the claim is submitted, unless it is alleged that the restructuring violates Article 4 (National Treatment) or Article 5 (Most-Favoured- Nation Treatment).

4. Notwithstanding Article 25(1) (Submission of a Claim to Arbitration), and subject to paragraph 3 of this Article, an investor of another Party may not submit under this Section a claim to the effect that a restructuring of debt issued by a Party breaches an obligation under this Agreement, other than an obligation under Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment), unless 270 days have elapsed since the events that gives rise to the claim.

(5) Claims regarding the expansion of an investment may only be submitted if the measure regards the existing activities of the covered investment and if it has caused loss or damage to the covered investment.

(6) Claims regarding the expansion of an investment may only be submitted if the measure regards the existing activities of the covered

investment and if it has caused loss or damage to the covered investment.

Article 22. Conditions Precedent to Submission of a Claim to Arbitration

1. The disputing parties shall hold consultations and attempt to settle a claim amicably before an investor may submit a claim to arbitration. Unless the disputing parties agree to a longer period, consultations shall be held within 60 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c). The place of consultation shall be the capital of the respondent Party, unless the disputing parties otherwise agree.

2. An investor may submit a claim to arbitration under Article 21 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

(a) the investor and, where a claim is made under Article 21(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;

(b) at least six months have elapsed since the events giving rise to the claim;

(c) the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 180 days prior to submitting the claim, that notice shall specify:

(i) the name and address of the investor and, where a claim is made under Article 21(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,

(ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,

(iii) the legal and the factual basis for the claim, including the measures at issue, and

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

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

(e) in the case of a claim submitted under Article 21(1) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):

(i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby,

(ii) the investor clearly and unambiguously waives its right to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise), and

(iii) if 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 waives the right referred to under subparagraph (ii);

(f) in the case of a claim submitted under Article 21(2) (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):

(i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and

(ii) both the investor and the enterprise clearly and unambiguously waive their right to initiate or continue before an administrative tribunal or court under the domestic law of a Party, or other dispute settlement procedures, proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article 21 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise).

3. Subparagraphs 2(e)/(ii), (iii) and 2(f)(ii) do not apply to proceedings before a judicial or administrative tribunal or court under the domestic law of the respondent Party for injunctive, declaratory or other extraordinary relief, not involving the payment of damages.

4. The disputing investor or the enterprise shall deliver the consent and waiver required under paragraph 2 to the respondent Party and the investor shall include them in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(iii) or 2(f)(ii) is not required if the respondent Party has deprived the investor of control

of the enterprise.

Article 23. Mediation

1. The disputing parties may at any time, be it after notice of intent to submit a claim to arbitration has been given or after a claim has been submitted to arbitration, agree to mediation.

2. Mediation is voluntary and does not prejudice the position of each disputing party.

3. Mediation is governed by the rules jointly determined by the disputing parties.

Article 24. Special Rules Regarding Financial Services

1. With respect to:

(a) financial institutions of a Party; and

(b) investors of a Party, and investments of those investors, in financial institutions in the respondent Party's territory,

this Section applies only in respect of claims that the respondent Party has breached an obligation under Article 10 (Expropriation), 11 (Transfers) or 19 (Denial of Benefits).

2. Where an investor or respondent Party claims that a dispute involves measures adopted or maintained by the respondent Party relating to financial institutions of the other Party or investors of the other Party and their investments in financial institutions in the respondent Party's territory, or where the respondent Party invokes Article 11(6) (Transfers), 18(2) or 18(3) (General Exceptions), the arbitrators shall, in addition to the criteria set out in Article 27(2) (Arbitrators), have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

3. Where an investor submits a claim to arbitration under this Section, and the respondent Party invokes Article 11(6) (Transfers), 18(2) or 18(3) (General Exceptions), at the request of that Party, the Tribunal shall request a report in writing from the Parties on the issue of whether and to what extent the invoked paragraph is a valid defence to the claim of the investor. The Tribunal may not proceed pending receipt of a report under this Article.

4. Where the Tribunal requests a report under paragraph 3, the Parties shall prepare a written report. If the Parties cannot agree on the content of the report, they shall submit the issue to an arbitral panel established in accordance with Section D (State-to-State Dispute Settlement Procedures) that shall prepare the written report. The report shall be transmitted to the Tribunal and be binding on it.

