
Chapter Six

Investment

Article 600: Application of General Rules

1. Articles 401 (Reciprocal Non-Discrimination), 402 (Right of Entry and Exit), 403 (No Obstacles) and 404 (Legitimate Objectives) do not apply to this Chapter.
2. For greater certainty, Articles 400 (Application), 405 (Reconciliation) and 406 (Transparency) apply to this Chapter, except as otherwise provided in this Chapter.

Article 601: Relationship to Other Chapters

Except as otherwise provided in this Chapter, in the event of an inconsistency between this Chapter and any other chapter in Part IV, the other chapter prevails to the extent of the inconsistency.

Article 602: Scope and Coverage

1. This Chapter applies to measures adopted or maintained by a Party relating to investors and enterprises of a Party.³⁴
2. This Chapter, except as provided in paragraph 6 of Annex 608.3, does not apply to measures relating to procurement by the entities listed in the Annexes to Article 502 (Scope and Coverage) and the entities referred to in Article 502(4). For the purposes of this paragraph, "procurement" means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services or construction.
3. This Chapter, except as provided in Articles 607 and 608, does not apply to measures relating to incentives.

Article 603: Reciprocal Non-Discrimination

1. Subject to Article 605, each Party shall accord to an investor of a Party treatment no less favourable than the best treatment it accords, in like circumstances, to an investor of any Party.
2. Subject to Article 605, each Party shall accord to an enterprise of any other Party, established and carrying on business activities in its territory, treatment no less favourable than the treatment it accords, in like circumstances, to its own enterprises.
3. With respect to the Federal Government, paragraphs 1 and 2 mean that, subject to Article 605, it shall ensure that any measure it adopts or maintains does not operate so as to discriminate between Provinces or regions.

³⁴ This paragraph was amended by the Fifth Protocol of Amendment.

Article 604: Local Presence and Residency Requirements

1. Subject to Article 605, no Party shall require an investor of any other Party to be resident in its territory as a condition for the establishment or acquisition of an enterprise.
2. Subject to Article 605, no Party shall require an enterprise of any other Party to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business activities.
3. For greater certainty, a requirement by a Party that an investor of any other Party:
 - (a) have an agent for service of notices of proceedings or other judicial documents; or
 - (b) post a bond or other form of financial security, for a legitimate objective;

as a condition for carrying on business activities in or into its territory is not a requirement to establish or maintain a local presence or to be resident in its territory.

4. Annex 604.4 lists existing measures maintained by each Party which include local presence and residency requirements that either require an investor of another Party to be resident in its territory as a condition for the establishment or acquisition of an enterprise; or require an enterprise of any other Party to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business activities. No measure listed may be made more restrictive than it was on the date of entry into force of this Agreement.³⁵
5. The Parties shall examine the measures listed in Annex 604.4 and make recommendations to the Committee as to the appropriate retention, removal or replacement of such measures.³⁶
6. No measure that a Party lists or proposes to list in Annex 604.4 shall, before January 1, 1997, be subject to the obligations of paragraphs 1 and 2 or to dispute settlement procedures under this Agreement.

Article 605: Legitimate Objectives

Where it is established that a measure is inconsistent with Article 603 or 604, that measure is still permissible under this Chapter where it can be demonstrated that:

- (a) the purpose of the measure is to achieve a legitimate objective;
- (b) the measure does not operate to impair unduly the access of investors of a Party or enterprises that meet that legitimate objective;
- (c) the measure is not more restrictive on investors of a Party or enterprises than necessary to achieve that legitimate objective; and
- (d) the measure does not create a disguised restriction on investors of a Party or enterprises.

³⁵ This paragraph was amended by the Second Protocol of Amendment.

³⁶ This paragraph was amended by the Second Protocol of Amendment.

Article 606: Corporate Registration and Reporting Requirements³⁷

The Parties shall reconcile extra-provincial corporate registration and reporting requirements in accordance with Annex 606.

Article 607: Performance Requirements

1. No Party shall impose or enforce, in relation to an investor of a Party or an enterprise in its territory, or condition the receipt of an incentive by an enterprise on compliance with, any requirement to:

- (a) achieve a specific level or percentage of local content of goods or services;
- (b) purchase or use goods or services produced locally;
- (c) purchase goods or services from a local source; or
- (d) achieve a certain level of sales in the territory of another Party.³⁸

2. For greater certainty, nothing in paragraph 1 shall be construed to prevent a Party from conditioning the receipt of an incentive on any requirement to carry out economic activities in its territory or to create or maintain employment.

