

## Investment Chapter

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### Section 1: Scope and Definitions

#### Article X.1: Scope of Application

1. This Chapter shall apply to [EU: treatment and] [CAN: measures adopted or maintained by a Party] in its territory relating to:

- (a) investors of the other Party; and
- (b) covered investments;
- (c) with respect to Articles X.8 (Performance Requirements), all investments in the territory of the Party.

2. The Section on Establishment, and the Section on Non-Discriminatory Treatment with regard to the establishment or acquisition of a covered investment, does not apply to:

A. [Air services and related services in support of air services other than:

- i. Aircraft repair and maintenance services [CAN: ~~when an aircraft is withdrawn from service~~];
- ii. The selling and marketing of air transport services;
- iii. Computer reservation system (CRS) services;
- iv. Ground handling services;
- v. Airport operation services.]

B. Activities carried out in the exercise of governmental authority.

*[Parties agree to remove their respective reservations on services provided under governmental authority]*

*[Reference regarding treatment in the cultural sector to be included in the Scope article.]*

*[EU reserves the possibility to propose language concerning observance of obligations by sub-central authorities, privileged entities and state owned enterprises in light of results in the institutional chapter]*

### **[Article X.2: Relation to Other Chapters]**

[1. This Chapter does not apply to [EU: treatment and] [CAN: measures adopted or maintained] by a Party to the extent that the [measures] apply to investors or to their investments covered by Chapter [XY] (Financial Services).]

*This does not prejudice EU's position regarding coverage of the Chapter on Financial Services.*

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the provision of that cross-border service. This Chapter shall apply to [EU treatment and] [CAN: 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.

### **Article X.3: Definitions**

For the purpose of this Chapter:

**Activities carried out in the exercise of governmental authority** means an activity carried out neither on a commercial basis nor in competition with one or more economic operators.

**Aircraft repair and maintenance service** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

**[Airport Operation Services** means the operation and management [*including the development, planning and oversight* ], on a fee or contract basis, of airport infrastructure, including terminals, runways, taxiways and aprons, parking facilities, and intra-airport transportation systems.

For greater certainty, Airport Operation Services do not include the ownership of, or investment in, airports or airport lands, or any of the functions carried out by a board of directors.

Airport Operation Services do not include Air Navigation Services.]

*Agreement in principle.*

**computer reservation system service** means services supplied by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

**[confidential information** means confidential business information and information that is privileged or otherwise protected from disclosure under the law of a Party.];

*To check with ISDS part.*

**covered investment** means, with respect to a Party, an investment:

- a) in its territory;
- b) made in accordance with the applicable law at that time;
- c) directly or indirectly owned or controlled by an investor of the other Party; and
- d) existing on the date of entry into force of this Agreement, as well as investments made or acquired thereafter.

**enterprise** means any entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or controlled or governmentally-owned or controlled, including any corporation, trust, partnership, joint venture, sole proprietorship or association and a branch or representative office of any such entity.

**[Ground handling services** means the provision, on a fee or contract basis, of the following services: ground administration and supervision, including load control and communications; passenger handling; baggage handling; cargo and mail handling; ramp handling and aircraft services; fuel and oil handling; aircraft line maintenance, flight operations and crew administration; surface transport; and catering services. Ground handling services do not include security services and the operation or management of centralised airport infrastructures, such as baggage handling systems, de-icing facilities, fuel distribution systems, and intra-airport transport systems.]

*Agreement in principle.*

**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; and, where such rights are provided by domestic law, utility model rights. The Joint Committee may, by decision, add other categories of intellectual property to this definition.

**'investment'** means:

Every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, and a certain duration. Forms that an investment may take include:

- a) an enterprise;

- b) shares, stocks and other forms of equity participation in an enterprise;
- c) bonds, debentures and other debt instruments of an enterprise;
- d) a loan to an enterprise;
- e) any other kinds of interest in an enterprise;
- f) an interest arising from:
  - i. a concession conferred pursuant to domestic law or under a contract, including to search for, cultivate, extract or exploit natural resources,
  - ii. a turnkey, construction, production, or revenue-sharing contract, or
  - iii. other similar contracts;
- g) intellectual property rights;
- h) any other moveable property, tangible or intangible, or immovable property and related rights;
- i) claims to money or claims to performance under a contract;

[For greater certainty, 'claims to money' does not include claims to money that arise solely from commercial contracts for the sale of goods or services by a natural person or enterprise in the territory of a Party to a natural person or enterprise in the territory of the other Party, domestic financing of such contracts, or any related order, judgment, or arbitral award.]