5. The Tribunal may decide the matter where, within 70 days of the referral by the Tribunal, no request for the establishment of a panel pursuant to paragraph 4 has been made and no report has been received by the Tribunal.

Article 25. Submission of a Claim to Arbitration

1. An investor that meets the conditions precedent in Article 22 (Conditions Precedent to Submission of a Claim to Arbitration) may submit a claim to arbitration under:

(a) the ICSID Convention, provided that both Parties are parties to the ICSID Convention;

(b) the Additional Facility Rules of ICSID, if only one Party is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other instrument that allows the arbitration procedure to be conducted in accordance with the provisions of this Agreement and that is adopted or applied by the national or regional arbitration centre proposed by the investor, provided that the disputing parties so agree. If the disputing parties cannot reach an agreement in this regard within 30 days following the investor's proposal, the investor may submit a claim under the instruments in paragraphs (a), (b) or (c).

2. Except to the extent modified by this Agreement, the arbitration is governed by the arbitration rules applicable under paragraph 1 that are in effect on the date that the claim is submitted to arbitration under this Section.

3. The Parties may adopt supplemental rules of procedure that complement the arbitration rules listed in paragraph 1 and that apply to the arbitration. The Parties shall promptly publish the supplemental rules of procedure that they adopt or otherwise make them available in such a manner as to enable interested persons to become acquainted with them.

4. A claim is submitted to arbitration under this Section when:

(a) the request for arbitration under Article 36(1) of the ICSID Convention is received by the Secretary-General of ICSID;

(b) the request for arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretariat of ICSID; or

(c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.

5. Each Party shall notify the other Party by diplomatic note of the place of delivery of notices and other documents.

Article 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. Failure to meet a condition precedent listed in Article 22 (Conditions Precedent to Submission of a Claim to Arbitration) nullifies that consent.

2. The consent given in paragraph 1 and the submission by an investor of a claim to arbitration satisfies the requirement of:

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

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

Article 27. Arbitrators

1. Except in respect of a Tribunal established under Article 29 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall be composed of three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who will be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of the disputing parties, impartial, free of any real or perceived conflicts of interest, and not be affiliated with or take instructions from either of the disputing parties.

3. If the disputing parties do not agree on the remuneration of the arbitrators before the Tribunal is constituted, the prevailing ICSID rate for arbitrators shall apply.

4. If a Tribunal, other than a Tribunal established under Article 29 (Consolidation), has not been constituted within 90 days from the date that a claim is submitted to arbitration, a disputing party may ask the Secretary-General of ICSID to appoint the arbitrator or arbitrators not yet appointed. The Secretary-General of ICSID shall make the appointment at his or her own discretion and, to the extent practicable, in consultation with the disputing parties. The Secretary-General of ICSID may not appoint as presiding arbitrator a national of a Party.

Article 28. Agreement to Appointment of Arbitrators

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

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

(b) an investor referred to in Article 21(1) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an enterprise) may submit a claim to arbitration or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only if the investor agrees in writing to the appointment of each member of the Tribunal; and

(c) an investor referred to in Article 21(2) (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only if the investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

Article 29. Consolidation

1. A disputing party that seeks a consolidation order under this Article shall request that the Secretary-General of ICSID

establish a Tribunal and shall specify in the request:

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

(b) the nature of the order sought; and

(c) the grounds for the order sought.

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

3. Within 60 days of receiving the request, the Secretary-General of ICSID shall establish a Tribunal composed of three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent Party, one member who is a national of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a national of a Party.

4. 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.

5. If a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 25 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:

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

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

6. Where a Tribunal has been established under this Article, an investor that has submitted a claim to arbitration under Article 25 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 1 may make a written request to the Tribunal that it be included in an order made under paragraph 5, and shall specify in the request:

(a) the name and address of the investor;

(b) the nature of the order sought; and

(c) the grounds for the order sought.

