

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Chapter Ten

Investment

Section A: Investment

Article 10.1: Scope and Coverage¹

1. This Chapter applies to measures adopted or maintained by a Party relating to:
 - (a) investors of another Party;
 - (b) covered investments; and
 - (c) with respect to Articles 10.9 and 10.11, all investments in the territory of the Party.
2. A Party's obligations under this Section shall apply to a state enterprise or other person when it exercises any regulatory, administrative, or other governmental authority delegated to it by that Party, such as the authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges.
3. For greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

Article 10.2: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of another Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Chapter applies to measures adopted or maintained by

¹ For greater certainty, nothing in this Chapter shall be construed to impose an obligation on a Party to privatize any investment that it owns or controls or to prevent a Party from designating a monopoly, provided that, if a Party adopts or maintains a measure to privatize such an investment or a measure to designate a monopoly, this Chapter shall apply to such measure.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.

3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Twelve (Financial Services).

Article 10.3: National Treatment

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

2. Each Party shall accord to covered investments treatment no less favorable 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 to be accorded by a Party under paragraphs 1 and 2 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

Article 10.4: Most-Favored-Nation Treatment

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

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

² For greater certainty, treatment “with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments” referred to in paragraphs 1 and 2 of Article 10.4 does not encompass dispute resolution mechanisms, such as those in Section B, that are provided for in international investment treaties or trade agreements.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Article 10.5: Minimum Standard of Treatment³

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
 - (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
 - (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 10.6: Treatment in Case of Strife

1. Notwithstanding Article 10.13.5(b), each Party shall accord to investors of another Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.
2. Notwithstanding paragraph 1, if an investor of a Party, in the situations referred to in paragraph 1, suffers a loss in the territory of another Party resulting from:
 - (a) requisitioning of its covered investment or part thereof by the latter’s forces or authorities; or
 - (b) destruction of its covered investment or part thereof by the latter’s forces or authorities, which was not required by the necessity of the situation,

³ Article 10.5 shall be interpreted in accordance with Annex 10-A.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

the latter Party shall provide the investor restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in accordance with Article 10.7.2 through 10.7.4, *mutatis mutandis*.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 10.3 but for Article 10.13.5(b).

Article 10.7: Expropriation and Compensation⁴

1. No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”), except:

- (a) for a public purpose⁵;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation; and
- (d) in accordance with due process of law and Article 10.5.

2. The compensation referred to in paragraph 1(c) shall:

- (a) be paid without delay;
- (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“the date of expropriation”);
- (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and
- (d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(c) shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

⁴ Article 10.7 shall be interpreted in accordance with Annex 10-B.

⁵ For greater certainty, for purposes of this article, the term “public purpose” refers to a concept in customary international law. Domestic law may express this or a similar concept using different terms, such as “public necessity,” “public interest,” or “public use.”

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(c) – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:
- (a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus
 - (b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.
5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter Sixteen (Intellectual Property Rights).

Article 10.8: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
- (a) contributions to capital;
 - (b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
 - (c) interest, royalty payments, management fees, and technical assistance and other fees;
 - (d) payments made under a contract, including a loan agreement;
 - (e) payments made pursuant to Article 10.6.1 and 10.6.2 and Article 10.7; and
 - (f) payments arising out of a dispute.
2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.
3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of another Party.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:
- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
 - (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
 - (c) criminal or penal offenses;
 - (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.

Article 10.9: Performance Requirements

1. No Party may, 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 enforce any requirement or enforce any commitment or undertaking:⁶
- (a) to export a given level or percentage of goods or services;
 - (b) to achieve a given level or percentage of domestic content;
 - (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
 - (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
 - (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

⁶ For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a “commitment or undertaking” for the purposes of paragraph 1.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;⁷ or
 - (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that it supplies to a specific regional market or to the world market.
2. No Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:
- (a) to achieve a given level or percentage of domestic content;
 - (b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
 - (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
 - (d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.
3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.
- (b) Paragraph 1(f) does not apply:
- (i) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the

⁷ For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party, 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, from imposing or enforcing a requirement or enforcing a commitment or undertaking to train workers in its territory, provided that such training does not require the transfer of a particular technology, production process, or other proprietary knowledge to a person in its territory.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

- (ii) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.⁸
 - (c) Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on international trade or investment, paragraphs 1(b), (c), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:
 - (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement,
 - (ii) necessary to protect human, animal, or plant life or health, or
 - (iii) related to the conservation of living or non-living exhaustible natural resources.
 - (d) Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs.
 - (e) Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to procurement.
 - (f) Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.
4. For greater certainty, paragraphs 1 and 2 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.
5. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

⁸ The Parties recognize that a patent does not necessarily confer market power.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Article 10.10: Senior Management and Boards of Directors

1. No Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 10.11: Investment and Environment

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

Article 10.12: Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if persons of a non-Party own or control the enterprise and the denying Party:
 - (a) does not maintain diplomatic relations with the non-Party; or
 - (b) adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.
2. A Party may deny the benefits of this Chapter to an investor of another Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of any Party, other than the denying Party, and persons of a non-Party, or of the denying Party, own or control the enterprise.

Article 10.13: Non-Conforming Measures

1. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to:
 - (a) any existing non-conforming measure that is maintained by a Party at:

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (i) the central level of government, as set out by that Party in its Schedule to Annex I,
 - (ii) a regional level of government, as set out by that Party in its Schedule to Annex I, or
 - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 10.3, 10.4, 10.9, or 10.10.
2. Articles 10.3, 10.4, 10.9, and 10.10 do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in its Schedule to Annex II.
3. No Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 10.3 and 10.4 do not apply to any measure that is an exception to, or derogation from, the obligations under paragraph 8 of Article 16.1 (General Provisions) as specifically provided in that Article.
5. Articles 10.3, 10.4, and 10.10 do not apply to:
- (a) procurement; or
 - (b) subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance.

