

CHAPTER EIGHT

INVESTMENT

Section A – Substantive Obligations

Article 801: Scope and Coverage

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

- (a)# investors of the other Party;
- (b) covered investments; and
- (c) with respect to Articles 807, 809 and 810, all investments in the territory of the Party.

2.# For greater certainty, the provisions of this Chapter do not bind a 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 802: 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 the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service into its territory does not of itself make this Chapter applicable to the cross-border supply of the service. This Chapter applies to measures adopted or maintained by 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 shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter Eleven (Financial Services).

4. Articles 906 (Cross-Border Trade in Services - Market Access) and 909 (Cross-Border Trade in Services - Domestic Regulation) are hereby incorporated into and made a part of this Chapter and apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.¹

Article 803: National Treatment

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

¹ It is understood by the Parties that any reservation taken by a Party pursuant to Article 908 (Cross-Border Trade in Services - Non-Conforming Measures) against Article 906 (Cross-Border Trade in Services - Market Access) applies to measures of that Party covered under paragraph 4.

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

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

Article 804²: Most-Favoured-Nation Treatment

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

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

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

² Article 804 shall be interpreted in accordance with Annex 804.1.

Article 805: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.
2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.
3. A 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 806: Senior Management and Boards of Directors

1. A Party may not require that an enterprise of that Party, that is a covered investment, appoint to senior management positions individuals of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise 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 807: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of the other Party or of a non-Party in its territory:

- (a) to export a given level or percentage of goods;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services 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 provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority, to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

- (g) to supply exclusively from the territory of the Party the goods it produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles 803 and 804 apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of the other Party or of a non-Party, on compliance with any of the following requirements:

- (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 producers 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 provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. Nothing in paragraph 3 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 the other Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

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

6. The provisions of:

- (a) subparagraphs 1(a), (b) and (c), and 3(a) and (b) do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b) do not apply to procurement by a Party or a state enterprise; and
- (c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

Article 808: Reservations and Exceptions

1. Articles 803, 804, 806 and 807 do not apply to:

(a)# any existing non-conforming measure that is maintained by

(i)# a national government, as set out in its Schedule to Annex I,
or

(ii)# a sub-national 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 Articles 803, 804, 806 and 807.

2. Articles 803, 804, 806 and 807 do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its schedule to Annex II.

3. In respect of intellectual property rights, a Party may derogate from Articles 803, 804 and subparagraph 1(f) of Article 807 in a manner that is consistent with the TRIPS Agreement and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

4. The provisions of Articles 803, 804 and 806 do not apply to:
- (a)# procurement by a Party or a state enterprise; or
 - (b)# subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

Article 809: Health, Safety and Environmental Measures

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

Article 810: Corporate Social Responsibility

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

Article 811: Compensation for Losses

1. Each Party shall accord to investors of the other 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, civil strife or a natural disaster.
2. Paragraph 1 shall not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 803 but for subparagraph 4(b) of Article 808.

Article 812³: Expropriation

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except for a public purpose⁴, in accordance with due process of law, in a non-discriminatory manner and on prompt, adequate and effective compensation.
2. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

³ For greater certainty, paragraph 1 of Article 812 shall be interpreted in accordance with Annex 812.1.

⁴ The term “public purpose” shall be interpreted in accordance with international law. It is not meant to create any inconsistency with the same or similar concepts in the domestic law of either Party.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency from the date of expropriation until date of payment.

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

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

Article 813: 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, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the investment;
- (c)# proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

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

(e)# payments made pursuant to Articles 811 and 812; and

(f)# payments arising under Section B.

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

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

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

(b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) reports of transfers of currency or other monetary instruments; or

(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs (a) through (e) of paragraph 3.

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

Article 814: Subrogation

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

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1 of this Article, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.

Article 815: Denial of Benefits

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

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such Party and to investments of such investors if investors of a non-Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

Article 816: Special Formalities and Information Requirements

1. Nothing in Article 803 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement that 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 the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles 803 or 804, a Party may require an investor of the other Party, or its covered investments, to provide information concerning that investment solely for informational or statistical purposes, provided that such requests are reasonable and not unduly burdensome. The Party shall protect any confidential 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.

Article 817: Committee on Investment

1.# The Parties hereby establish a Committee on Investment, comprising representatives of each Party.