7. An investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request under paragraph 1.

8. A Tribunal established under Article 25 (Submission of a Claim to Arbitration) does 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 5, may order that the proceedings of a Tribunal established under Article 25 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

Article 30. Documents to, and Participation of, the other Party

1. The respondent Party shall deliver to the other Party a copy of the notice of intent to submit a claim to arbitration and other documents within 30 days of the date those documents have been delivered to the respondent Party. The other Party is entitled, at its expense, to receive from the respondent Party a copy of the evidence that has been tendered to the Tribunal, copies of pleadings filed in the arbitration, and the written argument of the disputing parties. The Party receiving such information shall treat the information as if it were a respondent Party.

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

Article 31. Place of Arbitration

The disputing parties may agree on the place of arbitration under the arbitral rules applicable under Article 25(1) (Submission of a Claim to Arbitration) or 29(4) (Consolidation). If the disputing parties fail to agree, the Tribunal shall

determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a Party or of a third State that is a party to the New York Convention.

Article 32. Public Access to Hearings and Documents

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

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

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

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

5. If a Tribunal's order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information prevails. However, the Party should try to apply its law on access to information so as to protect information that the Tribunal's order has designated as confidential.

Article 33. Submissions by a Non-disputing Party

A Tribunal has the authority to consider and accept written submissions from a person or entity that is not a disputing party with a significant interest in the arbitration. The Tribunal shall ensure that a non-disputing party submission does not disrupt the proceedings and does not unduly burden or unfairly prejudice a disputing party. The procedures set out in Annex IV (Procedural Rules for Submissions by Amicus Curiae) apply.

Article 34. Governing Law

1. A Tribunal established under this Section shall decide the issues in dispute consistently with this Agreement and applicable rules of international law. A joint interpretation by the Parties of a provision of this Agreement shall bind a Tribunal established under this Section, and an award under this Section must be consistent with that interpretation.

2. When the respondent Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Article 17(1) (Reservations and Exceptions), or Annexe II (Reservations for Future Measures) or III (Exceptions from Most-Favoured-Nation Treatment), the Tribunal shall, at the request of that Party, request the joint interpretation of the Parties on the issue. Within 60 days of the delivery of the request, the Parties shall submit in writing their joint interpretation to the Tribunal. If the Parties fail to submit their joint interpretation within 60 days of the Tribunal's request, the Tribunal shall decide the issue. The joint interpretation is binding on the Tribunal.

Article 35. Expert Reports

1. Subject to paragraph 2, a Tribunal may appoint an expert to submit a written report to it on any factual element that relates to an issue involving the environment, health, safety, security, or another scientific field that is raised by a disputing party, subject to any terms that are determined by the disputing parties.

2. The Tribunal may not appoint an expert under paragraph 1 if the disputing parties agree that the Tribunal may not do so. The disputing parties are encouraged to provide the Tribunal with the reasons for such an agreement.

3. Paragraph 1 does not affect the appointment of other kinds of experts where the appointment is authorized by the applicable arbitration rules.

Article 36. Interim Measures of Protection and Final Award

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the

measure alleged to constitute a breach referred to in Article 21 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For the purposes of this paragraph, an order includes a recommendation.

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

(a) monetary damages and any applicable interest; and

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

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

3. Subject to paragraph 2, where a claim is made under Article 21(2) (Claim by an Investor of a Party on Behalf of an Enterprise):

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

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

(c) the award shall provide that it is made without prejudice to a right that a person may have in monetary damages or property awarded under paragraph (a) or (b) under a Party's domestic law.

4. A Tribunal may not order the respondent Party to pay punitive damages. Article 37

Article 37. Finality and Enforcement of an Award

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

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

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

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

(i) 120 days have elapsed from the date the award was rendered, provided that a disputing party has not requested the award be revised or annulled, or

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

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

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

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

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

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

Article 38. Receipts Under Insurance or Guarantee Contracts

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

Section D. State-to-state Dispute Settlement Procedures

Article 39. Disputes between the Parties

1. A dispute between the Parties concerning the interpretation or application of this Agreement shall be settled, if possible,

through diplomatic channels.

2. If a dispute cannot be settled through diplomatic channels, the dispute is submitted to a joint commission composed of the representatives of each Party. The joint commission shall meet without delay, by any technological means available, at the request of one of the Parties. If the joint commission is unable to settle the dispute within six months of the date that the Parties request a joint commission, the dispute shall, at the request of a Party, be submitted to an arbitral panel for decision.