Returns that are invested shall be treated as investments. Any alteration of the form in which assets are invested or reinvested does not affect their qualification as investment.

**investor** means [CAN: a Party] a natural person or an enterprise of a Party, that seeks to make, is making or has made an investment in the territory of the other Party. But "investor" does not mean:

- a) an enterprise of a Party, if the enterprise [CAN: is owned or controlled by an investor of the other Party or of a non-Party and the enterprise] has no substantial business activities in the territory of the Party under whose law it is constituted or organized; or,
- b) a branch or representative office of an enterprise of a Party or a non-Party.

*[Parties to consider alternatives regarding rights of 'a Party' as 'an investor' under this Chapter.]*

[**measure** includes a law, regulation, procedure, requirement or practice;]

**[Measures adopted or maintained by a Party]** means measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

*[Comment: To be reviewed in light of institutional provision]*

**natural person** means:

- (a) in the case of Canada, a natural person who is a citizen **[CAN: or permanent resident]** of Canada, and
- (b) in the case of the EU, a natural person having the nationality of one of the Member States of the EU according to their respective legislation **[EU:; and, for Latvia, a natural person permanently residing in the Republic of Latvia who is not a citizen of the Republic of Latvia or any other state but who is entitled, under laws and regulations of the Republic of Latvia, to receive a non-citizen's passport.]**

A natural person who is a citizen of Canada and has the nationality of one of the Member States of the EU shall be deemed to be exclusively a natural person of the Party of his or her dominant and effective nationality; and

**[CAN: A natural person who has the nationality of one of the Member States of the European Union or is a citizen of Canada, and is also a permanent resident of the other Party, shall be deemed to be exclusively a natural person of the Party of his or her nationality or citizenship, as applicable.]**

**returns** means all amounts yielded by an investment or reinvestment, including profits, royalties and interest or other fees and payments in kind.

*[Clarification of 'Subsidiary' may be needed in the Annex of Reservations of Non-Conforming Measures, as some the term is used in some specific reservations.]*

**selling and marketing of air transport service** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

## Section 2: Establishment of Investments

### Article X.4: Market Access

1. Neither Party shall adopt or maintain with regard to [EU: market access through establishment by an investor of a Party], either on the basis of its entire territory or on the basis of the territory of [a sub-national government], measures that:

*Exact wording of “sub-national government” to be determined.*

(a) impose limitations on:

(i) the number of [EU: enterprises that may carry out an specific business/economic activity] whether in the form of numerical quotas, monopolies, exclusive suppliers or the requirement of an economic needs test;

(ii) the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(iii) the total number of operations or the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test <sup>[1]</sup> EU;

(iv) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;

(v) the total number of natural persons that may be employed [in a particular sector] or that a covered investment may employ and who are necessary for, and directly related to, the performance of economic activity in the form of numerical quotas or the requirement of an economic needs test.

(b) restrict or require specific types of legal entity or joint venture through which an economic activity [may be performed].

2. [For greater certainty, [CAN: and without prejudice to any other obligations in this Chapter,] the following are consistent with paragraph 1 of this article [EU: provided that they are not applied in a manner which would constitute a disguised restriction on establishment]:

a) Measures concerning zoning and planning regulations affecting the development or use of land, or other analogous measures.

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<sup>1</sup> Subparagraphs 1(a) (i), (ii) and (iii) do not cover measures taken in order to limit the production of an agricultural product.