2.# The Committee shall provide a forum for the Parties to consult on issues related to this Chapter that are referred to it by a Party. The Committee shall meet at such times as agreed by the Parties and should work to promote cooperation and facilitate joint initiatives, which may address issues such as corporate social responsibility and investment facilitation.

Section B - Settlement of Disputes between an Investor and the Host Party

Article 818: Purpose

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

Article 819: Claim by an Investor of a Party on Its Own Behalf

1.# An investor of a Party may submit to arbitration under this Section a claim that the other Party has breached:

- (a)# an obligation under Section A, other than an obligation under paragraph 4 of Article 802, Articles 809, 810 or 816;
- (b)# an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises - Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises - State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 809, 810 or 816; or
- (c)# a legal stability agreement referred to in paragraph 2 of this Article,

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

2. A claim by an investor that a tax measure of a Party is in breach of a legal stability agreement between the national government authorities of a Party and the investor concerning an investment may be submitted to arbitration only where:

(a)# the legal stability agreement was entered into after 20 June 2007; or

(b)# the legal stability agreement existed on 20 June 2007, and

(i)# the tax measure was adopted after the date of entry into force of this Agreement; and

(ii)# the claim is not related to any tax matter in dispute between the investor or its investment and the Party before the entry into force of this Agreement,

and in either case, the taxation authorities of the Parties, no later than six months after the investor gives notice of its intention to submit the claim to arbitration, have not jointly determined that the tax measure does not contravene the legal stability agreement. The investor shall refer the issue of whether the tax measure does not contravene the legal stability agreement for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 821.

Article 820: Claim by an Investor of a Party on Behalf of an Enterprise

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

- (a)# an obligation under Section A, other than an obligation under paragraph 4 of Article 802, or Articles 809, 810 or 816; or
- (b)# an obligation under subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises - Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises - State Enterprises), only to the extent that a designated monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under paragraph 4 of Article 802, Articles 809, 810 or 816; or
- (c)# a legal stability agreement referred to in paragraph 2 of this Article,

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

2. A claim by an investor, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, that a tax measure of a Party is in breach of a legal stability agreement between the national government authorities of a Party and the enterprise may be submitted to arbitration only where:

(a)# the legal stability agreement was entered into after 20 June 2007; or

(b)# the legal stability agreement existed on 20 June 2007, and

(i)# the tax measure was adopted after the date of entry into force of this Agreement, and

(ii)# the claim is not related to any tax matter in dispute between the investor or its investment and the Party before the entry into force of this Agreement,

and in either case, the taxation authorities of the Parties, no later than six months after the investor gives notice of its intention to submit the claim to arbitration, have not jointly determined that the tax measure does not contravene the legal stability agreement. The investor shall refer the issue of whether the tax measure does not contravene the legal stability agreement for a determination to the taxation authorities of the Parties at the same time that it gives notice under Article 821.

3. Where an investor makes a claim under this Article and the investor or a non-controlling investor in the enterprise makes a claim under Article 819 arising out of the same events that gave rise to the claim under this Article, and two or more of the claims are submitted to arbitration under Article 824, the claims should be heard together by a Tribunal established under Article 829, unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.

4. An investment may not make a claim under this Section.

Article 821: Notice of Intent to Submit a Claim to Arbitration

1. The disputing investor shall deliver to the disputing Party a written notice of its intent to submit a claim to arbitration at least six months before the claim is submitted. The notice shall specify:

- (a) the name and address of the disputing investor and, where a claim is made under Article 820, the name and address of the enterprise;
- (b) the provisions of this Agreement alleged to have been breached and any other relevant provisions;
- (c) the issues and the factual basis for the claim, including the measures at issue; and
- (d) the relief sought and the approximate amount of damages claimed.

2. The disputing investor shall also deliver, with its Notice of Intent to Submit a Claim to Arbitration, evidence establishing that it is an investor of the other Party.

Article 822: Settlement of a Claim through Consultation

1. Before a disputing investor may submit a claim to arbitration, the disputing parties shall first hold consultations in an attempt to settle a claim amicably.
2. Consultations shall be held within six months of the submission of the Notice of Intent to Submit a Claim to Arbitration, unless the disputing parties otherwise agree.
3. The place of consultation shall be the capital of the disputing Party, unless the disputing parties otherwise agree.