3. A Party may, under exceptional circumstances, adopt or maintain a measure inconsistent with paragraph 1 for regional economic development purposes, provided that:

- (a) the measure does not operate to impair unduly the access of persons, goods, services or investors of another Party;
- (b) the measure is not more trade restrictive than necessary to achieve its specific objective; and
- (c) the Party promptly notifies the other Parties of the details of the measure.

Article 608: Incentives

1. No Party shall, in the provision of incentives to enterprises located in its territory, discriminate against an enterprise on the basis that:

- (a) the enterprise is owned or controlled by an investor of another Party; or
- (b) the head office of the enterprise is located in the territory of another Party.

2. Nothing in this Agreement shall be construed to require a Party to provide incentives for activities undertaken outside its territory.

³⁷ This article was amended by the Second Protocol of Amendment.

³⁸ This paragraph was amended by the Fifth Protocol of Amendment.

3. The Code of Conduct on Incentives set out in Annex 608.3 applies to the Parties.

Article 609: Government Enterprises and Monopolies

1. A Party may maintain or establish a government enterprise and may maintain, establish or authorize a monopoly.
2. Further to Article 102(1)(c) (Extent of Obligations), each Party shall ensure that any government enterprise maintained or established by it exercises any delegated administrative or other governmental authority in a manner consistent with this Chapter.

Article 610: Environmental Measures

1. No Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental measures as an encouragement for the establishment, acquisition, expansion, ongoing business activities or retention in its territory of an enterprise.
2. Notwithstanding paragraph 1 and Article 1505(5) (Basic Rights and Obligations), a Party is permitted a reasonable, but as short as possible, period of time to seek compliance by an established enterprise in its territory with its environmental measures.

Article 611: Non-Application

1. Articles 603, 604 and 605 do not apply to a measure for the privatization of government services, government assets or an enterprise.
2. Articles 603 and 604 do not apply to an existing measure that restricts the acquisition or use of land by non-residents of a Party. Any such measure may not be made more restrictive in its treatment of non-residents than it was on the date of entry into force of this Agreement.
3. Articles 603 and 604 do not apply to a measure:
 - (a) adopted by Prince Edward Island, after the date of entry into force of this Agreement, that restricts the acquisition or use of land by non-residents of Prince Edward Island; or
 - (b) adopted by a Party, other than Prince Edward Island, after the date of entry into force of this Agreement, that restricts the acquisition or use of agricultural, recreational or shorefront land by a non-resident of that Party.
4. Notwithstanding any other provision of this Agreement, in the event of an inconsistency between paragraph 2 or 3 and any other provision of this Agreement, paragraph 2 or 3 prevails to the extent of the inconsistency.

Article 612: Transparency and Reporting Requirements

1. Further to Article 406(1) (Transparency), each Party shall ensure that all measures it adopts or maintains pertaining to investors of a Party or enterprises are promptly published or otherwise made available in a manner easily accessible to the Parties and interested persons.
2. Each Party shall endeavour to reduce or simplify any requirement for the filing or other submission of documents imposed on investors or enterprises.
3. Each Party shall endeavour to facilitate public access to up-to-date information on its investment-related programs and measures through the development and interconnection of electronic data bases and networks.

Article 613: Preference for Canadians

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining a measure that accords rights or preferences to Canadians.
2. For the purposes of paragraph 1, "Canadian" means a Canadian citizen, a natural person who is a permanent resident of Canada, or an enterprise controlled by a Canadian citizen or natural person who is a permanent resident of Canada.

Article 614: Consultations and Dispute Resolution³⁹

Chapter Seventeen shall apply to consultations and the resolution of disputes arising out of this chapter.

Article 615: Working Group on Investment⁴⁰

The Parties shall establish a Working Group on Investment which shall:

- (a) examine local presence and residency requirements as set out in Article 604;
- (b) prepare the annual report on incentives referred to in paragraph 15 of Annex 608.3;
- (c) examine matters referred to it under Article 614(2) and paragraph 12 of Annex 608.3 and make recommendations as appropriate;
- (d) examine any investment matter as directed by the Committee; and
- (e) examine any other investment matter.

