CHAPTER 14

INVESTMENT

Article 14.1: Definitions

For the purposes of this Chapter:

covered investmentmeans, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force

- (g) licenses, authorizations, permits, and similar rights conferred pursuant to a Party's law;² and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as liens, mortgages, pledges, and leases,

but investment does not mean:

- (i) an order or judgment entered in a judicial or administrative action;
- (j) claims to money that arise solely from:
 - (i) commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to an enterprise in the territory of another Party, or
 - (ii) the extension of credit in connection with a commercial contract referred to in subparagraph (j)(i);

investor of a non-Party means, with respect to a Partyn investor that attempts to makes making, or has made an investment in the territory of that Party, that is not an investor of a

- 3. A requirement of Party that a service supplier of another Party post a bond or other form of financial security as a condition for the cross-der supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party telthiscrossborder supply of the serviceThis Chapter applies measures adopted or maintained by the Party relating to the posted bond or financial security; the extent that bond or financial security is a covered investment.
- 4. For greater certainty, consistent with Article 5.2.2(a) (Scope) Article 15.5 (Market Access) and Article 158 (Development and Administration of Measures) ply to measures adopted or maintained by a Party relating supply of a service in its territory by a covered investment.

Article 14.4: National Treatment

- 1. Each Party shall accord to investors of another Party treatment no less favtban that it accords, in like circumstances, to its own investors respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.
- 2. Each Party shall accord to covered investments treatments and voable than that it accords in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
- 3. The treatment accorded by a Party unpotent agraphs 1 and 2 means, with respect to a government other than at the 3.

2.

Article 14.7: Treatment in Case of Armed Conflict or Civil Strife

1. Notwithstanding Article 4.12.5(b) (Non-

(b)

Article 14.9: 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. The sansfers include:
 - (a) contributions to capital,
 - (b) profits, dividends, interest, capital gains, royalty/ments, management fees, technical assistance, and other fees;
 - (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (d) payments made under a contract entered into by the investor, or the covered investmentincluding payments made pursuant to a loan agreeomemorployment contract and
 - (e) payments made pursuant to Article 7 (Treatment in Case of Armed Conflict or Civil Strife) and Article 14.8 (Expropriation and Compensation)
- 2. Each Party shall permit transfered ating to a covered investment to be made in a freely usablecurrency at the market rate of exchange prevailing at the time of transfer
- 3. A Party shall not require its investors to transfer, or penalize its investors that fail to transfer, the income, earnings, profits other amounts derived from, or attributable to, investments in the territory of another Party.
- 4. Each Party shall permit returns in kind relating to a covered stment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.
- 5. Notwithstanding paragraphs 2, and 4, a Party may prevent or delay a transfer through the equitable, nordiscriminatory and good faithapplication of its law relating to:
 - (a) bankruptcy, insolvency or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities derivatives;
 - (c) criminal or penal offeness;

¹⁰ For greater certainty, contributions to capital include the initial contribution.

¹¹ For greater certainty, this Article does not preclude the equitabledi**scri**minatory, and good faith application of a Party's laws relating to its social security, public retirement, or compulsory savings programs.

- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; or
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings.
- 6. Notwithstanding paragrapt4, a Party may resict transfers of returns in kind in circumstances where it could otherwise resthics etransfers under this Agreement, including as set out in paragraph 5.

Article 14.10: Performance Requirements

- 1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforcemy requirement, or enforce any commitment or undertaking.¹²
 - (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, user accord a preference to a general duced on service supplied in its territory, or to purchase a good as service from a person in its territory;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with these times the control of the same of the control of the control
 - to restrict sales of a good osarvicein its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;
 - (f) to transfer a technology, a production process ther proprietary knowledge a person in its territory;
 - (g) to supply exclusively from the territory of the Partygood that the investment produces on service that it supplies a specific regional market or to the world market;

¹² For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "requirement" or a "commitment or undertaking" for the purposes of paragraph 1.