Article 823: Conditions Precedent to Submission of a Claim to Arbitration

1. A disputing investor may submit a claim to arbitration under Article 819 only if:
 - (a) the disputing investor consents to arbitration in accordance with the procedures set out in this Section;
 - (b) at least six months have elapsed since the events giving rise to the claim;
 - (c) not more than 39 months have elapsed from the date on which the disputing investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby;

- (d) the disputing investor has delivered the Notice of Intent required under Article 821, in accordance with the requirements of that Article, at least six months prior to submitting the claim; and
- (e) the disputing investor and, where the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

2. A disputing investor may submit a claim to arbitration under Article 820 only if:

- (a) both the disputing investor and the enterprise consent to arbitration in accordance with the procedures set out in this Section;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) not more than 39 months have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby;

- (d) the disputing investor has delivered the Notice of Intent required under Article 821, in accordance with the requirements of that Article, at least six months prior to submitting the claim; and
- (e) both the disputing investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the disputing Party that is alleged to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the disputing Party.

3. A consent and waiver required by this Article shall be in the form provided for in Annex 823.1, shall be delivered to the disputing Party and shall be included in the submission of a claim to arbitration.

4. An investor may submit a claim relating to taxation measures covered by this Chapter to arbitration under this Section only if the taxation authorities of the Parties fail to reach the joint determinations specified in paragraph 8 of Article 2203 (Exceptions - Taxation), paragraph 2 of Article 819 and paragraph 2 of Article 820 within six months of being notified in accordance with those provisions.

5. A waiver from the enterprise under subparagraphs 1(e) or 2(e) shall not be required only where a disputing Party has deprived a disputing investor of control of an enterprise.

6. Failure to meet any of the conditions precedent provided for in paragraphs 1 through 4 shall nullify the consent of the Parties given in Article 825.

Article 824: Submission of a Claim to Arbitration

1. Except as provided in Annex 824.1, a disputing investor who meets the conditions precedent in Article 823 may submit the claim to arbitration under:

- (a) the ICSID Convention, provided that both the disputing Party and the Party of the disputing investor are parties to the Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;
- (c) the UNCITRAL Arbitration Rules; or
- (d) any other body of rules approved by the Commission as available for arbitrations under this Section.

2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any rules of its own making. Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.

3. The applicable arbitration rules shall govern the arbitration except to the extent modified by this Section, and supplemented by any rules adopted by the Commission under this Section.

Article 825: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section.
2. The consent given in paragraph 1 and the submission by a disputing investor of a claim to arbitration shall satisfy the requirement of:
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties;
 - (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 826: Arbitrators

1. Except in respect of a Tribunal established under Article 829, and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.
2. Arbitrators shall:
 - (a) have expertise or experience in public international law, international trade or international investment rules or the resolution of disputes arising under international trade or international investment agreements;

- (b) be independent of, and not be affiliated with or take instructions from, either Party or the disputing investor; and
 - (c) comply with any Code of Conduct for Dispute Settlement as agreed by the Commission.
- 3. The disputing parties should agree upon the arbitrators' remuneration. If the disputing parties do not agree on such remuneration before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.
- 4. The Commission may establish rules relating to expenses incurred by the Tribunal.

Article 827: Constitution of a Tribunal When a Party Fails to Appoint an Arbitrator or the Disputing parties Are Unable to Agree on a Presiding Arbitrator

If a Tribunal, other than a Tribunal established under Article 829, has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General to appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

Article 828: Agreement to Appointment of Arbitrators

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 based on a ground other than citizenship or permanent residence:

- (a) the disputing Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) a disputing investor referred to in Article 819 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
- (c) a disputing investor referred to in Article 820 may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

Article 829: Consolidation

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article 824 have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims, and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General establish a Tribunal and shall specify in the request:

- (a) the name of the disputing Party or disputing investors against which the order is sought;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

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

5. The disputing parties shall request the Secretary-General to establish a Tribunal comprising three arbitrators within 60 days of receipt of the request. The disputing parties shall ask the Secretary-General to appoint the presiding arbitrator, from the ICSID Panel of Arbitrators. A presiding arbitrator may not be a national of either Party. The disputing parties shall ask the Secretary-General to appoint the two other members from the ICSID Panel of Arbitrators. To the extent arbitrators are not available from that Panel, the disputing parties will leave appointments to the discretion of the Secretary-General. One member shall be a national of the disputing Party and one member shall be a national of the Party of the disputing investors.