Article 10.14: Special Formalities and Information Requirements

1. Nothing in Article 10.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that investors be residents of the Party or that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

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

Section B: Investor-State Dispute Settlement

Article 10.15: Consultation and Negotiation

In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third-party procedures.

Article 10.16: Submission of a Claim to Arbitration

1. In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation:

(a) the claimant, on its own behalf, may submit to arbitration under this Section a claim

(i) that the respondent has breached

(A) an obligation under Section A,

(B) an investment authorization, or

(C) an investment agreement;

and

(ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach; and

(b) the claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (i) that the respondent has breached
 - (A) an obligation under Section A,
 - (B) an investment authorization, or
 - (C) an investment agreement;

and

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

provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.

2. At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration (“notice of intent”). The notice shall specify:

- (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise;
- (b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions;
- (c) the legal and factual basis for each claim; and
- (d) the relief sought and the approximate amount of damages claimed.

3. Provided that six months have elapsed since the events giving rise to the claim, a claimant may submit a claim referred to in paragraph 1:

- (a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention;
- (b) under the ICSID Additional Facility Rules, provided that either the respondent or the Party of the claimant is a party to the ICSID Convention;

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (c) under the UNCITRAL Arbitration Rules; or
 - (d) if the claimant and respondent agree, to any other arbitration institution or under any other arbitration rules.
4. A claim shall be deemed submitted to arbitration under this Section when the claimant's notice of or request for arbitration ("notice of arbitration"):
- (a) referred to in paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
 - (b) referred to in Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General;
 - (c) referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules, are received by the respondent; or
 - (d) referred to under any arbitral institution or arbitral rules selected under paragraph 3(d) is received by the respondent.

A claim asserted by the claimant for the first time after such notice of arbitration is submitted shall be deemed submitted to arbitration under this Section on the date of its receipt under the applicable arbitral rules.

5. The arbitration rules applicable under paragraph 3, and in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.
6. The claimant shall provide with the notice of arbitration:
- (a) the name of the arbitrator that the claimant appoints; or
 - (b) the claimant's written consent for the Secretary-General to appoint that arbitrator.

Article 10.17: Consent of Each Party to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with this Agreement.
2. The consent under paragraph 1 and the submission of a claim to arbitration under this Section shall satisfy the requirements of:

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

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

Article 10.18: Conditions and Limitations on Consent of Each Party

1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.

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

- (a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and
- (b) the notice of arbitration is accompanied,
 - (i) for claims submitted to arbitration under Article 10.16.1(a), by the claimant’s written waiver, and
 - (ii) for claims submitted to arbitration under Article 10.16.1(b), by the claimant’s and the enterprise’s written waivers

of any right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16.

3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 10.16.1(a)) and the claimant or the enterprise (for claims brought under Article 10.16.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant’s or the enterprise’s rights and interests during the pendency of the arbitration.⁹

⁹ In an action for interim injunctive relief described in paragraph 3 (including an action seeking to preserve evidence or property during the pendency of a dispute submitted to arbitration), a judicial or administrative tribunal

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

4. (a) No claim may be submitted to arbitration:
- (i) for breach of an investment authorization under Article 10.16.1(a)(i)(B) or Article 10.16.1(b)(i)(B), or
 - (ii) for breach of an investment agreement under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C),
- if the claimant (for claims brought under 10.16.1(a)) or the claimant or the enterprise (for claims brought under 10.16.1(b)) has previously submitted the same alleged breach to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure.
- (b) For greater certainty, if a claimant elects to submit a claim of the type described in subparagraph (a) to an administrative tribunal or court of the respondent, or to any other binding dispute settlement procedure, that election shall be definitive, and the claimant may not thereafter submit the claim to arbitration under Section B.

Article 10.19: Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.
2. The Secretary-General shall serve as appointing authority for an arbitration under this Section.
3. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Secretary-General, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
4. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator on a ground other than nationality:
 - (a) the respondent agrees to the appointment of each individual member of a tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;

of the Party that is the respondent in a dispute submitted to arbitration under Section B may apply the law of that Party, including its rules on the conflict of laws, and such rules of international law as may be applicable.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (b) a claimant referred to in Article 10.16.1(a) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant agrees in writing to the appointment of each individual member of the tribunal; and
- (c) a claimant referred to in Article 10.16.1(b) may submit a claim to arbitration under this Section, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only on condition that the claimant and the enterprise agree in writing to the appointment of each individual member of the tribunal.

Article 10.20: Conduct of the Arbitration

1. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under Article 10.16.3. If the disputing parties fail to reach agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.

3. The tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party. Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

4. Without prejudice to a tribunal's authority to address other objections as a preliminary question, such as an objection that a dispute is not within the tribunal's competence, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26.¹⁰

- (a) Such objection shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial (or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment).

¹⁰ For greater certainty, with respect to a claim submitted under Article 10.16.1(a)(i)(C) or 10.16.1(b)(i)(C), an objection that, as a matter of law, a claim submitted is not a claim for which an award in favor of the claimant may be made under Article 10.26 may include, where applicable, an objection provided for under the law of the respondent.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.
- (c) In deciding an objection under this paragraph, the tribunal shall assume to be true 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 Article 18 of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.
- (d) The respondent does not waive any objection as to competence or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make 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 and any objection that the dispute is not within the tribunal's competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the 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 it decides a respondent's objection under paragraph 4 or 5, the tribunal may, if warranted, award to 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 respondent's objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.