- (h) (i) to purchase, uşer accord a preference to, in its territory, technology of the Party or of a person of the Partyor
 - (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a technologyor
- (i) to adopt:
 - (i) a given rate or amount of royalty under a licensentractor
 - (ii) a given duration of the term of a licerescontract

in regard to any licerescontract in existence at the time the requirement is imposed or enforced, or any commitment or undertaking inforced, or any future licers contract freely entered into between the investor and a person in its territory, provided that the requirement is imposed or the commitment or undertaking is enforced in a manner that constitutes chiracterference with that license contract by an exercise of no joudicial governmental authority of a Party. For greater certainty, paragraph 1(i) does not apply when the license contract is concluded between the investor and a Party.

- 2. No Party shall condition the receipt or continuedeript of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a Party in its territory, on compliance with any requirement
 - (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, user accord a preference to a good produced in its territory, or to purchase good from aperson in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with these timest;
 - (d) to restrict sales of goods or services in its territory that the investment produces or supplies by relatingthose sales in any way to the volume or value of its exporr foreign exchange earnings; or

¹³ For the purposes of this Articlene term "technology of the Party or of a person of the Party" includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive license.

¹⁴ A "license contract" refer**re** to in this subparagraph means a contract concerning the licensing of technology, a production process, or other proprietary knowledge.

- (e) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party, or
 - (ii) that prevents the purchase or use of, or the according of a prefereince to,

- (iii) related to the conservation of living or nibwing exhaustible natural resources.
- (d) Paragraph (a), 1(b), 1(c), 2(a) and 2(b) do not apply to qualification requirements for a good or a service with respect to export promotion and foreign aid programs.
- (e) Paragraphs 1(b), 1)(c1(f), 1(g), 1(h), 1(i), 2(a)2(b), and 2(e)do not apply to government government.
- (f) Paragraph 2(a) and 2(b) do

- (ii) Article 4 of the TRIPS Agreement.
- 5. Article 14.4 (National Treatment), Article 14.5 (MdsavoredNation Treatment), and Article 14.11 (Senior Management and Boards of Directors) ot apply to:
 - (a) government procurement
 - (b) subsidies or grants provided by a Paintycluding governmensupported loans, guaranteesand insurance.

Article 14.13: Special Formalities and Information Requirements

1. Nothing in Article 14.4 (National Treatments) hall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments

violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments

Article 14.15: Subrogation

If a Party, oran agencyof a Party, makes a payment to an investor of the Randyer a guaranteea contract of insurançer other form ofindemnitythat it has entered into withespect to acovered investment, the other Party in whose territory the covered investmentalesshall recognize the subrogation or transfer of any right the investor would have possetts embed to the covered investment but for the subrogation, and the invested precluded from pursuing that right to the extent of the subrogation, unless a Party or an agency of a Partyzes thorithe investor to act on its behalf.

ANNEX 14-A

CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically ferenced in Article 14.6 (Minimum Standard of Treatment) sults from a general and consistent practice of States that they follow from a sense of legal obligation. The customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the investments of aliens.

5. For greater certainty, an arbitration initiated pursuant to the submission of chapter 11 (Investment)

ANNEX 14-D

MEXICO -UNITED STATES INVESTMENT DISPUTES

Article 14.D.1: Definitions

For the purposes of this Annex:

D

respondentmeans the Annex Party that is a party to a qualifying investment dispute;

Secretary-General means the Secretary-General of ICSID and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law.

Article 14.D.2: Consultation and Negotiation

- 1. In the event of aqualifying investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of nonbinding, third party procedures, such as good offices, conciliation, oatiomedi
- 2. For greater certainty, the initiation of consultations and negotiations shall not be construed as recognition of the jurisdiction of the tribunal.

Article 14.D.3: Submission of a Claim to Arbitration

- 1. In the event that a disputing party considers that a qualifying investment dispute cannot be settled by consultation and negotiation:
 - (a) the claimant, on its own behalf, may submit to arbitration under this Annex a claim:
 - (i) that the respondent has breached:
 - (A) Article 14.4 (National Treatment) or Article 1.5 (MostFavored-Nation Treatment), except with respect to the establishment or acquisition of an investment, or
 - (B) Article 14.8 (Expropriation and Compensation), except with to indirect expropriation and
 - (ii) that the claimant has incurred loss or damage by reason of, or arising ou-0.002(r)3

- (i) that the respondent has breached:
 - (A) Article 14.4 (National Treatment) or Article 14 (MostFavored-Nation Treatment), except with respect to the establishment or acquisition of an investment
 - (B) Article 14.8 (Expropriation and Compensation), except with respect to indirect expropriationand