- b) Measures requiring the separation of the ownership of infrastructure from the ownership of the goods or services provided through that infrastructure to ensure fair competition, for example in the fields of energy, transportation and telecommunications.
- c) Measures restricting the concentration of ownership to ensure fair competition.
- d) Measures seeking to ensure the conservation and protection of natural resources and the environment, including limitations on the [EU: availability,] number and scope of concessions granted, and the imposition of moratoria or bans.
- e) Measures limiting the number of authorizations granted because of technical or physical constraints, for example telecommunications spectrum and frequencies.
- f) Measures requiring that a certain percentage of the shareholders, owners, or partners in an enterprise be qualified or practice a certain profession such as lawyers or accountants.]

#### **Article X.5: Performance Requirements**

- 1). Neither Party may impose, or enforce any of the following requirements, or enforce any commitment or undertaking, [EU: or condition the receipt or continued receipt of an advantage,] in connection with the establishment, acquisition, expansion, management, conduct or operation of all investments in its territory to:
- (a) export a given level or percentage of goods or services;
  - (b) achieve a given level or percentage of domestic content;
  - (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from natural persons or enterprises in its territory;
  - (d) 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) 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) transfer technology, a production process or other proprietary knowledge to a natural person or enterprises\_in its territory; or
  - (g) supply exclusively from the territory of the Party a good produced or a service provided by the investment to a specific regional or world market.

[CAN: 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 X.03 (National Treatment) and X.04 (Most-Favoured-Nation Treatment) apply to the measure.]

[CAN: 3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct or operation of all investments in its territory, 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. a) Nothing in paragraph [EU: 1] [CAN: 3] shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investments in its territory, on compliance with a [EU: non-discriminatory] 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, [EU alternative instead of 'non-discriminatory': provided that the requirement is applied to all investors in comparable circumstances].

b) Subparagraph 1(f) does not apply 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.

5. 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 participation in export promotion and foreign aid programs;

[CAN: (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]

[EU: This Article shall not apply to measures governing public procurement falling within the scope of Article III: 8 (a) GATT or Article XIII:1 GATS.]



(c) [EU: For greater certainty], subparagraphs 3(a) and (b) [EU: are not to be understood as applying] [CAN: 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.

[EU: 6. Notwithstanding the Article X (Reservations), a Party shall neither impose nor maintain any measure inconsistently with its obligations under the WTO Agreement or under Articles [X,Y,Z – provisions in CETA that restate those obligations] of this Agreement, even if such measure has been scheduled by that Party in Annex ...]

*Par. 1c and 3b to be coordinated to the taxation article 7(c).*

### **Article X.6: Senior Management and Boards of Directors**

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management [EU: or the board of directors] positions natural persons of any particular nationality [EU: or require residency or prior residency in the territory of that party].

[CAN: 2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or be 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.]

*Comments: EU proposes not to include paragraph 2 or to make this into a binding obligation against which reservations should be taken, or to omit this obligation as in any case, such requirements would be covered under national treatment.*

*In the absence of agreement on paragraph 2, the Parties will list all requirements for nationality/residence relating to senior management and boards of directors.*

### Section 3: Non-Discriminatory Treatment

#### Article X.7: National Treatment

1. Each Party shall accord to investors of the other Party and to covered investments, treatment no less favourable than the treatment it accords, in like situations to its own investors and to their investments with respect to the establishment [EU: and], acquisition [EU: of an enterprise], [CAN: expansion], conduct, operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

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

*Text to be adjusted for the EU regarding “sub-national government” in relation to the Member States.*

#### Article X.8: Most-Favoured-Nation Treatment

***Subject to agreement by EU on inclusion of an MFN obligation regarding ‘establishment, acquisition, expansion of an investment:***

1. Each Party shall accord to investors of the other Party and to covered investments, treatment no less favourable than the treatment it accords in like situations, to investors and to their investments of any third country with respect to the establishment [EU: and], acquisition [EU: of an enterprise], [CAN: expansion], conduct, the operation, management, maintenance, use, enjoyment and sale or disposal of their investments in its territory.

[2. For greater certainty, the treatment accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment accorded, in like situations, by that sub-national government to investors, and to investments of investors, of any third country.]