7. A respondent may not assert as a defense, counterclaim, right of set-off, or for any other reason that the claimant has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract.

8. 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

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

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 10.16. For purposes of this paragraph, an order includes a recommendation.

9. (a) In any arbitration conducted under this Section, 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 and to the non-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 such comments and issue its decision or award not later than 45 days after the expiration of the 60-day comment period.
- (b) Subparagraph (a) shall not apply in any arbitration conducted pursuant to this Section for which an appeal has been made available pursuant to paragraph 10 or Annex 10-D.

10. If a separate, multilateral agreement enters into force between the Parties that establishes an appellate body for purposes of reviewing awards rendered by tribunals constituted pursuant to international trade or investment arrangements to hear investment disputes, the Parties shall strive to reach an agreement that would have such appellate body review awards rendered under Article 10.26 in arbitrations commenced after the multilateral agreement enters into force between the Parties.

Article 10.21: Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and 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 10.20.2 and 10.20.3 and Article 10.25;
 - (d) minutes or transcripts of hearings of the tribunal, where available; and
 - (e) orders, awards, and decisions of the tribunal.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate logistical arrangements. However, any disputing party that intends to use information designated as protected information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. Nothing in this Section requires a respondent to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Essential Security) or Article 22.4 (Disclosure of Information).
4. Any protected information that is submitted to the tribunal shall be protected from disclosure in accordance with the following procedures:
 - (a) subject to subparagraph (d), neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b);
 - (b) any disputing party claiming that certain information constitutes protected information shall clearly designate the information at the time it is submitted to the tribunal;
 - (c) a disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1; and
 - (d) the tribunal shall decide any objection regarding the designation of information claimed to be protected information. If the tribunal determines that such information was not properly designated, the disputing party that submitted the information may (i) withdraw all or part of its submission containing such information, or (ii) agree to resubmit complete and redacted documents with corrected designations in accordance with the tribunal's determination and subparagraph (c). In either case, the other disputing party shall, whenever necessary, resubmit complete and redacted documents which either remove the information withdrawn under (i) by the disputing party that first submitted the information or redesignate the information consistent with the designation under (ii) of the disputing party that first submitted the information.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

5. Nothing in this Section requires a respondent to withhold from the public information required to be disclosed by its laws.

Article 10.22: Governing Law

1. Subject to paragraph 3, when a claim is submitted under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A), the tribunal shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to paragraph 3 and the other terms of this Section, when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply:

- (a) the rules of law specified in the pertinent investment authorization or investment agreement, or as the disputing parties may otherwise agree; or
- (b) if the rules of law have not been specified or otherwise agreed:
 - (i) the law of the respondent, including its rules on the conflict of laws,¹¹ and
 - (ii) such rules of international law as may be applicable.

3. A decision of the Commission declaring its interpretation of a provision of this Agreement under Article 20.1.3 (Free Trade Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.

Article 10.23: Interpretation of Annexes

1. Where a respondent asserts as a defense that the measure alleged to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Commission on the issue. The Commission shall submit in writing any decision declaring its interpretation under Article 20.1.3 (Free Trade Commission) to the tribunal within 60 days of delivery of the request.

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

¹¹ The “law of the respondent” means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Article 10.24: Expert Reports

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

Article 10.25: Consolidation

1. Where two or more claims have been submitted separately to arbitration under Article 10.16.1 and the claims have a question of law or fact in common and arise out of the same events or circumstances, any disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.

2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General and to all the disputing parties sought to be covered by the order and shall specify in the request:

- (a) the names and addresses of all the disputing parties sought to be covered by the order;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

3. Unless the Secretary-General finds within 30 days after receiving a request under paragraph 2 that the request is manifestly unfounded, a tribunal shall be established under this Article.

4. Unless all the disputing parties sought to be covered by the order otherwise agree, a tribunal established under this Article shall comprise three arbitrators:

- (a) one arbitrator appointed by agreement of the claimants;
- (b) one arbitrator appointed by the respondent; and
- (c) the presiding arbitrator appointed by the Secretary-General, provided, however, that the presiding arbitrator shall not be a national of any Party.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

5. If, within 60 days after the Secretary-General receives a request made under paragraph 2, the respondent fails or the claimants fail to appoint an arbitrator in accordance with paragraph 4, the Secretary-General, on the request of any disputing party sought to be covered by the order, shall appoint the arbitrator or arbitrators not yet appointed. If the respondent fails to appoint an arbitrator, the Secretary-General shall appoint a national of the disputing Party, and if the claimants fail to appoint an arbitrator, the Secretary-General shall appoint a national of a Party of the claimants.

6. Where a tribunal established under this Article is satisfied that two or more claims that have been submitted to arbitration under Article 10.16.1 have a question of law or fact in common, and arise out of the same events or circumstances, the tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims;
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others; or
- (c) instruct a tribunal previously established under Article 10.19 to assume jurisdiction over, and hear and determine together, all or part of the claims, provided that
 - (i) that tribunal, at the request of any claimant not previously a disputing party before that tribunal, shall be reconstituted with its original members, except that the arbitrator for the claimants shall be appointed pursuant to paragraphs 4(a) and 5; and
 - (ii) that tribunal shall decide whether any prior hearing shall be repeated.

7. Where a tribunal has been established under this Article, a claimant that has submitted a claim to arbitration under Article 10.16.1 and that has 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, and shall specify in the request:

- (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.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

The claimant shall deliver a copy of its request to the Secretary-General.

8. A tribunal established under this Article shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.

9. A tribunal established under Article 10.19 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 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 10.19 be stayed, unless the latter tribunal has already adjourned its proceedings.