- 4. A claim shall be deemed submitted to arbitration under this Annex when the claimant's notice of or request for arbitration (notice of arbitration):
 - (a) referred to in the ICSID Convention is received by the Secreaneral;
 - (b) referred to in the ICSID Additional Facility Rules is received by the Secretary General;
 - (c) referred to in the UNCITRAL Arbitration Rules, together with the statement o(G)3(a)1

Article 14.D.6: Selection of Arbitrators

- (c) not, for the duration of the proceedings, act as counsel or asapartyinted expert or witness in any pending arbitration under the annexes to this Chapter
- 6. Challenges to arbitrators shall be governed by the procedures in the UNCITRAL Arbitration Rules.

Article 14.D.7: Conduct of the Arbitration

- 1. The disputing parties may agree on the legal place of any arbitration under the arbitration rules applicable under Article 14.D.3(Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitration rules, provided that the place shall the iterritory of a State that is a party to the New York Convention.
- 2. The nion-disputins Anniex Party may make a bral and written submissions to the tribunal regarding that same pretation of this Agrein (a)-

- preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 14.D.13 (Awards), the tribunal shall assume to be true the claimant's factual allegations 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 the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also considerny relevant facts not in dispute.
- (d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragrapake use of the expedited procedure set out in paragraph 5.
- 5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or aincent dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, regathie grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.
- 6. When the tribunal decides a respondent's objection under paragraph 4 or 5, it may, if warranted, award the prevailing disputing party reasonable costs and attorney's fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant's claim or the responder was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.
- 7. For greater certainty, if an investor of an Annex Party submits a claim under this Annex, the investor has the burden of proving all elements of international away applicable to international arbitration.
- 8. A respondent may not assert as a defense, counterclaim, rightoff, soutfor any other reason, that the claimant has received or will receive minification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.
- 9. A tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the trib\(\mathbb{u}\mathbb{s}\)ajurisdiction 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 a measure alleged to constitute a breach referred to in Article 14.D.3 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.

- 10. The tribunal and the disputing parties shall endeavor to conduct the arbitration in an expeditious and costffective manner.
- 11. Following the submission of a claim to arbitration under this Annel price fail to take any steps in the proceeding for more than 150 days, or such period as they may agree with the approval of the tribunal, the tribunal shall notify the disputing parties that they shall be deemed to have discontinued the proceedings if the parties fail to take any it tieps 0 days after the notice is received the parties fail to take any steps within that time period, the tribunal shall take note of the discontinuance in an ord tribunal has not yet been constituted, the Secretary General shall assume these responsibilities.
- 12. In any arbitration conducted under this Annex, at the request of a disputing party, a tribunal shall, before issuing a decision or award on liability, transmit its proposed decision or award to the disputing parties. Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal concerning any aspect of its proposed decision or award. The tribunal shall consider any comments and issue its decision or award no later than 45 days after the expiration of the 60 day comment period.

Article 14.D.8: Transparency of Arbitral Proceedings

- 1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit themthe nondisputing Annex Partand make them available to the public:
 - (a) the notice of intent;
 - (b) the notice of arbitration;
 - (c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 14.Daħ 2 14.D.7.3 (Conduct of the Arbitration, and Article 14.D.12 (Consolidation);
 - (d) minutes or transcripts of hearings of the tribunal, if available; and
 - (e) orders, awardsand decisions of the tribunal.
- 2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements dispating party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from dissure which may include closing the hearing for the duration of the discussion of that information.
- 3. Nothing in this Annex, including paragraph 4(d), requires spondent to make available to the public or otherwise disclose during or after the arbitral proceedings, including the hearing,

Article 14.D.9: Governing Law

- 1. Subject to paragraph When a claim is submitted under Article 14.D.3.1 (Submission of a Claim to Arbitration), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.
- 2. A decision of the Commission on the interpretation of a provision of this Agreement under Article 30.2 (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 14.D.10: Interpretation of Annexes