*Text to be adjusted for the EU regarding “sub-national government” in relation to the Member States.*

[3. Paragraph 1 shall not be construed to oblige a Party to extend to the investors of the other Party the benefit of any treatment resulting from:

(a). treatment granted as a process of economic integration, which includes commitments to abolish substantially all barriers to investment, together with the approximation of legislation of the parties on a broad range of matters within the purview of this Agreement.

(b). any international agreement for the avoidance of double taxation or other international agreement or arrangement relating wholly or mainly to taxation.

(c). existing or future measures providing for recognition.]

*Agreement in principle, issue relates to its placement. Both sides to come back to placement of paragraph 3.*

4. For greater certainty, the “treatment” referred to in Paragraph 1 and 2 does not include investor-to-state dispute settlement procedures provided for in other international investment treaties and other trade agreements.

## Section 4: Investment Protection

### Article X.9: Treatment of Investors and of Covered Investments

1. Each Party shall accord in its territory to investors and to covered investments of the other Party fair and equitable treatment and full protection and security in accordance with paragraphs 2 to 7.
2. A Party breaches the obligation of fair and equitable treatment referenced in paragraph 1 where a measure or series of measures constitutes:
  - a. Denial of justice in criminal, civil or administrative proceedings;
  - b. Fundamental breach of due process, including a fundamental breach of transparency, in judicial and administrative proceedings.
  - c. Manifest arbitrariness;
  - d. Targeted discrimination on manifestly wrongful grounds, such as gender, race or religious belief;
  - e. Abusive treatment of investors, such as coercion, duress and harassment; or
  - f. A breach of any further elements of the fair and equitable treatment obligation adopted by the Parties in accordance with paragraph 4 of this Article.
3. In addition to paragraph 2, a breach of fair and equitable treatment may also arise from any other treatment of covered investments or investors which is contrary to the fair and equitable treatment obligation recognized in the general practice of States accepted as law.
4. In accordance with X [*exact reference to be determined regarding the procedure*], the Parties shall every X years [*or regularly*], or upon request of a Party, review the content of the obligation to provide fair and equitable treatment.
5. When applying the above fair and equitable treatment obligation, a tribunal may take into account whether a Party made a specific representation to an investor to induce a covered investment, that created a legitimate expectation, and upon which the investor relied in deciding to make or maintain the covered investment, but that the Party subsequently frustrated.
6. For greater certainty, ‘full protection and security’ refers to the Party’s obligations relating to physical security of investors and covered investments.

7. For greater certainty, 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.

**[EU: Article X**

Each Party shall observe any specific written obligation it has entered into with regard to an investor of the other Party or an investment of such an investor.]

**Article X.10: Compensation for Losses**

Notwithstanding paragraph 5(b) of Article X.14 (Reservations and Exceptions), each Party shall accord to investors of the other Party, whose covered investments suffer losses owing to armed conflict, civil strife, a state of emergency or natural disaster in its territory, treatment no less favourable than that it accords to its own investors or to the investors of any third country, whichever is more favourable to the investor concerned, as regards restitution, indemnification, compensation or other settlement.

**Article X.11: 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:

- (a) for a public purpose;
- (b) under due process of law;
- (c) in a non-discriminatory manner; and
- (d) against payment of prompt, adequate and effective compensation.

For greater certainty, this paragraph shall be interpreted in accordance with Annex X.9.1 on the clarification of expropriation.

2. Such compensation shall amount to the fair market value of the investment at the time immediately before the expropriation or the impending expropriation became known, whichever is earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. The compensation shall also include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective for the investor, be paid and made transferable, without delay, to the country designated by the investor and in the

currency of the country of which the investor is a national or in any freely convertible currency accepted by the investor.

4. The investor affected shall have a right, under the law of the expropriating Party, to prompt review of its claim 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.

[CAN: 5. This article does 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 these actions are consistent with the TRIPS Agreement. For greater certainty, a determination that these actions are inconsistent with the TRIPS Agreement does not establish that there has been an expropriation.]

[EU: 5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, to the extent that such issuance is consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreements ('TRIPS Agreement').]