³⁹ This article was amended by the Seventh Protocol of Amendment.

⁴⁰ This article was amended by the Fifth Protocol of Amendment.

Article 616: Definitions

In this Chapter:

enterprise means an entity constituted, established or organized under the applicable laws of a Party, whether privately-owned or governmentally-owned, including any corporation, trust, partnership, cooperative, sole proprietorship, joint venture or other form of association, for the purpose of economic gain;

government enterprise means a Crown corporation within the meaning of the *Financial Administration Act* (Canada), a Crown corporation within the meaning of comparable provincial law or any equivalent entity formed under other applicable provincial law;

incentive means:

- (a) a contribution with a financial value that confers a benefit on the recipient, including cash grants, loans, debt guarantees or an equity injection, made on preferential terms; or
- (b) any form of income or price support which results directly or indirectly in a draw on the public purse;

investor of a Party means:

- (a) a Party;
- (b) a Canadian citizen or permanent resident of Canada; or
- (c) an enterprise;

that seeks to establish, acquire or dispose of an enterprise;

market means the geographic or commercial market for a good or service;

monopoly means an entity, whether privately-owned or owned by a Party, that, in the relevant market in the territory of a Party, is granted the right to be the only provider or purchaser of a good or service;

Working Group on Investment means the Working Group established under Article 615.

Annex 604.4⁴¹**Local Presence and Residency Requirements**

This Annex lists existing measures further to Article 604(4). The Parties recognize that a measure listed in this Annex may be still permissible where it can be demonstrated that the measure conforms with Article 605 (Legitimate Objectives).

NEWFOUNDLAND AND LABRADOR

NIL

NOVA SCOTIA

Collection Agencies Act, 1975, c.7, s.1

Consumer Reporting Act, 1973, c.4, s.1

Direct Sellers' Licensing and Regulation Act, R.S.N.S. 1989, c.129

Future Services Act, S.N.S 1990, c.12

Real Estate Brokers' Licensing Act, R.S.N.S. 1989, c.384, s.21

Solemnization of Marriage Act, 56 (1) (d)

PRINCE EDWARD ISLAND

Architects Act, R.S.P.E.I. 1988, A-18; Architects Association of Prince Edward Island Bylaws

Consumer Reporting Act, R.S.P.E.I. 1988, C-20

Fish and Game Protection Act, R.S.P.E.I. 1988, F-12; General Regulations

Legal Profession Act, 1992, c.39, R.S.P.E.I. 1988, L-6.1

Maritime Electric Company Limited Act, R.S.P.E.I. 1988, Cap. M-12

Real Estate Trading Act, R.S.P.E.I. 1988, R-2

NEW BRUNSWICK

Beverage Containers Act, R.S.N.B. 1991, C. B-2.2

⁴¹ This annex was added to the Agreement on Internal Trade by means of the Second Protocol of Amendment.

Collection Agencies Act, R.S.N.B. 1973, c.C-8

Companies Act, R.S.N.B. 1973, c.C-13

Fish and Wildlife Act, R.S.N.B. 1980, c.F-14.1

Marriage Act, R.S.N.B. 1973, c. M-3, as amended by S.N.B. 1986, c.52; Regulation 85-30

Real Estate Agents Act, R.S.N.B. 1973, c.R-1

Real Estate Agents Act, R.S.N.B. 1973, c.R-1

The Embalmers and Funeral Director's Act, S.N.B. 1978; Regulation 92-705

QUEBEC⁴²

Code de la sécurité routière, L.R.Q., c.C-24.2; Règlement sur les commerçants et les recycleurs, Décret 1693-87 du 4 novembre 1987

Loi sur la protection de la santé publique, L.R.Q., c.P-35; Règlement d'application de la Loi sur la protection de la santé publique, R.R.Q., 1981, c.P-35, r.1 et modifications

Loi sur la Société des alcools du Québec, L.R.Q., c.S-13

Loi sur le courtage immobilier, L.R.Q., c.C-73.1; Règlement de l'Association des courtiers et agents immobiliers du Québec, Décret 1865-93 du 15 décembre 1993