6. Where a Tribunal has been established under this Article, a disputing investor that has submitted a claim to arbitration under Article 824 and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in an order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the disputing investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

7. A disputing investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request made under paragraph 3.

8. A Tribunal established under Article 824 shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article 824 be stayed unless the latter Tribunal has already adjourned its proceedings.

Article 830: Notice to the Non-Disputing Party

A disputing Party shall deliver to the other Party a copy of the Notice of Intent to Submit a Claim to Arbitration and other documents, such as a Notice of Arbitration and Statement of Claim, no later than 30 days after the date that such documents have been delivered to the disputing Party.

Article 831: Documents

1. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of:

(a)# the evidence that has been tendered to the Tribunal;

(b)# copies of all pleadings filed in the arbitration; and

(c)# the written argument of the disputing parties.

2. The Party receiving information pursuant to paragraph 1 shall treat the information as if it were a disputing Party.

Article 832: Participation by the Non-Disputing Party

1. On written notice to the disputing parties, the non-disputing Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

2. The non-disputing Party shall have the right to attend any hearings held under this Section, whether or not it makes submissions to the Tribunal.

Article 833: Place of Arbitration

Unless the disputing parties agree otherwise, a Tribunal shall hold arbitration in the territory of a Party that is a party to the New York Convention, selected in accordance with:

- (a) the ICSID Additional Facility Rules, if the arbitration is under those Rules or the ICSID Convention; or
- (b) the UNCITRAL Arbitration Rules, if the arbitration is under those Rules.

Article 834: Preliminary Objections to Jurisdiction or Admissibility

Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a Tribunal shall, wherever possible, decide the matter before proceeding to the merits.

Article 835: Public Access to Hearings and Documents

1. Hearings held under this Section shall be open to the public. To the extent necessary to ensure the protection of confidential information, the Tribunal may hold portions of hearings *in camera*.
2. The Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for open hearings, in consultation with the disputing parties.

3. All documents submitted to, or issued by, the Tribunal shall be publicly available, unless the disputing parties otherwise agree, subject to the deletion of confidential information.

4. Notwithstanding paragraph 3, any Tribunal award under this Section shall be publicly available, subject to the deletion of confidential information.

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

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

7. As provided under Article 2202 (Exceptions - National Security) and Article 2204 (Exceptions - Disclosure of Information), the Tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

8. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

Article 836: Submissions by Other Persons

1. Any person, other than a disputing party, that wishes to file a written submission with a Tribunal (the "applicant") shall apply for leave from the Tribunal to file such a submission, in accordance with Annex 836.1. The applicant shall attach the submission to the application.

2. The applicant shall serve its application for leave to file a submission, as well as its submission, on all disputing parties and the Tribunal.

3. The Tribunal shall set an appropriate date for the disputing parties to comment on the application for leave.

4. In determining whether to grant the leave the Tribunal shall consider, among other things, the extent to which:

- (a) the applicant's submission would assist the Tribunal in the determination of a factual or legal issue related to the arbitration by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;
- (b) the applicant's submission would address a matter within the scope of the dispute;

- (c) the applicant has a significant interest in the arbitration; and
 - (d) there is a public interest in the subject-matter of the arbitration.
- 5. The Tribunal shall ensure that:
 - (a)# any applicant's submission does not disrupt the proceedings; and
 - (b)# neither disputing party is unduly burdened or unfairly prejudiced by such submissions.
- 6. The Tribunal shall decide whether to grant leave to an applicant to file a submission. If the Tribunal grants leave, it shall set an appropriate date for the disputing parties to respond in writing to the submission. By that date, the non-disputing Party may, pursuant to Article 832, address any issues of interpretation of this Agreement presented in the submission.
- 7. The Tribunal that grants leave to file a submission to an applicant is not required to address the submission at any point in the arbitration, nor is the person that files the submission entitled to make further submissions in the arbitration.
- 8. Access to hearings and documents by persons that file applications under these procedures shall be governed by the provisions pertaining to public access to hearings and documents under Article 835.