3. Within two months after receipt through diplomatic channels of the request for arbitration, each Party shall appoint one member to the arbitral panel. The two members shall then select a national of a third State, who, upon approval by the two Parties, shall be appointed Chair of the arbitral panel. The Chair shall be appointed within two months from the date of appointment of the other two members of the arbitral panel.

4. If within the periods specified in paragraph 3 the necessary appointments have not been made, a Party may invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of a Party or is prevented from discharging that function for another reason, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of a Party or is prevented from discharging this function for another reason, the Member of the International Court of Justice next in seniority who is not a national of a Party shall be invited to make the necessary appointments.

5. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, or the resolution of disputes arising under international trade or international investment agreements. They shall be independent of, and not be affiliated with or take instructions from, a Party.

6. Where a Party determines that the dispute involves measures relating to financial institutions, or to investors or investments of such investors in financial institutions, or where a Party invokes Article 11(6) (Transfers), 18(2) or 18(3) (General Exceptions), the arbitrators shall, in addition to the criteria set out in paragraph 5, have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

7. The arbitral panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. The decision is binding on both Parties. Unless otherwise agreed, the decision of the arbitral panel shall be rendered within six months of the appointment of the Chair.

8. Each Party shall bear the costs of its own member of the panel and of its representation in the arbitral proceedings. The costs related to the Chair and any remaining costs shall be borne equally by the Parties. The arbitral panel may, however, award that a higher proportion of costs be borne by one of the two Parties, and this award shall be binding on both Parties.

9. Within 60 days of the decision of an arbitral panel, the Parties shall agree on the manner in which to resolve their dispute. The agreement must normally implement the decision of the arbitral panel. If the Parties fail to agree, the Party bringing the dispute shall be entitled to compensation or to suspend benefits of equivalent value to those awarded by the panel.

Section E. Final Provisions

Article 40. Consultations, Amendments and other Actions

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

2. The consultations under paragraph 1 may address, inter alia, matters relating to:

(a) the implementation of this Agreement;

(b) the interpretation or application of this Agreement; or

(c) the proposed amendments to this Agreement.

3. Further to consultations under this Article, the Parties may take an action as they may agree, including making and adopting rules supplementing the applicable arbitral rules under Section C (Settlement of Disputes between an Investor and the Host Party) of this Agreement.

4. The Parties generally meet once every five years, or by any technological means available, after the entry into force of this Agreement, in order to examine the application and effectiveness of this Agreement.

5. Each Party shall notify the other Party in writing of the completion of the formalities required in its territory for the entry

into force of any amendment to this Agreement. The amendment shall come into force on the date of the last of these notifications and shall constitute an integral part of this Agreement.

Article 41. Extent of Obligations

Each Party shall ensure that it takes all necessary measures to give effect to the provisions of this Agreement, including their observance, except as otherwise provided in this Agreement, by its sub-national governments.

Article 42. Exclusions

Sections C (Settlement of Disputes between an Investor and the Host Party) and D (State- to-State Dispute Settlement Procedures) of this Agreement do not apply to the matters set out in Annex V (Exclusions from Dispute Settlement).

Article 43. Application and Entry Into Force

1. All Annexes are an integral part of this Agreement.

2. Each Party shall notify the other in writing of the completion of the procedures required in its territory for the entry into force of this Agreement. This Agreement enters into force on the date of the later of these notifications.

3. This agreement may be amended by mutual written consent of the Parties.

4. This Agreement shall remain in force unless a Party notifies the other Party in writing of its intention to terminate it. The termination of this Agreement will be effective one year after notice of termination has been received by the other Party. In respect of investments or commitments to invest made prior to the date when the termination of this Agreement becomes effective, Articles 1 to 42 inclusive, as well as paragraphs 1, 2 and 3 of this Article, shall remain in force for a period of 15 years.

IN WITNESS WHEREOF, the undersigned, duly authorised, have signed this Agreement.