Loi sur le recouvrement de certaines créances, L.R.Q., c.R-2.2

Loi sur les agences d'investigation ou de sécurité, L.R.Q., c.A-8; Règlement d'application de la Loi sur les agences d'investigation ou de sécurité, R.R.Q., 1981, c.A-8, r.1 et modifications

Loi sur les courses, L.R.Q., c.C-72.1; Règles sur l'élevage du chavel de course du Québec de race Standardbred, Décision du 21 décembre 1983 et modifications

Loi sur les intermédiaires de marché, L.R.Q., c.I-15.1; Règlement sur les cabinets modifications multidisciplinaires, Décret 1020-91 du 17 juillet 1991 et modifications

Loi sur les licences, L.R.Q., c.L-3

Loi sur les loteries, les concours publicitaires et les appareils d'amusement, L.R.Q., c.L-6; Règles appareils d'amusement, R.R.Q., 1981, c.L-6, r.2 et modifications; Règles sur les sur les systèmes de loteries, Décision du 14 décembre 1984 et modifications

Loi sur les pesticides, L.R.Q., c.P-9.3

⁴² This listing was amended by the Sixth Protocol of Amendment.

ONTARIO

Assignments and Preferences Act, R.S.O. 1990, c.A.33

Business Names Act, R.S.O. 1990, c.B.17; Regulation 121/91

Co-operative Corporations Act, R.S.O. 1990, c.C.35

Corporations Act, R.S.O. 1990, c.C.38; Regulation 181, R.R.O. 1990

Employment Agencies Act, R.S.O. 1990, c.E.13; Regulation 320, R.R.O. 1990

Farm Products Marketing Act, R.S.O.1990, c.F.9; Quota Policy No. 119-1992, Ontario Chicken Producers' Marketing Board

Game and Fish Act, R.S.O. 1990, c.G.1; Regulation 462/93; Regulation 480, R.R.O. 1990; Regulation 497, R.R.O. 1990; Regulation 300/93; Policy No. WM. 3.01.01, issued 1978, Appointment of Hunter Education Program Instructor; Regulation 495, R.R.O. 1990

Gaming Control Act, 1992, S.O. 1992, c.24; Order-in-Council 2688/93

Liquor Control Act, R.S.O. 1990, c.L.18; Regulation 717, R.R.O. 1990; Regulation 345/92; Liquor Control Board of Ontario Policies and Practices

Livestock Medicines Act, R.S.O. 1990, c.L.23; Regulation 730, R.R.O. 1990

Ontario Casino Corporation Act, S.O. 1993, c.26; Regulation 22/93; Lottery Licensing Policy Manual and Terms and Conditions to Licences

Ontario Lottery Corporation Act, R.S.O. 1990, c.O.25; Ontario Lottery Corporation practice

Public Lands Act, R.S.O. 1990, c.P.43; Policy and Procedure for Small Hydro Power Sites, 1988 Stakes Programs

Wild Rice Harvesting Act, R.S.O. 1990, c.W.7

MANITOBA

Fisheries Act (Canada), Chapter F-14; Manitoba Fishery Regulations, 1987; Manitoba Fisheries Policy

The Mortgage Dealers Act, C.C.S.M., c.M210

The Real Estate Brokers Act, C.C.S.M., R20

The Private Vocational Schools Act, R.S.M., c.V70; Manitoba Regulation 182/88

The Wild Rice Act, Chapter W130

The Wildlife Act, Chapter W140; Manitoba Wildlife Regulations; Manitoba Wildlife Policies

SASKATCHEWAN

The Agricultural Implements Act, R.S.S. 1978, c.A-10; *The Agricultural Implements Regulations*, 1982, R.R.S., c.A-10, Reg 1; *The Practices and Polices of the Agricultural Implements Board*

The Co-operatives Act, 1989, S.S. 1989-90, c.C-37.2; *Private Acts of the Legislature of Saskatchewan establishing corporate bodies*; *Practice and Policy of the Registrar*

The Labour-sponsored Venture Capital Corporations Act, S.S. 1986, c.L-0.2, and tax credit policy; *The Labour-sponsored Venture Capital Corporations Regulations*, R.R.S., c.L-0.2, Reg 1

The Saskatchewan Land Surveyors Act, S.S. 1978, c.S-27; *Bylaws of the Saskatchewan Land Surveyors' Association*