### **Annex: Expropriation**

The Parties confirm their shared understanding that:

1. Expropriation may be either direct or indirect:
  - a) direct expropriation occurs when an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
  - b) indirect expropriation occurs where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that it substantially deprives the investor of the fundamental attributes of property in its investment, including the right to use, enjoy and dispose of its investment, without formal transfer of title or outright seizure.
2. The determination of whether a measure or series of measures by a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
  - a) 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;
  - b) the duration of the measure or series of measures by a Party;
  - c) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and

d) the character of the measure or series of measures, notably their object, context and intent.

3. For greater certainty, except in the rare circumstance where the impact of the measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.

### **Article X.12: Transfers**

1. Each Party shall permit all transfers relating to a covered investment to be made without restriction or delay and in a freely convertible currency. Such transfers include:

(a) contributions to capital, such as principal and additional funds to maintain, develop or increase the investment;

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

(c) proceeds from the sale or liquidation of the whole or any part 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 X... (Compensation for Losses) and X... (Expropriation);

(f) earnings and other remuneration of foreign personnel and working in connection with an investment;

(g) payments of damages pursuant to an award issued by a tribunal under Chapter X Investor to State Dispute Settlement.

2. Transfers shall be made at the market rate of exchange applicable on the date of transfer.

3. 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.

[EU: 4. When in exceptional circumstances, capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party,

safeguard measures affecting transfers may temporarily be taken by the Party concerned, provided that these measures shall be strictly necessary and shall not exceed in any case a period of six months.

The Party adopting the safeguard measures shall inform the other Party forthwith and present, as soon as possible, a time schedule for their removal.]

5. Notwithstanding paragraphs 1, 2 or 3, nothing in this article shall be construed to prevent a Party from applying in an equitable and non-discriminatory manner and not in a way that would constitute a disguised restriction on transfers, 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) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring the satisfaction of judgments in adjudicatory proceedings.

#### **Article X.13: Subrogation**

1. If a Party, or an agency thereof, makes a payment under an indemnity, guarantee or contract of insurance it has entered into in respect of an investment made by one of its investors in the territory of the other Party, the other Party shall recognize that the Party or its agency 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 an agency thereof, or by the investor if the Party or an agency thereof so authorizes.



## Section 5: Reservations and Exceptions

### Article X.14: Reservations and Exceptions

1. Articles X- (National Treatment), X- (Most-Favoured-Nation Treatment), X- (Market Access), X- (Senior Management and Boards of Directors) and X- (Performance Requirements) do not apply to:

- (a) an existing non-conforming measure that is maintained by:
  - (i) the European Union, as set out in its Schedule to Annex I;
  - (ii) a national government [of a Party], as set out in its Schedule to Annex I;
  - (iii) a provincial, territorial, or regional government [of a Party], as set out in its Schedule to Annex I; or
  - (iv) a local government of a Party.
- (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 X- (National Treatment), X- (Most-Favoured-Nation Treatment), X- (Market Access), X- (Senior Management and Boards of Directors) and X- (Performance Requirements).

2. Articles X- (National Treatment), X- (Most-Favoured-Nation Treatment), X- (Market Access), X- (Senior Management and Board of Directors) and X- (Performance Requirements) do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. Without prejudice to Article X [Expropriation] and Article X [Treatment of Investors and Covered Investments], no Party may adopt any measure [CAN: or series of measures] after the date of entry into force of this Agreement and covered by its schedule to Annex II, [EU: the effect of which is] [CAN: which is designed] to require an investor of the other Party, by reason of nationality, to sell or otherwise dispose of an investment existing at the time the measure [CAN: or series of measures] becomes effective.

4. In respect of intellectual property rights, a Party may derogate from Article X.3 (National Treatment), Article X.4 (Most-Favoured-Nation Treatment) [CAN: and subparagraph 1(f) of Article X.8 (Performance Requirements)] where permitted by the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

[5. [EU: Article X. (Market Access)] Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment) and X.7 (Senior Management and Board of Directors) do not apply to:

- (a) procurement by a Party or a state enterprise; or
- (b) subsidies or government support provided by a Party [CAN: or State enterprise] including direct or potential transfer of funds, the foregoing of government revenue (such as a tax credit), and the provision of goods or services [CAN: other than general infrastructure].