Article 10.26: Awards

1. Where a tribunal makes a final award against a respondent, 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 may pay monetary damages and any applicable interest in lieu of restitution.

A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

2. Subject to paragraph 1, where a claim is submitted to arbitration under Article 10.16.1(b):

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

3. A tribunal may not award punitive damages.

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

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

5. Subject to paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
6. A disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention,
 - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 10.16.3(d),
 - (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.
7. Each Party shall provide for the enforcement of an award in its territory.
8. If the respondent fails to abide by or comply with a final award, on delivery of a request by the Party of the claimant, a panel shall be established under Article 21.6 (Request for an Arbitral Panel). The requesting Party may seek in such proceedings:
 - (a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of this Agreement; and
 - (b) in accordance with Article 21.13 (Initial Report), a recommendation that the respondent abide by or comply with the final award.
9. A disputing party may seek enforcement of an arbitration award under the ICSID Convention, the New York Convention, or the Inter-American Convention regardless of whether proceedings have been taken under paragraph 8.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

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

Article 10.27: Service of Documents

Delivery of notice and other documents on a Party shall be made to the place named for that Party in Annex 10-C.

Section C: Definitions

Article 10.28: Definitions

For purposes of this Chapter:

Centre means the International Centre for Settlement of Investment Disputes (“ICSID”) established by the ICSID Convention;

claimant means an investor of a Party that is a party to an investment dispute with another Party;

disputing parties means the claimant and the respondent;

disputing party means either the claimant or the respondent;

enterprise means an enterprise as defined in Article 1.3 (Definitions of General Application), and a branch of an enterprise;

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

freely usable currency means “freely usable currency” as determined by the International Monetary Fund under its *Articles of Agreement*;

ICSID Additional Facility Rules means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes*;

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

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Inter-American Convention means the *Inter-American Convention on International Commercial Arbitration*, done at Panama, January 30, 1975;

investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, other debt instruments, and loans;^{12, 13}
- (d) futures, options, and other derivatives;
- (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (f) intellectual property rights;
- (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law;^{14, 15} and
- (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges;

¹² Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

¹³ Loans issued by one Party to another Party are not investments.

¹⁴ Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the law of the Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

¹⁵ The term “investment” does not include an order or judgment entered in a judicial or administrative action.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

investment agreement means a written agreement¹⁶ between a national authority¹⁷ of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, that grants rights to the covered investment or investor:

- (a) with respect to natural resources that a national authority controls, such as for their exploration, extraction, refining, transportation, distribution, or sale;
- (b) to supply services to the public on behalf of the Party, such as power generation or distribution, water treatment or distribution, or telecommunications; or
- (c) to undertake infrastructure projects, such as the construction of roads, bridges, canals, dams, or pipelines, that are not for the exclusive or predominant use and benefit of the government;

investment authorization means an authorization that the foreign investment authority of a Party grants to a covered investment or an investor of another Party;^{18, 19}

investor of a non-Party means, with respect to a Party, an investor that attempts through concrete action to make, is making, or has made an investment in the territory of that Party, that is not an investor of a Party;

investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

¹⁶ “Written agreement” refers to an agreement in writing, executed by both parties, whether in a single instrument or in multiple instruments, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2. For greater certainty, (a) a unilateral act of an administrative or judicial authority, such as a permit, license, or authorization issued by a Party solely in its regulatory capacity, or a decree, order, or judgment, standing alone; and (b) an administrative or judicial consent decree or order, shall not be considered a written agreement.

¹⁷ For purposes of this definition, “national authority” means an authority at the central level of government.

¹⁸ For greater certainty, actions taken by a Party to enforce laws of general application, such as competition laws, are not encompassed within this definition.

¹⁹ The Parties recognize that no Party has a foreign investment authority that grants investment authorizations, as of the date this Agreement enters into force.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

national means a natural person who has the nationality of a Party according to Annex 1.3 (Country-Specific Definitions);

negotiated restructuring means the restructuring or rescheduling of a debt instrument that has been effected through (i) a modification or amendment of such debt instrument, as provided for under its terms, or (ii) 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 such debt instrument have consented to such 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, June 10, 1958;

non-disputing Party means a Party that is not a party to an investment dispute;

protected information means confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law;

respondent means the Party that is a party to an 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.

**Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006**

Annex 10-A

Customary International Law

The Parties confirm their shared understanding that “customary international law” generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Annex 10-B

Expropriation

The Parties confirm their shared understanding that:

1. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment.
2. Article 10.7.1 addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.
3. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.
 - (a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
 - (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
 - (iii) the character of the government action.
 - (b) Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.²⁰

²⁰ For greater certainty, the list of “legitimate public welfare objectives” in this subparagraph is not exhaustive.

**Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006**

Annex 10-C

Service of Documents on a Party under Section B

Colombia

Notices and other documents in disputes under Section B shall be served on Colombia by delivery to:

*Dirección de Inversión Extranjera y Servicios
Ministerio de Comercio, Industria y Turismo
Calle 28 # 13 A – 15
Bogotá D.C. - Colombia*

Peru

Notices and other documents in disputes under Section B shall be served on Peru by delivery to:

*Dirección General de Asuntos de Economía Internacional,
Competencia e Inversión Privada
Ministerio de Economía y Finanzas
Jirón Lampa 277, piso 5
Lima, Perú*

United States

Notices and other documents in disputes under Section B shall be served on the United States by delivery to:

Executive Director (L/EX)
Office of the Legal Adviser
Department of State
Washington, D.C. 20520
United States of America

**Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006**

Annex 10-D

Appellate Body or Similar Mechanism

Within three years after the date of entry into force of this Agreement, the Parties shall consider whether to establish an appellate body or similar mechanism to review awards rendered under Article 10.26 in arbitrations commenced after they establish the appellate body or similar mechanism.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Annex 10-E