Article 837: Governing Law

- 1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

2. Subject to the other terms of this Section, when a claim is submitted to arbitration for a breach of a legal stability agreement referred to in paragraph 2 of Articles 819 or paragraph 2 of Article 820, a Tribunal established under this Section shall apply:

(a)# the rules of law specified in the legal stability 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 disputing Party, including its rules on the conflict of laws,⁵ and

(ii) such rules of international law as may be applicable.

3. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award under this Section shall be consistent with the interpretation.

Article 838: Interpretation of Annexes

1. Where a disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the disputing Party, the Tribunal shall request the interpretation of the Commission on the issue. The Commission, within 60 days of delivery of the request, shall submit in writing its interpretation to the Tribunal.

⁵ The “law of the disputing Party” means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

2. Further to paragraph 3 of Article 837, a Commission interpretation submitted under paragraph 1 shall be binding on the Tribunal. If the Commission fails to submit an interpretation within 60 days, the Tribunal shall decide the issue.

Article 839: 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 on its own initiative unless the disputing parties disapprove, may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and conditions as the disputing parties may agree.

Article 840: Interim Measures of Protection

A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 819 or 820. For purposes of this paragraph, an order includes a recommendation.

Article 841: Final Award

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

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

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

2. Subject to paragraph 1, where a claim is made under paragraph 1 of Article 820:

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

3. A Tribunal may not order a disputing Party to pay punitive damages.

Article 842: Finality and Enforcement of an Award

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.
2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party may not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered 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 or the UNCITRAL Arbitration Rules:
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
 - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

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

5. If the disputing Party fails to abide by or comply with a final award, the Commission, on delivery of a request by the Party of the disputing investor, shall establish an arbitral panel under Chapter Twenty-One (Dispute Settlement). 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) a recommendation that the disputing Party abide by or comply with the final award.

6. A disputing investor 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 5.

7. 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 843: General

Time when a Claim is Submitted to Arbitration

1. A claim is submitted to arbitration under this Section when:
 - (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General;
 - (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General; or
 - (c) the notice of arbitration given under the UNCITRAL Arbitration Rules is received by the disputing Party.

Service of Documents

2. Delivery of notice and other documents on a Party shall be made to:

For Canada: Office of the Deputy Attorney General of Canada

For Peru: Ministerio de Economía y Finanzas

Receipts under Insurance or Guarantee Contracts

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

Article 844: Exclusions

The dispute settlement provisions of this Section and of Chapter Twenty-One (Disputes Settlement) shall not apply to the matters in Annex 844.1.

Article 845: Suspension of Other Agreements

1. The *Agreement Between Canada and the Republic of Peru for the Promotion and Protection of Investments* done in Hanoi on 14 November 2006 (the “FIPA”) shall be suspended from the date of entry into force of this Agreement and until such time as this Agreement is no longer in force.

2. Notwithstanding paragraph 1, the FIPA shall remain operative for a period of fifteen years after the entry into force of this Agreement for the purpose of any breach of the obligations of the FIPA that occurred before the entry into force of this Agreement. During this period the right of an investor of a Party to submit a claim to arbitration concerning such a breach shall be governed by the relevant provisions of the FIPA.

Article 846: Termination

Notwithstanding the termination of this Agreement pursuant to Article 2305 (Final Provisions - Termination), this Agreement shall remain in force for a period of fifteen years after the termination for the purpose of any breach of the obligations of this Chapter or subparagraph 3(a) of Article 1305 (Competition Policy, Monopolies and State Enterprises - Designated Monopolies) or paragraph 2 of Article 1306 (Competition Policy, Monopolies and State Enterprises - State Enterprises) that occurred prior to the termination of this Agreement. During this period the right of an investor of a Party to submit a claim to arbitration concerning such a breach shall be governed by the relevant provisions of this Agreement.