The Motor Dealers Act, R.S.S. 1978, c.M-22; *The Motor Dealers Regulations*, R.R.S., c.M-22, Reg 1; *Policies of the Registrar*

The Wildlife Act, S.S. 1979, c.W-13.1; *The Outfitter and Guide Regulations*, 1988, R.R.S. c.R-19.01, Reg 2; *The Wild Rice Regulations*, R.R.S., c.F-19, Reg 5; *The Wildlife Regulations*, 1981, R.R.S., c.W-13.1 Reg 1

The Real Estate Brokers Act, 1987, S.S. 1986-87-88, c.R-2.1; *The Real Estate Commission policies and bylaws*

The Alcohol and Gaming Regulation Act, S.S. 1988-89, c.A-18.01; *Saskatchewan Liquor and Gaming Authority Policy*

The Interprovincial Lotteries Act, 1984, S.S. 1983-84, c. I-12.01

The Slot Machine Act, R.S.S. 1978, c.S-50

The Saskatchewan Gaming Corporation Act, S.S. 1994, c. S-18.2; *Saskatchewan Liquor and Gaming Authority Policy*

ALBERTA

Alberta Government Telephones Reorganization Act, R.S.A. 1980, c.A-23.5, s.4, 6, 11

Cemeteries Act, R.S.A. 1980, c.C-2, Section 47

Charitable Fund Raising Act, c.C-4.5, s.7

Collection Practices Act, R.S.A. 1980, c.C-17, s.10, 12

Government Organization Act

Licensing Trades and Businesses Act, R.S.A. 1980, c.L-13; *Direct Selling Business Licensing Regulation*, 315/82, s.12; *Employment Agency Business Licensing Regulation*, 87/89, s.9; *Natural Gas Direct Marketing Regulation*, 237/95, s.11; *Prepaid Contracting Business Licensing Regulation*, 314/82, s.11; *Retail Home Sales Business Licensing Regulation*, 189/82, s.11

Pacific Western Airlines Act, R.S.A. 1980, c.P-0.5, s.13.1

Public Auctions Act, Statutes of Alberta, 1981, c.P-25.1, s.14; Auction Sales Business Licensing Regulations, 210/82

Residential Tenancies Act, R.S.A. 1980, c.R-15.3, s.37.1

Wildlife Act, R.S.A. 1980, c.W-9.1; Captive Wildlife Regulation, s.21; Captive Wildlife (Ministerial) Regulation; General Wildlife Regulation

BRITISH COLUMBIA

Cemetery and Funeral Services Act, R.S.B.C. 1989, c.21

Credit Reporting Regulations, B.C. Reg. 564/74, Section 5(2)

Liquor Control and Licensing Act, R.S.B.C. 1979, c.237, Section 16(3)

Real Estate Act Regulations, B.C. Reg. 75/61

NORTHWEST TERRITORIES

Real Estate Licensing Act

YUKON

Financial Administration Act, R.S.Y 1986; Contract Regulations, O.I.C. 1992/111, s.51(2); Contracting Directive, 1995, Part IV, s.40(g)

Fisheries Act, R.S.C 1985, c.F-14

Freshwater Fisheries Agreement Act, R.S.Y. 1989-90, c.4; Yukon Territory Fishery Regulations, C.R.C., 1978, c.854; Canada-Yukon Freshwater Fisheries Agreement, 1989

Motor Transport Act, R.S.Y. 1988, c.18, ss.33, 39(1); Policy and Procedures for Minimum Conditions of License, 1993, amended 1994

Notaries Act

Real Estate Agents Act, Regulation O.I.C. 1977/158, 1984/157

Wildlife Act, R.S.Y. 1986, c.178; Trapping Regulations, O.I.C. 1982/283; Interim Fur Farming Policy

CANADA

NIL

Annex 606⁴³

Extra-provincial Corporate Registration and Reporting Requirements

Purpose

1. The purpose of this Annex is to reconcile extra-provincial corporate registration and reporting requirements for corporations incorporated under the law of any Party.
2. In order to achieve the purpose of this Annex the Parties shall:
 - a) collect and make available to each other corporate information; and
 - b) cooperate and coordinate other measures relating to extra-provincial corporationsas provided for in this Annex.