DONE in two originals at on this 20th day of April 2015, in the English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF CANADA

FOR THE GOVERNMENT OF BURKINA FASO

Annex I. Expropriation

The Parties confirm their shared understanding that:

(a) indirect expropriation results from a measure or a series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure;

(b) the determination of whether a measure or a series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the measure or the series of measures, although the sole fact that a measure or a series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,

(ii) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations, and

(iii) the character of the measure or the series of measures;

(c) a non-discriminatory measure or series of measures of a Party designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation, except in rare circumstances, such as when a measure or a series of measures is so severe in the light of its purpose that it cannot be

reasonably considered as having been adopted and applied in good faith.

Annex II. Reservations for Future Measures

Schedule of Burkina Faso

In accordance with Article 17(2) (Reservations and Exceptions) of this Agreement, Burkina Faso reserves the right to adopt or maintain any measure that does not conform to the obligations set out below with respect to the following sectors or matters:

- social services (i.e.: public law enforcement; correctional services, income security or insurance; social security or insurance; social welfare; public education; public training; and health), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement;

- the rights or preferences provided to socially or economically disadvantaged minorities, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement;

- government securities (i.e. acquisition, sale or other disposition by nationals of the other Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Burkina Faso or a territorial community), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) of this Agreement;

- licensing agriculture-, forestry-, livestock- and fish-farm-related activities, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel), or Article 9 (Performance Requirements) of this Agreement;

- licensing in the telecommunications services sector, if the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement;

- the establishment or acquisition in Burkina of an investment in the services sector, if the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement, provided that the measure is consistent with Burkina's obligations under Articles II, XVI, XVII and XVIII of the WTO General Agreement on Trade in Services;

- development aid organizations, if the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement;

- the priority use of local products and services to the extent that those products and services are available at competitive terms of price, quality, warranty and delivery time, if the measure, otherwise consistent with Burkina Faso's obligations under the WTO Agreement on Trade-Related Investment Measures, does not conform with Article 9 (Performance Requirements).

Schedule of Canada

In accordance with Article 17(2) (Reservations and Exceptions) of this Agreement, Canada reserves the right to adopt or maintain any measure that does not conform to the obligations set out below with respect to the following sectors or matters:

- social services (i.e.: public law enforcement; correctional services, income security or insurance; social security or insurance; social welfare; public education; public training; health and child care), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement;

- the rights or preferences provided to aboriginal peoples, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement;

- the rights or preferences provided to socially or economically disadvantaged minorities, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement;

- residency requirements for ownership of oceanfront land, where the measure does not conform with the obligations imposed by Article 4 (National Treatment) of this Agreement;

- government securities (i.e. acquisition, sale or other disposition by nationals of the other Party of bonds, treasury bills or other kinds of debt securities issued by the Government of Canada, a province or local government), where the measure does not conform with the obligations imposed by Article 4 (National Treatment) of this Agreement;

- maritime cabotage, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 5 (Most-Favoured-Nation Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement. "maritime cabotage" means (a) the transportation of either goods or passengers by ship between points in the territory of Canada or above the continental shelf of Canada, directly or by way of a place outside Canada; but with respect to waters above the continental shelf of Canada, the transportation of either goods or passengers only in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada; and (b) the engaging by ship in any other marine activity of a commercial nature in the territory of Canada and, with respect to waters above the continental shelf, in such other marine activities of a commercial nature that are in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of the continental shelf of Canada;

- licensing fishing or fishing related activities, including entry of foreign fishing vessels to Canada's exclusive economic zone, territorial sea, internal waters or ports and use of any services therein, where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 5 (Most-Favoured-Nation Treatment) of this Agreement;

- telecommunications services, where the measure does not conform with the obligations imposed by Article 4 (National Treatment) or Article 8 (Senior Management, Boards of Directors and Entry of Personnel) of this Agreement by limiting foreign investment in facilities-based telecommunications service suppliers, requiring that such service suppliers be controlled in fact by a Canadian, requiring that at least 80 percent of the members of the board of directors of such suppliers be Canadian, and imposing cumulative foreign investment level restrictions; and

- the establishment or acquisition in Canada of an investment in the services sector, where the measure does not conform with the obligations imposed by Article 4 (National Treatment), Article 8 (Senior Management, Boards of Directors and Entry of Personnel) or Article 9 (Performance Requirements) of this Agreement, on condition that the measure is consistent with Canada's obligations under Articles II, XVI, XVII and XVIII of the WTO General Agreement on Trade in Services.