Special Dispute Settlement Provisions

1. Where a claimant submits a claim to arbitration alleging that a Party other than the United States has breached an obligation under Section A, other than Article 10.3 or 10.4, through the imposition of a restrictive measure with regard to payments and transfers, Section B shall apply, except as follows:

- (a) The claimant may not submit any such claim to arbitration until one year after the events that give rise to the claim.
- (b) Loss or damages arising from the restrictive measure on capital inflows shall be limited to the reduction in value of the transfers and shall exclude loss of profits or business and any similar consequential or incidental damages.
- (c) Subparagraph (a) shall not apply to a claim that arises from restrictions on:
 - (i) payments or transfers on current transactions,
 - (ii) payments or transfers associated with equity investments, or
 - (iii) payments pursuant to a loan or bond,²¹ provided that such payments are made in accordance with the terms and conditions of the loan or bond agreement.
- (d) If the measure restricts outward payments or transfers:
 - (i) it shall not prevent investors from earning a market rate of return in the territory of the Party imposing the measure on any restricted assets;
 - (ii) the Party imposing the measure shall afford investors a reasonable opportunity to mitigate any losses arising from such measure; and
 - (iii) so long as the Party imposing the measure has complied with its obligations under this paragraph, the claimant may not recover any alleged

²¹ For greater certainty, the term “payments pursuant to a loan or bond” as used in this subparagraph does not include capital account transactions relating to inter-bank loans, including loans to or from financial institutions established in the territory of the Party subject to the claim.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

opportunity costs or any similar consequential or incidental damages from forgoing alternative investments.

2. A Party may not request the establishment of a panel under Chapter Twenty-One (Dispute Settlement) relating to the imposition of a restrictive measure with regard to payments and transfers by a Party other than the United States until one year after the imposition of such measure.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Annex 10-F

Public Debt

1. The Parties recognize that the purchase of debt issued by a Party entails commercial risk. For greater certainty, no award may be made in favor of a claimant for a claim under Article 10.16.1(a)(i)(A) or Article 10.16.1(b)(i)(A) with respect to default or non-payment of debt issued by a Party unless the claimant meets its burden of proving that such default or non-payment constitutes an uncompensated expropriation for purposes of Article 10.7.1 or a breach of any other obligation under Section A.
2. No claim that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A may be submitted to, or if already submitted continue in, arbitration under Section B if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10.3 or 10.4.
3. Notwithstanding Article 10.16.3, and subject to paragraph 2 of this Annex, an investor of another Party may not submit a claim under Section B that a restructuring of debt issued by a Party other than the United States breaches an obligation under Section A (other than Article 10.3 or 10.4) unless 270 days have elapsed from the date of the events giving rise to the claim.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Annex 10-G

Submission of a Claim to Arbitration

1. An investor of the United States may not submit to arbitration under Section B a claim that a Party has breached an obligation under Section A either:

- (a) on its own behalf under Article 10.16.1(a), or
- (b) on behalf of an enterprise of a Party other than the United States that is a juridical person that the investor owns or controls directly or indirectly under Article 10.16.1(b),

if the investor or the enterprise, respectively, has alleged that breach of an obligation under Section A in proceedings before a court or administrative tribunal of that Party.

2. For greater certainty, if an investor of the United States elects to submit a claim of the type described in paragraph 1 to a court or administrative tribunal of a Party other than the United States, that election shall be definitive, and the investor may not thereafter submit the claim to arbitration under Section B.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Annex 10-H

**Certain Agreements between Peru and
Covered Investments or Investors of Another Party²²**

1. Pursuant to Legislative Decrees 662 and 757, Peru may enter into agreements known as “stability agreements” with covered investments or investors of another Party.
2. As part of a stability agreement referred to in paragraph 1, Peru accords certain benefits to the covered investment or the investor that is party to the agreement. These benefits typically include a commitment to maintain the existing income tax regime applicable to such covered investment or investor during a specified period of time.
3. Appendices 10-H.A and 10-H.B set forth, respectively, an illustration of a stability agreement with a covered investment and an illustration of a stability agreement with an investor.
4. A stability agreement referred to in paragraph 1 may constitute one of multiple written instruments that make up an “investment agreement,” as defined in Article 10.28.²³ Where that is the case, a breach of such a stability agreement by Peru may constitute a breach of the investment agreement of which it is a part.
5. Where a stability agreement is materially identical to the illustration set forth in Appendix 10-H.A or 10-H.B, and does not constitute one of multiple instruments that make up an “investment agreement,” as defined in Article 10.28, a breach of such a stability agreement by Peru shall not constitute a breach of an investment agreement.

²² The fact that this Annex addresses only agreements entered into by Peru shall not prejudice the determination by a tribunal established under Section B regarding whether an agreement entered into by the government of another Party meets the definition of “investment agreement” in Article 10.28.

²³ For greater certainty, for multiple written instruments to make up an “investment agreement,” as defined in Article 10.28, one or more of those instruments must grant rights to the covered investment or the investor as defined in subparagraph (a), (b), or (c) of that definition. A stability agreement may constitute one of multiple written instruments that make up an “investment agreement” even if the stability agreement is not itself the instrument in which such rights are granted.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Appendix 10-H.A

The following shall constitute a Legal Stability Agreement (hereinafter “the Agreement”) concluded between, on the one hand, the Peruvian State, represented by, and hereinafter referred to as “the STATE,” and,, on the other hand, hereinafter referred to as “the COMPANY,” under the terms and conditions set forth in the following Articles:

ONE. The Company has filed with (the appropriate Peruvian agency), an application for entering into a Legal Stability Agreement under the provisions of Title II of Legislative Decree N° 662; Title V, Chapter I of Legislative Decree N° 757 and the regulations thereof approved by Executive Decree N° 162-92- EF (including amending, regulating, and supplementing provisions).