Section C - Definitions

Article 847: Definitions

For the purpose of this Chapter:

affiliate: a person is an affiliate of another person when:

- (a)# directly or indirectly, it controls or is controlled by that other person;
or
- (b)# it and the other person are both controlled, directly or indirectly, by
the same person;

confidential information means business confidential information and information that is privileged or otherwise protected from disclosure;

covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

disputing investor means an investor that makes a claim under Section B;

disputing Party means a Party against which a claim is made under Section B;

disputing party means the disputing investor or the disputing Party;

enterprise means an enterprise as defined in Article 105 of Chapter One (Initial Provisions and General Definitions – Definitions of General Application) and a branch of any such entity;

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;

equity or debt securities include voting and non-voting shares, bonds, convertible debentures, stock options and warrants;

ICSID means 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 on 18 March 1965;

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

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

investment means:

(a)# an enterprise;

(b)# an equity security of an enterprise;

(c)# a debt security of an enterprise:

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

(ii) where the original maturity of the debt security is at least three years,

but does not include a debt security, regardless of original maturity, of a state enterprise;

(d)# a loan to an enterprise:

- (i) where the enterprise is an affiliate of the investor, or
- (ii) where the original maturity of the loan is at least three years,

but does not include a loan, regardless of original maturity, to a state enterprise;

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

(f)# an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraphs (c) or (d);

(g)# real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and

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

- (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
- (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;

but **investment does not mean,**

(i)# claims to money that arise solely from:

- (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or
- (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); and

(j)# any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) through (h);

investment of an investor of a Party means an investment owned or controlled directly or indirectly by an investor of such Party;

investor of a Party⁶ means:

(a)# in the case of Canada:

- (i)# Canada or a state enterprise of Canada, or
- (ii)# a national or an enterprise of Canada,

that seeks to make, is making or has made an investment; a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship; and

⁶ For greater certainty, it is understood that an investor “seeks to make an investment” only when the investor has taken concrete steps necessary to make the investment, such as when the investor has made an application for a permit or license authorizing the establishment of an investment.

(b)# in the case of Peru:

(i)# a state enterprise of Peru, or

(ii)# a national or enterprise of Peru,

that seeks to make, is making or has made an investment; a natural person who is a dual citizen shall be deemed to be exclusively a citizen of the State of his or her dominant and effective citizenship;

investor of a non-Party⁷ means an investor other than an investor of a Party, that seeks to make, is making, or has made an investment;

legal stability agreement means an agreement entered into by a national government authority of a Party and an investor of the other Party or a covered investment of such investor that accords certain benefits, including, but not limited to, a commitment to maintain the existing income tax regime during a specified time;

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

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

non-disputing party means a person of a Party, or a person of a non-Party with a significant presence in the territory of a Party, that is not a party to an investment dispute under Section B;

Secretary-General means the Secretary-General of ICSID;

⁷ For greater certainty, it is understood that an investor “seeks to make an investment” only when the investor has taken concrete steps necessary to make the investment, such as when the investor has made an application for a permit or license authorizing the establishment of an investment.

taxation authorities means the following until notice in writing to the contrary is provided to the other Party:

(a)# for Canada: the Assistant Deputy Minister, Tax Policy, of the Department of Finance Canada; and

(b)# for Peru: the Vice Minister of Economy, the Ministry of Economy and Finance;

Tribunal means an arbitration tribunal established under Article 824 or Article 829; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Annex 804.1

Most-Favoured-Nation Treatment

For greater clarity, 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 804 does not encompass dispute resolution mechanisms, such as those in Section B, that are provided for in international treaties or trade agreements.

Annex 812.1

Indirect Expropriation

The Parties confirm their shared understanding that:

- (a) Indirect expropriation results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- (b) The determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - (i)# the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,
 - (ii)# the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations, and
 - (iii)# the character of the measure or series of measures;

(c) Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

Annex 823.1

Standard Waiver and Consent in Accordance with Article 823 of this Agreement⁸

In the interest of facilitating the filing of waivers as required by Article 824 of this Agreement, and to facilitate the orderly conduct of the dispute resolution procedures set out in Section B, the following standard waiver forms shall be used, depending on the type of claim.

Claims filed under Article 819 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party.

Where the claim is based on loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, either Form 1 or 2 must be accompanied by Form 3.

Claims made under Article 820 must be accompanied by either Form 1, where the investor is a national of a Party, or Form 2, where the investor is a Party, a state enterprise thereof, or an enterprise of such Party, and Form 4.

⁸ Subject to Annex 824.1.

Form 1

Consent and waiver for an investor of a Party bringing a claim under Article 819 or Article 820 (where the investor is a national of a Party) of the Free Trade Agreement between Canada and the Republic of Peru:

I, (Name of investor) , consent to arbitration in accordance with the procedures set out in this Agreement, and waive my right to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of (Name of disputing Party) that is alleged to be a breach referred to in Article 819 or Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of (Name of disputing Party) .