Standard Statement of Registration

3. The Parties shall adopt a Standard Statement of Registration for use by corporations for the purposes of filing for extra-provincial registration with a Province.
4. Each Party shall put in place appropriate arrangements to enable its corporations, if the corporations so wish, to apply to register extra-provincially to operate in any other Province or Provinces by filing the Standard Statement of Registration.
5. Each Province shall accept filings for registration from corporations in the form of the Standard Statement of Registration.
6. The Standard Statement of Registration shall contain the following information:
 - a) name of corporation;
 - b) jurisdiction of incorporation or continuance, and
 - c) one of:
 - i) address for service in the registering province, or
 - ii) name and address of agent for service,if required.

Change Reporting

7. Each Party shall ensure that the following information is available to all Provinces in which a corporation is registered as an extra-provincial corporation:

⁴³ This annex was added to the Agreement on Internal Trade by means of the Second Protocol of Amendment.

- a) a proposed or actual change of name (with name availability documents, if required);
- b) a cessation of existence;
- c) a decision or application to dissolve or be dissolved, or to wind up or be wound up; or
- d) an amalgamation or continuance (including an “export” continuance from the incorporating jurisdiction to another jurisdiction).

Annual Reports

8. Each Party shall ensure that the information contained in the annual report submitted by any corporation which it incorporates is available to all Provinces in which that corporation is registered as an extra-provincial corporation.
9. Each Province shall accept the annual report (and the information contained therein) submitted by an extra-provincial corporation to that corporation’s incorporating jurisdiction as meeting its own requirements for an annual report from that corporation.
10. The annual report required by each Party shall identify all Provinces in which the corporation is registered as an extra-provincial corporation.
11. Each Province shall accept the date upon which an extra-provincial corporation must file an annual report with that corporation’s incorporating jurisdiction as the annual report filing date for its own extra-provincial reporting purposes.
12. Each Province retains the right to impose its own penalties on extra-provincial corporations for failure to file an annual report in conformity with the requirements of this Annex.

Additional Information Requirements

13. Provinces reserve the right to require corporations to submit information in addition to that specified in paragraphs 6, 7 and 9 in order to complete the processes referred to in those paragraphs.

Fees

14. Each Party retains the right to levy fees in respect of registration and renewal of registration of extra-provincial corporations.
15. The Parties shall incorporate in the arrangements for electronic communication of information under paragraph 20, arrangements to streamline the collection and distribution of fees.

Agent for Service

16. A Province may require an agent for service if the corporation does not have a presence within the province upon which legal service can be made.

Language

17. Each Party may require that information for registration, change reporting and annual reporting be submitted in either or both official languages.

Names

18. Nothing in this Annex affects the name granting authority of any Party and corporations maintain all rights associated with the name or names granted them under such authority.

19. Corporations are responsible for meeting all requirements related to name approval in any jurisdiction in which they operate or may plan to operate.

Communication of Information

20. The Parties shall put in place arrangements to ensure that the information stipulated in paragraphs 6, 7, 9 and 10 is communicated electronically. The Parties shall also include, as practicable, in such arrangements means to collect and communicate the information referred to in paragraph 13.

Review

21. The Parties shall review biennially the operation, scope and coverage of this Annex for the purpose of enhancing cooperation and trade liberalization.

Implementation

22. The arrangements to ensure electronic communication of information as specified in paragraph 20 shall be fully operational by July 1, 1999, subject to the following:

- a) should technical complications make compliance with the above date impossible, the Committee on Internal Trade will be informed at the earliest possible time so that it may take appropriate action; and
- b) should commencement of electronic communication of information among some or all Parties become feasible at an earlier date or dates, such Parties may implement this Annex at such earlier date or dates.

Definitions

23. In this Annex,

agent for service means, with reference to an extra-provincial corporation, the person authorized to accept service of documents on behalf of the corporation.

continuance means the process that allows a corporation to apply to be governed by the laws of another jurisdiction as if it had been incorporated under the laws of that other jurisdiction.

incorporating jurisdiction means the Party under whose laws a company has been incorporated.