TWO. The COMPANY, by virtue of this Agreement, undertakes to issue shares/interests to the INVESTOR, hereinafter referred to as the INVESTOR. Consequently, it undertakes the following: *(Only the obligations corresponding to the type of investment selected by the Investor should be indicated)*

- To issue shares/interests to the INVESTOR for US\$in exchange for the contributions the INVESTOR shall make within a term of (no greater than two years) from the date of the conclusion of the Legal Stability Agreement by the COMPANY.
- To guarantee that the foreign investments, referred to in section 1, are channeled through the national financial system, as recorded on the certification issued by the bank participating in the transaction. *(Applies only to foreign investments.)*
- To register the foreign investment referred to in section 1, valued in freely convertible currency, with the appropriate Peruvian agency.
- To generate directly no fewer than 20 permanent positions within no more than three years from the date of this Agreement.
- To generate directly US\$ (no less than two million) in foreign exchange earnings from exports within no more than three years from the date of this Agreement.
- To apply the investments referred to in paragraph 1 to expanding productive capacity or technological development.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

THREE. The STATE, by virtue of this Agreement and during the term thereof, undertakes to guarantee the legal stability of the COMPANY under the following terms:

1. Stability of the tax system with respect to Income Tax, pursuant to the provisions of Article 40 of Legislative Decree N° 757, as amended, which implies that the income tax to be paid by the Company shall not be modified during the term of this Agreement; *(A brief description of the tax security provisions follows, which may vary depending on the tax regime in force on the date of signature of the Agreement.)*
2. Stability of hiring procedures for the COMPANY's workers while this Agreement is in force, under the provisions of Article 12(a) of Legislative Decree N° 662; in the various forms set forth in *(reference to labor regulations in force on date of signature of the Agreement)*.
3. Stability of export promotion regimes used by the COMPANY under the provisions of Article 12(b) of Legislative Decree N° 662, currently in force *(reference to the application of current regulations)*.

FOUR. In addition, as agreed upon in Two above, the Company undertakes the following: *(Only the obligations corresponding to the type of investment selected by the Investor should be indicated)*

- To prove that the new investment exceeds, as of the date on which this Agreement is concluded, 50% of the COMPANY's capital and reserves as indicated in a report, equivalent to an affidavit, and subject to subsequent verification, prepared by an auditing firm;
- To prove that it has complied with the obligation to receive its investment in capital from abroad, in the amount of US\$ by filing *(list of substantiating documents required)*;
- To prove that the new investment has been effectively applied to the expansion of its productive capacity, by the appropriate report issued by an auditing firm;
- To show that it has complied with the obligation to generate..... permanent positions in the COMPANY by filing an affidavit subject to subsequent verification;
- To show that it has complied with the obligation to generate US\$in foreign exchange earnings from (the COMPANY's) exports, in an affidavit subject to subsequent verification.

Proof of compliance with obligations referred to in the foregoing paragraphs should be submitted to the appropriate Peruvian agency within no more than calendar days from the deadline for compliance therewith, pursuant to the provisions of Article Two above.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

FIVE. This Legal Stability Agreement shall remain in force for ten years from the date of on which it is concluded. It may not, therefore, be unilaterally amended by either of the parties during such period, even if domestic legislation is amended or if changes more beneficial or more detrimental to either of the parties are incorporated therein.

SIX. The COMPANY shall be entitled to a single waiver of the legal stability system granted hereunder. Such waiver should be formalized by written notice to the (appropriate Peruvian agency), which shall become effective as of the date of receipt of the notice by said agency. If the COMPANY chooses to exercise the right to waive the Stability Agreement acknowledged under this Article, it shall automatically become subject to the provisions of ordinary law.

SEVEN. This Legal Stability Agreement may be amended only by mutual consent of the Parties. It shall not be possible to amend the term established in Article Five, or the investment amount under the limit established in the laws (referred to in Article One). For such purpose, the COMPANY shall file an application with the appropriate Peruvian agency, which shall be processed in accordance with the same procedure used for the conclusion of this Agreement.

EIGHT. It being the intent of the Parties to resolve any matters involving compliance with this Agreement in the most expeditious manner possible, the Parties agree that henceforth, any dispute or claim between them regarding the interpretation, application or validity of this Agreement shall be settled through legal arbitration.

The arbitration shall be carried out in Lima, through the establishment of an Arbitral Tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator, and the two shall in turn appoint the third. The arbitrators shall be expressly empowered to rule on the dispute subject of the arbitration.

If one of the Contracting Parties has not appointed its arbitrator within ten working days of receipt of the request by the party or parties requesting the arbitration, or if, within ten days of the appointment of the second arbitrator by the parties, the two arbitrators cannot reach an agreement as to the choice of the third arbitrator, the latter shall be appointed, upon request of either Party, by the Lima Chamber of Commerce.

The term for completion of the arbitral procedure shall not exceed sixty (60) working days from the date of appointment of the last arbitrator; said procedure shall be governed by the provisions of the General Law on Arbitration, and/or any modifying or replacing regulations.

Each Contracting Party shall bear the costs incurred by the application of the provisions agreed upon herein in equal parts.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

NINE. This Legal Stability Agreement shall be terminated *ipso jure* on the following grounds:

1. Failure by The COMPANY to comply with any of the obligations stipulated in Article Two.
2. Failure by The COMPANY to comply any of the obligations set forth in Article Four.
3. The transfer by The COMPANY of its contractual status.
4. Failure by the company to generate the positions pursuant to Article Two.
5. Failure by the company to generate the foreign exchange earnings from exports pursuant to Article Two.