(To be signed and dated.)

Form 2

Consent and waiver for an investor of a Party bringing a claim under Article 819 or Article 820 (where the investor is a Party, a state enterprise thereof, or an enterprise of such Party) of the Free Trade Agreement between Canada and the Republic of Peru:

I, _____ (Name of declarant), on behalf of _____ (Name of investor), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of _____ (Name of investor) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of _____ (Name of disputing Party) that is alleged to be a breach referred to in Article 819 or Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of _____ (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of _____ (Name of investor) .

(To be signed and dated.)

Form 3

Waiver of an enterprise that is the subject of a claim by an investor of a Party under Article 819 of the Free Trade Agreement between Canada and the Republic of Peru:

I, _____ (Name of declarant), waive the right of _____ (Name of the enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to this Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of _____ (Name of disputing Party) that is alleged by _____ (Name of investor) to be a breach referred to in Article 819, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of _____ (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this waiver on behalf of _____ (Name of the enterprise).

(To be signed and dated.)

Form 4

Consent and waiver of an enterprise that is the subject of a claim by an investor of a Party under Article 820 of the Free Trade Agreement between Canada and the Republic of Peru:

I, _____ (Name of declarant), on behalf of _____ (Name of enterprise), consent to arbitration in accordance with the procedures set out in this Agreement, and waive the right of _____ (Name of enterprise) to initiate or continue before any administrative tribunal or court under the law of either Party to the Agreement, or other dispute settlement procedures, any proceedings with respect to the measure of _____ (Name of disputing Party) that is alleged by _____ (Name of investor) to be a breach referred to in Article 820, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages before an administrative tribunal or court under the law of _____ (Name of disputing Party).

I hereby solemnly declare that I am duly authorised to execute this consent and waiver on behalf of _____ (Name of the enterprise).

(To be signed and dated.)

Annex 824.1

Submission of a Claim to Arbitration

1. An investor of Canada may not submit to arbitration under Section B a claim that Peru has breached an obligation under Section A:

- (a) on its own behalf under subparagraphs 1(a) or (b) of Article 819; or
- (b) on behalf of an enterprise of Peru that is a juridical person that the investor owns or controls directly or indirectly under subparagraphs 1(a) or (b) of Article 820,

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

2. An investor of Canada may not submit to arbitration under Section B a claim that Peru has breached a legal stability agreement referred to in paragraph 3 of Article 819 and paragraph 3 of Article 820:

- (a) on its own behalf under subparagraph 1(c) of Article 820; or
- (b) on behalf of an enterprise of Peru that is a juridical person that the investor owns or controls directly or indirectly under subparagraph 1(c) of Article 820,

if the investor or the enterprise, respectively, has alleged that breach in proceedings before a court or administrative tribunal of Peru or has submitted that claim to any other binding dispute settlement proceedings.

3. For greater certainty, if an investor of Canada elects to submit:

(a)# a claim described in paragraph 1 to a court or administrative tribunal of the Republic of Peru; or

(b)# a claim described in paragraph 2 to a court or administrative tribunal of the Republic of Peru or to any other binding dispute settlement proceedings,

that election shall be definitive and the investor may not thereafter submit the same claim to arbitration under Section B.

Annex 836.1

Submissions by Other Persons

1. Applications for leave to file submissions by other persons shall:
 - (a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;
 - (b) be no longer than five typed pages;
 - (c) describe the applicant, including, where relevant, its membership and legal status (e.g., company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
 - (d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;
 - (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
 - (f) specify the nature of the interest that the applicant has in the arbitration;
 - (g) identify the specific issues of fact or law in the arbitration that the applicant has addressed in its written submission;

- (h) explain, by reference to the factors specified in paragraph 4 of Article 836, why the Tribunal should accept the submission; and

- (i) be made in a language of the arbitration.

2. Submissions filed by other persons shall:

- (a) be dated and signed by the person filing the submission;

- (b) be concise, and in no case longer than 20 typed pages, including any appendices;

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

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

Annex 844.1

Exclusions from Dispute Settlement

1. A decision by Canada following a review under the *Investment Canada Act* (1985, ch. 28, 1st supp.), with respect to whether or not permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article 2202 (Exceptions - National Security) of Chapter Twenty-Two (Exceptions) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter Twenty-One (Dispute Settlement).