Annex III. Exceptions from Most-Favoured-Nation Treatment

1. Article 5 (Most-Favoured-Nation Treatment) does not apply to treatment accorded by a Party under a bilateral or multilateral international agreement in force on or signed prior to the date on which this Agreement came into effect.

2. Article 5 (Most-Favoured-Nation Treatment) does not apply to treatment accorded by a Party under an existing or future bilateral or multilateral agreement:

(a) establishing, strengthening or expanding a free trade area or customs union; or

(b) relating to:

(i) aviation,

(ii) fisheries, or

(iii) maritime matters, including salvage.

3. For greater certainty, treatment "with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment" referred to in paragraphs 1 and 2 of Article 5 (Most-Favoured-Nation Treatment) does not include dispute settlement mechanisms, such as those provided for in Section C (Settlement of Disputes between an Investor and the Host Party), that are provided for in international treaties or trade agreements.

Annex IV. Rules of Procedure for Amicus curiae Submissions

1. The person or entity seeking amicus curiae status must serve the Tribunal and all the disputing parties with an application for leave to file an amicus curiae submission and the proposed oral representations.

2. An application for leave to file an amicus curiae submission must:

(a) be made in writing, and be dated and signed by the person or entity that files the application, and include the address and other contact details of the applicant. The person or entity may be represented by counsel for this purpose;

(b) not exceed seven typed pages;

(c) describe the applicant, which include, if relevant, its membership and legal status (for example, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);

(d) disclose whether or not the applicant has an affiliation, direct or indirect, with a disputing party;

(e) identify any government, person or entity that has provided financial or other assistance to prepare the submission;

(f) specify the nature of the applicant's interest in the arbitration;

(g) identify the specific issues of fact or law in the arbitration that the applicant plans to address in its written submissions;

(h) explain, by referring to the factors specified in paragraph 5, why the Tribunal should allow the submission; and

(i) be made in a language of the arbitration or in one of the official languages of the disputing Party.

3. The submission filed by an amicus curiae must:

(a) be dated and signed by the person who files the submission;

(b) be concise, and not exceed 30 typed pages, which includes any appendices;

(c) set out a precise statement supporting the amicus curiae's position on the issues; and

(d) address only matters within the scope of the dispute.

4. The Tribunal will set an appropriate date for the disputing parties to comment on the application for leave to file an amicus curiae submission.

5. In determining whether to grant leave to file an amicus curiae submission, the Tribunal must consider, among other things, the extent to which:

(a) the amicus curiae submission would assist the Tribunal to dispose of a question of fact or question of law related to the dispute;

(b) the amicus curiae submission would address a matter within the scope of the dispute;

(c) the amicus curiae has a significant interest in the arbitration; and

(d) the subject of the arbitration is a matter of public interest.

6. The Tribunal must ensure that:

(a) any amicus curiae submissions does not disrupt the proceedings; and

(b) any amicus curiae submissions do not unfairly prejudice either disputing party.

7. The Tribunal decides whether to grant leave to file an amicus curiae submission. If leave to file an amicus curiae submission is granted, the Tribunal sets an appropriate date for the disputing parties and the other Party to respond in writing to the amicus curiae submission.

8. A Tribunal that grants leave to file an amicus curiae submission is not required to address all aspects of the submission in the arbitration. The Tribunal may ask any person or entity to make oral representations before the Tribunal before it answers specific questions or questions regarding the amicus curiae submission.

9. Access to hearings and documents by persons or entities who apply for leave to file an amicus curiae submission in accordance with the procedures set out in this Annex is governed by the provisions pertaining to public access to hearings and documents under this Agreement.

Annex V. Exclusions from Dispute Settlement

A decision by Canada following a review under the Investment Canada Act, with respect to whether or not to permit an

investment that is subject to review, is not subject to the dispute settlement provisions under Section C (Settlement of Disputes between an Investor and the Host Party) or D (State-to-State Dispute Settlement Procedures) of this Agreement.