If the COMPANY is responsible for any of the above-mentioned grounds for termination of this Agreement, and if, as a result of the legal stability granted thereunder, it enjoyed a lower tax burden than what it would have been entitled to without this Agreement, it shall be required to reimburse the State the adjusted amount of any taxes that it would have owed had it not concluded the Agreement, in addition to the appropriate surcharges referred to in the Tax Code.

It is hereby understood that in the case referred to in the foregoing paragraph, if a greater tax burden has been imposed on the COMPANY by virtue of this Agreement, the State shall not be required to reimburse any amount whatsoever.

The Parties, having agreed on all its terms, have signed this Agreement at Lima in triplicate, all three copies being identical in content.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

Appendix 10-H.B

The following shall constitute a Legal Stability Agreement concluded between, on the one hand, the Peruvian State, represented by, and hereinafter referred to as the "STATE", and, on the other hand,, hereinafter referred to as the "INVESTOR" under the terms and conditions set forth in the following Articles:

ONE. The COMPANY has filed with the appropriate Peruvian agency an application for the conclusion of a Legal Stability Agreement under the provisions of , Title II of Legislative Decree N° 662; Title V, Chapter I, of Legislative Decree N° 757; and the Regulations Governing Private Investment Guarantee Regimes, approved by Executive Decree N° 162-92-EF, (including amending, regulating, and supplementing provisions).

TWO. The COMPANY, by virtue of this Agreement (consistent with the form of investment stipulated in the Regulations) undertakes the following: *(Only the obligations corresponding to the type of investment selected by the Investor should be included.)*

- To make cash contributions to the capital of, in the amount of US\$, within a term of (no more than two years) from the date of the conclusion of this Agreement;
- To channel the foreign investment referred to in paragraph 1 through the National Financial System, as recorded on the certification issued by the bank participating in the transaction.
- To register the foreign investment referred to in section 1, valued in freely convertible currency, with PROINVERSIÓN *(Only for foreign direct investment.)*;
- To make venture capital investments with third parties, in the amount of US\$..... within a term of (no more than two years) from the date of the conclusion of this Agreement;
- To generate directly no fewer than 20 permanent positions within no more than three years from the date the conclusion of this Agreement;
- To generate directly US\$ (no less than two million) in foreign exchange earnings from exports within no more than three years from the date of this Agreement.

THREE. The STATE, by virtue of this Agreement and during the term thereof, undertakes to guarantee the legal security of THE INVESTOR, with respect to the investment referred to in Article Two, under the following terms:

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

1. Stability of the tax system referred to the income tax, pursuant to the provisions of Article 10(a) of Legislative Decree N° 662; *(A brief description of the tax security provisions follows, which may vary depending on the tax regime in force on the date of signature of the agreement.)*

2. *(Only applicable to foreign investment.)* Stability of the freely available currency regime, pursuant to the provisions of Article 10(b) of Legislative Decree N° 662, which provides that the INVESTOR may freely access foreign currency on the exchange market at the most favorable exchange rate, while the STATE may not apply to the investment referred to in Article Two any exchange market regulation system or mechanism restricting this right or involving a less favorable treatment for the INVESTOR than that applied to any natural or legal person carrying out any type of exchange transaction.

3. *(Only applicable to foreign investment.)* Stability of the right of free remittance of profits and capital pursuant to the provisions of Article 10(b) of Legislative Decree N° 662, which provides that the INVESTOR may effect transfers abroad in freely convertible currency without previous authorization of national, regional or local government entities, provided that the pertinent investment has been registered with the appropriate Peruvian agency, and that the corresponding tax obligations have been met, it being prohibited for the State to establish any further restriction or limitations on this right, such transfers being permitted as follows:

- (a) The total amount of the INVESTOR's foreign capital, including capital generated by the sale of its stocks, interest shares, or options, from capital reduction and partial or total liquidation of any companies, derived from the investment referred to in Article Two;
- (b) The total amount of dividends or proven net profits generated by the investment referred to in Article Two, as well as the profits obtained from considerations for the use or enjoyment of goods or assets physically located in the investment target country; and
- (c) The total amount of royalties and considerations for the use and transfer of technology, trademarks and patents and any other aspects of industrial property authorized by the appropriate Peruvian agency.

4. Stability of the right to use the most favorable exchange rate in accordance with the provisions of Article 10(b) of Legislative Decree N° 662, which provides that the INVESTOR may access foreign currency in the exchange market at the most favorable exchange rate, while the STATE may not compel the INVESTOR to carry out its exchange transactions under a system or mechanism which grants a less favorable treatment than that applied to any natural or legal person in the execution of any exchange transaction, pursuant to the following:

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- (a) In the case of conversion of foreign currency to Peruvian currency: THE INVESTOR may sell such currency to any natural or legal person at the most favorable purchase exchange rate on the exchange market at the time of the exchange transaction; and
- (b) In the case of conversion of local currency to foreign currency: THE INVESTOR may purchase such currency from any natural or legal person at the most favorable exchange rate on the exchange market at the time of the exchange transaction.