#### **[CAN: Article X.15: 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 that Party and to investments of that investor if:
  - a) investors of a non-Party own or control the enterprise; and
  - b) the denying Party adopts or maintains measures with respect to the non-Party that:
    - i. are related to maintenance of international peace and security or the protection of human rights; and
    - ii. prohibit transactions with the enterprise or would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

#### **Article X-16: Formal Requirements**

Notwithstanding Articles X- (National Treatment) and X- (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its covered investment, to provide routine 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. [CAN: 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 laws.]

## Section 6: Investor-State Dispute Settlement

*(Latest Consolidated ISDS text to be inserted here)*

*[Scope of ISDS provision will include the non-application of ISDS to pre-establishment]*

*[ISDS Scope Provision Regarding Public Debt]*

[CAN: This Section shall apply to the restructuring of debt issued by a Party in accordance with Annex X (Public Debt).]

### [Annex X: Public Debt]

[CAN: 1. No claim that a restructuring of debt issued by a Party breaches an obligation under Sections [Establishment of Investments, Non-Discriminatory Treatment, Investment Protection] may be submitted to, or if already submitted continue in, arbitration under Section [Investor-State Dispute Settlement] if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article X [National Treatment] or Article X [Most-Favoured Nation].

2. Notwithstanding [ISDS: Article X Submission of a Claim to Arbitration, para 4], and subject to paragraph 1 of this Annex, an investor of another Party may not submit a claim under Section [Investor-State Dispute Settlement] that a restructuring of debt issued by a Party breaches an obligation under Sections [Establishment of Investments, Non-Discriminatory Treatment, Investment Protection] (other than Article X [National Treatment] or Article X [Most-Favoured Nation]) unless 270 days have elapsed from the date of receipt by the respondent of the written request for consultations pursuant to [ISDS: Article X Consultations para. 2].

*To be placed in definitions section:*

[CAN: **Negotiated restructuring** means the restructuring or rescheduling of a debt instrument that has been effected through (i) a modification or amendment of such debt instrument, as provided for under its terms, or (ii) a comprehensive debt exchange or other similar process in which the holders of no less than 75 percent of the aggregate principal amount of the outstanding debt under such debt instrument have consented to such debt exchange or other process.]

## Section 7: Final Provisions

*NB The following provisions to be included in the general part of the Agreement.*

### Article X.18: Termination

In the event that the present Agreement is terminated pursuant to Article X [Final Provisions], the provisions of this Section and those of the Section on Investor-to-State Dispute Settlement Procedures shall continue to be effective for a further period of 20 years from that date in respect of investments made before the date of termination of the present Agreement.

*Need to harmonize with Termination provisions in Final Provisions Chapter.*

### [EU: Relationship with other Agreements

1. This Agreement replaces the agreements between Member States of the European Union and Canada listed in Annex (Y). The provisions of such agreements shall cease to apply from the date of entry into force of this Agreement.

2. In the event of the provisional application of this agreement, the application of the provisions of the agreements mentioned in paragraph 1) shall be suspended as of the date of provisional application of this agreement in accordance with Article X [Final Provisions] and until such agreements are replaced in accordance with the provisions of paragraph 1). The suspension shall be terminated in the event the provisional application is terminated.

3. Notwithstanding paragraphs 1 and 2, claims may be submitted pursuant to the provisions of the agreements listed in Annex (Y), regarding treatment accorded while the said agreements were in force, pursuant to the rules and procedures established in them, and provided that no more than three (3) years have elapsed since the date of suspension of the agreement pursuant to paragraph 2, or if the agreement is not suspended pursuant to paragraph 2, the date of entry into force of this Agreement. Where a claim has been submitted to arbitration under an agreement listed in Annex (Y), the provisions of such agreement shall remain applicable to the extent necessary for the purposes of the arbitration and the execution and enforcement of any award].