1. If a respondent asserts as a defense that the measure alleged to be a breach is within the scope of a nonconforming measure set out in Annex I or Annex II, the tribunal shall, on request of the respondent, requap(r)-1 (t)-6.215 -1p2j EMC / vi(r)-1 s/(t)5 (e)1 (r)3 c41 (d unde)-1 ()2 (a)1 (A E15 Td xpi (e (u)6)1R15 Td -7 -2 (pa)1 (aa)-10oAonal Innex3-2 (s)4 (i)3 (on.)]TJ ()Tj16decisix e

except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and £ n,d

- (ii) that tribunal shall decide whether a prior hearing shall be repeated.
- 7. If a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration) landhas not been named in a request made under paragraph 2 may make a written request to the tribunal that it be included in any order made under paragraph 6. The request shall specify:
 - (a) the name and address of the claimant;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.

The claimant shall deliver a copy of its request to the Secretaineral.

- 8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Annex.
- 9. A tribunal established under Article 4.D.6 (Selection of Arbitrators) shall not have jurisdiction to decide a claim, or a part of a claim, over which a tribunal established or instructed under this Article has assumed jurisdiction.
- 10. On the application of a disputing party, a tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a tribunal established under Article 14.D.6 (Selection of Abitrators) be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 14.D.13: Awards

- 1. When a tribunal makes a final award, the tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applieablerest; and
 - (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution.
- 2. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1 (Submission of a Claim to Arbitration), it may recover only for loss or damage that is established on the basis of satisfactory evidence and that is not inherently speculative.

²⁷ For greater certainty, in the final **and** the tribunal may not order the respondent to take or not to take other actions, including the amendment, repeal, adoption, or implementation of a law or regulation.

- 3. For greater certainty, if an investor of an Annex Party submits a claim to arbitration under Article 14.D.3.1(a) (Submission of a Claim to Arbitration), it may recover only for loss or damage incurred in its capacity as an investor of an Annex Party.
- 4. A tribunal may also award costs and attorney's fees incurred by the disputing parties in connection with the arbitral proceedings of shall determine how and by whom those costs and attorney's fees shall be paid, in acceptance with this Annex and the applicable arbitration rules.

- (ii) a court has dismissed or allowed an application wise, set aside or annul the award and there is no further appeal.
- 10. Each Annex Party shall provide for the enforcement of an award in its territory.
- 11. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimana panel shall be established unaticle 31.6 (Establishment of a Panel). The requesting Party may seek in those proceedings:
 - (a) a determination that the failure to index by or comply with the final award is inconsistent with the obligations of this Agreement; and
 - (b) in accordance with Article 1.17 (Panel Report), are commendation that the respondent abide by or comply with the final award.
- 12. A disputing party may seek enforcement of an arbitration award undelicated Convention, the New York Convention, or the Internetion Convention regardless of whether proceedings have been taken under paragraph 11.
- 13. A claim that is submitted to arbitration under this Annex shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention and Article I of the InterAmerican Convention.

Article 14.D.14: Service of Documents

Delivery of notice and other documents to an Annex Party shall be made to the place named for that Annex Party in Appendix 1 (Service of Documents on an Annex Party). An Annex Party shall promptly make publicly available and notify the other Annex Ratingy change to the place referred to in that Appendix.

APPENDIX 1

APPENDIX 2

PUBLIC DEBT

1. For greater certainty, no award shall be made in favor of a claimant for a claim under Article 14.D.

APPENDIX 3

SUBMISSION OF A CLAIM TO ARBITRATION

An investor of the United States may not submit to arbitration a claim that Mexico has breached an obligation under this Chapter either:

- (a) on its own behalf underrticle 14.D.3.1(a) (Submission of a Claim to Arbitration); or
- (b) on behalf of an enterprise of Mexico that is a juridical person that the investor owns or controls directly or indirectly underticle 14.D.3.1(b) (Submission of a

ANNEX 14-E

MEXICO -UNITED STATES INVESTMENT DISPUTES RELATED TO COVERED GOVERNMENT CONTRACTS

1. Annex 14D (Mexico-United States Investment Disputes) plies

- (A) the enterprise is:
 - (1) a party to a covered government contract
 - (2) engaged in activities in the same covered seintothe territory of the respondents the claimant and the claimant is a party to a covered government contract
 - (3) engaged in activities in the same covered seixtothe territory of the respondents another enterprise of the