5. The stability of the right to non-discrimination pursuant to the provisions of Article 10(c) of Legislative Decree N° 662, which provides that the STATE, at none of its levels, whether they be national, regional or local government entities or companies, may apply to the INVESTOR different treatment based on nationality, the sector or type of economic activity pursued, or the geographic location of the companies in which it invests, or in the following matters:

- (a) *(Only applicable to foreign investment.)* Currency exchange, in that the State may not apply to the INVESTOR, with respect to the investments referred to in Article Two, an exchange regime that involves a less favorable treatment than that applied to any natural or legal person for the execution of any kind of exchange transaction.
- (b) Prices, tariffs or non-tariff duties, in that the STATE may not apply different amounts or rates in this regard to the INVESTOR for the investment referred to in Article Two.
- (c) *(Not applicable to banking and insurance.)*
- (d) Form of Incorporation, in that the STATE may not require that the INVESTOR invest in a company that adopts a specific form of incorporation.
- (e) The INVESTOR's individual or corporate status, in that the STATE may not apply to the INVESTOR a different treatment in this regard; and
- (f) Any other equivalent grounds, such as the application of discriminatory treatment to the INVESTOR resulting from any combination of the various sections of this item.

This item shall be applied notwithstanding the limits established in Article 3° of the Regulations.

FOUR. The INVESTOR undertakes, in addition to the provisions agreed upon in Article Two, the following: *(Only the obligations corresponding to the type of investment described in Article Two are included.)*

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

- To prove that he has complied with a cash contribution of US\$to the capital of (name of company) by filing (list of substantiating documents)
- To prove that he has complied with a venture capital investment of US\$in the company named by filing (list of substantiating documents)
- To prove that he has complied with the obligation to generate permanent positions in (name of company) by submitting an affidavit, subject to subsequent verification.
- To prove that he has complied with the obligation to generate US\$.....in foreign exchange earnings from exports from (name of company) by submitting an affidavit, subject to subsequent verification.

Proof of compliance with the obligations referred to in the foregoing paragraphs should be submitted to the appropriate Peruvian agency within no more than calendar days from the deadline for compliance therewith, pursuant to the provisions of Article Two above. Non-compliance with these provisions shall be grounds for termination of this Agreement.

FIVE. This Legal Stability Agreement shall remain in force for ten years from the date on which it is concluded. It may not, therefore, be unilaterally amended by either of the parties during such period, even if domestic legislation is amended or if changes more beneficial or more detrimental to either of the parties are incorporated therein.

SIX. The INVESTOR shall be entitled to a single waiver of the legal stability system granted hereunder. Such waiver should be formalized by written notice to the appropriate Peruvian agency, which shall become effective as of the date of receipt of the notice by said agency.

If the INVESTOR chooses to exercise the right to waive the Legal Stability Agreement acknowledged under this Article, it shall automatically become subject to the provisions of ordinary law.

SEVEN. The INVESTOR shall have the right to assign his contractual status under this Agreement, with the prior authorization of the appropriate Peruvian agency, to be formalized by means of an addendum to this Agreement.

It is hereby understood that the assignment of contractual status by the INVESTOR to another shall not extend the term of the Agreement stipulated in Article Five.

EIGHT. This Legal Stability Agreement may be amended only by mutual consent of the Parties.

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

It shall not be possible to amend the term established in Article Five, or the investment amount under the limit established in (*specify pertinent regulation*).

For such purpose, the INVESTOR shall file an application with the appropriate Peruvian agency, which shall be processed in accordance with the same procedure used for the conclusion of this Agreement.

NINE. It being the intent of the Parties to resolve any matters involving compliance with this Agreement in the most expeditious manner possible, the Parties agree that henceforth, any dispute or claim between them regarding the interpretation, application or validity of this Agreement shall be settled through legal arbitration.

The arbitration shall be carried out in Lima, through the establishment of an Arbitral Tribunal consisting of three members. Each Contracting Party shall appoint an arbitrator, and the two shall in turn appoint the third. The arbitrators shall be expressly empowered to rule on the dispute subject of the arbitration.

If one of the Contracting Parties has not appointed its arbitrator within ten working days of receipt of the request by the party or parties requesting the arbitration, or if, within ten days of the appointment of the second arbitrator by the parties, the two arbitrators cannot reach an agreement as to the choice of the third arbitrator, the latter shall be appointed, upon request of either Party, by the Lima Chamber of Commerce.

The term for completion of the arbitral procedure shall not exceed sixty (60) working days from the date of appointment of the last arbitrator; said procedure shall be governed by the provisions of the General Law on Arbitration, and/or any modifying or replacing regulations.

Each Contracting Party shall bear the costs incurred by the application of the provisions agreed upon herein in equal parts.

TEN. This Legal Stability Agreement shall be terminated *ipso jure* on the following grounds:

1. Failure by the INVESTOR to comply with any of the obligations stipulated in Article Two;
2. Failure by the INVESTOR to comply any of the obligations set forth in Article Four;
3. The assignment by the INVESTOR of its contractual status to another investor without the pertinent prior authorization of the appropriate Peruvian agency, as stipulated in Article Seven;
4. Failure by the COMPANY to generate the positions pursuant to Article Two;

Subject to Legal Review for Accuracy, Clarity, and Consistency
Subject to Authentication of English and Spanish Versions
Draft 8 May 2006

5. Failure by the COMPANY to generate the foreign exchange earnings from exports pursuant to Article Two.

If the INVESTOR is responsible for any of the above-mentioned grounds for termination of this Agreement, and if, as a result of the legal stability granted thereunder, it enjoyed a lower tax burden than what it would have been entitled to without this Agreement, it shall be required to reimburse the State the adjusted amount of any taxes that it would have owed had it not concluded the Agreement, in addition to the appropriate surcharges referred to in the Tax Code.

It is hereby understood that in the case referred to in the foregoing paragraph, if a greater tax burden has been imposed on the INVESTOR by virtue of this Agreement, the State shall not be required to reimburse any amount whatsoever.

The Parties, having agreed on all its terms, have signed this Agreement at Lima in duplicate, both copies of which are identical in content.