### Article X: General exceptions

1. For purpose of the Investment Chapter:

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

(i) [EU: to protect public security or public morals or to maintain public order<sup>2</sup>];

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<sup>2</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (ii) to protect human, animal or plant life or health,
- (iii) to ensure compliance with domestic law that is not inconsistent with this Agreement, [EU: including those relating to:
  - a) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
  - b) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
  - c) safety];
- (iv) [EU: to protect national treasures of artistic, historic or archaeological value];
- (v) for the conservation of living or non-living exhaustible natural resources, [EU: if such measures are applied in conjunction with restrictions on domestic investors];

or

[EU: (vi) inconsistent with Articles 3 (National Treatment) and 4 (Most-Favoured-Nation Treatment), provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party<sup>3</sup>.]

*[Parties to check for the need of paragraph (vi) in relation to coverage in the Article on Taxation.]*

- (b) provided that the measure referred to in subparagraph (a) is not:
  - (i) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors [EU: where like conditions prevail], or
  - (ii) a disguised restriction on international [CAN: trade] or investment.

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<sup>3</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of nonresidents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

[EU: 2. This Article does not apply to obligations arising out of Articles X [Treatment of Investment] and X [Expropriation] of the Chapter on Investment regarding treatment accorded to investors of a Party in so far as they affect investors and their investments with respect to the operation, management, maintenance, use, enjoyment and sale or disposal of their investments in the territory of one of the Contracting Parties.]

#### Article X. **Current account**

The Parties shall authorise, in freely convertible currency and in accordance with the provisions of Article VIII of the Articles of the Agreement of the International Monetary Fund, any payments and transfers on the current account of the balance of payments between the Parties.

#### *Article X* **Movement of Capital**

The Parties shall consult each other with a view to facilitating the movement of capital between them by continuing the implementation of their policies regarding the liberalisation of the capital and financial account, supporting a stable and secure framework for long term investment.

#### **[Balance-of-Payments [EU: Exceptions]**

1. Nothing in this Chapter shall be construed to prevent a Party from adopting or maintaining [EU: restrictive] measures [EU: with regard to trade in goods, services, establishment and transfer of capital and payments] [CAN: that restrict transfers] where the Party experiences serious balance-of-payments difficulties [EU: and external financial difficulties], or the threat thereof, provided that such measures [CAN:<sup>4</sup>]:
  - a. are in effect for a period not exceeding one year; however, if extremely exceptional circumstances arise such that a Party seeks to extend such measures, it will coordinate in advance with the other Party concerned the implementation of any proposed extension;
  - b. are not confiscatory;
  - c. do not constitute a dual or multiple exchange rate practice;
  - d. [CAN: do not otherwise interfere with investors' ability to earn a market rate of return in the territory of the other country on any restricted assets;<sup>5</sup>]

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<sup>4</sup> Each Party shall endeavour to provide that such measures will be price based.

<sup>5</sup> For greater certainty, the term "restricted assets" in subparagraph (d) refers only to assets invested in the territory of the Party by an investor of the other Party that are restricted from being transferred out of the territory of the Party.

- e. avoid unnecessary damage to the commercial, economic or financial interests of the other Party;
  - f. are temporary and phased out progressively as the situation calling for imposition of such measures improves;
  - g. are applied on a national treatment or most-favoured-nation treatment basis, whichever is better;
  - h. are promptly published by the government authorities responsible for financial services or central bank of a Party.
  - i. [EU: They shall be in accordance with the conditions established in the WTO Agreement and consistent with the Articles of Agreement of the International Monetary Fund, as applicable.]
2. [CAN: Paragraph 1 does not apply to measures that restrict:
- a. Payments or transfers for current transactions, unless:
    - i. The imposition of such measures complies with the procedures stipulated in the *Articles of the International Monetary Fund*;<sup>6</sup> and,
    - ii. The Party coordinates any such measures in advance with the other Party; or,]
  - b. Payments or transfers associated with foreign direct investment].

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<sup>6</sup> Current transactions shall have the meaning set forth in Article 30(d) of the Articles of Agreement of the International Monetary Fund, and, for greater certainty, shall include interest pursuant to a loan or bond on any restricted amortization payments coming due during period that control on capital transactions are applied.