Annex 608.3

Code of Conduct on Incentives

Scope and Coverage

1. This Annex applies to incentives provided to enterprises by a Party or any entity acting on its behalf.

1P5. Parties shall not influence or direct municipalities, regional development authorities or any other entity, or apply incentive practices through same, so as to circumvent the intent and provisions of this Annex.⁴⁴

2. In this Annex, "incentive" means:

- (a) a contribution with a financial value that confers a benefit on the recipient, including cash grants, loans, debt guarantees or an equity injection, made on preferential terms;
- (b) a reduction in taxes or government levies otherwise payable aimed at a specific enterprise, whether organized as one legal entity or as a group of legal entities, but does not include a reduction resulting from a provision of general application of a tax law of a Party; or
- (c) any form of income or price support that results directly or indirectly in a draw on the public purse.

Purpose

3. The Parties affirm the application of the operating principles of this Agreement to incentives and shall minimize the adverse effects of their incentives on the economic interests of other Parties.

Prohibited Incentives

4. No Party shall provide an incentive that is, in law or in fact, contingent on, and would directly result in, an enterprise located in the territory of any Party relocating an existing operation to its territory or to the territory of any other Party.⁴⁵

5. An incentive shall not be considered to be inconsistent with paragraph 4 where a Party can demonstrate that the incentive was provided to offset the possibility for relocation of the existing operation outside Canada and the relocation was imminent, well known and under active consideration.

6. No Party shall provide an incentive the primary purpose of which is to enable the recipient enterprise to undercut competitors of another Party in obtaining a specific contract in the territory of a Party.

⁴⁴ This paragraph was added to the Agreement on Internal Trade by means of the Fifth Protocol of Amendment.

⁴⁵ This paragraph was amended by the Fifth Protocol of Amendment.

7. For greater certainty, paragraph 4 shall not be construed to prevent a Party from carrying out general investment promotion activities such as market information and intelligence.

Avoidance of Certain Incentives

8. The Parties affirm that economic development within their territories may include the provision of incentives. The Parties acknowledge that certain incentives may harm the economic interests of other Parties. The Parties shall take into account the economic interests of other Parties in developing and applying their incentive measures, and shall endeavour to refrain from providing an incentive that:

- (a) sustains, for an extended period of time, an economically non-viable operation whose production adversely affects the competitive position of a facility located in the territory of another Party;
- (b) increases capacity in sectors where the increase is not warranted by market conditions; or
- (c) is excessive, either in absolute terms or relative to the total value of the specific project for which the incentive is provided, taking into account such factors as the economic viability of the project and the magnitude of the economic disadvantage that the incentive is designed to overcome.

9. Each Party shall refrain from engaging in bidding wars to attract prospective investors seeking the most beneficial incentive package.⁴⁶

Request for Information

10. Where a Party has reason to consider that an incentive program or an individual incentive package offered or implemented by another Party may be inconsistent with paragraphs 4 through 9, it may request relevant information from that other Party. A Party may also request any other information relating to a Party's investment incentive programs or individual incentive packages offered or implemented. The other Party shall respond promptly to any such requests.⁴⁷

Consultation

11. ⁴⁸

12. ⁴⁹

13. ⁵⁰

⁴⁶ This paragraph was amended by the Fifth Protocol of Amendment.

⁴⁷ This paragraph was amended by the Fifth Protocol of Amendment.

⁴⁸ This paragraph was deleted by the Seventh Protocol of Amendment.

⁴⁹ This paragraph was deleted by the Seventh Protocol of Amendment.

⁵⁰ This paragraph was deleted by the Seventh Protocol of Amendment.

14. ⁵¹

Annual Report

15. The Working Group on Investment shall prepare an annual report on incentives for submission to the Committee that includes:

- (a) a short description, including the goals and objectives, of the incentive programs and of the individual incentive packages that are outside established programs offered by each Party;
- (b) the total amount of each of the following types of incentives committed by a Party to enterprises in its territory:
 - (i) cash grants or contributions;
 - (ii) loans or loan guarantees; and
 - (iii) equity injections;
- (c) in the case of the Federal Government, the total amount for each Province of each of the types of incentives referred to in paragraph (b) committed by it to enterprises;
- (d) the amounts of:
 - (i) each cash grant or contribution over \$500,000;
 - (ii) each loan or loan guarantee over \$1,000,000; and
 - (iii) each equity injection over \$1,000,000;committed by a Party to enterprises in its territory; and
- (e) where relevant, a summary of any matter that has given rise to procedures under paragraph 10 or paragraphs 11 through 14.

⁵¹ This paragraph was deleted by the Seventh Protocol of Amendment.

